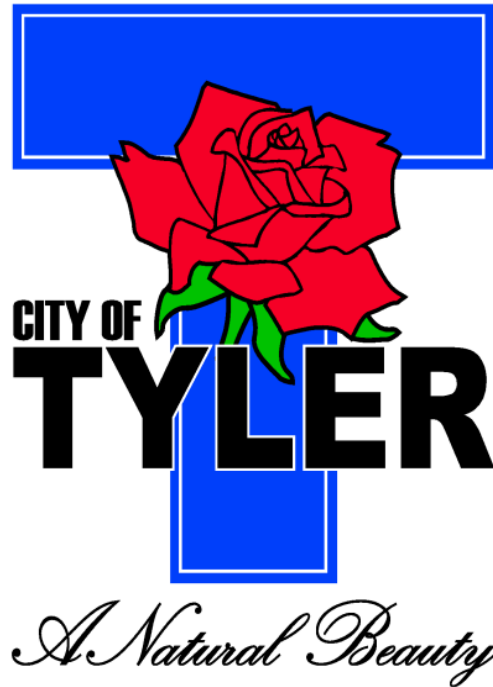


CITY COUNCIL AGENDA



Wednesday, May 14, 2025
9:00 am



CITY COUNCIL

Donald P. Warren, Mayor
Stuart Hene, District 1
Petra Hawkins, District 2
Dr. Shirley McKellar, District 3
James Wynne, District 4
Lloyd Nichols, District 5
Brad Curtis, District 6



CITY COUNCIL MEETING AGENDA

CITY COUNCIL CHAMBERS - CITY HALL

City Hall, City Council Chambers

212 N. Bonner Avenue, 2nd Floor

Tyler, Texas

Follow us on Facebook Live at:

<https://www.facebook.com/CityofTylerTexas/>

Wednesday, May 14, 2025

9:00 am

Internet website <http://www.cityoftyler.org> and Cable Access Channel 3

Please call (903) 531-1250 if you need assistance with interpretation or translation for this City meeting.

Si usted necesita ayuda con la interpretación o traducción de cualquier material en este sitio o en una reunión pública de la Ciudad de Tyler por favor llame al (903) 531-1250.

AMERICANS WITH DISABILITIES ACT NOTICE

The City of Tyler wants to ensure that City Council Meetings are accessible to persons with disabilities. If any individual needs special assistance or accommodations in order to attend a City Council meeting, please contact the City Manager's Office at 903.531.1250, in advance so accommodations can be made.

COURTESY RULES

Thank you for your presence. The City Council appreciates your interest in Tyler City Government. To ensure fairness and orderly meetings, the Council has adopted rules of courtesy which apply to all members of the Council, Administrative Staff, News Media, Citizens and Visitors. If you wish to address the Council, please fill out the information on the IPAD located outside the Council Chambers. Speakers will be heard as the individual item(s) in which they have registered an interest come before the Council. Your remarks will be limited in duration depending on the number of people wanting to speak on a particular item. Comments to the City Council should only be made from the podium. This will ensure that the comments are picked up by the microphones and are made a part of the official record. Delay or interruption of the proceedings will not be tolerated.

INVOCATION

PLEDGE OF ALLEGIANCE

MINUTES

Request that the City Council consider approving the minutes of the regular called meeting of the City Council of the City of Tyler, Texas, held on March 26, 2025.

ELECTION

E-1 Request that the City Council consider canvassing the returns of the Tyler City Council Election held May 3, 2025, for Districts No. 1 and 3, and affirming the cancellation of the Election and designation of the unopposed winner for the Tyler City Council Election for District 5 that would have been held on May 3, 2025, and adopting an Ordinance declaring the results.

E-2 Request that a Certificate of Election and the Oath of Office be administered to the re- elected City Councilmembers for Districts 1 and 5.

E-3 Request that a Certificate of Election and the Oath of Office be administered to the newly elected City Councilmember for District No. 3.

(NOTE: New City Council member takes seat on the dais)

E-4 Request that the City Council consider electing a Mayor Pro Tem.

PRESENTATION

P-1 Request that the City Council consider receiving a presentation on an opportunity to issue approximately \$45,000,000 in revenue bonds to facilitate regulatory compliance water and sewer projects, consider any appropriate action related thereto, and provide general guidance to staff regarding authorization to proceed with this opportunity to issue revenue bonds.

RESOLUTION

R-1 Request that the City Council consider approving an amended Resolution R-24-04 nominating Hiland Dairy to the Office of the Governor, Economic Development and Tourism through the Economic Development Bank for designation as an Enterprise Project under the Texas Enterprise Zone Program under the Texas Enterprise Act, Chapter 2303, Texas Government Code, and authorize the City Manager to sign all documents necessary to implement the amended Resolution.

MISCELLANEOUS

M-1 Request that the City Council consider authorizing the City Manager to execute a Engineering Services Agreement in the amount of \$607,200 with Kimley-Horn and Associates, Inc. for the SL 124 Utility Relocation and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

CONSENT

(These items are considered to be routine or have been previously discussed, and can be approved in one motion, unless a Council Member asks for separate consideration of an item.)

- C-A-1** Request that the City Council consider authorizing the City Manager to execute and add Amendment #01 to Work Order #01 of the Master Services Agreement with Elledge Engineering Corp. for the design and construction phase services, as they relate to the Stormwater Repair Projects 2025 for \$20,500.00 for a total of \$132,500.00.
- C-A-2** Request that the City Council consider authorizing the City Manager to execute Change Order No. 1 for the 2024 Water Meter Replacement Program to increase the total contract amount by 15% from \$3,450,000 to \$3,967,500 for approximately 3,000 additional meter replacements.
- C-A-3** Request that the City Council consider authorizing the City Manager to declare a Ford Explorer as surplus property and approve the inter-local agreement authorizing the sale to Hemphill ISD for a total purchase price of \$11,000.00.
- C-A-4** Request that the City Council consider authorizing the City Manager to execute a new Hangar/Operator Lease to The Albert Hall Co., LLC (John D Crow), for a portion of Tract 2 currently leased by Term Properties, at Tyler Pounds Regional Airport.
- C-A-5** Request that the City Council consider authorizing the City Manager to execute a Consent to Assignment & Amendment of F.B.O. Lease for Term Properties, assigning a 0.352-acre portion of 7.03 acres of Tract 2 to The Albert Hall Co., LLC (John D. Crow) at Tyler Pounds Regional Airport.
- C-A-6** Request that the City Council consider authorizing the City Manager to execute a mutual agreement between the City of Tyler and Lindale Rural Water Company for the purpose of clarifying the rights, obligations and regulatory fees of the Parties regarding the provision of sanitary sewer services to customers that the Parties have in common and to the extent allowed under State and Federal Law.
- C-A-7** Request that the City Council consider authorizing the City Manager to execute the proposal with Eagle Airport Marking, Inc., for \$79,968.23 to repaint the surface painted markings on Runway 13-31 at Tyler Pounds Regional Airport.
- C-A-8** Request that the City Council consider authorizing the City Manager to approve the addition of an Exhibit C to the City of Whitehouse Interlocal Agreement, and to approve additional equipment expenditures per that agreement up to \$50,000 during the Fiscal Year.

CITY MANAGER'S REPORT

EXECUTIVE SESSION

The City Council may go into Executive Session regarding any item posted on the Agenda as authorized by Title 5, Chapter 551 of the Texas Government Code. Notice is hereby given that the City Council may go into Executive Session in accordance with the following provision of the Government Code: Under Tex. Gov't Code Section 551.071 "Litigation", deliberation regarding the following: Pending or contemplated litigation or settlement offer involving. Sorto et al v. City

of Tyler, Cause 23-1947-A Litigation is, by its nature, an ongoing process, and questions may arise as to trial tactics, or settlement offers which need to be explained to the City Council. Upon occasion, the City Council may need information from the City Attorney as to the status of the pending or contemplated litigation and or settlement offers related to the litigation matters listed above. Any final action by the City Council will be taken in open session.

ADJOURNMENT

**MINUTES OF THE REGULAR CALLED MEETING OF
THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
March 26, 2025**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, March 26, 2025 at 9:00 a.m. in the City Council Chambers, 2nd floor of City Hall, Tyler, Texas, with the following present:

Mayor: Don Warren
Mayor Pro Tem: Stuart Hene
Councilmembers: Brad Curtis
Shirley McKellar
Petra Hawkins
James Wynne
Lloyd Nichols

City Manager: Edward Broussard
Deputy City Manager: Stephanie Franklin
Asst. City Manager: Heather Nick
Asst. City Manager: Keidric Trimble
City Attorney: Deborah G. Pullum
Senior Asst. City Attorney: April Earley
Senior Asst. City Attorney: Alesha Buckner
Director of Organizational Development: Regina Y. Moss
Planning Director: Kyle Kingma
Chief Information Officer: Benny Yazdanpanahi
City Fire Chief: David Coble
City Librarian: Ashley Taylor
Police Chief: Jimmy Toler
City Engineer: Darin Jennings
Traffic Engineer: Cameron Williams
Director of Utilities: Kate Dietz
Director of Parks & Recreation: Leanne Robinette
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Councilmember McKellar.

MINUTES

Motion by Councilmember Wynne to approve the February 12, 2025 minutes;
seconded by Councilmember McKellar; motion carried 7 - 0 & approved as presented.

AWARDS

A-1 Request that the City Council consider accepting the Texas Municipal Library Directors Association 2024 Achievement of Excellence in Libraries Award.

PRESENTATION

- P-1** Request that the City Council consider hearing a presentation and approving the Annual Comprehensive Financial Report for the fiscal year ending on September 30, 2024, as presented by Gollob Morgan Peddy.

Kevin Cashion, Gollob Morgan Peddy- Gave a brief presentation concerning the Annual Comprehensive Financial Report for the fiscal year ending on September 30, 2024.

Motion by Councilmember Nichols; seconded by Mayor Pro Tem Hene; motion carried 7 - 0 & approved as presented.

- P-2** Request that the City Council consider receiving an updated presentation on the progress of the Consent Decree Program for Tyler Water Utilities.

Jim Forbes, Pipeline Analysis- Gave a presentation on the progress of the Consent Decree Program for Tyler Water Utilities

ZONING

- Z-1** PD25-005 ALLEN ROBERT H TESTAMENTARY TRUST ET AL
(CUMBERLAND PARK DEVELOPMENT AT SOUTH BROADWAY AVENUE,
CUMBERLAND ROAD, CENTENNIAL PARKWAY AND MARKET SQUARE
BOULEVARD)

Request that the City Council consider adoption of an Ordinance approving the concept plan amendment for the Cumberland Park Development currently zoned 'AG', Agricultural District, 'RPO', Restricted Professional Office District, and 'PCD', Planned Commercial Development District. **(O-2025-12)**

Motion by Councilmember Curtis; seconded by Councilmember Nichols; motion carried 7 - 0 & approved as presented.

- Z-2** PD24-036 ALLEN ROBERT H TESTAMENTARY TRUST ET AL (240
CENTENNIAL PARKWAY AND APPROXIMATELY 90 ACRES OF LAND
EAST OF CENTENNIAL PARKWAY)

Request that the City Council consider adoption of an Ordinance approving a zone change from 'AG', Agricultural District, 'RPO', Restricted Professional Office District, and 'PCD', Planned Commercial Development District to 'PMF', Planned Multi-Family District with final site plan. **(O-2025-13)**

Motion by Councilmember Curtis; seconded by Councilmember Nichols; motion carried 7 - 0 & approved as presented.

- Z-3** Z25-002 NEW DOOR PROPERTIES LLC (1204 KENNEDY ROAD)
Request that the City Council consider adoption of an Ordinance approving a zone change from 'R-1B', Single-Family Residential District to 'R-1D', Single-Family Detached and Attached Residential District. **(O-2025-14)**

Motion by Councilmember McKellar; seconded by Councilmember Curtis; motion carried 7 - 0 & approved as presented.

- Z-4** Z25-001 REGINALD JENKINS (2120 NORTH GASTON AVENUE)
Request that the City Council consider adoption of an Ordinance approving a zone change from 'R-1B', Single-Family Residential District to 'R-1D', Single-Family Detached and Attached Residential District. **(O-2025-15)**

Motion by Councilmember McKellar; seconded by Councilmember Curtis; motion carried 7 - 0 & approved as presented.

RESOLUTION

- R-1** Request that the City Council consider adoption of a Resolution authorizing submission of an application by the Tyler Fire Department for and acceptance of grant funding through the Office of the Texas Governor's (OOG) Homeland Security Grant Division (HSGD) and for grant funding through the State Homeland Security Program (SHSP), as managed by the East Texas Council of Governments, to be used to support programs and projects aimed at maintaining and/or enhancing the City of Tyler's emergency preparedness and response capabilities. **(R-2025-21)**

Motion by Mayor Pro Tem Hene; seconded by Councilmember McKellar; motion carried 7 - 0 & approved as presented.

MISCELLANEOUS

- M-1** Request that the City Council consider authorizing the City Manager to execute a Capital Improvements Project contract, in the amount of \$151,198.92, with Advanced Water Well Technologies for the Well Survey Phase 2 Project (Buyboard Contract #672-22) and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt. **(R-2025-22)**

Motion by Councilmember Curtis; seconded by Councilmember Wynne; motion carried 7 - 0 & approved as presented.

- M-2** Request that the City Council consider authorizing the City Manager to execute a contract for the "Group 9 Cleaning & Closed-Circuit Television (CCTV) Recording of Wastewater Lines, Basin 13", Bid No #25-018, with Pro-Pipe, Inc for \$1,516,869.87.

Motion by Councilmember Curtis; seconded by Councilmember McKellar; motion carried 7 - 0 & approved as presented.

- M-3** Request that the City Council consider authorizing the City Manager to enter into an agreement with MHS Planning & Design to prepare Stewart Park design plans, in the amount of \$67,500.00.

Motion by Mayor Pro Tem Hene; seconded by Councilmember Hawkins; motion carried 7 - 0 & approved as presented.

M-4

Request that the City Council consider ratifying City Staff's previous execution of an indefinite right-of-way use agreement and easement with ATDL Ferguson, LLC, dba The Gardens at West Oak for the purpose of utilizing designated parking spaces in the City of Tyler public right-of-way on West Erwin Street and West Ferguson Street, Tyler, Texas.

William Hersey, Managing Member of West Oak Property Development –

Stated that they we're excited to get back to work. It's been a little bit since they had been building in downtown, so they are excited. He stated that the way that Greg Mitchell and The Benchmark has put this together with the City, there's a great flow in the area. It's going to increase traffic. There's going to be a 201-unit apartment complex, six buildings. Amenities- I know Mayor Warren, loves his pickleball court, so they included one of those. They will also have a indoor golf facility; they are excited about that. Pool, obviously, with a gated community.

Councilmember Wynne – Asked if the extra parking is needed because of the number of units or guests, or just because it's always nice to have extra parking?

William Hersey – Stated they always want to maximize the ability for their tenants to have extra parking. With that, it made sense to go ahead and just redo all the curb scape and take care of having additional parking for the units. So, this is part of their master plan to have all of those in there.

Motion by Councilmember Hawkins; seconded by Councilmember McKellar; motion carried 7 - 0 & approved as presented.

BOARD APPOINTMENTS

B-1

Request that the City Council consider making appointments to fill vacancies on the Disability Issues Review Board, Historical Preservation Board, Parks Board and the Main Street Board.

Disability Issues Review Board appointed

- *Robert Ogden - Chair
- *Juanita Fletcher
- *Neisha Lestage
- *Craig Ellis
- *Patricia Glass
- *Mary Kahrhoff
- *Jeremy Flowers

Historical Preservation Board

Stuart Bannan

Parks Board

Denice Smith

Main Street Board

Lindsay Durr for Heart of Tyler

Motion by Councilmember McKellar to approve the slate of members recommended; seconded by Councilmember Curtis; motion carried 7 - 0 & approved as presented.

CONSENT

(These items are considered to be routine or have been previously discussed, and can be approved in one motion, unless a Council Member asks for separate consideration of an item.)

- C-A-1** Request that the City Council consider authorizing the City Manager to approve the reconciliation change order final payment and release of the retainage in the amount of \$31,640.00 to N.G. Painting, L.P., for the Shiloh Road Elevated Storage Tank Rehabilitation project.
- C-A-2** Request that the City Council consider authorizing the City Manager to purchase two (2) BraunAbility Voyager ADA (Americans with Disabilities Act) Minivans for Transit Department from Model 1 Commercial Vehicles, Inc., for a total of \$195,623.70 through the State of Oklahoma contract SW0797C FY25.
- C-A-3** Request that the City Council consider authorizing the City Manager to execute The reconciliation Change Order with Hartbeat Construction for the Repair of Stormwater Inlet Boxes - 2024 project, Bid No. 24 -016, increasing the approved contract amount by \$20,934.50, from \$320,449.50 to \$341,384.00, and approve the release of retainage.
- C-A-4** Request that the City Council consider authorizing the City Manager to purchase five RTVs (Rough Terrain Vehicles) from Lowe Tractor for \$11,579.85 each to replace units for the Parks Department with the option to purchase additional units as needed for fiscal year 2025 for a total purchase price of \$57,899.25 through Sourcewell Contract #031121.
- C-A-5** Request that the City Council consider authorizing the City Manager to ratify the underground fuel storage tank project change orders for a total of \$476,396.21.
- C-A-6** Request that the City Council consider authorizing the City Manager to execute Work Order No. 3 with MHS Planning and Design, LLC., in an amount not to exceed \$130,075, to provide final design and construction administration services for the 2025 Pedestrian Access Improvement Project.
- C-A-7** Request that the City Council consider authorizing the City Manager to purchase one (1) rearload garbage truck from Doggett Freightliner to replace unit 15780 through Tips Contract #230802 for a purchase price of \$258,118.35.
- C-A-8** Request that the City Council consider authorizing the City Manager to execute the

Second Amendment to the Interlocal Agreement for Computer Support Services
between the City of Tyler and the City of Whitehouse.

- C-A-9** Request that the City Council consider adopting a Resolution amending the polling locations and giving Notice of an Election for a previously called Election for May 3, 2025, to fill the offices of Tyler City Council Members for Districts No. 1 and 3, making provisions for and resolving other matters incident and related to such regular election, and reducing the total number of voting locations throughout Smith County.
(R-2025-23)
- C-A-10** Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed \$242,500.00, with Halff Associates, Inc. for Consent Decree Field Management.
- C-A-11** Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed \$148,750.00, with Halff Associates, Inc. for Sanitary Sewer Line Relocation.
- C-A-12** Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by \$9,849.64 and release of final retainage payment in the amount of \$13,547.10 to Hartbeat Construction, for Private Lateral Group 2 Program Construction.
- C-A-13** Request that the City Council authorize the City Manager to ratify expenditures in the amount of \$126,702.32 by Advanced Water Well Technologies for all work performed on the number 3 pump and motor emergency rehabilitation at the Lake Tyler Raw Water Pump Station.

Motion by Councilmember Curtis to approve the entire consent agenda as presented; seconded by Councilmember Wynne; motion carried 7 - 0 & approved as presented.

CITY MANAGER'S REPORT

1. So, Spring is in the air. I mean, the weather is wonderful outside, and the Great Tyler Cleanup is coming up to give you an opportunity to get out and pick up some trash. That's coming up on April 12th, and the focus this year is on the significant anniversaries we have with TxDOT's 40th anniversary of the Adopt-a-Highway program, which began here in Tyler, and Keep Tyler Beautiful's 30th anniversary of this year. In fact, you can learn more about this on our Roses and Weeds podcast that just came out last week - features Katherine Kroemer from TxDOT and Casey Williams, our Keep Tyler Beautiful Coordinator. They focused on litter and highlighted programs like the Adopt-a-Highway and Adopt-a-Spot program that you can do here in Tyler.
2. If you get a chance, with all the work that's been going on at W.E. Winters Park, our new mural installation has been done over there in the bathroom. It's a vibrant and meaningful addition to the ongoing park revitalization. While the park is still under construction, the mural has been completed. The mural's theme revolves around pollinators. The artwork was created by artist Hilly Shirley, who is known for his distinctive airbrush style.
3. Switch things over to the Airport. The Airport is moving through a site study and process for the construction of a new air traffic control tower. This is kind of one of the pieces that we look at for the Airport that would be critical in future years and decades. So, at this stage, local controllers recently reviewed or provided the opportunity to compare three potential sites using virtual reality technology. After validating models of the Airport in each potential

site location, a team of Engineers and FAA personnel conducted comparisons and evaluated criteria such as runway and taxiway visibility, different sun reflectivity scenarios, and night time operations. The site identified as the most advantageous in terms of safety, efficiency, cost, and future expansion will then move forward into the design phase. The Airport will be competing for construction funding with the hope of initiating construction sometime in the near future.

4. And then finally, Fire Departments from all over Texas are assisting with the wildfires in Texas, from Panhandle extending down to the Hill Country. The Tyler Fire Department, which is new to the TIFMAs program, has sent a member to join up with a Texarkana team fighting one of the largest wildfires in Texas history. Fire Senior Captain Daniel Bailey is on a 14-day deployment in the Panhandle before returning to Tyler. So, we're proud of him and hope he is safe out there and all come back to all of us.

Councilmember Hene – Mentioned the Great Tyler Cleanup is on April 12th. Right after that event, you could go to another park and do a battle of badges. This is a softball game between the Fire Department and the Police Department.

ADJOURNMENT

Motion by Councilmember McKellar to adjourn the meeting at 10:08 am; seconded by Councilmember Nichols; motion carried 7 - 0 & meeting adjourned.

DONALD P. WARREN, MAYOR OF
THE CITY OF TYLER, TEXAS

A T T E S T:

CASSANDRA BRAGER, CITY CLERK



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. E-1

Date: May 14, 2025

Subject: Request that the City Council consider canvassing the returns of the Tyler City Council Election held May 3, 2025, for Districts No. 1 and 3, and affirming the cancellation of the Election and designation of the unopposed winner for the Tyler City Council Election for District 5 that would have been held on May 3, 2025, and adopting an Ordinance declaring the results.

Item Reference: **Texas Election Code Section 67.003 (Time for Local Canvass);
Ordinance No. 0-2025-11, adopted February 26, 2025**

The City Council is required by law (Sec. 67.003 of the Texas Election Code) to:

- 1) Canvass the returns and declare the results of the City Council Election to elect a Tyler City Council Councilmember
for Single Member Districts No. 1 and 3, held on May 3, 2025;
- 2) Affirm the cancellation of the election and designate the unopposed winner for the Single Member District No. 5 and
- 3) Adopt an ordinance that declares the results of said election.

RECOMMENDATION:

Request that the City Council consider canvassing the returns of the Tyler City Council Election held May 3, 2025, for Districts No. 1 and 3, and affirming the cancellation of the Election and designation of the unopposed winner for the Tyler City Council Election for District 5 that would have been held on May 3, 2025, and adopting an Ordinance declaring the results.

Attachments:

[05 14 2025 Ordinance canvassing election results](#)

Drafted/Recommended By:

Department Leader Cassandra Brager, City Clerk

Edited/Submitted By:

City Manager

ORDINANCE NO. O-2025-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, CANVASSING THE RESULTS OF AN ELECTION HELD ON THE 3rd DAY OF MAY, 2025, FOR CITY COUNCILMEMBERS DISTRICT NO. 1 AND DISTRICT 3; AFFIRMING THE CANCELLATION OF THE ELECTION FOR THE TYLER CITY COUNCILMEMBER DISTRICT NO. 5; DESIGNATING THE UNOPPOSED CANDIDATE AS THE WINNER FOR TYLER CITY COUNCILMEMBER FOR DISTRICTS NO. 5 DECLARING THE RESULTS, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on the 14th day of May, 2025, the City Council of the City of Tyler, Texas, at a meeting duly called for the purpose, canvassed the returns of the City Council Election held on the 3rd day of May, 2025, in the City of Tyler, for the election of the City Councilmembers for Districts No. 1 and 3; and it appearing as a result of such canvass that the following named persons received the following number of votes for City Councilmembers, District No. 1 and District No. 3:

District No. 1, For City Councilmember

Stuart Hene	375 Votes (86.01%)
Max Stewart	61 Votes (13.99%)

District No. 3, For City Councilmember

Shonda Marsh	247 Votes (87.90%)
Write in Candidate	27 Votes (9.61%)

WHEREAS the City Clerk has certified in writing that the candidate for District No. 5 was unopposed and that no write-in candidate had filed to be placed on the list of write-in candidate for that place; and

WHEREAS, Texas Election Code Sections 2.051 through 2.054 authorize the City Council to declare the unopposed candidate elected to office and cancel the unneeded election; and

WHEREAS, on February 26, 2025, the City Council adopted Ordinance No. 0-2025-11, cancelling the Regular Election scheduled for City Council Districts 5 for May 3, 2025, and declaring the unopposed candidate elected to office;

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

PART 1: That **Stuart Hene** be and is hereby declared the duly elected City

Councilmember for District No. 1, to serve for a two-year term of office.

PART 2: That Shonda Marsh be and is hereby declared the duly elected City Councilmember for District No. 3, to serve for a two-year term of office.

PART 3: That the City Council Election for District No. 5, scheduled for May 3, 2025, was cancelled by Ordinance No. 0-2025-11 and the unopposed candidate declared the winner, and such cancellation and declaration is hereby affirmed.

PART 4: That the above named Tyler City Councilmembers for Districts No. 1 and District No. 3 shall be sworn into office and shall each serve for a two-year term of office.

PART 6: That this ordinance shall take effect immediately upon its adoption.

PASSED AND APPROVED on this the 14th day of May, A.D., 2025.

DONALD P WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number. E-2

Date: May 14, 2025

Subject: Request that a Certificate of Election and the Oath of Office be administered to the re- elected City Councilmembers for Districts 1 and 5.

Item Reference: Texas Election Code Section 67.016 (Certificate of Election)

It is recommended that a Certificate of Election and the Oath of Office be administered to the re-elected City Councilmembers for Districts 1 and 5

Stuart Hene, District 1
Lloyd Nichols, District 5

RECOMMENDATION:

Request that a Certificate of Election and the Oath of Office be administered to the re- elected City Councilmembers for Districts 1 and 5.

Drafted/Recommended By:
Department Leader Cassandra Brager, City Clerk

Edited/Submitted By:
City Manager



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number. E-3

Date: May 14, 2025

Subject: Request that a Certificate of Election and the Oath of Office be administered to the newly elected City Councilmember for District No. 3.
(NOTE: New City Council member takes seat on the dais)

Item Reference: Texas Election Code Section 67-016 (Certificate of Election)

Request that a Certificate of Election and the Oath of Office be administered to the newly elected City Councilmember for District No. 3.

RECOMMENDATION:

Request that a Certificate of Election and the Oath of Office be administered to the newly elected City Councilmember for District 3

Shonda Marsh, District 3

Drafted/Recommended By:
Department Leader Cassandra Brager, City Clerk

Edited/Submitted By:
City Manager



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. E-4

Date: May 14, 2025

Subject: Request that the City Council consider electing a Mayor Pro Tem.

Item Reference: **Texas Election Code Section 67.016 (Certificate of Election); Tyler City Charter Section 7 - Election of a Mayor Pro Tem**

Tyler City Charter Section 7.e. provides that a Mayor Pro Tem shall be elected by members of the Council. It is now necessary for the City Council to elect, from among its members, a new Mayor Pro Tem. The Mayor Pro Tem serves in the absence of the Mayor during a one-year term. By tradition, the City Council usually selects the City Councilmember with the most seniority to be Mayor Pro Tem. The Mayors Pro Tem for the past six years have been as follows:

2020/2021 Broderick McGee (District 2)
2021/2022 Shirley McKellar (District 3)
2022-2023 James Wynne (District 4)
2023/2024 Brad Curtis (District 6)
2024-2025 Stuart Hene (District 1)
2025-2026

RECOMMENDATION:

Request that the City Council consider electing a Mayor Pro Tem.

Drafted/Recommended By:
Department Leader Cassandra Brager, City Clerk

Edited/Submitted By:
City Manager



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. P-1

Date: May 14, 2025

Subject: Request that the City Council consider receiving a presentation on an opportunity to issue approximately \$45,000,000 in revenue bonds to facilitate regulatory compliance water and sewer projects, consider any appropriate action related thereto, and provide general guidance to staff regarding authorization to proceed with this opportunity to issue revenue bonds.

Item Reference:

Steven Adams, Managing Director with Specialized Public Finance, Incorporated, serving as Financial Advisor to the City of Tyler, will discuss an opportunity to issue approximately \$45,000,000 in new Revenue Bonds. During Fiscal Year 2025, we anticipate spending approximately \$45,825,294, with the excess being paid for from previous bond funds. The projects include, but are not limited to, the following:

- Bond Funded - Regulatory Compliance (Consent Decree)
- Capacity (Estimated Cost FY 25 \$14,468,372)
 - Private Lateral (Estimated Cost FY 25 \$1,064,876)
 - Group 3 (Estimated Cost FY 25 \$3,181,820)
 - Group 4 (Estimated Cost FY 25 \$1,680,039)
 - Group 5 (Estimated Cost FY 25 \$3,780,609)
 - Group 6 (Estimated Cost FY 25 \$8,367,377)
 - Group 7 (Estimated Cost FY 25 \$783,000)
 - Creek Crossing Repair (Estimated Cost FY 25 \$1,009,956)
 - Lift Stations (Estimated Cost FY 25 \$11,489,245)

The regulatory compliance fee will increase per month per customer to cover the EPA consent decree projects starting in October 2025.

RECOMMENDATION:

Request that the City Council consider receiving a presentation on an opportunity to issue approximately \$45,000,000 in revenue bonds to facilitate regulatory compliance water and sewer projects, consider any appropriate action related thereto, and provide general guidance to staff regarding authorization to proceed with this opportunity to issue revenue bonds.

Drafted/Recommended By:
Department Leader

Keidric Trimble

Edited/Submitted By:
City Manager



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. R-1

Date: May 14, 2025

Subject: Request that the City Council consider approving an amended Resolution R-24-04 nominating Hiland Dairy to the Office of the Governor, Economic Development and Tourism through the Economic Development Bank for designation as an Enterprise Project under the Texas Enterprise Zone Program under the Texas Enterprise Act, Chapter 2303, Texas Government Code, and authorize the City Manager to sign all documents necessary to implement the amended Resolution.

Item Reference: **Chapter 2303, Subchapter F of the Texas Enterprise Zone Act, Texas Government Code.**

Hiland Dairy Foods Company is an award-winning processor and distributor of dairy foods and other beverages. Founded in 1938, the company is based in Springfield, Missouri. It has approximately 4,000 employees and operates 19 processing plants in Arkansas, Kansas, Missouri, Nebraska, Oklahoma, and Texas, with 64 distribution centers across the region. Hiland uses the latest in high-tech robotics and other state-of-the-art technologies, which ensures that its milk typically goes from cow to table within 48 hours.

Hiland Dairy is farmer-owned, which ensures control of the quality and consistency of Hiland Dairy milk from farm to table. That is how the company knows its milk is fresh and pure, produced with no artificial growth hormones, and tested for antibiotics. Additionally, the quality and control process is what assures that Hiland's milk and dairy products are produced responsibly and sustainably. From water and energy conservation to recycling and animal care, Hiland's farmer owners are committed to minimizing waste and environmental impact.

In February of 2017, Hiland Dairy announced plans to expand its footprint and support economic development in Tyler, Texas by acquiring the manufacturing assets of Brookshire Grocery Company's ice cream, dairy and water plants. Currently, Hiland is in the process of expanding and upgrading its dairy facility at 200 N. Fuller Street, in Tyler.

The expansion and improvements project will generate up to \$98 million in new investment and create 30 new jobs. The average pay for the new these positions is estimated to be \$66,000 per year. The project would add over 90,000 square feet of dry storage, refrigerated storage, and production space. In addition, the number of production lines would increase to 8 with space for 2 additional lines in the future.

The amended resolution (R-24-04) reflects that Hiland Dairy's business site is not located in an enterprise zone and at least thirty-five percent (35%), not twenty-five percent (25%), of the business' new employees are residents of an enterprise zone, economically disadvantaged individuals, or veterans.

THE TEXAS ENTERPRISE ZONING PROGRAM

The Texas Enterprise Zone Program (EZP) is a state sales and use tax refund program designed to encourage private investment and job creation in economically distressed areas of the state.

Texas communities must nominate companies in their jurisdiction to receive an Enterprise Zone designation and thus be eligible to receive state sales and use tax refunds on qualified expenditures by applying on the company's behalf. Companies must contribute information to the application packet where required. Companies must meet minimum capital investment thresholds and create and/or retain jobs that employ a certain percentage of economically disadvantaged individuals, enterprise zone residents, or veterans.

State sales and use tax refund, with the maximum allowable refund (both total and per-job) determined for each company that has been awarded a designation based on the company's planned capital investment and job creation and/or retention at the qualified business site. Companies approved for Enterprise Zone designations are eligible to apply for refunds of the state sales and use tax they have paid during the designation period on qualified expenditures, up to their maximum allowable refund. The Texas Comptroller of Public Accounts administers all refunds.

RECOMMENDATION:

It is recommended that the City Council approve the amended Resolution R-24-04 to reflect that Hiland Dairy's business site is not located in an enterprise zone and at least thirty-five percent (35%), not twenty-five percent (25%), of the business' new employees are residents of an enterprise zone, economically disadvantaged individuals, or veterans.

Attachments: [Resolution](#)

Drafted/Recommended By:

Department Leader

Heather Nick, AICP, Assistant City Manager

Edited/Submitted By:

City Manager

RESOLUTION NO. R-2025-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, NOMINATING HILAND DAIRY TO THE OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM THROUGH THE ECONOMIC DEVELOPMENT BANK FOR DESIGNATION AS AN ENTERPRISE PROJECT ("PROJECT") UNDER THE TEXAS ENTERPRISE ZONE PROGRAM UNDER THE TEXAS ENTERPRISE ZONE ACT, CHAPTER 2303, TEXAS GOVERNMENT CODE ("ACT"); AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on August 25, 2010, the City of Tyler, Texas (the "City") previously passed Ordinance No. O-2010-89 electing to participate in the Texas Enterprise Zone Program, and the local incentives available under this Resolution are the same on this date as were outlined in Ordinance No. O-2010-89;

WHEREAS, pursuant to Chapter 2303, Subchapter F of the Texas Enterprise Zone Act, Texas Government Code (the "Act"), Hiland Dairy Foods Company, LLC ("Hiland Dairy") has applied to the City for designation as an enterprise project; and

WHEREAS, the Office of the Governor Economic Development and Tourism (EDT) through the Economic Development Bank will consider Hiland Dairy as an enterprise project pursuant to a nomination and an application made by the City; and

WHEREAS, the City desires to pursue the creation of the proper economic and social environment in order to induce the investment of private resources in productive business enterprises located in the City and to provide employment to residents of enterprise zones, economically disadvantaged individuals and veterans; and

WHEREAS, the City finds that Hiland Dairy meets the criteria for designation as an enterprise project under Chapter 2303, Subchapter F of the Act on the following grounds: (1) Hiland Dairy is a "qualified business" under Section 2303.402 of the Act since it is engaged in the active conduct of a trade or business at a qualified business site not located in an enterprise zone and at least thirty-five percent (35%) of the business' new employees are residents of an enterprise zone, economically disadvantaged individuals or veterans; (2) There has been and will continue to be a high level of cooperation between public, private, and neighborhood entities within the area; and (3) The designation of Hiland Dairy as an enterprise project will contribute significantly to the achievement of the plans of the City for development and revitalization of the area; and

WHEREAS, the City finds that Hiland Dairy meets the criteria for tax relief and other incentives adopted by the City on the grounds that it will be located at the qualified business site, will retain a higher level of employment, economic activity and stability; and

WHEREAS, the City finds that it is in the best interest of the City to nominate Hiland Dairy as an enterprise project pursuant to the Act;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: THAT the findings of the City and its actions approving this Resolution taken at the council meeting are hereby approved and adopted and in effect.

PART 2: THAT the City finds that Hiland Dairy meets the criteria for designation as an enterprise project under Chapter 2303, Subchapter F of the Act on the following grounds:

- (a) Hiland Dairy is a "qualified business", as defined in Section 2303.402 of the Act, since it will be engaged in the active conduct of a trade or business at a qualified business site not located in an enterprise zone in the governing body's jurisdiction and at least thirty-five percent (35%) of the business' new employees will be residents of an enterprise zone, economically disadvantaged individuals, or veterans; and
- (b) There has been and will continue to be a high level of cooperation between public, private and neighborhood entities in the area; and
- (c) The designation of Hiland Dairy as an enterprise project will contribute significantly to the achievement of the plans of the City for development and revitalization of the area.

PART 3: THAT the City hereby nominates Hiland Dairy to the State of Texas for Enterprise status.

PART 4: THAT the enterprise project shall take effect on the date of designation of the enterprise project by the EDT and terminate five (5) years after the date of designation.

PART 5: THAT this Resolution shall become effective upon its passage and approval.

PASSED AND APPROVED this 14th day of May, 2025.

DONALD P. WARREN, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

CASSANDRA BRAGER,
CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. M-1

Date: May 14, 2025

Subject: Request that the City Council consider authorizing the City Manager to execute a Engineering Services Agreement in the amount of \$607,200 with Kimley-Horn and Associates, Inc. for the SL 124 Utility Relocation and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

Item Reference:

SL 124 is also known as Old Henderson Highway and runs outside SSE Loop 323 between Loop 323 and Highway 64 East. This is the location of an upcoming TxDOT widening project. Prompted by the new Chapel Hill IDS Junior High School facility that is currently under construction at the corner of Old Henderson and Highway 64, this TxDOT widening project is focused on improving safety on the corridor in preparation for the increase in pedestrian and motor traffic.

The preliminary plan for the roadway project is to add a center turn lane with additional right-hand turn lanes where necessary, wider shoulders, sidewalks, and shared-use paths from Loop 323 to HWY 64 E. In partnership with this roadway widening project, Tyler Water Utilities (TWU) has water and sewer lines in the area that will need to be relocated to the edge of the existing ROW to avoid conflict with the roadway construction.

Based on pre-engineering estimates, approximately 1,800 LF of water and 3,200 LF of sewer are included in this scope. Currently, TxDOT is at 30% plan development but anticipates this project to be completed in May 2026. Due to this accelerated schedule, TWU is partnering with Kimley-Horn and Associates to fast-track the utility relocation portion of this project. Design is anticipated to take 5 months, and construction 6 months.

A pre-engineering Opinion of Probable Construction Cost (OPPC) has been estimated at \$1,880,000.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to execute a Engineering Services Agreement in the amount of \$607,200 with Kimley-Horn and Associates, Inc. for the SL 124 Utility Relocation and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

Attachments:

[Engineering Services Agreement - SL 124 Utility Relocations_v2.](#)

04.22.2025- SL 124 Utility Relocation Resolution
OPCC - Planning Level_v2

Drafted/Recommended By:
Department Leader

Jacob Yanker, Utilities Project Engineer/ Kate Dietz, PE, Director of
Utilities

Edited/Submitted By:
City Manager



STATE OF TEXAS

§

**STANDARD FORM OF AGREEMENT
FOR PROFESSIONAL CONSULTING
SERVICES**

COUNTY OF SMITH

§

This AGREEMENT is entered into, with an Effective Date of _____, _____, by and between the **CITY OF TYLER**, in Smith County, Texas (OWNER), acting therein by and through its duly authorized City Manager, and Kimley-Horn and Associates, Inc. (ENGINEER or ARCHITECT), hereinafter referred to as “E/A,” for the purpose of acquiring all professional engineering and/or architectural services required for the project known as “**SL 124 Utility Relocation**” (hereinafter called the Project).

OWNER and E/A in consideration of their mutual covenants herein agree in respect of the performance of professional engineering and/or architectural services by E/A and the payment for those services by OWNER as set forth below.

**SECTION 1—BASIC SERVICES OF
ENGINEER OR ARCHITECT**

1.1. General.

1.1.1. E/A shall provide for OWNER professional consulting services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional E/A representative for the project, providing professional engineering and/or architectural consultation and advice and furnishing customary civil services incidental thereto.

1.1.2. **If the Project is a “civil works” project, as defined by Sec. 2269.351 of Tex. Gov. Code Ann., then Exhibit “F” does NOT apply. “Civil works” projects are those related to roads, streets, bridges, utilities, water supply projects, water plants, waste water plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage, flood control projects and transit projects.**

1.1.3. **If the Project is related to “public works” projects or construction contract affecting City-owned buildings, then this contract IS SUBJECT TO ADDITIONAL PROVISIONS FOUND IN EXHIBIT “F”, which is attached and incorporated for all purposes herein. “Public Works” is defined by Tex. Gov. Code Ann., Sec. 2269.001 (6) as a contract for constructing, altering, or repairing a public building or carrying out any public work.**

1.1.4. If Exhibit “F” is applicable and there is a conflict between this Agreement and Exhibit “F”, provisions in Exhibit “F” shall control.

1.2. Study and Report Phase.

After written authorization to proceed and as required by the specific services set forth in Exhibit “A”, E/A shall:

1.2.1. Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.

1.2.2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 3.4, and assist OWNER in obtaining such data and services.

1.2.3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the Project and participate in consultations with such authorities.

1.2.4. Provide analysis of OWNER's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.

1.2.5. Provide a general economic analysis of OWNER's requirements applicable to various alternatives.

1.2.6. Prepare a Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable

requirements of governmental authorities having jurisdiction as aforesaid) and the alternative solutions available to OWNER and setting forth E/A's findings and recommendations. This Report will be accompanied by E/A's opinion of probable costs for the Project, including the following which will be separately itemized: Construction Cost, allowance for E/A costs and contingencies, and (on the basis of information furnished by OWNER) allowances for such other items as charges of all consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others for OWNER pursuant to paragraphs 3.7 through 3.11, inclusive. The total of all such costs, allowances, etc. are hereinafter called "Total Project Costs".

1.2.7. Furnish multiple copies of the Study and Report documents (not to exceed six (6) copies) and review them in person with OWNER.

1.3. Preliminary Design Phase.

After written authorization to proceed and as required by the specific services set forth in Exhibit "A", E/A shall:

1.3.1. In consultation with OWNER and on the basis of the accepted Study and Report documents, determine the general scope, extent and character of the Project.

1.3.2. Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.

1.3.3. Advise OWNER if additional data or services of the types described in paragraph 3.4 are necessary and assist OWNER in obtaining such data and services.

1.3.4. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Total Project Costs.

1.3.5. Furnish multiple copies of the above Preliminary Design documents and present and review them in person with OWNER, not to exceed six (6) copies.

1.3.6. Derive right-of-way (ROW) data and easement documents as needed for the OWNER to begin land

acquisition.

1.4. Final Design Phase.

After written authorization to proceed and as required by the specific services set forth in Exhibit "A", E/A shall:

1.4.1. On the basis of the accepted Preliminary Design documents and the revised opinion of probable Total Project Costs prepare for incorporation in the Contract Documents final drawings to show the general scope, extent and character of the work to be furnished and performed by Contractor(s) (hereinafter called "Drawings") and Specifications.

1.4.2. Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project and assist OWNER in consultations with appropriate authorities.

1.4.3. Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent or character or design requirements of the Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.

1.4.4. Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders.

1.4.5. Furnish multiple copies of the above documents and of the Drawings and Specifications and present and review them in person with OWNER, not to exceed six (6) copies.

1.5. Bidding or Negotiating Phase.

After written authorization to proceed and as required by the specific services set forth in Exhibit "A", E/A shall:

1.5.1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials,

equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences and receive and process deposits for Bidding Documents.

1.5.2. Assist OWNER in issuing addenda as appropriate to interpret, clarify or expand the Bidding Documents.

1.5.3. Consult with and advise OWNER as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.

1.5.4. Consult with OWNER concerning and determine the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

1.5.5. Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

1.6. Construction Phase.

After written authorization to proceed and as required by the specific services set forth in Exhibit "A", E/A shall:

1.6.1. *Preconstruction Conference.* Coordinate, schedule and attend a preconstruction conference with the OWNER, other utility owners, contractors and other interested parties to determine and coordinate construction scheduling and responsibilities.

1.6.2. *Visits to Site and Observation of Construction.* In connection with observations of the work of Contractor(s) while it is in progress:

1.6.2.1. E/A shall make visits to the site at intervals appropriate to the various stages of construction as necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s)' work. Based on information obtained during such visits and on such observations, E/A shall endeavor to determine in general if such work is proceeding in accordance with the Contract

Documents and E/A shall keep OWNER informed of the progress of the work.

1.6.2.2. The purpose of E/A's visits to the site will be to enable E/A to better carry out the duties and responsibilities assigned to and undertaken by E/A during the Construction Phase, and in addition, by exercise of E/A's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, E/A shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work nor shall E/A have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction elected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, E/A can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.

1.6.3. *Interpretations and Clarifications.* E/A shall issue necessary interpretations and clarifications of the Contract Documents as requested by the OWNER.

1.6.4. *Subsurface Exploration.* Coordinate core borings, probing or subsurface explorations, issue orders for necessary laboratory tests and inspect samples or materials submitted for laboratory testing.

1.6.5. *Shop Drawings.* E/A shall review and approve (or take other appropriate action in respect of) samples, catalog data, shop drawings other data which Contractor(s) is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.6.6. *Substitutes.* E/A shall evaluate the acceptability of substitute materials and equipment proposed by Contractor(s) and make recommendations to OWNER, subject to the provisions of paragraph 2.2.2.

1.6.7. *Tests.* E/A shall verify that tests, including equipment and start-up, which are required by the specifications and contract documents, are conducted and that the Contractor maintains adequate records thereof and shall observe, record and report to the OWNER appropriate details relative to the test procedures and start-ups.

1.6.8. *Applications for Payment.* Based on his on-site observations as an experienced and qualified design professional and on his review of the Contractors' applications for payment, determine the amount owing to the Contractor(s) and recommend in writing payment to the Contractor(s) in such amounts; such recommendations of payment to constitute a representation to the OWNER, based on such applications, that the work has progressed to the point indicated and that, to the best of his knowledge, work is in accordance with the plans, specifications and contract documents, subject to the specifications and contract documents and any qualifications stated in his approval.

1.6.9. *Final Inspection.* Conduct, in company with the OWNER'S representative, a final inspection of the Project for conformance with the design concept of the Project and compliance with the plans, specifications and contract documents, and recommend in writing final payment to the Contractor.

1.6.10. *Disputes between OWNER and Contractor.* E/A shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work performed thereunder. E/A shall also make recommendations to OWNER on all claims of Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. OWNER has the final decision with regard to such disputes.

1.6.11. *Limitation of Responsibilities.* E/A shall not be responsible to OWNER for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor's or supplier's agents or employees or any other persons (except E/A's own employees and agents) whether at

the site or otherwise furnishing or performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.6.1. through 1.6.11 inclusive, shall be construed to release E/A from liability for failure to properly perform duties and responsibilities assumed by E/A in the Contract Documents.

1.7. Operational Phase.

After written authorization to proceed and as required by the specific services set forth in Exhibit "A", E/A shall:

1.7.1. In company with OWNER, visit the Project to observe any apparent defects in the completed construction, assist OWNER in consultations and discussions with Contractor(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work.

1.7.2. Prepare a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to E/A and furnish one (1) set of the revised reproducible drawings and one set of drawings in PDF format to the Owner.

SECTION 2—ADDITIONAL SERVICES OF E/A

2.1. Services Requiring Authorization in Advance.

If authorized in writing by OWNER, E/A shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1. through 2.1.13. inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in this Agreement; these will be paid for by OWNER as indicated in Section 5.

2.1.1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the project.

2.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3. Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other cause beyond E/A's control.

2.1.4. Providing renderings or models for OWNER's use.

2.1.5. Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.6. Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.7. Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil, structural, mechanical, and electrical engineering and customary architectural design incidental thereto); and providing data or services of the types described in paragraph 3.4 when OWNER employs E/A to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.4.

2.1.8. Services during out-of-town travel required of E/A other than visits to the site or OWNER's office as required by Section 1.

2.1.9. Assistance in connection with bid protest, rebidding, or renegotiating contracts for construction, materials, equipment or services when E/A did not create or contribute to the event or situation requiring said assistance, rebidding, renegotiating, materials, equipment, or services.

2.1.10. Providing any type of property surveys or related engineering or architectural services needed for the transfer of interests in real property and field surveys for design purposes and engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

2.1.11. Preparation of operating, maintenance and staffing manuals to supplement Basic Services under paragraph 1.7.

2.1.12. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project unless E/A created or contributed to the cause of the litigation.

2.1.13. Additional services in connection with the Project, including services which are to be furnished by OWNER in accordance with Section 3, and services not otherwise provided for in this Agreement.

2.2. Required Additional Services.

When required by the Contract Documents in circumstances beyond E/A's control, E/A shall furnish or obtain from others, as circumstances require during construction and with specific authorization from OWNER, Additional Services of the types listed in paragraphs 2.2.1 through 2.2.6, inclusive. These services are not included as part of Basic Services. E/A shall advise OWNER promptly before starting any of the following additional services which will be paid for by OWNER as indicated in Section 5.

2.2.1. Services in connection with work directive changes and change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.

2.2.2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and

determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.2.3. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.2.4. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by any Contractor.

2.2.5. Services (other than Basic Services during the Operations Phase) in connection with any partial utilization of any part of the Project by OWNER prior to Substantial Completion.

2.2.6. Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

SECTION 3—OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of E/A:

3.1. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to E/A's services for the Project.

3.2. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.3. Assist E/A by placing at E/A's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.4. Furnish to E/A, as required for performance of E/A's Basic Services (except to the extent provided otherwise in this Agreement) the following:

3.4.1. data prepared by or resulting from the services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

3.4.2. appropriate professional interpretations of all of the foregoing;

3.4.3. environmental assessment and impact statements;

3.4.4. property, boundary, easement, right-of-way, topographic and utility surveys, to the extent required by E/A, and only if not required to be performed by E/A as set out in E/A's Proposal;

3.4.5. property descriptions;

3.4.6. zoning, deed and other land use restrictions;

all of which E/A may use and rely upon in performing services under this Agreement.

3.5. Provide engineering surveys to establish reference points for construction (unless required to be performed by E/A as Basic Services under E/A's Proposal) to enable Contractor(s) to proceed with the layout of the work.

3.6. Arrange for access to and make all provisions for E/A to enter upon public and private property as required for E/A to perform services under this Agreement.

3.7. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by E/A, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of E/A.

3.8. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, unless required to be performed by E/A as Basic Services under this Agreement.

3.9. Provide such accounting, independent cost estimating and insurance counseling services as may, in the judgement of the OWNER, be required for the Project, such legal services as OWNER may require or E/A may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

3.10 If OWNER designates a person to represent OWNER at the site who is not E/A or E/A's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of E/A and the Resident Project Representative (and any assistants) will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

3.11. If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

3.12. Furnish to E/A data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 3.7 through 3.11, inclusive) so that E/A may make the necessary findings to support opinions of probable Total Project Costs.

3.13. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.

3.14. Give prompt written notice to E/A whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of E/A's services, or any defect or non-conformance in the work of any Contractor.

3.15. Furnish, or direct E/A to provide, Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

3.16. E/A shall not be obligated to bear any of the costs of compliance with this Section 3.

SECTION 4—PERIODS OF SERVICE

4.1. The services provided by the E/A and the various rates of compensation for E/A's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Operational Phase. E/A's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction and initial operation of the Project including extra work and required extensions thereto. If in Section 8 of this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such dates are exceeded through no fault of E/A, all rates, measures and amounts of compensation provided herein may be subject to equitable adjustment.

4.2. A schedule for completion of each phase of the project is provided in the attached sample Work Order. If the E/A determines or reasonably anticipates that the project, (or any of its phases), cannot be completed before the specified completion date, the E/A shall submit a revised schedule to the OWNER for approval.

SECTION 5—PAYMENTS TO ENGINEER AND/OR ARCHITECT CONSULTANT

5.1. Methods of Payment for Services and Expenses of E/A.

For design, construction plan preparation, construction document preparation (including bid proposal, specifications, construction contract), and all other services to be rendered by E/A hereunder, as the same are set out in the attached sample Work Order, "Exhibit "A", and as further set out in the contractual documents, save and except for specified special and additional services; Owner shall pay to E/A the following fee in accordance with the fee summary and schedule of hourly rates set forth in attached Exhibit "C".

- Base Fee = \$386,900 (Not-to-Exceed)
- Hourly/Reimbursable Expenses = \$238,700
- **Total Contract Price= \$625,600**

5.2. Times of Payment.

E/A shall submit clear and detailed monthly statements for the services rendered and for the expenses and hourly costs incurred. The statements shall show the percent of work completed and amount billed to date, broken down by activity or task. All monthly statements shall be in a form as specified by and acceptable to OWNER.

SECTION 6—CONSTRUCTION COST AND OPINIONS OF COST

6.1. Construction Cost.

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by E/A, but it will not include E/A's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties unless this Agreement so specifies, nor will it include OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Section 3, as applicable. [Construction Cost is one of the items comprising Total Project Costs which is defined in paragraph 1.2.6.]

6.2. Opinions of Cost.

It is understood by the Parties that E/A has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions. Therefore, E/A's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of E/A's experience and qualifications and represent E/A's best judgment as an experienced and qualified professional E/A, familiar with the construction industry; but E/A cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by E/A. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to Total Project or Construction Costs, OWNER shall employ an independent cost estimator as provided in paragraph 3.9.

SECTION 7—GENERAL CONSIDERATIONS

7.1. Termination.

7.1.1. During the construction phase of the Project, and except as provided under **Exhibit F-Procedure for Correcting Construction Defects** which is applicable when the construction is to a City-owned building or other public work, this Agreement may be terminated by either party hereto, with or without cause, upon a minimum of thirty (30) calendar days written notice thereof. It is understood that immediately upon receipt of said notice all work and labor being performed under this Agreement shall cease immediately. Before the end of the minimum thirty (30) calendar day period following receipt of said notice, the E/A shall invoice the OWNER for all work completed. The E/A shall be compensated in accordance with the terms of this Agreement for all work accomplished and approved by the OWNER up to the date of termination.

7.1.2 The termination requirements in Sec. 7.1.1 shall be applicable to civil works construction projects but shall not be applicable to construction contracts related to City-owned buildings and other public works unless and until *after* the procedures are followed as outlined in Exhibit "F" to identify and correct construction defects.

7.1.3 During the design phase of the Project, this Agreement may be terminated by either party hereto, with or without cause, upon a minimum of thirty (30) calendar days written notice thereof. It is understood that immediately upon receipt of said notice all work and labor being performed under this Agreement shall cease immediately. Before the end of the minimum thirty (30) calendar day period following receipt of said notice, the E/A shall invoice the OWNER for all work completed. The E/A shall be compensated in accordance with the terms of this Agreement for all work accomplished and approved by the OWNER up to the date of termination.

7.2. Reuse of Documents.

The E/A's Instruments of Service (including but not limited to plans, field surveys, maps, cross sections, drawings, specifications, calculations and other data related to the Project) are and shall remain the property of the E/A until payment of the E/A in full. Upon payment of the E/A in full, said E/A's Instruments of Service shall pass to and become the property of the OWNER without restriction as to their

subsequent uses. E/A acknowledges that OWNER is a governmental entity and that all Instruments of Service in respect of the Project, upon completion of the Project, shall thereafter be subject to the Texas Public Information Act (Texas Government Code Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents. In the event that a valid Public Information Request is received prior to completion of the Project and payment of the E/A in full, OWNER shall work with the E/A to protect any information deemed to be confidential by seeking an Opinion from the Texas Attorney General as allowed by State law.

7.3. Insurance.

7.3.1. The E/A agrees, at its sole expense, to maintain on a primary basis during the life of this Contract and the performance of Work hereunder, insurance coverage, limits, and endorsements required herein, unless otherwise noted. Insurance required by this contract for the OWNER as additional insured shall be primary insurance and not contributing with any other insurance available to OWNER.

7.3.2 The E/A agrees to provide evidence of the following coverage's at execution of contract:

- **Commercial General Liability:** E/A agrees to maintain Commercial General Liability at a limit of liability not less than one million dollars (\$1,000,000) Each Occurrence, two million dollars (\$2,000,000) General Aggregate per project. E/A agrees its coverage will not contain any restrictive endorsement(s) excluding or limiting Products - Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage (X = Explosion Hazard; C = Collapse Hazard; U = Underground Damage), Contractual Liability or Cross Liability. The E/A agrees any Self-Insured-Retention or deductible shall not exceed twenty-five thousand dollars (\$25,000).
- **Business Automobile Liability:** E/A agrees to maintain Business Automobile Liability at a limit of liability not less than one million dollars (\$1,000,000) Each Occurrence. Coverage shall include bodily injury and property damage liability arising out of the operation, maintenance and use of Any Auto, or All Owned Autos, and Hired Autos, and Non-Owned automobiles. In the event E/A does not own automobiles, E/A agrees

to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

- **Professional Errors and Omissions Liability:** E/A agrees to maintain Professional Errors and Omissions Liability at a limit of liability not less than one million dollars (\$1,000,000) Each Claim, two million dollars (\$2,000,000) Annual Aggregate. The E/A agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective date of the Agreement, or the performance of services hereunder. The E/A agrees the Self-Insured-Retention shall not exceed twenty-five thousand dollars (\$25,000). This coverage may be provided on a Per-Project Basis.
- **Pollution Liability Insurance** (if required by a City Operational Department): If a City Operational Department requires Pollution Liability coverage, the E/A agrees to maintain Pollution Liability Insurance at a limit of liability not less than one million dollars (\$1,000,000) Each Claim, two million dollars (\$2,000,000) Annual Aggregate.
- **Commercial Umbrella / Excess Liability:** E/A agrees to maintain either a Commercial Umbrella or Excess Liability at a limit of liability not less than five million dollars (\$5,000,000) Each Occurrence, five million dollars (\$5,000,000) General Aggregate. The E/A agrees to endorse the OWNER as an "Additional Insured" on the Commercial Umbrella/Excess Liability, unless the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the OWNER is automatically defined as an Additional Protected Person. The E/A agrees any Self-Insured-Retention or deductible shall not exceed twenty-five thousand dollars (\$25,000).
- **Worker's Compensation and Employer's Liability:** The E/A agrees to maintain its own Workers' Compensation Insurance pursuant to statutory limits. See TEX. LAB. CODE ANN. Title 5, Subtitle A, Chapter 401; TEX. ADMIN CODE, Title 28, Part 2. (NOTE: Elective exemptions or coverage through an employee leasing arrangement will NOT satisfy this requirement).

The E/A agrees to maintain its own Employer's Liability Insurance at a limit of liability not less than one million dollars (\$1,000,000) Bodily Injury by Accident, one million dollars (\$1,000,000) Bodily Injury by Disease Each Occurrence, one million dollars (\$1,000,000) Bodily Injury by Disease Aggregate Limit.

See Exhibit "D" Certificate(s) of Insurance and Endorsements for a chart and checklist providing a summary and overview of the insurance requirements.

7.3.3 In the event the E/A performs any site work, then all the insurance required herein will need to be evidenced prior to commencement of said site work.

7.3.4. The E/A agrees the insurance requirements herein as well as OWNER'S review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the E/A under this Agreement.

7.4. Additional Insured Endorsements.

7.4.1 The E/A agrees to endorse the OWNER as an "Additional Insured" on the Commercial General Liability. E/A shall choose one of the three Endorsement Options stated below. All Endorsements shall be in the form required. All pages of the Endorsement(s) shall be attached.

The form of the endorsement(s) shall be:

Option 1:

CG 20 10 10 01

Additional Insured - Owners, Lessees, or Contractor – Scheduled Person or Organization

AND, the additional endorsement of

CG 20 37 07 04

Additional Insured – Owners, Lessees, or Contractors – Completed Operations

shall be required to provide back coverage for the E/A's "your work" as defined in the policy and liability arising out of the products-completed operations hazard.

Option 2:

CG 20 10 07 04

Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization

AND, the additional endorsement of

CG 20 37 07 04

Additional Insured – Owners, Lessees, or Contractors – Completed Operations

shall be required to provide back coverage for the E/A's "your work" as defined in the policy and liability arising out of the products-completed operations hazard.

Option 3:

GA 4113 11 99

Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization – Your Work

AND, the additional endorsement of

GA 233 02 07

Contractors' Commercial General Liability Broadened – with coverage for Completed Operations in conformance to specific written contract

E/A shall attach actual copies of the endorsements.

7.4.2 Additionally, E/A agrees to endorse the OWNER as an "Additional Insured" under the Commercial Umbrella / Excess Liability and the Pollution Liability Insurance, if required, as also provided herein.

7.4.3 The name of the organization endorsed as Additional Insured for all endorsements shall read "City of Tyler."

7.5. Deductibles, Coinsurance Penalties and Self-Insured Retention.

E/A agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation. For deductible amounts that exceed the

amounts stated herein that are acceptable to OWNER, the E/A agrees, when requested by OWNER, to maintain a Commercial Surety Bond in an amount equal to said deductible amount.

7.6. Waiver of Subrogation.

E/A agrees by entering into this written Agreement to a Waiver of Subrogation in favor of the OWNER for each required policy providing coverage during the life of this Agreement. E/A agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement and provide such endorsement to OWNER. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the E/A enter into such an agreement on a pre-loss basis.

7.7. Subconsultants' Insurance.

In the event any work is sublet, the E/A shall require its subconsultants to similarly provide the same coverage as the E/A, and shall acquire evidence of such coverage on behalf of the OWNER.

7.8. Insurance Effective Until Completion.

Insurance coverage, limits, and endorsements required herein shall remain in full force and effect on all phases of the work, whether or not the work is occupied or utilized by the OWNER, until all work under the Agreement is completed and has been accepted by the OWNER.

7.9. Right to Revise or Reject Insurance.

7.9.1 E/A agrees the OWNER reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverage and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage.

7.9.2 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 in the OWNER'S Legal Department for their adequacy as to form, content, form of protection, and

providing company. Additionally, the OWNER reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due of its poor financial condition or failure to operate legally in the State of Texas. In such events, OWNER shall provide E/A written notice of such revisions or rejections.

7.10. Certificate of Insurance.

7.10.1 Before commencement of any work, the E/A agrees to provide OWNER with **Certificate(s) of Insurance and Endorsements** that clearly evidence that E/A's insurance contains the minimum coverages, limits, and endorsement requirements set forth herein, and which shall be attached as Exhibit "D" of this Agreement. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be identified on each Certificate(s) of Insurance. In the event the OWNER is notified that a required insurance coverage will cancel or expire during the period of this Agreement, the E/A agrees to furnish OWNER prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by OWNER, the E/A agrees to not continue Work pursuant to this Agreement, unless all required insurance remains in effect.

7.10.2 The OWNER shall have the right, but not the obligation, of prohibiting E/A from entering the Work site until a new Certificate of Insurance is provided to the OWNER evidencing the replacement coverage. The E/A agrees the OWNER reserves the right to withhold payment to E/A until evidence of reinstated or replacement coverage is provided to the OWNER. If the E/A fails to maintain the insurance as set forth herein, the E/A agrees the OWNER shall have the right, but not the obligation, to purchase replacement insurance, which the E/A agrees to reimburse any premiums or expenses incurred by the OWNER.

7.10.3 Such insurance shall remain in full force and effect on all phases of the work, whether or not the work is occupied or utilized by the OWNER, until all work under the Agreement is completed and has been accepted by the OWNER.

7.11. Insurance - No Limit on Obligation to Pay.

Nothing contained in the insurance requirements shall be construed as limiting the extent of the E/A's responsibility for payment of damages resulting from

his operations.

7.12. Non-compliance; Breach.

The E/A's failure to comply with any of the provisions of paragraphs 7.3 through 7.11, inclusive, is a breach of contract by the E/A which entitles the OWNER to declare the contract void if the E/A does not remedy the breach within ten days after receipt of notice of breach from the OWNER.

7.13. Indemnity.

E/A AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST LIABILITY FOR LIENS, DEMANDS, AND DAMAGES FOR INJURIES TO PERSONS INCLUDING DEATH, PROPERTY DAMAGE INCLUDING LOSS OF USE, AND EXPENSES, INCLUDING REIMBURSEMENT OF REASONABLE ATTORNEY'S FEES IN PROPORTION TO E/A'S LIABILITY, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT TO THE EXTENT CAUSED BY THE NEGLIGENT OR INTENTIONAL TORTIOUS ACTS OR OMISSIONS OF E/A, E/A'S SUBCONSULTANTS, AGENTS, OR ANYONE FOR WHOSE ACTS THE E/A OR SUBCONSULTANT MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIMS OR DAMAGES OCCURRED ON PROPERTY BELONGING TO THE OWNER. THE E/A'S INDEMNIFICATION OBLIGATION PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

7.14. Certificate of Interested Parties.

In accordance with Texas Gov't Code Sec. 2252.908, for certain contracts entered into on or after January 1, 2016, E/A must submit a Certificate of Interested Parties (Form 1295) at the time the E/A submits the signed contract to the OWNER. This applies only to contracts with a value greater than \$25,000 or that otherwise require City Council approval. If required, the Certificate of Interested Parties (Form 1295) shall be attached as Exhibit "E".

7.15. Controlling Law.

This Agreement is to be governed by the law of the state of Texas. Venue for any action arising hereunder shall lie exclusively in Smith County, Texas for actions in state court and in the Eastern District of

Texas, Tyler Division, for actions in federal court. This provision shall supersede any other references in the Agreement.

If this Project includes construction activities to City-owned buildings or other public works, Exhibit "F" provisions shall be applicable.

7.16. Successors and Assigns.

7.16.1. OWNER and E/A each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and E/A (and to the extent permitted by paragraph 7.16.2 the assigns of OWNER and E/A) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.16.2. Neither OWNER nor E/A shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent E/A from employing such independent professional associates and consultants as E/A may deem appropriate to assist in the performance of services hereunder, provided such independent associates or consultants are approved in writing in advance by OWNER and are paid by E/A.

7.16.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and E/A, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and E/A and not for the benefit of any other party.

SECTION 8—SPECIAL PROVISIONS, SCHEDULES, AND EXHIBITS

8.1. Special Provisions.

Any other provisions of this Agreement or other documents included by reference herein to the contrary notwithstanding, the following provisions shall apply to this Agreement and the respective duties and responsibilities of OWNER and E/A affected thereby:

8.1.1. As to the contractual relationship between E/A and OWNER, E/A is and shall be considered in all things an independent contractor.

8.1.2. OWNER reserves the right, with E/A's agreement, to consolidate any and all phases of performance set out in the standard form contractual documents. The consolidation of said services shall not in any way affect the E/A's responsibilities to perform the services set out therein.

8.2. Exhibits.

The following exhibits are attached to and made a part of this Agreement:

- *Exhibit A - E/A's Scope of Services,*
- *Exhibit B - E/A's Project Schedule,*
- *Exhibit C - E/A's Fee Summary and Schedule of Hourly Fees*
- *Exhibit D - Certificate of Insurance and Endorsements,*
- *Exhibit E - Certificate of Interested Parties (Form 1295)*

Provided, however, that where the terms and provisions of the above-referenced exhibit(s) shall conflict with the terms and provisions of this standard contract, this standard contract shall control. **However, if Exhibit "F" is applicable, provisions therein shall control over any other conflicting provisions.**

8.3. Entire Agreement.

8.3.1 This Agreement, together with the exhibits and schedules identified above, constitute the entire Agreement between OWNER and E/A and supersede all prior or oral understandings.

8.3.2 This Agreement and said exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

8.4. Effective Date.

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed.

8.5. Severability.

The invalidity of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

8.6. Waiver.

The waiver of any breach of a term or condition of this Agreement does not waive any other breach of that term or condition or any breach of any other term or condition of this Agreement.

8.7. Notices.

Any notices provided under this Agreement shall occur in writing, by certified or registered mail delivery, receipt requested. For purposes of such notice, the addresses of the parties, until changed by written notice, shall be:

E/A:

Kimley-Horn and Associates, Inc.
Attn: Jason Snyder, P.E.
121 South Broadway Ave, Suite 478
Tyler, TX 75702

OWNER:

City of Tyler
Attn: Jacob Yanker
P.O. Box 2039
Tyler, TX 75710

8.8. Venue.

Venue for any action arising hereunder shall lie exclusively in Smith County, Texas for actions in state court and in the Eastern District of Texas, Tyler Division, for action in federal court. This provision shall supersede any other references in the Agreement.

(The remainder of this page was left blank intentionally.)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

FOR THE CITY OF TYLER, TEXAS:

ATTEST:

By: _____
City Manager Date

Edward Broussard
Printed Name

By: _____
City Clerk

Cassandra Brager
Printed Name

APPROVED:

By: _____
City Attorney's Office Date

Printed Name

RECOMMENDED:

By: _____
Department Leader Date

Printed Name

CITY COUNCIL APPROVAL:

AGENDA ITEM NUMBER: _____

DATE APPROVED: _____

FOR THE E/A:

By:

_____ Date

Printed Name

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, who is known to me, or who was proved to me through _____ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 20_____.

Notary Public In and For The State of Texas

My Commission Expires: _____

Notary's Printed Name

INDEX OF EXHIBITS

Exhibit A - E/A's Scope of Services

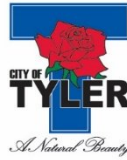
Exhibit B - E/A's Project Schedule

Exhibit C - E/A's Fee Summary and Schedule of Hourly Fees

Exhibit D - Certificate of Insurance and Endorsements

Exhibit E - Certificate of Interested Parties (Form 1295)

Exhibit A - E/A's Scope of Services



WORK ORDER FOR PROFESSIONAL SERVICES

PROJECT NO. _____

WORK ORDER NO. _____

SL 124 UTILITY RELOCATION

This Work Order constitutes authorization by the City of Tyler, Texas (OWNER) for Kimley-Horn and Associates, Inc. (ENGINEER) to provide engineering services for the above titled project (hereinafter called the PROJECT).

Project Understanding

The Texas Department of Transportation (TxDOT) notified the OWNER on February 10, 2025 concerning an apparent conflict between the OWNER's existing water and wastewater infrastructure and a proposed TxDOT roadway widening project. The PROJECT location is within the existing SL 124 right-of-way, from SL 323 to SH 64. TxDOT has stated that the conflict requires relocation of the OWNER's utilities and requires this relocation to be completed by May 1, 2026. The OWNER has requested the ENGINEER assist in identifying these apparent conflicts, coordinate with TxDOT to confirm the extents of the relocation, apply for a TxDOT utility permit, prepare construction documents for these relocations, and provide bid phase and construction phase services.

Project Assumptions

The following assumptions have been made by the ENGINEER in preparation of this scope of services:

- The existing SL 124 right-of-way will not be widened. The roadway extents will be widened as shown in the TxDOT schematic, dated 2/10/2025. Due to the right-of-way not being widened, it is anticipated that there will be no reimbursement opportunities for the OWNER.
- The OWNER does not own the drainage infrastructure within the PROJECT corridor and will not be responsible for their relocation or improvements.
- The OWNER prefers any relocated utilities to stay within the TxDOT right-of-way. If this is not possible, relocation to the adjacent private property will be necessary, requiring a permanent utility easement.
- The OWNER intends to replace the existing utility line with the same size.
- The full width of the existing SL 124 right-of-way will be surveyed with this project. Survey on adjacent private property is not expected or desired at this time. As such, right-of-entry agreements are not included in this scope of services. Survey limits longitudinally will be constrained to locations of known OWNER utilities and will not cover the entire length of the PROJECT.
- The ENGINEER estimates the total length of OWNER utilities within the TxDOT right-of-way to be as shown below. All OWNER utilities within the TxDOT right-of-way are assumed to be needed to be relocated with the PROJECT. Any increase or decrease to the estimated length in excess of 15% will require a subsequent change in design fee. The tasks subject to change include Tasks 4, 5, 7, 8, and 9.
 - Water
 - 6-inch and 8-inch encroachment: 1,800 LF
 - Two crossing locations
 - Wastewater
 - 6-Inch and 8-Inch encroachment: 3,200 LF
 - Two gravity crossing locations
 - One force main crossing location

Scope of Services

ENGINEER shall provide engineering services for the OWNER in accordance with the STANDARD FORM OF AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES (hereinafter called the CONTRACT) dated _____. ENGINEER will provide the services specifically set forth below.

Task 1 Project Management and Meetings

- A. Project Administration
 - 1. Prepare project correspondence.
 - 2. Prepare monthly invoicing documents and progress reports.
 - 3. Maintain and update project schedule.
- B. Anticipated Project Meetings
 - 1. Project Kickoff
 - 2. Status Update Meetings (up to two (2) in-person meetings) – ENGINEER will prepare for and lead a status update meeting for months where a project workshop meeting is not planned.
- C. Assumptions
 - 1. Deliverable-specific project workshop meetings are included in Tasks 3, 4, and 5.
 - 2. All project meetings will be in-person, unless otherwise noted.
- D. Deliverables
 - 1. Monthly invoicing documents.
 - 2. One (1) electronic copy of the Meeting Minutes produced for each project meeting.

Task 2 Topographic Survey

- A. The ENGINEER will prepare a topographic survey for the site to be used for civil engineering design purposes. The survey will consist of:
 - 1. Elevations around the immediate perimeter of the site.
 - 2. Contour lines representing the surface of the existing ground at one-foot intervals based on a survey grid system and tied to existing control points.
 - 3. Observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, and franchised utility facility appurtenances.
 - 4. Observed locations of pavement and traffic infrastructure.
 - 5. Observed locations of buildings, walls, and fence lines.
 - 6. Dig Tess markings of subsurface utilities that are in place at the time our field work is being done.
- B. Prepare a base map of the topographic survey.
- C. Assumptions
 - 1. Right of entry to private properties is not expected and will not be coordinated in this task.
 - 2. Topographic survey on private property is not included in this task.
 - 3. A boundary survey is not included in this task.
 - 4. An Abstract of Title is not included in this task.
 - 5. An ALTA or TSPS Land Title Survey is not included in this task.
 - 6. The topographic survey is to be used in-house and will not be issued as a stand-alone survey document.
 - 7. Tree location, type, and size are not included in this Scope of Services.
 - 8. The TxDOT right-of-way will be drafted using County Appraisal District files and the TxDOT Schematic Design provided on 2/10/2025. The base map will not include existing easements.
- D. Deliverables
 - 1. None

Task 3 Conceptual Utility Relocation Design

- A. Preliminary Investigation
 - 1. Data Collection and Record Research – ENGINEER will request available record information along the project corridor from the OWNER, TxDOT, franchise utilities, and other agencies with facilities within the project corridor. The ENGINEER will request planned infrastructure improvements from TxDOT and franchise utilities.

2. Site Visit to verify survey, document existing facilities with photographs, and identify opportunities and constraints.
- B. The ENGINEER will edit the base map to include information gathered during the preliminary investigation.
- C. The ENGINEER will prepare a Conceptual Utility Relocation Design consisting of:
 1. Base map
 2. High-resolution aerial imagery provided by Nearmap
 3. Proposed TxDOT infrastructure
 4. Identified conflicts between OWNER existing infrastructure and proposed TxDOT or franchise utility infrastructure
 5. Horizontal layout of proposed water and wastewater line relocations
 6. Vertical clearances at proposed crossings for the wastewater line
- D. Conceptual Utility Relocation Design Workshop (one (1) in-person meeting) – ENGINEER will meet with OWNER for review and consensus prior to TxDOT coordination.
- E. The ENGINEER will revise the Conceptual Utility Relocation Design based on OWNER Workshop comments.
- F. The ENGINEER will revise the Conceptual Utility Relocation Design based on TxDOT and OWNER meeting comments.
- G. The ENGINEER will prepare an Opinion of Probable Construction Cost (OPCC) after revisions are completed.
- H. Assumptions
 1. The ENGINEER will meet with TxDOT and OWNER after revisions to the Conceptual Utility Relocation Design to reach a consensus on OWNER's existing water and wastewater conflicts and the proposed layout.
 2. TxDOT coordination and meetings are included in Task 10.
- I. Deliverables
 1. One (1) electronic copy of the Meeting Minutes produced for each project meeting.
 2. One (1) electronic copy of the OPCC.

Task 4 60% Utility Relocation Design

- A. The ENGINEER will prepare and submit preliminary (60% level) 22"x34" construction plan sheets for the proposed water and wastewater line relocations. Plan sheets will be shown at 1"=20' horizontal scale. A list of specifications by section number and title will be submitted with the 60% submittal.
 1. Plan sheets will consist of the following:
 - a. Cover
 - b. General Notes and Legend
 - c. Project Layout and Horizontal and Vertical Control
 - d. Plan and Profile – (eleven (11) sheets expected)
 - i. Wastewater Only Plan and Profile – three (3) sheets expected
 - ii. Water and Wastewater Plan and Profile – seven (7) sheets expected
 - iii. Crossing Profiles – one (1) sheet expected
 - e. Construction Details – OWNER standard details and list of expected special details
- B. The ENGINEER will prepare an OPCC at 60% design.
- C. The ENGINEER will perform Quality Assurance/Quality Control (QA/QC) reviews for the 60% design submittal.
- D. 60% Design Submittal Workshop (one (1) in-person meeting) – ENGINEER will meet with OWNER to discuss OWNER comments to the 60% Design Submittal.
- E. The ENGINEER will coordinate with franchise utilities to discuss existing and future lines along the project corridor. The construction plan sheets will be sent to each utility for their review and the same will be requested from each utility.
- F. Assumptions
 1. Only water lines 12 inches and larger require a profile design. No water lines of this size are anticipated for the PROJECT.

2. Plan views will show both proposed water and proposed wastewater design, where applicable.
 3. TxDOT coordination and meetings are included in Task 10.
- G. Deliverables
1. Two (2) hard copies and one (1) electronic PDF copy of the 60% Construction Plans.
 2. One (1) electronic PDF copy of the 60% design OPCC.
 3. One (1) electronic copy of the Meeting Minutes produced for each project meeting.

Task 5 90% and 100% Utility Relocation Design

- A. Incorporate OWNER's and TxDOT's comments to the 60% and 90% design submittals. Prepare a Comment/Response document to be submitted with the next deliverable documenting the ENGINEER's response to the OWNER's and TxDOT's comments and if the comment has been addressed.
- B. The ENGINEER will prepare and submit final (90% and 100% level) Contract Documents for the proposed water and wastewater line relocations. Contract Documents shall include 22"x34" construction plan sheets and a specification book. Plan sheets will be shown at 1"=20' horizontal scale.
 1. Plan sheets will consist of the following:
 - a. Cover
 - b. General Notes and Legend
 - c. Project Layout and Horizontal and Vertical Control
 - d. Plan and Profile – (eleven (11) sheets expected)
 - i. Wastewater Only Plan and Profile – three (3) sheets expected
 - ii. Water and Wastewater Plan and Profile – seven (7) sheets expected
 - iii. Crossing Profiles – one (1) sheet expected
 - e. Construction Details
 - f. Erosion Control Plan – (six (6) sheets expected)
 - g. Erosion Control Details
- C. The ENGINEER will prepare an OPCC at 90% and 100% design.
- D. The ENGINEER will perform Quality Assurance/Quality Control (QA/QC) reviews for the 90% and 100% design submittals.
- E. 90% Design Submittal Workshop (one (1) in-person meeting) – ENGINEER will meet with OWNER to discuss OWNER comments to the 90% Design Submittal.
- F. The ENGINEER will coordinate with franchise utilities to discuss existing and future lines along the project corridor. The 90% and 100% construction plan sheets will be sent to each utility for their review and the same will be requested from each utility.
- G. TCEQ Coordination – The ENGINEER will prepare correspondence for submittal to the TCEQ. The ENGINEER will receive and address up to one (1) round of ordinary and reasonable comments from the TCEQ. The Summary Transmittal Letter will be submitted to the TCEQ at the 90% Design submittal.
- H. Assumptions
 1. 100% Contract Documents submittal will be signed and sealed, and no additional comments will be provided by the OWNER.
 2. Front-end documents will be provided by the OWNER.
 3. Only water lines 12 inches and larger require a profile design. No water lines of this size are anticipated for the PROJECT.
 4. Plan views will show both proposed water and proposed wastewater design, where applicable.
 5. TxDOT coordination and meetings are included in Task 10.
- I. Deliverables
 1. Two (2) hard copies and one (1) electronic PDF copy of the 90% Contract Documents (Plans and Specifications).
 2. Two (2) hard copies and one (1) electronic PDF copy of the 100% Contract Documents (Plans and Specifications).
 3. One (1) electronic PDF copy of the 90% and 100% design OPCC.
 4. One (1) electronic copy of the Meeting Minutes produced for each project meeting.
 5. One (1) electronic copy of the TCEQ Summary Transmittal Letter.

Task 6 Bid Phase Services

- A. Prepare and issue one (1) bid package via CivCast.
- B. Conduct one (1) pre-bid meeting with potential bidders.
- C. Prepare and deliver up to one (1) addendum to plan holders, including responses to questions submitted by plan holders.
- D. Attend one (1) bid opening.
- E. Tabulate the bids received for the project and evaluate general compliance of bids with the bid package.
- F. Review bidder information and references and prepare one (1) Recommendation of Award letter.
- G. Produce one (1) Conformance Document which incorporates all addenda into the Contract Documents.
- H. Assumptions
 - 1. N/A
- I. Deliverables
 - 1. One (1) electronic copy of the Pre-Bid Meeting Minutes.
 - 2. One (1) electronic copy of each addendum.
 - 3. One (1) electronic copy of the bid tabulation.
 - 4. One (1) electronic copy of the Recommendation of Award letter.
 - 5. Three (3) color hard copies and one (1) electronic PDF copy of the Conformance Documents.

Task 7 Construction Administration Services

- A. Pre-Construction Conference: ENGINEER will conduct one (1) Pre-Construction Conference before the start of construction.
- B. Site Visits and Construction Observation: ENGINEER will make visits (up to two (2)) to observe the progress of the work. Observations will not be exhaustive or extend to every aspect of Contractor's work, but will be limited to spot checking, and similar methods of general observation. Based on the site visits, ENGINEER will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents and keep OWNER informed of the general progress of the work.
- C. Construction Meetings: ENGINEER will attend construction meetings on site (up to six (6) meetings).
- D. Clarifications and Interpretations: ENGINEER will respond to Contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents will be made by the OWNER.
- E. Change Orders: ENGINEER may recommend Change Orders to the OWNER and will review and make recommendations related to Change Orders (not counting weather related delay change orders) submitted or proposed by the Contractor.
- F. Shop Drawings and Samples: ENGINEER will review up to twenty (20) Contractor-stamped Shop Drawings, Samples, Contractor Delegated Designs, and other data which Contractor is required to submit, but only for general conformance with the Contract Documents. Such review and any action taken in response will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders. ENGINEER will submit all review findings to the OWNER for their affirmation prior to returning to the Contractor.
- G. Substitutes and "or-equal/equivalent": ENGINEER will evaluate the acceptability of substitute or "or-equal/equivalent" materials and equipment proposed by Contractor in accordance with the Contract Documents.
- H. Substantial Completion: When requested by Contractor and the OWNER, ENGINEER will conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. One (1) site visit is included.
- I. Final Notice of Acceptability of the Work: ENGINEER will conduct a final site visit to evaluate whether the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that ENGINEER may recommend final payment to Contractor. One (1) site visit is included.

J. Assumptions

1. ENGINEER will not supervise, direct, or control Contractor's work, and will not have authority to stop the Work or responsibility for the means, methods, techniques, equipment choice and use, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for failure of Contractor to comply with laws. ENGINEER does not guarantee Contractor's performance and has no responsibility for Contractor's failure to perform in accordance with the Contract Documents.
2. ENGINEER is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement.
3. Review of Contractor applications for payment are not included in this task. See Task 8 for this scope of services.

K. Deliverables

1. One (1) electronic copy of Construction Meeting Minutes prepared after each meeting.
2. One (1) electronic copy of a Letter of Substantial Completion, including the Final Punch List, produced after the Substantial Completion site visit.
3. One (1) electronic copy of the Final Notice of Acceptability produced after the final site visit.

Task 8 Construction Observation Services

- A. Meetings: ENGINEER will attend one (1) Pre-Construction Conference and six (6) monthly Construction Meetings with the OWNER and the Contractor to review the status of the construction and coordinate upcoming work or any outstanding items. (ENGINEER design staff to participate under Task 7.)
- B. Shop Drawings and Clarifications and Interpretations: ENGINEER will review approved submittals, shop drawings, and clarifications and interpretations so that construction conformance can be evaluated against approved project documentation. (ENGINEER design staff to participate under Task 7.)
- C. Site Observation: ENGINEER will perform periodic site visits. Site observation will be scheduled based on contractor activities at the site. Site visits will follow the guidelines established in the original contract for engineering services for this project. Site visits will be documented with observation reports to include a description of work in progress and any observations of construction issues that may require attention. (ENGINEER design staff to participate under Task 7.)
1. Assumes approximately 500 total hours of effort. Scheduling and duration of site visits will vary as needed per construction activities.
- D. Applications for Payment:
1. ENGINEER will review six (6) Contractor applications for payment. Based on its observations and on review of applications for payment and accompanying supporting documentation, ENGINEER will determine the amounts that it recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated in the recommendation. In the case of unit price work, ENGINEER's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests.
 2. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, nor that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

- E. OWNER and Contractor Coordination: ENGINEER will perform coordination with OWNER staff and the Contractor on an as-needed basis regarding project documentation, the project schedule, and known project issues. The purpose of this coordination will be to facilitate communication and resolution of outstanding items to promote progress of the project during construction.
- F. Limitation of Responsibilities:
 - 1. ENGINEER shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall ENGINEER have any authority or responsibility to stop or direct the work of any contractor. ENGINEER's visits will be for the purpose of endeavoring to provide the OWNER a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by ENGINEER. ENGINEER neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - 2. ENGINEER is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The OWNER agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the OWNER and ENGINEER for all claims and liability arising out of job site accidents; and that the OWNER and ENGINEER shall be made additional insureds under the contractor's general liability insurance policy.
- G. Assumptions
 - 1. Change order review beyond the scope of services included in Task 7 is not included in this task.
 - 2. Full-time project observation is not included in this task.
 - 3. Materials testing is not included in this task and will be provided by the OWNER.
 - 4. Materials testing coordination is not included in this task and will be provided by the Contractor.
 - 5. Specialized testing/inspection is not included in this task.
- H. Deliverables
 - 1. One (1) electronic copy of Site Observation Report prepared after each site visit.

Task 9 Record Drawing Production

- A. The ENGINEER will prepare a record drawing showing significant changes reported by the Contractor or made to the design by the ENGINEER. Record drawings are not guaranteed to be as-built but will be based on information made available.
- B. Assumptions
 - 1. The ENGINEER will be provided the Contractor's marks.
 - 2. The ENGINEER shall not be responsible for verifying the completeness or accuracy of the Contractor's marks.
- C. Deliverables
 - 1. One (1) CD containing record drawing in digital format (PDF, CAD).

Task 10 TxDOT Coordination

- A. The ENGINEER will prepare a TxDOT Utility Permit application using the Right of Way Utility and Leasing Information System (RULIS), including associated attachments, as necessary for OWNERS's execution and submittal of the Utility Permit application.
- B. Prepare for and attend up to three (3) in-person milestone review meetings with OWNER and TxDOT representatives. These meetings are anticipated to occur during the conceptual, 60%, and 90% design tasks.
- C. Attend up to five (5) additional virtual coordination meetings with OWNER and TxDOT representatives.
- D. Assumptions
 - 1. All proposed utility relocation work will be submitted under one (1) application.
 - 2. Up to two (2) Utility Permit application revisions in response to TxDOT review.
 - 3. Standard Utility Agreement (SUA) preparation and coordination is not included in this task.
 - 4. Reimbursement preparation and coordination is not included in this task.
- E. Deliverables
 - 1. One (1) electronic copy of the Meeting Minutes produced for each project meeting.

Task 11 Boundary Survey (As Needed)

- A. The ENGINEER will perform the following tasks to prepare a boundary survey for up to five (5) property owners:
 - 1. Perform field survey to identify and locate existing property corners within the alignment corridor.
 - 2. Research available property and easement information in the County Clerk's Official Public Records database.
 - 3. Research available property owner information on the County's Appraisal District website.
- B. Edit the base map to add the existing boundary and easement lines found in the research above.
- C. Assumptions
 - 1. An Abstract of Title is not included in this task.
 - 2. An ALTA or TSPS Land Title Survey is not included in this task.
- D. Deliverables
 - 1. None.

Task 12 Easement Exhibit Preparation (As Needed)

- A. The ENGINEER will prepare legal descriptions and easement exhibits for up to five (5) permanent utility easements which may be required for the improvements.
- B. Individual parcel exhibits shall be on 8 ½"x11" paper, shall be sealed, dated, and signed by a Registered Professional Land Surveyor, and shall contain the following:
 - 1. Parcel number
 - 2. Area required
 - 3. Area remaining
 - 4. Easement description
 - 5. Current owner based on information available from the Appraisal District
 - 6. Known platted easements filed by separate instrument including easements provided by utility companies
- C. Assumptions
 - 1. Preparation of temporary workspace easements are not included in this task.
 - 2. Easement monumentation is not included in this task.
 - 3. Easements in addition to the total included in this scope shall be billed per each.
- D. Deliverables
 - 1. Five (5) individual documents. One (1) electronic PDF copy of each document.

Task 13 Real Property Acquisition Services (As Needed)

- A. The ENGINEER is retaining Dixon Services Inc. (Subconsultant) to provide the services described herein solely for the administrative convenience of the OWNER. The OWNER acknowledges that the ENGINEER will not be reviewing the work product of Subconsultant and agrees that the ENGINEER shall not be liable for it in any way. If the OWNER has any future claim related to these services, the OWNER will pursue the claim against Subconsultant directly and hold harmless the ENGINEER from any such claim.
- B. The Subconsultant will perform the following tasks on an as-needed basis:
 - 1. Research and identify current ownership of each property using Smith County Appraisal District (SCAD) records and the Official Public Records of Smith County, Texas.
 - 2. Prepare project notification and preliminary land value analysis.
 - 3. Prepare and negotiate easement and temporary workspace easement documents.
 - 4. Prepare project status reports.
 - 5. Prepare final reports and transmit files in digital format to the OWNER.
 - 6. File original easements of record in Smith County, Texas.
- C. Assumptions
 - 1. Easement language will be similar to previous municipal projects with the OWNER.
 - 2. Monetary consideration for the purchase of the easement and payment of damages for the easement will be based on a percentage of the SCAD values. On similar municipal projects, the initial

consideration offered is 50% of the SCAD per acre value for the subject property, and for temporary workspace only, the initial consideration offered is 25% of the SCAD per acre value for the subject property.

3. The Subconsultant will make an effort to obtain an easement from each property owner within a reasonable time frame. However, there are many variables which could affect the time needed to complete any portion of the acquisition process. This task is estimated to cover up to five (5) separate easement acquisitions.

D. Deliverables

1. One (1) electronic copy of Progress Reports and the Final Report.
2. One (1) electronic copy of each executed easement document.

Services Not Included

Any other services, including but not limited to the following, are not included in this CONTRACT:

- Providing a preliminary design report
- Subsurface utility engineering (SUE)
- Geotechnical Engineering
- Roadway design and/or street rehabilitation design
- Drainage design
- Franchise utility relocation design
- Hike and bike trail and/or sidewalk design
- Providing an Aquatic Resources Delineation, Cultural Resources Review, or other Environmental Engineering services
- Construction staking
- Easement monumentation
- Addressing OWNER or agency comments beyond those identified in this scope of services
- Landscape/irrigation design
- Retaining wall design
- Detailed traffic control plans

OWNER's Responsibilities

The OWNER's responsibilities shall be as described in SECTION 3 of the CONTRACT.

Exhibit B - E/A's Project Schedule

Project Schedule

The ENGINEER will perform these services as expeditiously as practicable with the goal of meeting the following schedule:

<u>TASK</u>	<u>EST. COMPLETION DATE</u>
Notice to Proceed (on or before)	4/14/2025
Conceptual Utility Relocation Design Workshop	5/23/2025
60% Design Submittal	7/4/2025
90% Design Submittal	8/15/2025
100% Design Submittal (Signed and Sealed)	9/5/2025
Begin Advertisement	9/5/2025
Bid Opening	10/1/2025
Construction Contract Award at City Council	11/12/2025
Construction Notice to Proceed	11/14/2025
Final Completion	5/1/2026

Exhibit C - E/A's Fee Summary and Schedule of Hourly Fees

Fee and Expenses

The ENGINEER will perform the services in Tasks 1 – 7, 9, and 11-12 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the OWNER.

Task 1	Project Management and Meetings	\$34,100
Task 2	Topographic Survey	\$13,500
Task 3	Conceptual Utility Relocation Design	\$56,700
Task 4	60% Utility Relocation Design	\$75,200
Task 5	90% and 100% Utility Relocation Design	\$89,500
Task 6	Bid Phase Services	\$12,200
Task 7	Construction Administration Services	\$69,300
Task 9	Record Drawing Production	\$9,100
Task 11	Boundary Survey (As Needed)	\$6,000
Task 12	Easement Exhibit Preparation (As Needed)	\$12,000
	<i>\$2,400 per each</i>	
Design Contingency – <i>Not to be used without written authorization from OWNER</i>		\$10,000
Total Lump Sum Fee		\$387,600

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed.

The ENGINEER will perform the Services in Tasks 8, 10, and 13 on a labor fee plus expense basis with the maximum labor fee shown below.

Task 8	Construction Observation Services	\$173,800
Task 10	TxDOT Coordination	\$27,900
Task 13	Real Property Acquisition Services (As Needed)	\$17,900
Total Maximum Labor Fee		\$219,600

Total Not to Exceed Fee (Total Lump Sum and Total Maximum Labor Fee) \$607,200

The ENGINEER will not exceed the total maximum labor fee shown without authorization from the OWNER. However, the ENGINEER reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the OWNER. Should the OWNER request ENGINEER to advance any such project fees on the OWNER's behalf, an invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the OWNER.

Payment will be due within 25 days of OWNER's receipt of the invoice and should include the invoice number and ENGINEER's project number.

Hourly Labor Rate Schedule

Classification	<i>Rate</i>
Analyst	\$165 - \$250
Professional	\$235 - \$300
Senior Professional I	\$260 - \$360
Senior Professional II	\$345 - \$380
Senior Technical Support	\$160 - \$285
Support Staff	\$110 - \$150
Technical Support	\$125 - \$155

- Effective through June 30, 2025 (Subject to adjustment thereafter)
- External Reimbursable Expenses will be charged at 15% mark-up, or per the Contract

Exhibit D - Certificates of Insurance and Endorsements

Exhibit E - Certificate of Interested Parties (Form 1295)

Check Here if this Section is NOT Used ☐

In accordance with Texas Gov't Code Sec. 2252.908, for certain contracts entered into on or after January 1, 2016, E/A must submit a Certificate of Interested Parties (Form 1295) at the time the E/A submits the signed contract to the OWNER. This applies only to contracts with a value greater than \$25,000 or that otherwise require City Council approval.

RESOLUTION NO. R-2023-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE DEBT FOR COSTS ASSOCIATED WITH THE ENGINEERING, DESIGN, AND CONSTRUCTION OF THE SL 124 UTILITY RELOCATION; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Tyler, Texas (the "Issuer") reserves the right to issue debt for the engineering, design, and construction of the SL 124 Utility Relocation project (the "Project") and further intends to make certain capital expenditures with respect to the Project and currently reserves the right to reimburse the capital expenditures with proceeds of such debt; and

WHEREAS, under 26 CFR § 1.150-2 (the "Regulation"), to fund such reimbursement with proceeds of tax-exempt obligations, the Issuer must declare its expectation to make such reimbursement; and

WHEREAS, the Issuer desires to preserve its ability to reimburse the capital expenditures with proceeds of tax-exempt obligations,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER TEXAS:

Part 1: That the City of Tyler reasonably expects to reserve the right to reimburse capital expenditures with respect to the Project with proceeds of future potential debt hereafter which may be incurred by the Issuer, and that this Resolution shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Project is \$607,200.

Part 2: That this Resolution shall be effective immediately upon adoption.

PASSED AND APPROVED, this the 14th day of May, 2025.

DONALD P. WARREN, MAYOR OF THE
CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH PULLUM, CITY ATTORNEY

Client: Tyler Water Utilities	Date: 3/20/2025
Project: SL 124 Utility Relocation	Prepared By: JAS
KHA No.:	Checked By:

Title: Planning - Level OPCC	Sheet: 1 of 1
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Item No.	Item Description	Quantity	Unit	Unit Price	Item Cost
1	Mobilization/Demobilization, Bonds, and Insurance	1	LS	\$ 69,000.00	\$ 69,000.00
2	16" Steel Casing Pipe (by Bore)	130	LF	\$ 550.00	\$ 71,500.00
3	12" Steel Casing Pipe (by Bore)	300	LF	\$ 400.00	\$ 120,000.00
4	10" Steel Casing Pipe (by Bore)	130	LF	\$ 325.00	\$ 42,250.00
5	8" DR 18 PVC Water Pipe (by Open Cut)	950	LF	\$ 90.00	\$ 85,500.00
6	8" DR 18 PVC Water Pipe Inside Casing Pipe	130	LF	\$ 85.00	\$ 11,050.00
7	6" DR 18 PVC Water Pipe (by Open Cut)	870	LF	\$ 80.00	\$ 69,600.00
8	6" DR 18 PVC Water Pipe Inside Casing Pipe	100	LF	\$ 70.00	\$ 7,000.00
9	4" DR 18 PVC Wastewater Pressure Pipe (by Open Cut)	80	LF	\$ 55.00	\$ 4,400.00
10	4" DR 18 PVC Wastewater Pressure Pipe Inside Casing Pipe	130	LF	\$ 45.00	\$ 5,850.00
11	Relocate and Reconnect Ex. Water Meter	9	EA	\$ 2,000.00	\$ 18,000.00
12	Fire Hydrant Assembly	4	EA	\$ 8,000.00	\$ 32,000.00
13	8" Gate Valve	4	EA	\$ 3,000.00	\$ 12,000.00
14	6" Gate Valve	3	EA	\$ 2,000.00	\$ 6,000.00
15	Ductile Iron Fittings	5,100	LB	\$ 5.00	\$ 25,500.00
16	Connect to Existing Water Line	5	EA	\$ 3,000.00	\$ 15,000.00
17	8" SDR 26 PVC Wastewater Pipe (by Open Cut)	1,680	LF	\$ 100.00	\$ 168,000.00
18	6" SDR 26 PVC Wastewater Pipe (by Open Cut)	1,485	LF	\$ 80.00	\$ 118,800.00
19	6" SDR 26 PVC Wastewater Pipe Inside Casing Pipe	200	LF	\$ 75.00	\$ 15,000.00
20	Reconnect Ex. Wastewater Service	15	EA	\$ 2,000.00	\$ 30,000.00
21	4' Diameter Manhole	7	EA	\$ 7,000.00	\$ 49,000.00
22	Wastewater Cleanout	2	EA	\$ 2,000.00	\$ 4,000.00
23	Hydrostatic Testing and Disinfection	1	LS	\$ 12,000.00	\$ 12,000.00
24	Vacuum Testing of Manholes	7	EA	\$ 2,000.00	\$ 14,000.00
25	Trench Safety - Water Line	1,900	LF	\$ 3.00	\$ 5,700.00
26	Trench Safety - Wastewater Line	3,165	LF	\$ 6.00	\$ 18,990.00
27	Grout-Abandon Ex. Water and Wastewater Crossings	560	LF	\$ 20.00	\$ 11,200.00
28	Remove Existing Water and Wastewater Lines in ROW	5,065	LF	\$ 25.00	\$ 126,625.00
29	Remove & Replace Asphalt Street Pavement	199	SY	\$ 155.00	\$ 30,827.78
30	Remove & Replace Concrete Driveway Pavement	181	SY	\$ 170.00	\$ 30,788.89
31	Remove & Replace Asphalt Driveway Pavement	881	SY	\$ 155.00	\$ 136,486.11
32	Seeding	10,550	SY	\$ 3.00	\$ 31,650.00
33	Clearing and Grubbing	1	LS	\$ 10,000.00	\$ 10,000.00
34	Creek Restoration	4	EA	\$ 5,000.00	\$ 20,000.00
35	SWPPP Preparation and Implementation	1	LS	\$ 15,000.00	\$ 15,000.00
Basis for Cost Projection:		Subtotal			\$1,442,717.78
☒ No Design		Conting. (% ,±) 30			\$437,282.22
☐ Preliminary		Total:			\$1,880,000.00
☐ Final Design					

This total does not reflect engineering or technical services.

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable construction costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar w/ the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-1

Date: May 14, 2025

Subject: Request that the City Council consider authorizing the City Manager to execute and add Amendment #01 to Work Order #01 of the Master Services Agreement with Elledge Engineering Corp. for the design and construction phase services, as they relate to the Stormwater Repair Projects 2025 for \$20,500.00 for a total of \$132,500.00.

Item Reference: CC 09/25/2024, Item C-A-6

This amended scope of work includes an additional location at 2206 North Glass Avenue. This location is experiencing the separation of reinforced concrete pipe (RCP) culverts and roadway failure.

The original scope of this Capital Improvement Project (CIP) was to repair failing stormwater infrastructure for the City of Tyler at five (5) locations and included:

1. 1100 East Lake Street (erosion and a failed RCP and outfall);
2. 1647 Mims Drive (erosion, failing inlet boxes, and separated RCP causing roadway failure);
3. 516 East 6th Street (erosion, failing deep inlet boxes, and separated RCP eventually causing roadway failure);
4. 1902 Sybil Lane (erosion and a failed reinforced concrete pipe (RCP) and outfall, jeopardizing a private retaining wall); and
5. 2305 East 5th Street (erosion and undermined culvert, headwall, and wingwalls).

The attached amendment includes the original scope of services, updated with the additional scope and changes to the original engineer's opinion of cost (EOPC). The changes are highlighted in yellow.

This project is to be funded from the Stormwater Capital Outlay Budget.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to execute and add Amendment #01 to Work Order #01 of the Master Services Agreement with Elledge Engineering Corp. for the design and construction phase services, as they relate to the Stormwater Repair Projects 2025 for \$20,500.00 for a total of \$132,500.00.

Attachments:

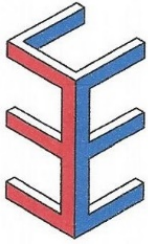
[EA_MSA_WO#01_SW_Repair_Projects_2025_A01_Elledge.pdf](#)
[IMG_1261](#)

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[IMG_1266](#)

Drafted/Recommended By:
Department Leader

Paul Neuhaus, P.E., M.S. - Stormwater Management and
Environmental Compliance Engineer

Edited/Submitted By:
City Manager



ELLEDGE ENGINEERING CORPORATION

P.O. Box 7110
Tyler, Texas 75711
TBPE #F-16917

(903) 780-3251

April 2, 2025

Mr. Paul Neuhaus, M.S., P.E., Project Engineer
City of Tyler
P.O. Box 2039
Tyler, Texas 75710-2039

**RE: City of Tyler
Stormwater Repair Projects 2025
Amended Scope of Work**

Dear Mr. Neuhaus:

As you know an additional site location was added to our scope of work. As a result, we have prepared updated versions of the "Engineering Fee Estimate and Hourly Rate Schedule" and the "Preliminary List of Drawings" included in our executed contract with the City of Tyler. The change in scope has added \$20,500.00 to our original fee for this project.

Thank you for the opportunity to work with you on such an important project.

Sincerely,

ACCEPTED:

Phil Elledge, P.E., President
Elledge Engineering Corporation
TBPE F-16917

Edward Broussard, City Manager
City of Tyler

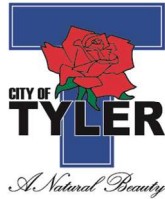
Enclosures

City of Tyler

Stormwater Repair Projects 2025 6 Locations

11/2/2024

AMENDED Scope of Work	
Preliminary Phase	
>	Consult with Owner to determine requirements of the Project.
>	Review Watershed and Floodplain Information for 6 locations
>	Determine flowrate at each location based on Ultimate Development
>	Design the channel configuration and protection to accommodate ultimate flows
>	Design structural repairs to existing structures, as required.
>	Prepare the preliminary plans for the proposed improvements at each of the 6 locations
>	Prepare a report outlining the proposed options at each of the 6 locations.
Design Phase	
>	Prepare detailed construction drawings and specifications for the Project.
>	Advise the Owner of any adjustment in the opinion of probable cost for the project caused by changes in scope, design requirements, sketch and furnish an updated opinion of probable cost based on the completed design package.
>	Prepare proposal forms, notice to bidders and contract documents for submission by the Owner to their attorney
>	Furnish to the Owner five complete sets of contract documents for execution
>	Meet with Owner to review Plans
Construction Phase	
>	Assist owner in securing bids including notification of perspective bidders and plan rooms
>	Assist Owner in opening, tabulation and analysis of bids and furnish information gathered from references to aid in the award of the contract.
>	Assist in the preparation of formal contract documents for award of contract.
>	Schedule and attend a preconstruction conference with the Owner, other utility owners, contractors and other interested parties to determine and coordinate construction scheduling and responsibilities, if required.
>	Make periodic site visits to observe the general progress and quality of work to determine if the work is proceeding in accordance with the Contract Documents
>	Check submittals for compliance with the contract plans and specifications.
>	Consult and advise with the Owner and act as the Owner's representative at the Project Site; issue instructions of the Owner to the contractor that do not conflict with good engineering practices.
>	Review monthly and final estimates from contractor for payment and determine if the work progress justifies the pay request
>	Prepare Contract Change Order, as required.
>	Conduct a final inspection of the completed work and issue a punch list of items that require correction. Re-inspect as required.
>	Revise the Contract Drawings to reflect "as-built" conditions of the project and furnish one set of the revised drawing to the owner on paper and as a pdf file.
Additional Services	
>	Preparation of Design Surveys
>	Prepare Easements
>	Negotiate Easements
>	Construction Observation (Part Time)



City of Tyler

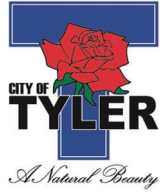
Stormwater Repair Projects 2025

AMENDED Preliminary List of Drawings

11/2/2024

Sheet No.	Sheet Title
General Sheets	
C1.1	Cover Sheet
C1.2	General Notes
C1.3	Quantities
1100 LAKE STREET	
C2.1	Demolition Plan
C2.2	Site Plan
C2.3	Profile & Cross Sections
C2.4	Cross Sections
1647 MIMS DRIVE	
C3.1	Demolition Plan
C3.2	Site Plan
C3.3	Grading Plan
C3.4	Cross Sections
C3.5	Inlet Repair Details
516 E 6th STREET	
C4.1	Demolition Plan
C4.2	Site Plan
C4.3	Cross Sections
C4.4	Inlet construction Details
1902 SYBIL LANE	
C5.1	Demolition Plan
C5.2	Site Plan
C5.3	Cross Section
C5.4	Channel Details
2305 E 5th STREET	
C6.1	Demolition Plan
C6.2	Site Plan
C6.3	Cross Sections
2206 N GLASS AVENUE	
C7.1	Demolition Plan
C7.2	Site Plan
C7.3	Grading Plan
C7.4	Cross Sections
Miscellaneous Detail Sheets	
C8.1	City of Tyler Details
C8.2	City of Tyler Details
C8.3	City of Tyler Details
C8.4	TxDOT Details
C8.5	Flowable Fill Specifications





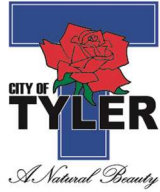
City of Tyler

Stormwater Repair Projects 2025
6 Locations

Amended Opinion of Probable Cost
11/2/2024

1100 EAST LAKE STREET					
TxDOT ITEM	Quantity	Unit	Description	Unit Cost	Total Cost
100	1	EA	PREPARING RIGHT OF WAY	\$5,000.00	\$5,000.00
104	4	EA	REMOVE CONCRETE (48-INCH RCP)	\$500.00	\$2,000.00
132	350	CY	COMPACTED SELECT MATERIAL (PLAN QUANTITY)	\$70.00	\$24,500.00
164	1000	SY	HYDROMULCH	\$3.00	\$3,000.00
403	50	SY	TEMPORARY SPECIAL SHORING (AS NEEDED)	\$50.00	\$2,500.00
432	400	SY	FILTER FABRIC	\$12.00	\$4,800.00
432	35	CY	RIPRAP (STONE PROTECTION)(DRY)(6IN)(12IN)	\$325.00	\$11,375.00
462	50	CY	GRAVEL BEDDING (1" - 2" ANGULAR STONE)	\$300.00	\$15,000.00
464	32	LF	RC PIPE (CLIII)(48IN)	\$300.00	\$9,600.00
464	1	EA	RC PIPE (CLIII)(48IN)(15 DEGREE BEND)	\$300.00	\$300.00
466	1	EA	HEADWALL (CH-FW-0)(DIA=48IN)	\$30,000.00	\$30,000.00
500	1	LS	MOBILIZATION AND BONDS	\$5,000.00	\$5,000.00
502	1	MO	BARRICADES, SIGNS AND TRAFFIC HANDLING	\$1,700.00	\$1,700.00
506	20	LF	ROCK FILTER DAMS (INSTALL)(TYPE 2)	\$119.00	\$2,380.00
506	20	LF	ROCK FILTER DAMS (REMOVE)	\$40.00	\$800.00
506	50	LF	TEMPORARY SEDIMENT CONTROL FENCE (INSTALL)	\$4.00	\$200.00
506	50	LF	TEMPORARY SEDIMENT CONTROL FENCE (REMOVE)	\$2.00	\$100.00
N/A	1	LS	ALLOWANCE FOR ADDITIONAL WORK	\$15,000.00	\$15,000.00
SUBTOTAL - 1100 EAST LAKE STREET					\$133,255.00





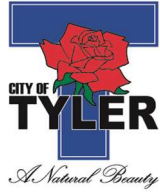
City of Tyler

Stormwater Repair Projects 2025
6 Locations

Amended Opinion of Probable Cost
11/2/2024

TxDOT ITEM	Quantity	Unit	Description	Unit Cost	Total Cost
1647 MIMS DRIVE					
100	1	EA	PREPARING RIGHT OF WAY	\$10,000.00	\$10,000.00
104	1	EA	REMOVE CONCRETE (48-INCH RCP)	\$2,000.00	\$2,000.00
104	1	EA	REMOVE EXISTING INLET	\$2,000.00	\$2,000.00
104	20	LF	REMOVE EXISTNG CURB & GUTTER	\$20.00	\$400.00
105	50	SY	REMOVE EXISTNG ASPHALT	\$5.00	\$250.00
110	100	CY	UNCLASSIFIED EXCAVATION	\$15.00	\$1,500.00
132	100	CY	COMPACTED SELECT MATERIAL (PLAN QUANTITY)	\$70.00	\$7,000.00
164	1000	SY	HYDROMULCH	\$3.00	\$3,000.00
150	1	LS	MISC. GRADE WORK	\$5,000.00	\$5,000.00
341	50	SY	ASPHALT PAVEMENT REPAIR	\$100.00	\$5,000.00
403	50	SY	TEMPORARY SPECIAL SHORING (AS NEEDED)	\$50.00	\$2,500.00
432	125	SY	FILTER FABRIC	\$12.00	\$1,500.00
432	35	CY	RIPRAP (STONE PROTECTION)(DRY)(6IN)(12IN)	\$325.00	\$11,375.00
462	10	CY	GRAVEL BEDDING (1" - 2" ANGULAR STONE)	\$300.00	\$3,000.00
464	16	LF	RC PIPE (CLIII)(48IN)	\$300.00	\$4,800.00
465	1	EA	INLET (COMP)(10')(CURB)(SAG)	\$15,000.00	\$15,000.00
465	1	LS	INLET REPAIR (MISC)	\$10,000.00	\$10,000.00
466	2	EA	WINGWALL (PW-1)(HW=7.5FT)(LENGTH=10FT)	\$15,000.00	\$30,000.00
500	1	LS	MOBILIZATION AND BONDS	\$5,000.00	\$5,000.00
502	1	MO	BARRICADES, SIGNS AND TRAFFIC HANDLING	\$1,700.00	\$1,700.00
506	20	LF	ROCK FILTER DAMS (INSTALL)(TYPE 2)	\$119.00	\$2,380.00
506	20	LF	ROCK FILTER DAMS (REMOVE)	\$40.00	\$800.00
506	50	LF	TEMPORARY SEDIMENT CONTROL FENCE (INSTALL)	\$4.00	\$200.00
506	50	LF	TEMPORARY SEDIMENT CONTROL FENCE (REMOVE)	\$2.00	\$100.00
N/A	1	LS	ALLOWANCE FOR ADDITIONAL WORK	\$15,000.00	\$15,000.00
SUBTOTAL - 1647 MIMS DRIVE					\$139,505.00



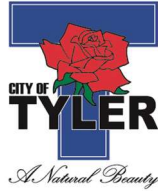


City of Tyler

Stormwater Repair Projects 2025
6 Locations

Amended Opinion of Probable Cost
11/2/2024

TxDOT ITEM	Quantity	Unit	Description	Unit Cost	Total Cost
516 EAST 6TH STREET					
100	1	EA	PREPARING RIGHT OF WAY	\$10,000.00	\$10,000.00
104	1	EA	REMOVE CONCRETE (48-INCH RCP)	\$3,000.00	\$3,000.00
104	1	EA	REMOVE EXISTING INLET	\$2,000.00	\$2,000.00
105	100	SY	REMOVE EXISTING ASPHALT	\$5.00	\$500.00
110	100	CY	UNCLASSIFIED EXCAVATION	\$15.00	\$1,500.00
132	100	CY	COMPACTED SELECT MATERIAL (PLAN QUANTITY)	\$70.00	\$7,000.00
164	1000	SY	HYDROMULCH	\$3.00	\$3,000.00
341	100	SY	ASPHALT PAVEMENT REPAIR	\$100.00	\$10,000.00
403	100	SY	TEMPORARY SPECIAL SHORING (AS NEEDED)	\$50.00	\$5,000.00
432	125	SY	FILTER FABRIC	\$12.00	\$1,500.00
432	35	CY	RIPRAP (STONE PROTECTION)(DRY)(6IN)(12IN)	\$325.00	\$11,375.00
450	35	LF	RAIL (HANDRAIL)(TY F)	\$75.00	\$2,625.00
462	10	CY	GRAVEL BEDDING (1" - 2" ANGULAR STONE)	\$300.00	\$3,000.00
465	2	EA	INLET (COMP)(10')(CURB)(SAG)	\$15,000.00	\$30,000.00
466	2	EA	WINGWALL (PW-1)(HW=15FT)(LENGTH=10FT)	\$20,000.00	\$40,000.00
500	1	LS	MOBILIZATION AND BONDS	\$5,000.00	\$5,000.00
502	1	MO	BARRICADES, SIGNS AND TRAFFIC HANDLING	\$1,700.00	\$1,700.00
506	20	LF	ROCK FILTER DAMS (INSTALL)(TYPE 2)	\$119.00	\$2,380.00
506	20	LF	ROCK FILTER DAMS (REMOVE)	\$40.00	\$800.00
506	50	LF	TEMPORARY SEDIMENT CONTROL FENCE (INSTALL)	\$4.00	\$200.00
506	50	LF	TEMPORARY SEDIMENT CONTROL FENCE (REMOVE)	\$2.00	\$100.00
529	150	LF	CURB & GUTTER	\$50.00	\$7,500.00
N/A	1	LS	ALLOWANCE FOR ADDITIONAL WORK	\$15,000.00	\$15,000.00
SUBTOTAL - 516 EAST 6TH STREET					\$163,180.00

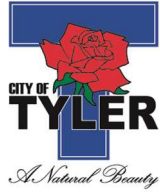


City of Tyler

Stormwater Repair Projects 2025
6 Locations

Amended Opinion of Probable Cost
11/2/2024

TxDOT ITEM	Quantity	Unit	Description	Unit Cost	Total Cost
1902 SYBIL LANE					
100	1	EA	PREPARING RIGHT OF WAY	\$10,000.00	\$10,000.00
104	1	EA	REMOVE CONCRETE (30-INCH RCP)	\$500.00	\$500.00
110	200	CY	UNCLASSIFIED EXCAVATION	\$15.00	\$3,000.00
132	100	CY	COMPACTED SELECT MATERIAL (PLAN QUANTITY)	\$70.00	\$7,000.00
164	500	SY	HYDROMULCH	\$3.00	\$1,500.00
403	100	SY	TEMPORARY SPECIAL SHORING (AS NEEDED)	\$50.00	\$5,000.00
420	10	CY	SEAL SLAB	\$400.00	\$4,000.00
432	35	CY	CLASS A CONC (SLAB)	\$700.00	\$24,500.00
432	30	CY	CLASS A CONC (WALL)	\$900.00	\$27,000.00
432	125	SY	FILTER FABRIC	\$12.00	\$1,500.00
432	50	CY	RIPRAP (STONE PROTECTION)(DRY)(18IN)(24IN)	\$400.00	\$20,000.00
450	80	LF	RAIL (HANDRAIL)(TY F)	\$75.00	\$6,000.00
500	1	LS	MOBILIZATION AND BONDS	\$5,000.00	\$5,000.00
502	1	MO	BARRICADES, SIGNS AND TRAFFIC HANDLING	\$1,700.00	\$1,700.00
506	20	LF	ROCK FILTER DAMS (INSTALL)(TYPE 2)	\$119.00	\$2,380.00
506	20	LF	ROCK FILTER DAMS (REMOVE)	\$40.00	\$800.00
506	50	LF	TEMPORARY SEDIMENT CONTROL FENCE (INSTALL)	\$4.00	\$200.00
506	50	LF	TEMPORARY SEDIMENT CONTROL FENCE (REMOVE)	\$2.00	\$100.00
N/A	1	LS	ALLOWANCE FOR ADDITIONAL WORK	\$15,000.00	\$15,000.00
SUBTOTAL - 1902 SYBIL LANE					\$135,180.00
2305 E 5th STREET					
100	1	EA	PREPARING RIGHT OF WAY	\$5,000.00	\$5,000.00
110	30	CY	UNCLASSIFIED EXCAVATION	\$15.00	\$450.00
164	200	SY	HYDROMULCH	\$3.00	\$600.00
432	3	CY	FLOWABLE FILL	\$300.00	\$900.00
432	125	SY	FILTER FABRIC	\$12.00	\$1,500.00
432	50	CY	RIPRAP (STONE PROTECTION)(DRY)(12IN)(24IN)	\$400.00	\$20,000.00
500	1	LS	MOBILIZATION AND BONDS	\$5,000.00	\$5,000.00
502	1	MO	BARRICADES, SIGNS AND TRAFFIC HANDLING	\$1,700.00	\$1,700.00
506	20	LF	TEMPORARY SEDIMENT CONTROL FENCE (INSTALL)	\$4.00	\$80.00
506	20	LF	TEMPORARY SEDIMENT CONTROL FENCE (REMOVE)	\$2.00	\$40.00
N/A	1	LS	ALLOWANCE FOR ADDITIONAL WORK	\$5,000.00	\$5,000.00
SUBTOTAL - 2305 E 5th STREET					\$40,270.00

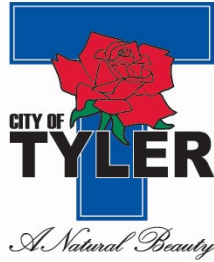


City of Tyler

Stormwater Repair Projects 2025
6 Locations

Amended Opinion of Probable Cost
11/2/2024

TxDOT ITEM	Quantity	Unit	Description	Unit Cost	Total Cost
2206 N GLASS AVENUE					
100	1	EA	PREPARING RIGHT OF WAY	\$15,000.00	\$15,000.00
104	1	EA	REMOVE CONCRETE (48-INCH RCP)	\$2,000.00	\$2,000.00
104	1	EA	REMOVE EXISTING INLET	\$2,000.00	\$2,000.00
104	20	LF	REMOVE EXISTING CURB & GUTTER	\$20.00	\$400.00
105	100	SY	REMOVE EXISTING ASPHALT	\$5.00	\$500.00
110	100	CY	UNCLASSIFIED EXCAVATION	\$15.00	\$1,500.00
132	100	CY	COMPACTED SELECT MATERIAL (PLAN QUANTITY)	\$70.00	\$7,000.00
164	1000	SY	HYDROMULCH	\$3.00	\$3,000.00
150	1	LS	MISC. GRADE WORK	\$5,000.00	\$5,000.00
341	100	SY	ASPHALT PAVEMENT REPAIR	\$100.00	\$10,000.00
403	100	SY	TEMPORARY SPECIAL SHORING (AS NEEDED)	\$50.00	\$5,000.00
432	125	SY	FILTER FABRIC	\$12.00	\$1,500.00
432	35	CY	RIPRAP (STONE PROTECTION)(DRY)(6IN)(12IN)	\$325.00	\$11,375.00
450	40	LF	RAIL (HANDRAIL)(TY F)	\$75.00	\$3,000.00
462	10	CY	GRAVEL BEDDING (1" - 2" ANGULAR STONE)	\$300.00	\$3,000.00
464	16	LF	RC PIPE (CLIII)(48IN)	\$300.00	\$4,800.00
465	1	EA	INLET (COMP)(10')(CURB)(SAG)	\$15,000.00	\$15,000.00
466	2	EA	WINGWALL (PW-1)(HW=7.5FT)(LENGTH=10FT)	\$15,000.00	\$30,000.00
500	1	LS	MOBILIZATION AND BONDS	\$5,000.00	\$5,000.00
502	1	MO	BARRICADES, SIGNS AND TRAFFIC HANDLING	\$1,700.00	\$1,700.00
506	20	LF	ROCK FILTER DAMS (INSTALL)(TYPE 2)	\$119.00	\$2,380.00
506	20	LF	ROCK FILTER DAMS (REMOVE)	\$40.00	\$800.00
506	50	LF	TEMPORARY SEDIMENT CONTROL FENCE (INSTALL)	\$4.00	\$200.00
506	50	LF	TEMPORARY SEDIMENT CONTROL FENCE (REMOVE)	\$2.00	\$100.00
N/A	1	LS	ALLOWANCE FOR ADDITIONAL WORK	\$15,000.00	\$15,000.00
SUBTOTAL - 2206 N GLASS AVENUE					\$145,255.00
SUBTOTAL CONSTRUCTION					\$756,645.00
Engineering					\$57,500.00
Surveying, Design					\$15,000.00
Easement Preparation (2 Required)					\$5,000.00
Easement Negotiation (2 Required)					\$5,000.00
Construction Observation					\$50,000.00
TOTAL PROJECT COST					\$889,145.00



City of Tyler

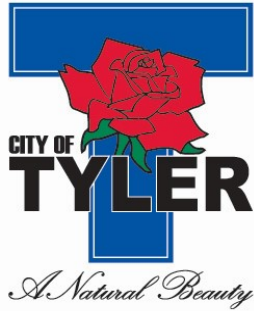
Stormwater Repair Projects 2025 6 Locations

Amended Engineering Fee Estimate & 2024 Rate Schedule 11/2/2024

ENGINEERING FEE ESTIMATE			
Basic Services	Fee Estimate	Amendment No. 1 Totals	Amended Fee Estimate
Plan Preparation	\$ 27,000.00	\$ 7,500.00	\$ 34,500.00
Contracts & Specifications	\$ 6,750.00		\$ 6,750.00
Bids Phase	\$ 2,250.00		\$ 2,250.00
Construction Engineering	\$ 9,000.00	\$ 5,000.00	\$ 14,000.00
Additional Services			
Surveying, Design	\$ 12,000.00	\$ 3,000.00	\$ 15,000.00
Easement Preparation (2 Required)	\$ 5,000.00		\$ 5,000.00
Easement Negotiation (2 Required)	\$ 5,000.00		\$ 5,000.00
Construction Observation*	\$ 45,000.00	\$ 5,000.00	\$ 50,000.00
* Construction Observation will be billed at an hourly rate not to exceed the amount shown. All other fees will be billed as a lump sum not to exceed the amount shown.			

2024 Rate Schedule	
Staff Classification	Rate / hr.
Principal/President	\$200
Project Manager	\$175
Sr. Design Engineer	\$150
Design Draftsman, Engineering Technician	\$100
Project Inspector	\$95
Secretary	\$75





City of Tyler
Stormwater Repair Projects 2025
6 Locations

Amended Project Schedule
11/2/2024

TASK	EST. COMPLETION DATE	AMENDED COMPLETION DATE
Surveying, Design	12/1/2024	12/15/2024
Preliminary Design	1/15/2025	1/30/2025
Final Plan Preparation	2/15/2025	2/28/2025
Contracts & Specifications	2/28/2025	3/15/2025
Bid Phase	3/25/2025	4/22/2025
Construction Engineering	9/30/2025	10/31/2025
Construction Observation	9/30/2025	10/31/2025





DIRECTION
254 deg(T)

32.37240°N
095.30765°W

ACCURACY 4 m
DATUM WGS84



2024-10-30
11:26:40-05:00

DIRECTION
109 deg(T)

32.37241°N
095.30768°W

ACCURACY 7 m
DATUM WGS84



2024-10-30
11:36:18-05:00



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-2

Date: May 14, 2025

Subject: Request that the City Council consider authorizing the City Manager to execute Change Order No. 1 for the 2024 Water Meter Replacement Program to increase the total contract amount by 15% from \$3,450,000 to \$3,967,500 for approximately 3,000 additional meter replacements.

Item Reference:

In mid-August 2024, Core and Main was given Notice to Proceed (NTP) for the 2024 Water Meter Replacement Program with a goal of replacing 8,000 meters throughout the City. Shortly after NTP it was determined that there were approximately 3,000 additional meters that were in need of replacement.

By the end of April, 2025, it is projected that approximately 8,000 meters will have been replaced with the new Neptune T-10 model, and staff have been able to collect enough data to forecast what the additional 3,000 meters will increase the original contract by, which is 15%. Change Order No 1 will increase the total contract amount to \$3,967,500 from the original amount of \$3,450,000.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to execute Change Order No. 1 for the 2024 Water Meter Replacement Program to increase the total contract amount by 15% from \$3,450,000 to \$3,967,500 for approximately 3,000 additional meter replacements.

Attachments:

[City of Tyler CO Revised Letter](#)
[04.16.2025 - City of Tyler Change Order No.1](#)

Drafted/Recommended By:

Department Leader Jacob Yanker, Project Engineer/ Kate Dietz P.E., Director of Water Utilities

Edited/Submitted By:

City Manager



Jim Cross
District Manager
Core & Main LP
3090 N NE Loop 323
Tyler, TX 75708
Jim.cross@coreandmain.com
(903) 592-8221

April 18, 2025

Jacob Yanker
Project Engineer
City of Tyler
212 N Bonner
Tyler, TX 75702
(903) 531-1100

Subject: Change Order No?fica?on-City of Tyler CAP 2024 Water Meter Replacement Program
Contract Price Adjustment

Dear Jacob,

This letter serves as formal notification of a change order request related to our existing contract dated December 13, 2023 for the project titled CIP 2024 Water Meter Replacement Program.

Due to a significant number of the addresses given to Core & Main as no read meter change outs for 5/8 x 3/4 meters are actually 1 meter changeouts, along with increasing the projected number of meters replaced in this phase, it is necessary to increase the total contract amount by 15%. The original contract amount was for \$3,450,000.00, and the revised total will now be \$3,967,500.00.

We kindly request your written approval to proceed with this change. Attached to this letter is the formal Change Order document for your review and signature. If you have any questions or require additional details, please do not hesitate to contact me directly.

Thank you for your continued partnership.

Sincerely,

Jim Cross
District Manager

CHANGE ORDER NO.: 1

Owner:	<u>City of Tyler, Texas</u>	Owner's Project No.:	<u>20-00808</u>
Engineer:	<u>Jacob Yanker</u>	Engineer's Project No.:	<u>7001-47</u>
Contractor:	<u>Core & Main</u>	Contractor's Project No.:	
Project:	<u>City of Tyler 2024 Water Meter Change Out Phase 1</u>		
Contract Name:	<u>Automated Meter Infrastructure System – CIP 20-00808</u>		
Date Issued:	<u>March 16,2025</u>	Effective Date of Change Order:	<u>April 01, 2025</u>

The Contract is modified as follows upon execution of this Change Order:

Description: Increase Contract Amount 15%

Attachments:

Change in Contract Price	Change in Contract Times
Original Contract Price: \$ 3,450,000.00	Original Contract Times: Substantial Completion: 365 Days Ready for final payment:
Increase from approved Change Order: \$ 517,500.00	Increase/Decrease from previously approved Change Orders: Substantial Completion: 0 Ready for final payment: 0
Contract Price prior to this Change Order: \$ 3,450,000.00	Contract Times prior to this Change Order: Substantial Completion: 365 Days Ready for final payment:
Increase this Change Order by 15%: \$ 517,500.00	Increase/Decrease this Change Order: Substantial Completion: 0 Ready for final payment: 0
Contract Price incorporating this Change Order: \$ 3,967,500.00	Contract Times with all approved Change Orders: Substantial Completion: Ready for final payment:

Recommended by City of Tyler

(if required)

Authorized by Owner

By: <u>Edward Broussard</u>	<u></u>
Title: <u>City Manager</u>	<u>City of Tyler, Texas</u>
Date: <u></u>	<u></u>
<u>Acknowledged by Contractor</u>	<u></u>
By: <u>Jim Cross</u>	<u></u>
Title: <u>District Manager</u>	<u></u>
Date: <u></u>	<u></u>

EJCDC® C-941, Change Order.

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CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-3

Date: May 14, 2025

Subject: Request that the City Council consider authorizing the City Manager to declare a Ford Explorer as surplus property and approve the inter-local agreement authorizing the sale to Hemphill ISD for a total purchase price of \$11,000.00.

Item Reference:

The City of Tyler Vehicle Services Department currently owns unit 14872, a 2015 Ford Explorer, mileage 80,499. Hemphill ISD requested the City of Tyler sell them this unit, so they may update their fleet. Tyler City Code Section 4-9 provides that the City is authorized to initiate or respond to requests for transfer of surplus or salvage property to other governmental agencies. The Vehicle Services Department is of the opinion that execution of this agreement and the conveyance of the vehicles to Hemphill ISD will be highly beneficial to both entities in their effort to provide services to the public. Hemphill ISD agrees to pay \$11,000.00 for this unit. By executing the agreement, Hemphill ISD will become the owner of unit 14872. Hemphill ISD shall be responsible for removal and all future use, maintenance, repair, preservation, and liability.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to declare a Ford Explorer as surplus property and approve the inter-local agreement authorizing the sale to Hemphill ISD for a total purchase price of \$11,000.00.

Attachments:
[interlocal hemphill isd](#)

Drafted/Recommended By:
Department Leader Stan Stoffregen Fleet Manager

Edited/Submitted By:
City Manager

COUNTY OF SMITH § INTERLOCAL AGREEMENT BETWEEN
 § CITY OF TYLER AND HEMPHILL
 § INDEPENDENT SCHOOL DISTRICT
 §
 §
 §
STATE OF TEXAS § SALE OF SURPLUS FORD EXPLORER

This Interlocal Agreement ("Agreement") is entered into by and between the City of Tyler, Texas ("Tyler") and Hemphill Independent School District ("Hemphill ISD") pursuant to the authority granted under and in compliance with the provisions of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

WHEREAS, it is the intent of the City of Tyler and the Hemphill Independent School District to promote the public health, safety, and welfare; and

WHEREAS, the City of Tyler Vehicle Services Department ("VES") currently has one Ford Explorer vehicle, which has been replaced; and

WHEREAS, at the request of VES, the Tyler City Council has declared such Ford Explorer vehicle to be surplus property; and

WHEREAS, Hemphill ISD requested to purchase the surplus Ford Explorer vehicle from the City to update their current fleet; and

WHEREAS, after the completion of the sale, Hemphill ISD agrees to and would be responsible for the removal and all future use, maintenance, and repair of the equipment; and

WHEREAS, the Parties agree that execution of this Agreement and the sale of the Ford Explorer vehicle to Hemphill ISD will be highly beneficial to both entities in their efforts to provide services to the public, and the public will benefit from this Agreement; and

WHEREAS, Tyler City Code, Chapter 4, Article I, Section 4-9(d) provides that the City of Tyler is authorized to initiate or to respond to requests for transfers of surplus or salvage property to other governmental agencies.

NOW THEREFORE, the Parties hereby agree as follows:

1. Tyler agrees to sell, and Hemphill ISD agrees to buy one (1) Ford Explorer vehicle owned by Tyler as more thoroughly identified below (the "Vehicle"):
Unit No. 14872 – 2015 Ford Explorer
2. Hemphill ISD agrees to pay Tyler the total purchase price of Eleven Thousand dollars and no cents (\$11,000.00) on or before May 16, 2025.
3. Tyler warrants that it has full legal title to the Vehicle.
4. The Vehicle is sold in an "as is" condition. Tyler hereby disclaims any warranty of

merchantability, working order, or condition of the Vehicle, except that the Vehicle shall be sold in its present condition.

5. Hemphill ISD shall be responsible for pick-up and removal of the Vehicle from Tyler VES and all future possession, use, maintenance, registration, and repair of the Vehicle following the effective date of this Agreement. The Vehicle shall be picked up on or before May 16, 2025.
6. By signing this Agreement and upon receipt of payment from Hemphill ISD to Tyler, Hemphill ISD assumes ownership and possession of the vehicle and shall be responsible for all future use, maintenance, repair, and preservation thereof, as well as registration, titling, and any associated costs. Furthermore, the Parties hereby agree that effective upon the date of sale, Tyler shall be released from all liability and Hemphill ISD assumes full, total, and sole liability and responsibility for the Vehicle and for any resulting injuries, losses, damages, or claims of any sort resulting from, involving, or in any way related to the Vehicle. The parties hereto agree that the payment to Tyler by Hemphill ISD of the amount in Section 2. above, the assumption of the duties by Hemphill ISD pursuant to this section, and the benefits to Hemphill ISD and its citizens that are associated with the transferred Vehicle, all constitutes good, valuable, and adequate consideration for the parties to enter this Agreement.
7. Upon the effective date of this Agreement and receipt of payment, Tyler relinquishes all rights of ownership, possession, and maintenance of the Vehicle to Hemphill ISD. Immediately thereafter, the Parties shall effectuate the transfer of title to the Vehicle, and Tyler shall properly submit a Vehicle Transfer Notification to the Texas Department of Motor Vehicles.

IN WITNESS WHEREOF, the City of Tyler, Texas, and Hemphill Independent School District have caused this Agreement to be executed and effective as of the 14th day of May, 2025.

**APPROVED BY THE TYLER CITY COUNCIL IN A MEETING ON THE 14th
DAY OF May, 2025**

**APPROVED BY HEMPHILL INDEPENDENT SCHOOL DISTRICT
IN A MEETING ON THE ____ DAY OF ____, 2025**

City of Tyler

FOR THE CITY OF TYLER, TEXAS

By: _____
EDWARD BROUSSARD
CITY MANAGER

**FOR THE CITY OF TYLER, TEXAS
ATTEST:**

By: _____
CASSANDRA BRAGER
CITY CLERK

APPROVED:

By: _____
CITY ATTORNEY'S OFFICE

APPROVED:

By: _____
LEROY SPARROW
DIRECTOR OF VES

APPROVED:

By: _____
VES MANAGER

Hemphill Independent School District

STEPHEN ENGLISH
HEMPHILL INDEPENDENT SCHOOL DISTRICT
SUPERINTENDENT H.I.S.D.



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-4

Date: May 14, 2025

Subject: Request that the City Council consider authorizing the City Manager to execute a new Hangar/Operator Lease to The Albert Hall Co., LLC (John D Crow), for a portion of Tract 2 currently leased by Term Properties, at Tyler Pounds Regional Airport.

Item Reference:

Term Properties has leased Tract 2 at Tyler Pounds Regional Airport since March 4, 1994. Term Properties desires to assign a 0.352-acre portion of Tract 2 to The Albert Hall Co., LLC (John D Crow), executing a new Hangar/Operator Lease with the City for 0.352 acres of Tract 2 at Tyler Pounds Regional Airport.

On April 21, 2025, the Airport Advisory Board considered this item and unanimously recommended that the City Council approve this request

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a new Hangar/Operator Lease to The Albert Hall Co., LLC (John D Crow), for a portion of Tract 2 currently leased by Term Properties, at Tyler Pounds Regional Airport.

Attachments:

[The Albert Hall Co LLC Hangar Operator 2025
Lease Map for Crow & Term CA4 & CA5](#)

Drafted/Recommended By:
Department Leader Steve Thompson

Edited/Submitted By:
City Manager

TYLER POUNDS REGIONAL AIRPORT

The State of Texas
County of Smith

I N D E X

HANGAR/OPERATOR LEASE

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FOR QUESTIONS CALL:

Airport Manager, 903-531-9825

THE STATE OF TEXAS

§

HANGAR/OPERATOR LEASE

COUNTY OF SMITH

§

§

THIS LEASE is made between the CITY OF TYLER, TEXAS, a political subdivision of the State of Texas (hereinafter "City"), and The Albert Hall Co, LLC (hereinafter "Lessee").

WITNESSETH:

WHEREAS, the City owns and operates the Tyler Pounds Regional Airport, located in Smith County, State of Texas (hereinafter "Airport"); and

WHEREAS, on February 23, 2022, the City entered into a Fixed Base Operator Lease (the "FBO Lease") with Term Properties, Inc. (the "Prior Lessee") covering 7.03 acres of land, more or less, described therein; and

WHEREAS, Article IV, Section F. of the FBO Lease authorizes assignment of all or any part of the prior Lease upon the written consent of the Airport Manager; and

WHEREAS, the Airport Manager and the Prior Lessee have consented to the Prior Lessee's assignment of a portion of the acreage of the FBO Lease to the Lessee as to 0.352 of an acre of land, more or less, to be operated by the Lessee for aviation related activities as a Hangar/Operator Lease and as described in the attached Exhibit A (the "Premises"); and

WHEREAS, City and Prior Lessee have agreed to amend the FBO Lease as to the Premises between City and Lessee; and

WHEREAS, Lessee has indicated a willingness and ability to keep, maintain, and improve said leased space in accordance with City standards, if granted a lease of sufficient term on said assigned Premises.

NOW, THEREFORE, for and in consideration of the mutual agreements, the parties agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

A. **DESCRIPTION OF PREMISES.** For and in consideration of the term(s), conditions and covenants of this Lease to be performed by Lessee, all which Lessee accepts, City hereby leases to Lessee the premises as shown on the attached Exhibit A.

Lessee accepts the premises in their present condition, subject to and including all defects, and Lessee will, without expense to City, repair and maintain any installations thereon and remove, or cause to be moved, any debris, buildings, or improvements to the extent required for Lessee's use thereof.

B. **ACCESS.** Upon paying the rental hereunder and performing the requirements of this Lease, Lessee shall have the right of access to and from said premises over such roadway(s), as may be designed for that purpose and the right of access to and from the landing area for airplanes over taxiways and aircraft parking ramps provided by City. Said roadway(s), aircraft parking ramps and taxiways shall be used jointly with other Airport tenants, but not for the conduct of business on another Lessee's premises and Lessee shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as the City Council deems necessary.

C. **OBJECTS AND PURPOSE OF LEASE.** Lessee is hereby granted the right and privilege to use the leased area only for **aviation-related activities**, being those provided by a Hangar Operator.

Lessee shall have the following privileges, uses, and rights, all of which shall be subject to the terms set forth:

DRAFT

1. Ability to build hangars for private, corporate, or public use, or to house aircraft under contract for management, sale, or lease to Lessee. (The Lessee shall provide the Airport Manager with a description of and identification numbers for these aircraft.) The maintenance and servicing of these aircraft shall be limited to those aircraft owners leasing storage space within the hangar. This right shall include repairing, inspecting, and licensing the same as well as purchasing and selling aircraft, parts, equipment, and accessories. (These activities are subject to such noise ordinances as the City now has or may adopt in the future.)
2. The operation and sale of air taxi and sightseeing services.
3. The operation of schools for the instruction of the general public in flying, navigation, aerial survey, or photography.
4. The operation of non-scheduled and charter air transportation of passengers.
5. Rental of Hangar Space for Aircraft Storage.

Lessee shall not use the premises for any purposes other than those authorized herein without the prior written consent of City:

It is understood and agreed that nothing herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958, [49 USCA §1349 (a)] or successor statute.

D. **CITY'S RESERVED RIGHTS.**

1. **Development.** City, at its sole discretion, reserves the right to further develop or improve the aircraft operating area of the airport as it sees fit and to take action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of City, would limit the usefulness of the Airport or constitute a hazard to aircraft. City reserves the right to develop easements through the leased premises for access to the airfield area. It is understood and agreed that this Lease is made subject and subordinate to the City's right to develop easements as set forth in this section and in Article II. Section M.3.
2. **Oil, Gas, Mineral Interests.** It is understood and agreed that this Lease is made subject and subordinate to the terms of any oil, gas, and other mineral interest; leases; or right-of-way easements of any nature which may have been executed heretofore.

If third persons owning or claiming any interest in minerals, in, under, or upon the premises, cause a permanent or temporary disruption of Lessee's operations upon the premises, Lessee

expressly agrees not to sue City, nor City's agents, for any loss to Lessee caused by such event. Said disruption of possession is a risk which Lessee expressly assumes herein.

City agrees that (1) if it should, as a mineral owner under the premises, develop the Airport area, or a portion thereof, for oil, gas or other mineral purposes, no well will be drilled or other operations conducted on the leased premises, and (2) in the event it should hereafter execute an oil, gas or other mineral lease in favor of a third party covering the Airport area, or a portion thereof, it will cause such lease to contain a provision that the Lessee therein will not conduct any of its drilling or other operations on the land covered by this Lease, or in a manner which would unreasonably interfere with Lessee's use and enjoyment of the premises.

3. **Other Contracts.** This Lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States, relative to the operation or maintenance of the airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to City of federal funds for the development of the Airport. In the event this lease is subordinated due to the City's election to receive federal funds and that action results in reduction of Lessee's revenue producing activities, City and Lessee shall negotiate reasonable compensation to Lessee for such reduction.
4. **Other Leases.** Nothing herein contained shall limit City with respect to granting of leases to other aviation tenants under more restrictive terms as herein set forth or to granting of leases for non-commercial aviation or non-aviation purposes at terms different from those set forth herein.
5. City reserves the right with ninety (90) days' written notice to repossess portions of the leased area and to lease to others for hangar development should the lessee fail to utilize the leased area to its fullest potential for its own hangar development as shown in the Airport Master plan. Lessee's rental rate will be reduced for the amount of land repossessed.
6. City agrees not to enter into any agreement with any other similar Lessee with respect to the Airport containing more favorable terms than this Lease or to grant to any other air transport operator rights, privileges, or concessions with respect to the said Airport unless the same terms are made available to Lessee.

E. **PROHIBITED USES.** Lessee shall not use or permit the use of any part of the premises in any other manner than set out in Article I, Section C of this Lease. Some specific activities prohibited are as follows:

1. Auto rental service
2. Food sales (except the sale of confections and refreshments prepared and packaged off the leased premises through either coin-operated vending machines or over the counter or in the waiting area, and other foods prepared and packaged off the leased premises for food trays for private or charter flights) at the leased premises.
3. Sales of alcoholic beverages at the leased premises, except with City approval.
4. Sales or advertisement of non-aviation products.

5. Any use prohibited by law.
6. Storage of old cars, buses, trucks or other vehicles causing unattractive or unsafe conditions.
7. Sale of fuel of any type.
8. Aircraft maintenance on aircraft other than aircraft owned or controlled by Lessee.
9. Residential use, incompatible land use or private airparks.
10. Storage for non-aviation purposes.

F. **MANDATORY CONSTRUCTION.** Intentionally Omitted.

G. **IMPROVEMENTS ON LEASED PREMISES.** No material improvement on the leased premises shall be made or installed by Lessee without the prior consent of Airport Manager, which consent will not be arbitrarily withheld. Lessee agrees that prior to the installation or construction of any such building, fixture, structure addition, or improvement, it shall submit the general plan, location, design and character thereof to Airport Manager for approval, and that all construction will be in conformity with such plans and specifications. Approval of Lessee's plans by City shall not constitute a representation or warranty as to such conformity. Responsibility for such conformity shall at all times remain in Lessee.

Lessee understands that all development shall conform to Airport Master Plan Guidelines and other City of Tyler Codes, Ordinances, Rules and Regulations then in existence as approved by City Council. A site plan of Lessee's area will be attached as Exhibit "A". Intentional failure to conform development to approved plans and as scheduled shall be cause for termination of this Lease upon failure to conform within thirty (30) days of City's notice to Lessee of its failure to conform.

Title to all improvements constructed or installed by Lessee on the leased premises shall remain in Lessee throughout the term of this Lease. However, if upon expiration or termination of this Lease, the Lessee owes any payments to City, the provisions of Article VI. shall govern.

Upon expiration or termination of this Lease, City shall have the first option to purchase buildings and improvements for a fair market value as determined by a mutually agreeable Independent Appraiser selected by the City and paid for by the Lessee at that time, or to request in writing that Lessee return the leased premises clear of all buildings and improvements above ground level constructed by Lessee. Request for said removals shall be delivered in writing by Airport Manager at least thirty (30) days prior to the termination or expiration of this Lease and shall be effective only for improvements constructed by Lessee. If City requires such removal, Lessee may have one hundred eighty (180) days after expiration or termination in which to have said improvements removed and the premises cleared of said improvements, provided that such continued occupancy for purposes of removal only shall relieve Lessee from rental obligations hereunder during such period of time. If Lessee makes any use of the premises other than for removal, then rental obligations herein shall continue during that time. If City does not purchase the improvements and does not request that such improvements be removed but does lease such improvements to another lessee, Lessee shall be compensated for the use of such improvements at a mutually agreeable fee or Lessee may, in the alternative, sell such improvements to such other lessee.

H. **MORTGAGE OF LEASEHOLD INTEREST.** Lessee shall have the right subject to City Manager approval to place a first mortgage lien upon its leasehold. Any approved lender shall notify City of all action taken

by it in the event payments on such loans shall become delinquent. Lender shall also notify Airport Manager, in writing, of any change in the identity or address of the Lender.

ARTICLE II - OBLIGATIONS OF LESSEE

A. **NET LEASE; MAINTENANCE AND OPERATION.** **The use and occupancy of the leased premises by Lessee will be without cost or expense to the City.** It shall be the sole responsibility of Lessee to construct, maintain, repair, and operate the entirety of the leased premises and any improvements and facilities constructed thereon at Lessee's sole cost and expense, except as specifically set forth in this Article.

Lessee shall maintain the leased premises at all times in a safe, neat and attractive condition and shall not permit the accumulation of any trash or debris on the premises. Lessee shall repair all damages to said premises caused by its employees, patrons, or its operation thereon. Lessee shall maintain and repair all buildings, pavements, equipment and improvements, and shall repaint the buildings as necessary. Storage of vehicles, trailers, and R.V.s are prohibited.

City reserves the right to make periodic inspection of leased premises and improvements and equipment therein during normal business hours.

City, in its reasonable discretion, shall be the sole judge of the quality of maintenance which shall uniformly apply to all airport tenants. Upon written notice by City to Lessee, Lessee shall be required to perform whatever reasonable maintenance City deems necessary. If said maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, City shall have the right to enter upon the leased premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

Lessee agrees to install and maintain within any building, parking and tie-down, and fuel storage areas, on or hereafter placed on the leased premises, such fire equipment and fire extinguishers as may be reasonably designated or requested by the Fire Marshal or in accordance with applicable safety standards.

B. **ALTERATIONS TO AND CONDITION OF PREMISES.** ***Any change in exterior paint colors shall be subject to the prior approval of the Airport Manager.*** Lessee agrees **not** to construct, install, remove, and/or materially modify any of the buildings or premises leased hereunder without prior written approval of the Airport Manager, subject to the conditions considered by the City to be necessary.

Lessee shall not remove or demolish, in whole or in part, any improvements upon the premises without the prior written consent of the City, which may, at its discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement specified in such consent.

Lessee further agrees that upon the expiration of the term of this Lease or sooner cancellation thereof, said premises will be delivered to City in good condition, reasonable wear and tear excepted, subject to the provisions of Article VI, hereof.

C. **TRASH, GARBAGE, LANDSCAPING.** Lessee shall provide a complete and proper arrangement of the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of the operation of its business. Lessee shall provide and use approved receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels or other similar items in an unattractive or unsafe manner, on

or about the leased premises, is prohibited.

Lessee shall be responsible for maintaining a suitably attractive yard appearance, as follows: Lessee shall be responsible for grounds keeping and shall screen any outside storage or work areas by the use of an opaque fence or other suitable opaque barrier so that such storage or work areas shall be hidden from public view from the street.

Lessee will landscape the premises according to City specifications (either now in existence or when adopted in the future) when requested to do so by City. Lessee is specifically responsible for mowing (and to ensure that weed or grass growth is never allowed in excess of that allowed by Tyler City Code Chapter 18, Article III., and FAA Regulations) and removal of weeds from around fences and buildings for the area as shown on the attached Exhibit A. Lessee is encouraged to provide additional landscaping beyond the minimum required by City to assist in enhancing Airport appearance.

D. **FUEL STORAGE/OPERATIONS.** If Lessee has fuel storage tanks, Lessee shall maintain and keep in good repair all fuel storage tanks used by Lessee on Airport premises and shall conduct all fueling operations in such a manner so as to prevent leakage. Lessee shall comply with all applicable federal, state and local environmental laws and regulations, and further agrees that it shall be solely responsible for clean-up of any leakage occurring from fuel storage tanks or fueling operations.

If Lessee has fuel storage tanks, Lessee shall submit to an environmental audit within two (2) months from lease renewal to demonstrate that neither the fuel tanks nor the fuel handling procedures have resulted in contamination of Airport property, ground water beneath the surface of the property or contamination of property adjoining the Airport. The Lessee shall provide full documentation of licensing or registration of fuel tanks with any governmental agency and certification that the tanks and facilities comply with applicable regulations. If the documentation does not show compliance, the Lessee shall employ engineers or other qualified experts to investigate compliance with all applicable regulations and apply for necessary permits, certifications or registrations.

E. **SIGNS.** The installation and operation of identifying signs on the leased premises, the general type, number, design, and method of installation and removal, and location of such signs are subject to approval of the Airport Manager, such approval not to be arbitrarily withheld.

F. **UTILITIES.** Lessee shall assume and pay for all costs or charges for utilities services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any storm and sanitary sewers and water and utility outlets at its own cost and expense; and Lessee shall pay for any service charges incurred therefor. All septic systems will be installed and maintained in accordance with all state and local codes or requirements.

G. **FIELD USE CHARGES.** Nothing herein shall be deemed to relieve Lessee and its tenants, sub lessees, patrons, invitees, and others from field landing fees, nor its guests from fuel flowage fees, as are levied by City.

H. **WORK STOPPAGES.** In the event of a strike or work stoppage by employees of Lessee, Lessee will continue to pay, during the entire period of any such strike or work stoppage, the rentals due in this Lease.

I. **PAYMENTS DUE.** Lessee agrees that no payments owed by Lessee of any nature whatsoever to City, including payment in advance for service charges, such as garbage collection, or any other sums of any character whatsoever, shall become delinquent or in arrears.

J. **COMPLIANCE WITH RULES.** Lessee will comply with any and all federal or state laws, federal

and state regulations, applicable City ordinances, City rules and regulations, all regulations made by the Airport Manager and approved by the City Council, and all applicable rules and regulations of the Northeast Public Health District.

K. **NONDISCRIMINATION/FEDERALLY REQUIRED ASSURANCES.** Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby agree that "as a covenant running with the land" (1) no person on the grounds of race, color, sex, creed, national origin, or disabled status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, or in the construction of any improvements on, or under such land, or the furnishing of services thereof, and (2) that Lessee shall use the premises in compliance with and conduct its operations in accordance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, or Section 504 of the Rehabilitation Act of 1973 (23 USC 794) and 49 CFR Part 27 and as said regulations may be amended, and that Lessee will comply with such enforcement procedures as the United States might demand that City take.

L. **FAA AND OTHER APPROVAL OF USE.** Lessee agrees to secure approval from the Federal Aviation Administration concerning the height and location of all buildings or improvements or modifications thereof which may be constructed or installed on the leased premises and to satisfy any applicable environmental or other requirements of federal, state, and local authorities as to noise, smoke, fumes, emissions, or other hazards or potential hazards or other offensive uses, if any, which may occur as a result of Lessee's operations on the premises.

M. **NON-INTERFERENCE WITH OPERATION OF AIRPORT/EASEMENTS.**

1. Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not make use of the premises in any manner, which might interfere with the operations of aircraft at Airport or otherwise constitute a hazard. If Lessee violates this, City reserves the right to enter upon the premises and remove the interference at the expense of Lessee.
2. City shall maintain and keep in good repair the landing area of the Airport, and shall have the right to direct and control all activities of the Lessee in this regard.
3. Easements. City retains the use and enjoyment of all utility and other easements located on, in or about the hereinabove described premises. City shall retain the right to take, without compensation to Lessee, any additional easements as are necessary on the hereinabove described premises for installation or maintenance of utilities, service roads or Airport operational systems whether they be to supply service to the Lessee hereunder or other Airport lessees, and for access to the airfield area, provided that such additional easements will not interfere with Lessee's use of the premises.
4. City shall retain an easement over, above and on the premises in relation to aircraft noise and the utilization of the air space for the purposes of the operation of Airport.

N. **LESSEE AUTHORITY.** The officers of the Lessee which execute this Lease represent and promise that they are duly authorized by corporate resolution or other appropriate authorization to execute same on behalf of Lessee.

ARTICLE III - TERM

This Lease shall be for a period of about twenty (20) years from June 1, 2025, through May 31, 2045.

Lessee shall have an option to renew this Lease for two (2), five-year period(s) upon the expiration of the initial lease term at rates to be negotiated.

Lessee's election to exercise an option shall be set forth in writing to the Airport Manager no later than six (6) months before the expiration of the primary term of this Lease or option period. **Lessee's failure to supply written request voids any renewal options.**

It is specifically agreed that Lessee's option to extend the original term or option period of this Lease shall be subject to a finding and determination by the City Council, subsequent to the receipt of the exercise of said option to renew by Lessee, as follows:

1. That the operations of Lessee upon the premises have not resulted in a disruption of normal Airport aviation activities; and that,
2. The continued use of said premises by Lessee will be consistent with the normal functioning of the Airport for the extended term.

If Lessee continues to occupy the premises beyond the term of the leased period or any extension thereof, such holding over shall not constitute a renewal of this Lease but shall be a day-to-day tenancy only, which may be terminated at any time by City.

ARTICLE IV – RENTALS

A. **GROUND RENTAL.** Lessee shall pay to City for the leased tracts as follows:

Tract 2 15,333.12 S.F. x \$.090 S.F. = \$ 1,379.98 annually / \$115.00 monthly

This payment shall be made in advance on or before the tenth of each month for which it is due. Since this fee is set herein, it shall not be necessary for City to bill Lessee, although City may choose to do so. All payments are to be made at:

Tyler Pounds Regional Airport

700 Skyway Blvd., Suite 201

Tyler Texas 75704

Or at such other place City may direct Lessee, in writing.

B. **FUEL FLOWAGE FEE.** Nothing herein shall be deemed to relieve Lessee and others from field use charges or fuel flowage fees, whenever applicable, and the fuel flowage fee of .06 cents per gallon as provided herein is specifically levied.

The fuel flowage fee shall be levied upon all fuel **delivered** to anyone at the Airport for each gallon of fuel or propellant (including aviation gasoline and kerosene base type fuels) shown on Lessee supplier's delivery tickets less 1% for shrinkage.

A fuel flowage report is required, on a form provided by the Airport, and will be due on or before the fourth (4th) working day of each month for the preceding month. The fuel flowage payment is due on or before the tenth (10th) working day of each month. Lessee agrees to allow City access to books and records of fuel purchases at any time during normal business hours upon reasonable notice for verification of fuel flowage fees tendered to City.

C. **DELINQUENT RENTALS.** There shall be added to all sums due City and unpaid, an interest charge on the unpaid balance of one and one-half percent (1 ½%) per month, if payment is not received by the tenth day of the month for which payment is due. (Example: A delinquent fee will be added to January's rent if January rental is not received by the tenth day of January.) No interest shall be charged upon that portion of any debt which, in good faith, is in dispute.

D. **FUTURE FEES.** Upon City Council approval and two (2) months written notice, City may decrease or increase the rates as set provided that they shall not exceed the rates then being charged at similar-sized airports in the United States at comparable facilities. Should such rates increase, Lessee may choose to either comply with the increase or cancel this Lease with no penalty.

ARTICLE V - INSURANCE AND INDEMNITY BY LESSEE

A. **TYPE AND AMOUNT.** Lessee shall provide and maintain, at its own expense, the following types and amounts of insurance, during the term of this Lease:

<u>TYPE</u>	<u>AMOUNT</u>
1. Comprehensive General (Public) Liability - to include (but not limited to) the following:	<u>Bodily Injury:</u> \$1,000,000
a. Premises/operations	Combined Single Limit for Bodily Injury and Property Damage each occurrence/\$2,000,000 aggregate
b. Independent contractors	
c. Personal injury liability/contractual liability (insuring indemnity provision within this contract)	
AND, where the exposure exists, coverage for:	
d. Products/Completed operations	
e. Explosion, Collapse and Underground Property Damage	
2. Worker's Compensation and Employer's Liability (where required by state law)	Statutory \$500,000 per occurrence
3. (When improvements are built) (Airport) Hangar Keepers Liability Insurance (where exposure exists) to include coverage for:	
a. Premises/Operations	\$1,000,000 per aircraft/\$1,000,000 per

- | | | |
|----|--|---|
| b. | Products/Completed Operations | occurrence |
| 4. | Property Damage Insurance -
physical damage coverage for the perils of
Fire and Extended Coverage on the improvements
and betterment to the leased property | Coverage for a minimum of Eighty (80%)
per cent of the actual cash value of property |

The preceding amounts notwithstanding, the City Council reserves the right to increase the minimum required insurance to be effective thirty (30) days after notice is sent to the address provided herein. If City exercises the right to increase minimum insurance amounts, Lessee may choose to either comply with the increase or cancel this Lease with no penalty.

The procuring of such policy of insurance shall not be construed to be a limitation upon Lessee's liability or as a full performance on its part of the indemnification provisions of the Contract. Lessee's obligations of the City are, notwithstanding said policy of insurance, for the full and total amount of any damage, injury or loss as provided under the terms of the Lease.

B. **OTHER INSURANCE REQUIREMENTS.** *Prior to the lease effective date*, Lessee shall furnish to Airport certificates or copies of the policies, plainly and clearly evidencing required insurance, and thereafter new certificates ***prior to the expiration date of any prior certificate.*** Lessee understands that it is its sole responsibility to provide this necessary information and that failure to comply timely with the requirements of this article shall be a cause for termination of this Lease, under the provisions of the termination clause.

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 Lease for the City as additional insured shall be primary insurance and not contribute with any other insurance available to the City, under any third party liability policy.

Lessee further agrees that with respect to the above required insurance, the City shall:

1. Be named as additional insured/or an insured, as its interest may appear; and
2. Be provided with a waiver of subrogation; and
3. Be provided with 30 days advance notice, in writing, of cancellation or material change.

If either requirements #1 or #2 requires the payment of an additional premium by the Lessee, the Lessee may present such information to the City Council for reconsideration. The City will not be responsible for any of the Lessee's insurance costs.

C. **INDEMNITY.** It is agreed for all purposes hereunder, Lessee is and shall be an independent contractor and shall not, with respect to its acts or omissions be deemed an agent or employee of City.

Lessee agrees to indemnify , hold harmless and defend City, City's officers, agents and employees, from and against all liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's fees and other reasonable costs occasioned by Lessee's occupancy or use of the premises and/or activities conducted in connection with or incidental to this Lease and arising out of or resulting from the intentional acts or negligence of

Lessee, Lessee's officers, agents or employees, including all such causes of action based on common, constitutional, or statutory law, or based upon the negligent or intentional acts or omissions of Lessee, Lessee's officers, agents, employees, or visitors.

Lessee further agrees that it shall at all times exercise reasonable precautions for the safety of its officers, agents, employees, customers, and visitors, as well as their property, while in or on the premises. It is expressly understood and agreed that City shall not be liable or responsible for the negligence of Lessee, Lessee's agents, servants, employees, customers, and visitors. Provided, however, nothing herein shall be construed to create a duty owed by Lessee to third persons where no such duty exists by law.

Further, City assumes no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premises defects in improvements constructed by Lessee which may now exist or which may hereafter arise upon the premises, any and all such defects being expressly waived by Lessee. Lessee understands and agrees that this indemnity provision shall apply to any and all claims, suits, demands, and/or actions based upon or arising from any such premise defects or conditions, including but not limited to any such claim asserted by or on behalf of Lessee or any of Lessee's members, agents, employees, customers, or visitors.

It is further agreed with respect to the above indemnity, that City and Lessee will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Lessee or City, and City shall have the right to compromise and defend the same to the extent of City's own interests. Provided, however, nothing in this Lease shall be construed as obligating Lessee to indemnify the City for the negligence or actions of City, City's agents, servants, or employees, or third parties over whom Lessee has no right of control.

D. **FAILURE TO PROVIDE INSURANCE, SUSPENSION OF ACTIVITIES.** Whenever a Lessee is unable to show proof of insurance required and after ten (10) days prior notice, then the City Manager, upon recommendation of the Airport Manager, shall have the authority to suspend temporarily Lessee's Airport activities on a daily, or portion of a day basis, until proof of required insurance is provided. This remedy is in addition to all others herein and is intended to obtain compliance without and before termination of the Lease.

ARTICLE VI - TERMINATION OF LEASE, CANCELLATION, ASSIGNMENT AND TRANSFER

A. **TERMINATION; RECAPTURE BY CITY.** This Lease shall terminate at the end of the full term hereof and Lessee shall have no further right or interest in the ground or improvements constructed thereon, except as provided by the other provisions herein relating to such improvements (Refer to Article I. Section G.). Premises will be returned to City in good condition, reasonable wear and tear excepted.

If City requires the leased premises for expansion or developing of the Airport, City reserves the right, on six (6) months notice, to relocate or replace Lessee's improvements at City's cost and expenses in substantially similar form at another generally comparable location on Airport. During such period of relocation, City will use its best efforts to assist Lessee in obtaining temporary shelter and rent payments will be abated on that portion of the premises taken.

During the time of war or national emergency, City shall have the right to lease the Airport or any part thereof to the United States Government for military or naval use, and if any such lease is executed, the provisions of this instrument insofar as they are inconsistent with the lease to the Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated.

B. **CANCELLATION BY CITY.** This Lease shall be subject to cancellation by City if Lessee fails to

rectify the following within ten (10) days of written notice to do same from City.

1. Default in the performance of any of the terms required herein to be kept and performed by Lessee.
2. Material failure to abide by all valid and enforceable laws of the United States or State of Texas or any ordinances or other Airport Rules and Regulations approved by the City Council.
3. Failure to replace any improvements which have been destroyed by fire, explosion, etc., within six (6) months from the date of such destruction or if improvements are owned by Lessee, failure to replace them or obtain approval of an amended site plan within six (6) months.
4. Abandonment of the leased premises for thirty (30) days.
5. Bankruptcy; being in arrears in the payment of the benefit of creditors; or making a general assignment for the benefit of creditors; or filing a voluntary petition of bankruptcy, or, if the proceedings in bankruptcy shall be instituted against Lessee and thereafter adjudicated a bankrupt pursuant to such proceedings; or if a receiver shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

If, after ten (10) days from the date of such notice, the default, failure to perform, or breach complained of shall not have been corrected in manner satisfactory to City, then City shall have the right, without further notice to Lessee, to take immediate possession of the leased premises and remove Lessee's effects, forcibly, if necessary, without being deemed guilty of trespassing, subject to Lessee's rights in the improvements provided for elsewhere herein. Upon said default, all rights of Lessee shall be forfeited; provided, however, City shall have and reserve all of its available remedies at law as a result of said breach of this Lease.

Failure of either party to declare this Lease terminated upon the default of either party for any reasons set out shall not operate to bar, destroy or waive the right of such party to cancel this Lease by reason of any subsequent violation of the terms hereof. The acceptance of rentals and fees by City for any period(s) after a default of any of the terms herein contained to be performed by Lessee shall not be deemed a waiver of any rights of City to cancel this Lease for failure by Lessee to so perform any of the terms hereof to be performed. (The actual termination of this Lease shall occur when approved by the City Council.)

C. **WAIVER OF STATUTORY NOTICE TO QUIT.** If City exercises its option to cancel this Lease upon the happening of any or all of the events set forth in Section B (Cancellation by City) and the failure of Lessee to correct any such breach within the time allowed, a notice of cancellation given pursuant to Section B and sent to the address specified in Article VII Section F (or subsequent address provided in writing to Airport Manager) and City Council approval of the termination shall be sufficient to cancel this Lease; and upon such cancellation, Lessee hereby agrees that it will forthwith surrender up possession of the leased premises to the City, subject to Lessee's rights in the improvements as provided for elsewhere herein.

D. **PERSONAL PROPERTY.** City shall have a lien as security for any rentals or other payments owed to City upon all goods, wares, chattels, implements, fixtures, furniture, tools, and other personal property excluding aircraft which are or may be put or caused to be put on the leased premises by Lessee. Upon expiration or

termination of this Lease, Lessee shall remove all property from the leased premises within thirty (30) days after said termination; provided that Lessee shall at no time remove any improvement for which it has or will receive a rental credit or rebate. If, upon expiration or termination, the Lessee owes any payments to City, City may elect to retain possession of such property or may sell the same and keep the proceeds after first applying them to any payments in arrears, or may have such property removed at the expense of Lessee.

Lessee shall repair, at its own expense, any damage resulting from said removal of personal property and shall leave the leased premises in a neat and clean condition with all other improvements in place.

E. **CANCELLATION BY LESSEE.** This Lease shall be subject to cancellation by Lessee, at Lessee's option, after one or more of the following:

1. The permanent abandonment of the Airport as a public airport.
2. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport of any substantial part or part(s) thereof, in such a manner as substantially to restrict Lessee for a period of at least ninety (90) days from operating thereof.
3. Damage to Lessee's improvements, by any instrumentality that renders such improvements unacceptable for the purpose for which they were intended.
4. Lessee's determination that its continued occupancy or use has become uneconomical.
5. The breach by City of any of the terms herein contained and the failure of City to remedy such breach for a period of thirty (30) days after receipt of a written notice of the existence of such breach.

Lessee may exercise such rights of termination by written notice to City upon ninety (90) days prior written notice and this Lease or portion thereof shall terminate as of that date. Rentals due hereunder shall be payable only to the date of said termination.

F. **SUBLETTING AND ASSIGNMENT.** Except to a corporation(s) owned or controlled by Lessee, Lessee shall not rent or sublease or assign all or any part of such premises or the improvements located thereon without the prior written consent of the Airport Manager, which consent shall not be unreasonably withheld. **(This prior Airport Manager approval requirement shall not apply to the lease or rental of hangar space for aircraft storage by a hangar operator authorized to lease hangar space. However, if the prospective tenant intends to also operate a business such as a charter service, etc., then Airport Manager consent is still required.)** Any sub lessees or tenants shall be subject to the same terms as set forth herein.

As a condition of and as consideration for approving any assignment, transfer or sublease, City may require amendment of the provisions and conditions of this lease to conform to any different provisions and conditions of the lease form then currently approved and adopted by City for new leases, provided, in the event of such amendment, transferee, assignee, or sub lessee shall be given the option of taking over the unexpired balance of this Lease or entering into a new lease for such term as may then be approved by City for new leases for lease assignees. It is not the intention of the City that the subleases or other tenant situations be misused as a method to avoid compliance with the minimum standards herein.

If the City determines that a sub lessee is operating an aviation-related business without complying with the

minimum standards applicable thereto, the sublease or this Lease may be terminated in the same manner as provided by Article VI herein for leases.

In the event of approved assignment, Lessee shall be relieved of any further obligation hereunder, and City will look solely to such approved assignee for performance of this Lease subsequent to the date of such approved assignment. Said assignee shall not assign said Lease except with the prior written approval of City, and any assignment by the Lessee shall contain a clause to this effect.

All of terms herein contained shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.

ARTICLE VII - GENERAL PROVISIONS

A. **APPLICABLE LAW AND VENUE.** This Lease and all transactions made hereunder shall be construed and governed according to the laws of the State of Texas. Venue for any legal proceedings shall be in Smith County, Texas.

B. **INVALID PROVISIONS.** If any provision herein is held to be invalid by a court of competent jurisdiction, the invalidity of such provision shall in no way affect any other provision.

C. **PARAGRAPH HEADINGS.** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

D. **DEFINITION OF LESSEE.** The term "Lessee" shall include Lessee, its heirs or executors, and any corporations now or hereafter owned or controlled by Lessee, its heirs and executors, who are operating on the leased premises.

E. **FEDERAL AVIATION ADMINISTRATION.** Whenever the term "Federal Aviation Administration" is used in this Lease, it shall be construed as referring to the Federal Aviation Administration created by the federal government or to such other agencies of the State of Texas or the federal government having from time to time similar jurisdiction over Lessee or its business.

F. **SECURITY.** Lessee shall be responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state and /or local government entity regarding airport and/or airfield security.

G. **NOTICES.** Whenever any notice or payment is required by this Lease to be made, given or transmitted to the parties hereto, such notice or payment shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, addressed to:

Notice and Payment to:
Airport Manager
Tyler Pounds Regional Airport
700 Skyway Blvd., Ste. 201
Tyler, TX 75704
(903) 531-9825

and notices, consents, and approval to Lessee addressed to:

John D Crow
The Albert Hall Co., LLC
728 Esperanza Place
Tyler, TX 75703
360-461-1736
johncrow@greencrow.com

H. **ENTIRE AGREEMENT.** This Lease shall represent the entire Agreement between City and Lessee as to the Premises.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed this _____ day of _____, 2025.

CITY OF TYLER, TEXAS

LESSEE: John D Crow

BY: _____
EDWARD BROUSSARD, CITY MANAGER
Council approved: _____

BY: _____
JOHN D. CROW

A T T E S T:

CITY CLERK

RECOMMENDED: _____
AIRPORT MANAGER
(Airport Advisory Board considered on _____
and recommended approval/denial)

APPROVED: _____
CITY ATTORNEY

Plat of Survey
0.352 Acres of Land
 Being Part of that Lease Tract No. 2
 Tyler Pounds Field Regional Airport
 R. M. Merchant Survey, Abstract No. 687
 Smith County, Texas
 Client: John David Crow

- Legend**
- 1/2" Iron Rod Found Unless Otherwise Noted
 - 1/2" Iron Rod Set 180° Yellow Cap Stamped "Freeman Surveying"
 - May Nail Set Unless Otherwise Noted
 - Utility Pole
 - Overhead Power Line
 - Chain Link Fence
 - Barbed Wire Fence
 - Wrought Iron Fence
 - Water Meter
 - (C.M.) Control Monument
 - Electric Box (Trash)



Tyler Pounds Field Regional Airport

Volume 147, Page 418
 Called 829.16 Acres

Lease Tract No. 2

Property, aka
 2301, Phase 10
 Called 2,000 Acres
 Called 1,113 Acres
 Called 3,200 Acres
 Called 1,270 Acres



County Road No. 1143 (A.K.A. Dike Highway)



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 Reproduction of this plat without the express, written consent of Freeman Surveying & Mapping, LLC is strictly prohibited.
 This plat is ONE Y used for the use of John David Crow. The use of this plat for any other reason is EXPRESSLY PROHIBITED.
 Basis of Bearings: This survey is related to the Texas State Plane Coordinate System NAD 83 (2011), Texas North Central Zone (4302), U.S. Survey Foot from the TopNET VRS Network System.
 A title/assessment search was not apart of this survey. Schedule "A & B" of a Title commitment was not furnished to the surveyor.
 This plat is an integral part of a sales & bounds description of even data describing the same tract shown herein.
 There may be underground utilities on or near the subject tract. It is the contractor's and/or landowner's responsibility to verify the location of the underground utilities before any excavation is done.
 Flood Plain Statement: According to FEMA Map Panel No. 48423C02500, dated April 18, 2014, the subject tract appears to be within Zone "X", areas determined to be outside the 0.2% annual chance floodplain.
 To the best of my knowledge the plat herein is a true, correct representation of the property as determined by survey, the lines and dimensions of said property were found to be as indicated by plat, Boundary Survey Only. The subject properties may contain improvements that may or may not be shown herein. This plat is valid only if signed in blue ink with an accompanying RPLS Seal. Plat Date: January 9, 2025.

2024 AERIAL

FB 54976
 FSD 12/5/2024
 Drawn By: CHVS
 Job No. 24 1630

STEVEN J. FREEMAN II
 REGISTERED PROFESSIONAL LAND
 SURVEYOR NO. 6339

FREEMAN
 SURVEYING & MAPPING LLC

T.B.P.E.L.S. FIRM NO. 10194523
 10763 County Road 127, Suite D, Pkint, Texas 76762
 VOICE (803) 604-6314 CELL (803) 620-1890
 www.firmsurvey.com office@firmsurvey.com

Lease Tract No. 1

Plat of Survey

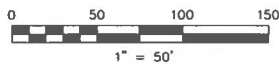
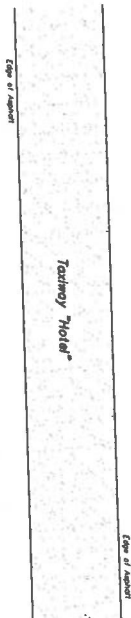
0.352 Acres of Land

Being Part of that Lease Tract No. 2
R. M. Merchant Survey, Abstract No. 687
Smith County, Texas

Buyer/Borrower: ????????

Legend

- 1/2" Iron Rod Found Unless Otherwise Noted
- 1/2" Iron Rod Set With Yellow Cap Stamped "Freeman Surveying"
- ⊙ Mag. Nail Set Unless Otherwise Noted
- ⊕ Utility Pole
- Overhead Power Line
- Iron Pipe Fence
- Barbed Wire Fence
- Wrought Iron Fence
- ⊞ Water Meter
- (C.M.) Control Monument
- ⊞ Electric Box (Flush)



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Reproduction of this plat without the express, written consent of Freeman Surveying & Mapping, LLC is strictly prohibited.
This plat is ONE (1) year valid for the use of: ??????????
The use of this plat for any other reason is EXPRESSLY PROHIBITED.

Basis of Bearings: This survey is related to the Texas State Plane Coordinate System NAD 83 (2011), Texas North Central Zone (4202) U.S. Survey Feet from the TopNET VRS Network System.

A title search was not part of this survey. Schedule "A & B" of a Title commitment was not furnished to the surveyor.

This plat is an integral part of a metes & bounds description of even date describing the same tract shown herein.

There maybe underground utilities on or near the subject tract. It is the contractor's and/or landowner's responsibility to verify the location of the underground utilities before any excavation is done.

Flood Plain Statement: According to FIRM Map Panel No. 48423C03500 dated April 18, 2014, the subject tract appears to be within Zone "X" areas determined to be outside the 0.2% annual chance floodplain.

To the best of my knowledge the plat herein is a true, correct representation of the property as determined by survey, the lines and dimensions of said property were found to be as indicated by deeds, the size, locations and types of improvements are shown. There are no conflicts as noted as shown. This plat is valid only if signed in blue ink with an accompanying RPLS Seal
Plat Date: December 17, 2024

"PRELIMINARY. THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT"

FB 54925
FBD 12/5/2024
Drawn By: CWS
Job No. 24-1639

STEVEN J. FREEMAN, II
REGISTERED PROFESSIONAL LAND SURVEYOR No. 6339

FREEMAN
SURVEYING & MAPPING, LLC



T.B.P.E.L.S. FIRM NO. 10194523
10763 County Road 127, Suite D, P.O. Box 75762
VOICE (903) 504-6314 CELL (903) 520-1890
www.freemansurvey.com office@freemansurvey.com

Lease Tract No. 4

Lease Tract No. 3

Lease Tract No. 2

1/2" Iron Rod Found
NEC of Lease Tract No. 4

N 02°03'56" E 271.76'

N 02°03'45" E 148.34'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

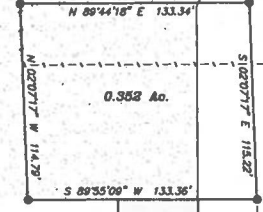
N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'

N 02°07'17" W 365.59'



S 87°52'07" W 416.64'

Lease Tract No. 1



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-5

Date: May 14, 2025

Subject: Request that the City Council consider authorizing the City Manager to execute a Consent to Assignment & Amendment of F.B.O. Lease for Term Properties, assigning a 0.352-acre portion of 7.03 acres of Tract 2 to The Albert Hall Co., LLC (John D. Crow) at Tyler Pounds Regional Airport.

Item Reference:

Term Properties has leased Tract 2 at Tyler Pounds Regional Airport since March 4, 1994. Term Properties desires to assign a 0.352-acre portion of Tract 2 to The Albert Hall Co., LLC (John D Crow) and requests a Consent to Assignment & Amendment to the 20-year Fixed Base Operator Lease with the City for the remaining 6.68 acres of Tract 2 at Tyler Pounds Regional Airport.

On April 21, 2025, the Airport Advisory Board considered this item and unanimously recommended that the City Council approve this request.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a Consent to Assignment & Amendment of F.B.O. Lease for Term Properties, assigning a 0.352-acre portion of 7.03 acres of Tract 2 to The Albert Hall Co., LLC (John D. Crow) at Tyler Pounds Regional Airport.

Attachments:

[Term Properties Amendment 2025](#)

Drafted/Recommended By:
Department Leader Steve Thompson

Edited/Submitted By:
City Manager

STATE OF TEXAS §
 §
COUNTY OF SMITH §

**CONSENT TO ASSIGNMENT &
AMENDMENT OF F.B.O. LEASE
TERM PROPERTIES**

WHEREAS, Tyler City Code Section 12- 11.b. states that no person may use the Airport or any part thereof for any activities or commercial purposes, unless approved by the City Council; and

WHEREAS, City Code Section 12- 11. d. provides that all leases, subleases, permits, and other agreements for the use of the Airport and its facilities, whether for commercial or noncommercial purposes, shall be conditioned upon the full assumption of responsibility; and

WHEREAS, City Code Section 12- 11. d. provides that each lessee, sublessee, permittee, and other signatory shall indemnify the City, its officers, agents, and employees from all liability resulting from the activities of persons using the airport, and that the use of the Airport shall constitute an acceptance of this rule; and

WHEREAS, City Code Section 12- 30.a. states that it is unlawful for anyone to conduct any commercial activities or solicitation for commercial activities without a valid lease, sublease, permit, or other form of City approval; and

WHEREAS, on February 23, 2022, the City of Tyler previously entered a Fixed Base Operator (FBO) lease with Term Properties for a term of January 7, 2022, through December 30, 2042, and

WHEREAS, Article VI, Section F. of the FBO lease provides Term Properties the opportunity, with Airport Manager approval, to assign any part of such premises to The Albert Hall Co., LLC as depicted on Exhibit A, and,

WHEREAS, Term Properties' lease is hereby amended as set forth herein, and as shown in Exhibit A, from 306,291 square feet to 290,958 square feet.

WHEREAS, it is considered to be in the public interest to approve the assignment and amendments;

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

PART 1: ASSIGNMENT OF PORTION OF F.B.O. LEASE. The City of Tyler hereby approves the Assignment of the portion of the FBO Lease between the City of Tyler and Term Properties dated February 23, 2022, as shown in the attached Exhibit "A" and incorporated herein, to John D. Crow. The said portion being assigned constitutes a total acreage of 15,333.12 square feet.

PART 2: AMENDMENT OF F.B.O. LEASE. The parties hereto agree that the total area of the leasehold in the FBO Lease between Term Properties and the City of Tyler dated February 23, 2022, is hereby decreased by 15,333.12 square feet, to reflect the decrease in total square footage of the area as shown in the Attached Exhibit "A" and as incorporated herein. The total existing leasehold area in said Lease shall be reduced from 306,291 square feet to 290,958 square feet, with the total rentals adjusted accordingly based on the revised acreage, by amending Article IV., Section A., "Ground Rental" of the FBO Lease between Term Properties and the City of Tyler to read as follows:

Tract 2 290,958 S.F. x \$0.090/SF = \$26,186.22 annually / \$2,182.19 monthly

PART 3: AMENDMENT OF EXHIBIT “A” OF FBO LEASE. Exhibit “A” of the FBO Lease between the City of Tyler and Term Properties dated February 23, 2022, is hereby replaced with a Revised Exhibit “A” attached hereto and incorporated herein to reflect the change in total acreage as described above.

PART 4: The Albert Hall Co., LLC will accept an assignment of 15,333.12 square feet of the leasehold area in the FBO Lease between the City of Tyler and Term Properties and shall enter into a separate Hangar/Operator Lease with the City of Tyler regarding said assigned leasehold acreage.

PART 5: All other provisions contained within the FBO Lease between the City of Tyler and Term Properties dated February 23, 2022, and not affected hereby, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this document to be signed this _____ day of _____, A. D., 2025.

CITY OF TYLER, TEXAS

LESSEE

BY: _____
EDWARD BROUSSARD, CITY MANAGER
Council approved: _____

BY: _____
MARVIN R. WIEBE

ATTEST :

CASSANDRA BRAGER, CITY CLERK

ATTEST:

RECOMMENDED: _____
AIRPORT MANAGER

(Airport Advisory Board considered on _____
and recommended approval/denial)

APPROVED: _____
CITY ATTORNEY



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-6

Date: May 14, 2025

Subject: Request that the City Council consider authorizing the City Manager to execute a mutual agreement between the City of Tyler and Lindale Rural Water Company for the purpose of clarifying the rights, obligations and regulatory fees of the Parties regarding the provision of sanitary sewer services to customers that the Parties have in common and to the extent allowed under State and Federal Law.

Item Reference:

The City of Tyler provides sewer-only services to the residents of Las Lomas, which is situated outside the city limits of Tyler. Lindale Rural Water Co. provides water to this neighborhood. This mutual agreement allows Lindale Rural and the City of Tyler to share information on the customers we have in common. In exchange for valuable consideration, Lindale Rural Water will provide the City of Tyler with the actual usage of the customers within this neighborhood so the Water Business Office may charge sewer fees at actual usage. In exchange, Lindale Rural Water will, at our request, and after we follow our process of required notification, disconnect those water customers who are delinquent from paying their sewer-only charges, ensuring the City of Tyler is paid for the services we provide. We agree to pay Lindale Rural Water a fifty-dollar disconnection charge per customer to shut off the delinquent sewer customers.

RECOMMENDATION:

Request that the City Council consider authorizing the City Manager to execute a mutual agreement between the City of Tyler and Lindale Rural Water Company for the purpose of clarifying the rights, obligations and regulatory fees of the Parties regarding the provision of sanitary sewer services to customers that the Parties have in common and to the extent allowed under State and Federal Law.

Attachments:

[Tyler - Lindale Rural Agreement for Shared Customers Final](#)

Drafted/Recommended By:

Department Leader Chris Cambra

Edited/Submitted By:

City Manager



AGREEMENT FOR COORDINATED WATER AND SEWER SERVICE DELIVERY AND DISCONNECTION BETWEEN THE CITY OF TYLER AND LINDALE RURAL WATER SUPPLY CORPORATION

This Agreement (“Agreement”) is made and entered into by and between the **City of Tyler**, a Texas home-rule municipal corporation (“City”), and **Lindale Rural Water Supply Corporation**, a Texas nonprofit water supply corporation, duly organized and existing pursuant to Chapter 67 of the Texas Water Code (“Lindale Rural”). The City and Lindale Rural may be collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, Lindale Rural holds water Certificate of Convenience and Necessity (CCN) No.10758, owns water wells, pumps, storage, transmission lines and distribution lines, and other water-related facilities in Smith County, Texas, including areas in and around the City, and provides retail water service to its customers within its certificated service area; and

WHEREAS, Lindale Rural’s CCN includes areas that are in the City’s corporate and extraterritorial limits; and

WHEREAS, the City intends to promote public health, safety, and welfare; and

WHEREAS, the City holds CCN No. 20319, pursuant to Chapter 13 of the Texas Water Code, provides continuous and adequate retail sanitary sewer service within the City limits of Tyler and outside the City limits within the boundaries of Smith County, Texas, and to the area within its CCN boundary; and

WHEREAS, as is the practice with the City, the City intends to determine sewer service usage for purposes of billing its retail customers using the customer’s water usage during the month; and

WHEREAS, Texas Water Code § 13.147 authorizes the Parties to execute an agreement that provides for the termination of water service for non-payment of sewer service; and

WHEREAS, Texas Water Code § 13.250 authorizes Lindale Rural to disconnect water service for a customer’s failure to pay the City charges for the City’s sewer service; and

WHEREAS, the Parties recognize that the collection of delinquent sanitary sewer customer accounts is integrally related to the provision of water services; and

WHEREAS, the City desires to base customer billing on the actual flow of wastewater services through the meter of its customers, along with any regulatory fees; and

WHEREAS, by cooperating with each other regarding billings and disconnections, the

Parties are able to ensure water and sewer services are provided in areas where both the City provides sewer and Lindale Rural provides water, thereby ensuring the continued growth and economic development of the area; and

WHEREAS, this Agreement will accomplish legitimate public purposes of the Parties and will permit the provision of water and sewer service in the Parties' overlapping jurisdictions that will benefit the public health, safety, and welfare of their respective present and future customers within each Parties' jurisdictions; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, including the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged by their representatives affixing their signatures below, Lindale Rural and the City agree as follows:

AGREEMENT

ARTICLE 1 – PURPOSE, SERVICE AREAS, AND TRANSITION PROCEDURE

- 1.01 This Agreement establishes procedures and responsibilities for the coordinated provision of water and sewer services to shared customers and sets forth a mutual understanding regarding Lindale Rural's termination of water services for nonpayment of sewer services administered by the City.
- 1.02 The Parties agree that this Agreement applies only to customers who receive water service from Lindale Rural and sewer service from the City ("Shared Customers").
- 1.03 **Transition Procedure:** During the first sixty (60) days following the effective date of this Agreement, while Lindale Rural and the City completes the exchange of common customer account information as described in **ARTICLE 2**, the City may seek a discontinuance of water services for specific Shared Customers accounts by submitting customer account information as described in **ARTICLE 2**, to Lindale Rural for those delinquent accounts for which the City requests disconnection on or before the fifth (5th) day of each month along with a certification from the City that the Shared Customer's account is delinquent, that all required notices of delinquency and termination have been properly given, that the delinquent bill is undisputed and that no person residing on the Shared Customer's premises is seriously ill. Lindale Rural will perform the disconnection within twenty-five (25) days of receipt of this information from the City.

ARTICLE 2 – SEWER BILLING METHOD, WATER USAGE DATA, AND SHARED CUSTOMER LIST

- 2.01 The City shall bill Shared Customers for sewer service based on actual metered water usage data provided by Lindale Rural. The Parties agree that metered water usage is the most accurate and efficient method for determining wastewater flow for billing purposes.
- 2.02 Lindale Rural agrees to provide the City with a list of the Shared Customers' actual consumption usage for the previous month.

- (1.) Lindale Rural agrees to provide the City with the monthly water usage data collected and used by Lindale Rural for billing purposes for each Shared Customer within five (5) days after it is collected by Lindale Rural.
 - (2.) The water usage data shall include metered or estimated usage data, account change information (including name and billing address of a new or transferred account), and other data needed by the City for sewer billing purposes that is reasonably attainable by Lindale Rural.
 - (3.) Lindale Rural and the City will coordinate on the appropriate format for transferring the data.
 - (4.) Lindale Rural shall notify the City within five (5) days of any disputes regarding the billing volume of any Shared Customer and shall promptly provide the City with any revised billing data.
 - (5.) If a Shared Customer disputes the billing volume used by the City, Lindale Rural will provide the City with a copy of the Shared Customer's water bill for the appropriate billing period.
 - (6.) The City agrees that the data it obtains shall be used solely for the purpose of computing and collecting its sewer charges and that it shall limit the disclosure of the data to only those officers, employees, or agents who need the data for such purpose. The City agrees to keep the data confidential and shall not disclose, provide, or sell the data, except as required by law.
- 2.03 On or before the thirtieth (30th) day immediately following the effective date of this Agreement, the City shall prepare and deliver to Lindale Rural a list of all common customer accounts, i.e., Shared Customers, receiving sanitary sewer service from the City and water service from Lindale Rural.
- 2.04 The Shared Customers list of accounts, prepared by the City, shall include, but not be limited to, the following information for each account:
- (1.) City's billing account number;
 - (2.) The customer's name, as it appears on the billing statement;
 - (3.) The occupant of the consuming facility, if different from the customer named on the billing statement;
 - (4.) The billing address;
 - (5.) The physical location of the consuming facility, if different from the billing address;
 - (6.) The meter number on Lindale Rural's water meter serving the consuming facility; and,
 - (7.) Any distinguishing characteristics of the consuming facility that would assist Lindale Rural in cross-referencing the City's account number to the physical location of its water meter.

- 2.05 Lindale Rural shall provide to the City a written list setting forth a cross-reference between the City's billing account numbers and Lindale Rural's billing account numbers within thirty (30) days of receipt of the Shared Customers list of accounts.
- 2.06 Except for the Transition Procedure outlined in **ARTICLE 1**, on or before the fifth (5th) day of each calendar month, Lindale Rural shall provide written notification to the City of the specific date of that calendar month on which Lindale Rural will perform the disconnection of delinquent accounts for the City.
- 2.07 The City accepts full and total responsibility for conformance with all notice requirements to Shared Customers outlined in this Agreement regarding the disconnection of sewer services.

ARTICLE 3 – TERMINATION OF WATER SERVICE FOR NONPAYMENT OF SEWER SERVICE

- 3.01 Upon a Shared Customer's failure to pay for sewer services in accordance with the City's billing policies, the City will provide written notice to Lindale Rural requesting termination of water service.
- 3.02 The City shall provide Lindale Rural with a copy of the written termination of service notification to the Shared Customer as outlined in subsection 3.03, along with a written notification of the specific Shared Customer accounts for which the City seeks disconnection of water services by 5:00 p.m. on the business day immediately preceding the written disconnection date provided by Lindale Rural.
 - (1.) The City's written disconnection notification to Lindale Rural for each account shall include, but not be limited to, the City's billing account number, the Lindale Rural billing account number, the meter number, and the physical address.
 - (2.) The Parties agree that an email or other electronic notification sent to the proper Lindale Rural contact(s) counts as written notice and is considered received on the date sent, provided no delivery failure notification is received.
 - (3.) The Parties shall cooperate in good faith to ensure that any termination is legally compliant.
- 3.03 Before water service may be terminated, the City shall provide proper notice to its customers. Such notice provided by the City to its customers must be in strict conformance with the following, as set forth by the Texas Public Utility Commission ("commission"):
 - (1.) **Notice requirements.** Proper notice shall consist of a separate written statement, which will be mailed or hand-delivered to the customer before the water service is disconnected. The notice must be provided in English and Spanish if necessary to adequately inform the customer. The notice shall include the following:
 - (a) The words **"TERMINATION NOTICE"** or similar language approved by the commission written in a way to stand out from other information on the notice;

- (b) A description of action required to avoid disconnection, such as paying all past due service charges;
- (c) The date by which the required action must be completed to avoid disconnection. This date must be at least (10) days from the date the notice is provided unless a shorter time is authorized by the commission;
- (d) The intended date of disconnection;
- (e) The office hours, telephone number, and address of the place where payment must be made;
- (f) The total past due charges; and
- (g) All reconnect fees that will be required to restore service if disconnected.
- (2.) **As long as this Agreement is in effect between the City and Lindale Rural, the notice shall also state:**
 - (a) That failure to pay past due sewer charges will result in termination of water service by Lindale Rural; and
 - (b) That water service will not be reconnected until all past due and current sewer service charges and sewer reconnect fees are paid to the City.

3.04 Water service may be disconnected after proper notice as set forth herein, for any of the following reasons:

- (1.) Failure to pay all delinquent (past due) service charges;
- (2.) Failure to comply with the written terms of a deferred payout agreement;
- (3.) Failure to comply with the deposit arrangements;
- (4.) Payment by check which has been rejected for insufficient funds, closed account, or for which a stop payment order has been issued;
- (5.) Violation of Lindale Rural or the City's rules pertaining to the use of the service in a manner that interferes with the service of others;
- (6.) Operation of non-standard equipment, if a reasonable attempt has been made to notify the Shared Customer and the Shared Customer is provided with a reasonable opportunity to remedy the situation; or
- (7.) Failure to comply with deposit or guarantee arrangements where required by 16 Tex. Admin. Code § 24.159 (2024) (Service Applicant and Customer Deposit).

3.05 Lindale Rural will disconnect water service to the delinquent Shared Customer by the close of business the next business day after receipt of the City's notice during the business hours as determined by Lindale Rural.

3.06 Lindale Rural shall not provide water service to the disconnected Shared Customer until Lindale Rural receives written notification from the City that the delinquent sewer bill, along with all associated fees and penalties, has been paid to the City.

- 3.07 Lindale Rural is not obligated to collect any delinquent bill(s) on behalf of the City. If any Shared Customer attempts to pay a delinquent bill to Lindale Rural, Lindale Rural will direct the Shared Customer to the payment location provided to Lindale Rural by the City. Lindale Rural shall not accept payment of the delinquent sewer bill when a Lindale Rural employee is at the Shared Customer's location to disconnect service.
- 3.08 Lindale Rural shall not be obligated or required to disconnect any water service until it has received a written request from the City requesting the disconnection of water service for Shared Customer(s). Such written request shall include, but not be limited to, certification from the City that the Shared Customer's account is delinquent, that all required notices of delinquency and termination have been properly given, that the delinquent bill is undisputed, and that no person residing on the customer's premises is seriously ill.

ARTICLE 4 – SPECIAL PROTECTIONS FOR ILL CUSTOMERS

- 4.01 Service shall not be disconnected from any delinquent residential Shared Customer when it has been established that some person residing at that residence will become seriously ill or more seriously ill if service is disconnected.
- 4.02 To avoid disconnection under these circumstances, the Shared Customer must provide the City with a written statement from a physician prior to the stated date of disconnection. Lindale Rural shall not be in violation of this section unless the City has provided Lindale Rural with a copy of such written statement prior to any disconnection.
- 4.03 Service may be disconnected in accordance with subsection 3.03 if the next month's bill and the past-due bill are not paid by the due date of the next month's bill, unless the Shared Customer enters into a deferred payment plan with the City.

ARTICLE 5 – SERVICE RESTORATION

- 5.01 Upon payment of the Shared Customer's outstanding sewer charges in full or upon payment to the satisfaction of the City and upon written notification from the City to Lindale Rural, Lindale Rural shall restore water service within thirty-six (36) hours (excluding weekends and holidays recognized by Lindale Rural).
- 5.02 Without exception, Lindale Rural shall not be obligated or required to restore water service for any account of the City outside of the regular business hours of Lindale Rural.
- 5.03 The City's personnel shall be available during regular business hours to accept payment from customers according to the City's customary practice, but in particular, on both the day of and the day after Lindale Rural disconnects water service for a Shared Customer.
- 5.04 Lindale Rural, at its sole discretion, may require payment of all delinquent (past due) water service charges prior to reconnection of water service in accordance with its approved water tariff, rules, and regulations as promulgated by the Texas Commission on Environmental Quality or the rules and regulations of any Agency having jurisdiction over Lindale Rural.
- 5.05 Lindale Rural shall not independently reconnect water service for Shared Customers disconnected under this Agreement unless authorized in writing by the City, except as required by law or the Texas Public Utility rules (including reconnection under emergency medical conditions as outlined in **ARTICLE 4**).

ARTICLE 6 - COMPENSATION

- 6.01 The City agrees to compensate Lindale Rural fifty dollars (\$50.00) for each disconnection of water service performed by Lindale Rural at the City's written request.
- 6.02 Lindale Rural shall submit an invoice at the end of each calendar month, setting forth the number of disconnections performed and the total compensation due from the City. The disconnection fee includes the cost of re-connection. Lindale Rural shall not charge a separate re-connection fee. Lindale Rural may not collect a disconnect fee from the City where the water service was not disconnected.
- 6.03 The City agrees to remit payment in full of all amounts due Lindale Rural within twenty (20) days of the invoice date.

ARTICLE 7 – TERM AND TERMINATION

- 7.01 This Agreement shall be effective upon execution by the parties and in force and effect until May 1, 2030, unless terminated pursuant to subsection 7.02 of this Section.
- 7.02 Either Party may terminate this Agreement for any reason by providing the other Party with thirty (30) days written notice of cancellation. Such notice may be given by hand delivery or certified mail, prepaid postage, or return receipt requested to the address shown under this Agreement's "Notices" provision in subsection 9.12.

ARTICLE 8 – INDEMNIFICATION

IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT EACH PARTY HERETO SHALL BE RESPONSIBLE FOR ITS OWN ACTS OF NEGLIGENCE IN CONNECTION WITH THIS AGREEMENT. NEITHER PARTY SHALL BE RESPONSIBLE TO THE OTHER PARTY FOR ANY NEGLIGENT ACT OR OMISSION IN CONNECTION WITH THIS AGREEMENT. NO PARTY SHALL BE LIABLE OR HAVE ANY RESPONSIBILITY TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, DELAY-RELATED, OR PERFORMANCE-RELATED DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST EARNINGS OR PROFITS. SUCH LIMITATION ON LIABILITY SHALL APPLY TO ANY CLAIM OR ACTION, WHETHER IT IS BASED IN WHOLE OR IN PART ON AGREEMENT, NEGLIGENCE, STRICT LIABILITY, TORT, STATUTE, OR OTHER THEORY OF LIABILITY.

IT IS SPECIFICALLY AGREED THAT, AS BETWEEN THE PARTIES, EACH PARTY TO THIS AGREEMENT SHALL BE INDIVIDUALLY AND RESPECTIVELY RESPONSIBLE FOR RESPONDING TO, DEALING WITH, INSURING AGAINST, DEFENDING, AND OTHERWISE HANDLING AND MANAGING LIABILITY AND POTENTIAL LIABILITY PURSUANT TO THIS AGREEMENT.

EACH PARTY HERETO RESERVES AND EXPRESSLY DOES NOT WAIVE ANY DEFENSE AVAILABLE AT LAW OR IN EQUITY, INCLUDING GOVERNMENTAL IMMUNITY, FOR ANY CLAIM OR CAUSE OF ACTION WHATSOEVER THAT MAY ARISE OR RESULT FROM THE SERVICES PROVIDED AND/OR ANY CIRCUMSTANCES ARISING UNDER THIS AGREEMENT.

WHERE INJURY OR PROPERTY DAMAGE RESULTS FROM THE JOINT OR CONCURRENT NEGLIGENCE OF BOTH PARTIES, LIABILITY, IF ANY, SHALL BE SHARED BY EACH PARTY ON THE BASIS OF COMPARATIVE RESPONSIBILITY IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF TEXAS, SUBJECT TO ALL DEFENSES AVAILABLE TO THEM. NOTHING IN THIS SECTION ADDS TO OR CHANGES THE LIABILITY LIMITS AND IMMUNITIES FOR A GOVERNMENTAL UNIT

PROVIDED BY THE TEXAS TORT CLAIMS ACT, CHAPTER 101, CIVIL PRACTICE AND REMEDIES CODE, OR OTHER LAW.

THIS INDEMNIFICATION PROVISION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

ARTICLE 9 – MISCELLANEOUS

- 9.01 **Force Majeure.** If, for any reason of force majeure, either Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, then that Party shall give notice of the reasons in writing to the other Party within a reasonable time after the occurrence of the force majeure event. The obligation of the Party giving the notice, so far as it is affected by the force majeure and provided the cause is not reasonably within its control, shall be suspended during the continuance of the inability then claimed, but for no longer period and to no greater extent than the force majeure causes such inability. The term “force majeure” as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, order or actions of any kind of government of the United States or the State of Texas, or any civil or military authority, insurrection, riots, epidemics, pandemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply including pollution (accidental or intentional), and any other cause not reasonably within the control of either Party.
- 9.02 **Necessary Documents and Actions.** Each Party agrees to execute and deliver all such other and further instruments and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement.
- 9.03 **Regulatory Requirements.** This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. This Agreement is specifically subject to all applicable sections of the Texas Water Code and the rules of the Public Utility Commission of Texas or any successor agency, subject to subsection 9.04 below regarding severability, and provided that changes in the law shall not be applied retroactively to amend this Agreement unless retroactivity is required by law.
- 9.04 **Severability.** If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative, or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, administrative rule, regulation or finding, rule of public policy, or for any other reason, this Agreement shall remain in effect and be construed as if the invalid, inoperative, or unenforceable provision had never been in the Agreement, and such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

- 9.05 **No Third-Party Beneficiaries.** This Agreement does not create any third-party benefits to any person or entity other than the signatories hereto and their authorized successors in interest and is solely for the consideration herein expressed.
- 9.06 **Assignability.** Neither Party may assign its rights or obligations under this Agreement without first obtaining the written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- 9.07 **No Transfer of Government Power.** Any limits stated in this Agreement should not be seen as giving Lindale Rural any government authority or power. Instead, these limits should be understood as a requirement for the City's approval before it can expand its responsibilities and continue carrying out its duties under this Agreement.
- 9.08 **Independent Contractor.** Nothing in this Agreement creates a partnership or joint venture between the parties. The parties agree and acknowledge that each is not an agent of the other party.
- 9.09 **Applicable Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and the provisions of the Charter and Ordinances of the City of Tyler, Texas. Venue for any action brought to enforce or interpret the agreement shall lie exclusively in a court of competent jurisdiction in Smith County, Texas, for actions in state court and in the Eastern District of Texas, Tyler Division, for actions in Federal Court.
- 9.10 **Modification.** This Agreement may not be modified, altered, or amended except by a written instrument duly executed by both parties. Any attempted modification, alteration, or amendment not duly executed by both parties shall be null and void and of no effect.
- 9.11 **Business Days.** In the event that any date or any period provided for in this Agreement shall end on a Saturday, Sunday, or legal holiday, the applicable period shall be extended to the first business day following such Saturday, Sunday, or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the State of Texas.
- 9.12 **Notices.**
All notices or communications ("**Notices**") to be given under or pursuant to this Agreement shall be in writing, addressed to the parties at their respective addresses as set forth below, and shall be delivered by personal delivery, U.S. certified mail, postage prepaid, return receipt requested, or reputable, national, pre-paid overnight delivery service.

If to the City: **City of Tyler**
C/O Tyler Water Utilities
Attn: Kate Dietz
P.O. Box 2030
Tyler, TX 75710
Office: 903-531-1234
Fax: 903-531-1259

If to Lindale Rural: **Lindale Rural Water Supply Corp.**
Attn: Carlos Carreon
P.O. Box 756
Tyler, TX 75771
Office: 903-882-3335

- 9.13 **Captions.** The sections and captions contained herein are for convenience and reference only and are not intended to define, extend, or limit any provision of this Agreement.
- 9.14 **Negotiation by Counsel.** The Parties acknowledge that each party and its counsel have reviewed and revised this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.
- 9.15 **Counterparts and Electronic Transmissions.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. A telecopied, emailed, or electronically transmitted facsimile of an executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms hereof. However, each party agrees to promptly deliver to the other party an original, duly executed counterpart of this Agreement.
- 9.16 **Effective Date.** The Effective Date of this Agreement is the date upon which this Agreement was executed by the last Party.

[The remainder of this page is intentionally left blank.]

ATTEST:

CITY OF TYLER

CASSANDRA BRAGER
City Clerk

By: _____
EDWARD BROUSSARD
City Manager

DATE

APPROVED:

APPROVED:

City Attorney's Office

Tyler Water Utilities, Department Leader

ATTEST:

LINDALE RURAL WATER SUPPLY

By: _____
Carlos Carreon
General Manager

DATE

APPROVED:

ATTORNEY, LINDALE RURAL WATER SUPPLY



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-7

Date: May 14, 2025

Subject: Request that the City Council consider authorizing the City Manager to execute the proposal with Eagle Airport Marking, Inc., for \$79,968.23 to repaint the surface painted markings on Runway 13-31 at Tyler Pounds Regional Airport.

Item Reference:

On September 03, 2024, the City Council approved the acceptance of the Fiscal Year 2025 Texas Department of Transportation (TxDOT) Routine Airport Maintenance Program (RAMP) Grant totaling \$100,000.00, requiring a 10% match. The TxDOT RAMP Grant funds general maintenance at Tyler Pounds Regional Airport. Airport Staff will work with Eagle Airport Marking, Inc., to repaint the surface painted markings on Runway 13-31.

The grant funds have been used for Jet bridge repairs and Runway 13 edge line painting.

During the Part 139 FAA annual inspection, it was noted that Runway 13-31 would require repainting of the designator, touchdown, aiming, and threshold markings before September 1, 2025. This project is required to meet this expectation.

Bid requests were sent to three vendors. Two vendors did not reply by the required deadline. Eagle Airport Marking Inc. replied with a quote of \$79,968.23.

Budget:

TxDOT RAMP Grant Funding \$47,181.26

Airport Budget \$32,786.97

TOTAL PROGRAM FUNDING \$79,968.23

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute the proposal with Eagle Airport Marking, Inc., for \$79,968.23 to repaint the surface painted markings on Runway 13-31 at Tyler Pounds Regional Airport.

Attachments:

[Eagle Airport Marking Inc Contract](#)

Drafted/Recommended By:

Department Leader

Steve Thompson

**Edited/Submitted By:
City Manager**

4.10.25

From: Michael Barker

Tyler Pounds Regional Airport

Proposal: Supply equipment, materials and personnel to provide the following.

Item/Description	Quantity	Unit Price	Price
Mobilization	1	LS \$	500.00
White Reflectorized Paint	70,378	\$ 0.879	\$ 61,862.26
Black Non-Reflectorized Paint	10,232	\$ 0.843	\$ 8,625.58
Add Alt 1			
Surface Painted Sign	1	LS \$	1,000.00
Surface Cleaning	80,610	\$ 0.099	\$ 7,980.39
TOTAL			\$ 79,968.23

Paint: TT-P 1952F Type I 115 sqft/gallon
Beads: TT-B 1325 Type I 7 lbs/gal

This bid reflects a 10% discount for paying within 40 calendar days. Additional discounts may be available if paying within 7 calendar days.

Cleaning to be performed by 3500 psi/200° pressure washing.

Cleaning work based on (1) mobilization - Additional mobilizations \$3500.00

CLEAN water to be provided on site by owner.

Paint and marker installation based on (1) mobilization - Additional mobilizations \$3500.00

Work surfaces to be clean before marking activities begin. Surface cleaning can be provided upon request, but must be done prior to crew arrival to prevent an additional mobilization charge. Surface cleaning does not include bulk grass, gravel, or dirt removal.

Additional work above stated bid quantities will be charged at stated unit prices.

No retainage. The price quoted represents a 4% discount for not with holding retainage.

Prices effective for 60 days from bid date unless revoked.

Payment due upon completion of work.

A copy of this Proposal must be attached to corresponding Contract or Purchase Order signed by issuing agent.



Eagle
AIRPORT MARKING, INC.

5266 FM 2207
Kilgore, TX 75662
Phone/Fax (903) 983-1111
airportmarking@mac.com

Eagle Airport Marking, Inc does not mobilize to job sites or work on Sunday.

Thank You,

Michael Barker

Accepted: _____ Date: _____



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-8

Date: May 14, 2025

Subject: Request that the City Council consider authorizing the City Manager to approve the addition of an Exhibit C to the City of Whitehouse Interlocal Agreement, and to approve additional equipment expenditures per that agreement up to \$50,000 during the Fiscal Year.

Item Reference: **Amendment to the City of Whitehouse Interlocal Agreement which was approved under C-A-8 on 3/26/25 to include Exhibit C.**

The City of Whitehouse entered into an agreement that did not initially allow for the purchase of mid-year Information Technology equipment additions. To provide greater flexibility and to support operational needs, this amendment to the agreement approved in C-A-8 on 3/26/25 (lays the groundwork for effecting such purchases). This designation enables Whitehouse to supplement their existing contract with additional equipment purchases within the fiscal year.

We are requesting Council authorization for the City Manager to approve expenditures related to this amendment, not to exceed \$50,000 for the Fiscal Year. These expenditures will remain within the City Manager's delegated spending authority.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to approve the addition of an Exhibit C to the City of Whitehouse Interlocal Agreement, and to approve additional equipment expenditures per that agreement up to \$50,000 during the Fiscal Year.

Attachments:

[Executed 2nd Amendment Interlocal Agreement with City of Whitehouse
Whitehouse Lease Renewal to include Exhibit C 050525](#)

Drafted/Recommended By:
Department Leader Benny Yazdanpanahi

Edited/Submitted By:
City Manager

STATE OF TEXAS §

§

COUNTY OF SMITH §

KNOW ALL BY THESE PRESENTS:

INTERLOCAL AGREEMENT FOR COMPUTER SUPPORT SERVICES

Pursuant to authority granted by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, this INTERLOCAL AGREEMENT is made and entered into as of the 24th day of October 2018, is being amended October 2024 that supersedes other amendments by and between the City of Tyler, Texas, a municipal corporation, hereinafter called "Tyler," and the City of Whitehouse, a municipal corporation of Texas, hereinafter called "Whitehouse."

WITNESSETH:

WHEREAS, Whitehouse seeks assistance in the area of information technology support and maintenance; and,

WHEREAS, Tyler's Information Technology Services staff supports and maintains an extensive network of computers and components; and,

WHEREAS, cooperation between Tyler and Whitehouse in the provision of information technology services to both entities is mutually beneficial;

NOW, THEREFORE, BE IT RESOLVED THAT:

In consideration of the premises and of the mutual covenants herein contained, Tyler and Whitehouse agree as follows:

Article I. Definitions

In this agreement, the following terms shall have the meanings assigned to them in this Article unless otherwise required by the context:

"Force Majeure Events" means any event or events beyond Tyler's control and without Tyler's default or negligence. Such events may include but are not limited to, acts of God or of the public

enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, riots, acts of terrorism, and unusually severe weather.

"Individual Stop Work Issue" is a problem in the Whitehouse System that results in an individual User being unable to perform a portion of the functions of the User's job that rely on the Whitehouse System.

"Individual Critical Function Issue" means a problem in the Whitehouse System that prevents an individual User from reasonably performing a core function of their job that relies on the Whitehouse System.

"Whitehouse" means the City of Whitehouse, Texas.

"Whitehouse System" means any computer hardware provided by the City of Tyler to Whitehouse, including servers, personal computers, and electronic devices networked with such servers or personal computers, security cameras, and security door access, as well as software used on said hardware in full compliance with any required license or other permission required for the use of said software. The term does not include landline telephone (POTS) equipment or systems, nor any equipment or software installed by any third parties or entities.

"Whitehouse System, Critical Issue" means a problem in the Whitehouse System that results in a workgroup's inability to reasonably perform a core function that relies on the Whitehouse System.

"Tyler" means the City of Tyler, Texas.

"Maximum Resolution Time" means the maximum time that Tyler will take to resolve a request for troubleshooting services under this agreement, starting from when notification of the request is first provided to Tyler per the terms of this agreement.

"Maximum Response Time" means the maximum time that Tyler will take to respond to a request for troubleshooting services under this agreement, starting from when notification of the request is first provided to Tyler per the terms of this agreement.

"Normal Hours of Operation" means Monday through Friday, 8:00 AM to 5 PM, Central Time.

"Other Whitehouse System Issue" means any problem in the Whitehouse System that is not a Whitehouse System Critical Issue, an Individual Stop Work Issue, or an Individual Critical Function Issue.

"User" means an employee of Whitehouse who uses any hardware or software part of the Whitehouse System.

Article II. Scope of Services

A. Services to be Provided. Tyler and Whitehouse agree that Tyler's services, pursuant to this agreement, will be provided by employees of Tyler's Information Technology Services Division. Such employees will never be considered Whitehouse employees or even be on loan to Whitehouse.

Pursuant to this agreement, Tyler will provide the following computer support services to Whitehouse for the Whitehouse System:

1. Provide Information Technology Infrastructure as a Service (IaaS), including hosting services for virtual and physical servers and storage, network switches and security, internet service, and Voice over IP (VoIP) equipment. VoIP service does not include long-distance services. Charges for long distances will be billed separately to Whitehouse.
2. A direct fiber-optic network connection between Tyler and Whitehouse. If Whitehouse terminates the contract, it will be responsible for any prorated contract charges from Suddenlink for the fiber connection, which has been contracted with Suddenlink for ten years beginning on October 1, 2018.
3. The second/redundant/diverse fiber will be installed between Whitehouse City Hall and the City of Tyler. Also, a direct fiber will be installed between the Civic Center and the Whitehouse City Hall. If Whitehouse terminates the contract, it will be responsible for any prorated contract charges from

Suddenlink for the fiber connection, which has been contracted with Suddenlink for ten years starting October 1, 2024.

4. Installation of server and desktop software upgrades for existing supported software
5. Incident-based troubleshooting for supported computer hardware, software, and operating systems that are part of the Whitehouse System
6. Regular daily backups of data and applications
7. Function as liaison between Whitehouse and any vendor for software and hardware purchasing, support, and installation.
8. Provide data storage capabilities and server processing for server and desktop cloud hosting services.
9. System administration and network monitoring services
10. Provide an agreed-upon number of PCs, monitors, printers, laptops, VoIP phones, and virtual hosting server hardware. All equipment provided will be purchased by and will remain the property of the City of Tyler. Additional hardware will increase the cost of service. All Whitehouse data remains the property of Whitehouse and will be provided in electronic form upon contract termination to be handed to the City of Whitehouse employees or contractors.
11. Administration of system improvements or special projects as agreed by both Tyler and Whitehouse. System improvements or special projects may include but are not limited to, network reconfiguration, hardware and software inventories, security improvements, and new technology implementations. The contract is included in the flat annual rate provided in Article IV of this agreement. System improvements and special projects will be scheduled around the availability of personnel from Tyler's Information Technology Services Division.

Network cabling materials and installation are not covered under this agreement. Software maintenance and new software application costs are not covered under this agreement. Suppose Tyler determines that new software licenses or applications are needed. In that case, Tyler will inform the

appropriate department of Whitehouse, and all costs of obtaining said licenses and applications shall be Whitehouse's responsibility.

Whitehouse will provide Tyler with all Whitehouse System passwords. All new passwords for the Whitehouse System will be shared with Whitehouse. All administrative passwords will be provided to Whitehouse upon termination of this contract.

B. Service and Support Procedures. Tyler will provide the services set forth in this agreement during Normal Hours of Operation. After-hours emergency support will also be provided by Tyler as needed. A User must contact IT HelpDesk personnel at (ithelpdesk@tylertexas.com) or (903) 531-1128, and City of Tyler IT personnel will respond according to this agreement. The User must specify that the requested assistance is for the Whitehouse System. Problems will be addressed via telephone or remote desktop support when possible. If necessary, support cases may be escalated to Tyler's Help Desk Manager or Infrastructure Manager as appropriate. The initial response from Tyler will depend on the urgency of the problem, as communicated to the HelpDesk.

C. Maximum Response Times and Maximum Resolution Times. Tyler will make commercially reasonable efforts to abide by the Maximum Response Times and Maximum Resolution Times set forth in this Article. Tyler will classify each problem for which troubleshooting services are requested under this agreement as a Whitehouse System Critical Issue, an Individual Stop Work Issue, an Individual Critical Function Issue, or another Whitehouse System Issue. Suppose Whitehouse disagrees with Tyler's classification of any such problem. In that case, Tyler and Whitehouse will negotiate in good faith to agree upon the classification of the problem or type of problem to determine the applicable maximum response time and maximum resolution time for future occurrences of the problem. In addition, Tyler and Whitehouse may agree in advance upon classifying specific types of problems. Regarding any problem for which Tyler and Whitehouse have agreed upon a classification under this agreement, Tyler will make every reasonable

effort and attempt to respond to requests for troubleshooting services for that type of problem per the agreed-upon classification.

1. Whitehouse System Critical Issue:

Maximum Response Time: 1 working hour

Maximum Resolution Time: Until fixed

2. Individual Stop Work Issue

Maximum Response Time: 2 working hours

Maximum Resolution Time: Until fixed

3. Individual Critical Function Issue

Maximum Response Time: 4 working hours

Maximum Resolution Time: Until fixed

4. Other Whitehouse System Issue

Maximum Response Time: One business day

Maximum Resolution Time: Until fixed

D. User Responsibilities. Tyler's ability to meet Maximum Response Times is contingent on a User providing notification as follows:

When Whitehouse personnel call the HelpDesk for assistance, the Whitehouse personnel must:

1. Provide the User's name and location; and
2. Specify that the assistance being requested is for the Whitehouse System and
3. Provide a clear description of the problem; and
4. Provide a clear description of the impact of the problem; and
5. Provide an accurate and complete history of the problem.

E. Escalation. Whitehouse personnel can escalate issues to Tyler through the Whitehouse City Manager or their designee at any time at jlusk@whitehousetx.org or lblack@tylertexas.com and Cio@tylertexas.com or by telephone at (903) 531-1119.

Article III. Term, Termination, Notices

A. Term. The initial term of this agreement was from October 24th, 2018, to September 30th, 2019. This new revision honors these dates, which supersedes all amendments in the past. Subsequent terms shall begin on October 1. This agreement shall automatically renew each year for up to five additional one-year terms unless terminated earlier as provided herein.

B. Termination. Either party may terminate this agreement at any time by giving the other party at least 90 days advance notice in writing. Unless provided otherwise by law or by this agreement, each party shall be obligated to pay all charges incurred before any termination of this agreement.

C. Notice. All written notices or other communications under this agreement shall be directed to the following contact persons:

City of Tyler- Benny Yazdanpanahi, CIO, PO Box 2039, Tyler, Texas 75710;

City of Whitehouse- Leslie Black as City Manager or Jennifer Lusk, Finance and HR Director, 101 A Bascom Rd. Whitehouse, Texas 75791.

The parties agree to provide written notice to the other immediately upon changing the primary contact person and/or address information set forth in this Article.

D. Agreement subject to availability of funds. This agreement shall not be construed as creating any debt by or on behalf of Tyler or Whitehouse, and all obligations of each party to this agreement are subject to the availability of funds. Accordingly, and in addition to any other authority to terminate this agreement, if the governing body of either party does not appropriate funds to make payments pursuant to this agreement, that party may terminate this agreement as of the last day for which funds were appropriated.

Article IV. Consideration and Payment

Consideration. In consideration of the services provided hereunder,

Effective Dates:

- The effective date of this agreement is October 1, 2024.

Existing Services:

- The current cost for existing hardware, software, and other services is \$224,438.74. The details of the costs can be found in Exhibit A.

Additional Fees:

- An additional 5% increase in security and software maintenance due to industry vendor increases. The initial amount for security services and software is outlined in Exhibit A and included as the base year in the payment schedule below. The following payment schedule details the change in the charge for these services over the next five (5) years and can be extended if this agreement is extended.
 - FY 2024-2025: \$67,768.64 (base year)
 - FY 2025-2026: \$71,157.07, an increase of \$3,388.43
 - FY 2025-2026: \$71,326.49, an increase of \$3,557.85
 - FY 2026-2027: \$71,504.39, an increase of \$3,735.46
 - FY 2027-2028: \$71,691.17, an increase of \$3,922.53
 - FY 2028-2029: \$71,887.30, an increase of \$4,118.66
 - Subsequent years are to be calculated as the agreement is extended.

New Equipment Request for Civic Center and Fiber Optics Costs:

- For FY 2024-2025, the total amount of new equipment will be equal to \$39,400.25, as detailed in Exhibit B.
- The City of Tyler will review requests for new hardware, software, and other services with the City of Whitehouse annually during the City of Tyler Information Technology Department's budget request process.
- Any new purchases will be billed to the City of Whitehouse at the current market rate.

Payment Schedule:

- Initial payment is due on or before October 31, 2024.
- Subsequent annual payments will be due on or before October 31 of each year.

CPI Adjustment:

- Effective January 1 of each year, the amounts listed above will be adjusted by the US Consumer Price Index: Information Technology, Hardware and Services (I:USCPIIUM).
- CPI adjustments will be based on the national average as of the close of December each year.
- The effective rate will be established on October 1 of each year.

Total Payment Calculation:

- The total payment for FY2024-2025, due on or before October 31, 2024, is \$263,838.99, consisting of total charges from Exhibit A and Exhibit B.
- Subsequent years will be calculated by adding the existing costs, plus any new costs, plus the security increases, and CPI.

Fiscal Year Revenues:

- Each party paying for the performance of governmental functions or services under this agreement must make those payments from current Fiscal Year revenues available to the paying party.

A. Billing and Payment. Tyler will bill Whitehouse monthly for services provided outside the scope of this contract. The rate billed for such services will be \$150 per hour per Tyler employee, and the cost of such services will be in addition to the annual payment agreed to be paid to Tyler by Whitehouse under this agreement. Billing for services outside of scope will be based on the number of hours worked by Tyler personnel over and above their normal work hours, as defined by the Fair Labor Standards Act. Tyler will not bill for periods of time during which activities such as server reboots, backups, routine maintenance, and similar activities are not actively monitored or otherwise performed by Tyler personnel. Tyler will notify Whitehouse via email of all calls that result in billing for services provided outside of the contract scope. In addition to any other amounts to be paid by Whitehouse pursuant to this agreement, Whitehouse agrees to pay any sales use, gross receipts, excise, access, bypass, or other local, state, and Federal taxes or charges imposed on or based upon the provision, sale or use of the services provided by Tyler pursuant to this agreement.

B. Tyler's Right to Renegotiate Payment Amounts. Tyler reserves the right to renegotiate payment amounts and/or terms prior to each renewal term. If Tyler requests any increase in payment, all proposed increases shall be provided to the Whitehouse at least 90 days prior to the renewal period for which Tyler seeks an increase. If the parties are unable to agree upon payment amounts and terms prior to any renewal term, this agreement shall terminate at the end of the then-current term.

Article V. Records

Tyler agrees to keep proper financial and accounting records and books of accounts, pursuant to law and in accordance with generally accepted accounting principles, pertaining to Tyler's performance of Tyler's obligations under this agreement, and such records and books of accounts shall be open to inspection and review by Whitehouse at all reasonable times.

Article VI. Purchasing Procedures

Tyler has adopted and shall observe purchasing procedures intended to assure that all purchases using funds provided under this agreement are made in full compliance with all applicable competitive purchasing procedures required by state or federal law. At any time, Whitehouse may, at the discretion of the Whitehouse City Manager, require Tyler to provide the Whitehouse City Manager with a copy of Tyler's purchasing procedure.

Article VII. Assignment

Neither party shall assign this agreement without the written consent of the other party. Any attempted assignment without the written consent of the other party shall be null and void and of no effect.

Article VIII. Applicable Law and Venue

Without regard to any rules on conflicts of law, this agreement shall be subject to and interpreted in conformance with the laws of the State of Texas unless expressly provided otherwise by federal law or regulations. Venue for any action arising hereunder shall lie exclusively in Smith County, Texas, for actions in state court and in the Eastern District of Texas, Tyler Division, for actions in federal court.

Article IX. Amendments

Changes in the terms and conditions of this agreement can be made only by a written amendment executed by the parties hereto prior to the changes being made.

Article X. Third-party Beneficiaries

Nothing under this agreement shall be construed to give any rights or benefits in this agreement to anyone other than Tyler and Whitehouse, and all duties and responsibilities undertaken pursuant to this agreement will be for the sole and exclusive benefit of Tyler and Whitehouse and not for the benefit of any other party.

Article XI. Severability

If any provision of this agreement is held invalid, illegal, or unenforceable in any jurisdiction for any reason, then, to the full extent permitted by law, (a) all other provisions hereof will remain in full force and effect in such jurisdiction and will be liberally construed in order to carry out the intent of the parties hereto as nearly as may be possible, (b) such invalidity, illegality or unenforceability will not affect the validity, legality or enforceability of any other provision hereof, and (c) any court having jurisdiction will have the power to reform such provision to the extent necessary for such provision to be enforceable under applicable law.

Article XII. Waiver

The waiver of any breach of a term or condition of this agreement does not waive any other breach of that term or condition or any breach of any other term or condition of this agreement.

Article XIII. Effect of Authorship on Construction

The parties agree that this agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this agreement.

Article XIV. Counterparts

This agreement and any related documents and any amendments may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Article XV. Survival

Upon the expiration or termination of this agreement for any reason, the obligations of the parties hereunder shall thereupon cease, but the provisions of this agreement which confer rights upon either party and which limit or delineate the responsibility of either party shall remain in effect as to the parties' conduct prior to expiration or termination of this agreement.

Article XVI. Merger

This agreement constitutes the entire agreement between Tyler and Whitehouse regarding the subject matter contained herein and supersedes all prior written or oral understandings.

Article XVII. Interlocal Cooperation Act

This agreement is made pursuant to the authority granted by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, and is subject to the provisions of that act. In case of any conflict between the provisions of this agreement and the provisions of the Interlocal Cooperation Act, the provisions of the Interlocal Cooperation Act shall control.

Article XVIII. Limitation of Liability

Each party's entire liability to the other party, and the exclusive remedy for damages under this agreement, shall be limited as follows: for tangible property damage or bodily injury or death to a person proximately caused by a party's or a party's employees or agents negligence or willful misconduct, the amount of proven, direct damages; and for any other claims, liability shall be limited to direct damages that are proven, in an amount not to exceed the amount of the charges to Whitehouse for the services provided by Tyler during the period affected by the mistake, omission, error, delay, interruption, or defect. Except for damages for personal injury or death or damages to or loss of personal property (excluding loss of data or programming) caused by Tyler, Tyler's aggregate liability for all direct damages shall not exceed the total amount paid by Whitehouse under this agreement. In no event shall either Tyler or Whitehouse be responsible for or liable for any special, indirect, incidental, consequential, or exemplary damages arising in

any way in connection with this agreement, even if the said party has been advised of the possibility of such damages. Tyler shall not be liable for any failure of performance or failure to provide service under this agreement due to Force Majeure Events. Tyler shall not be liable for any interruptions or damages due to the fault or negligence of Whitehouse or due to the failure or malfunction of equipment or facilities provided by Whitehouse.

This Article is intended only as a limitation and shall not be construed to expand the liability of either Whitehouse or Tyler beyond the liability that said party would have if this Article had not been included in this agreement.

Article XIX. No Warranties

THERE ARE NO AGREEMENTS, WARRANTIES, OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

Exhibit A

Category	Description	Qty	Total
Inventory	Battery Backups	4	902.88
	Laptops	16	13,333.33
	Monitors	44	2,845.33
	PCs/thin client	27	3,613.41
	Phones (handset)	31	950.67
	Printers	18	1,749.91
	Servers	59	10,672.61
	Switches	4	3,045.97
	Wireless Access Points	5	902.88
			38,016.59
Security	Darktrace Artificial Intelligence Behavioral Monitoring		4,800.57
	Dell MDR w/ CarbonBlack Anti-Virus Services		8,822.11
	KnowBe4 Cyber-Security Training		1,394.90
	Nessus Vulnerability Patching		549.29
	SonicWALL Firewall		523.01
			16,089.88
Software	Cisco Unity Phone System		6,540.00
	Citrix Client PCs		6,464.30
	Commvault On-Site Backup		2,576.48
	ControlUp System Desktop Performance Monitoring		1,154.52
	Microsoft Tertiary Backups		1,436.37
	Microsoft Windows Licensing		5,388.26
	Nagios Network and Equipment Monitoring		1,798.48
	PatchMyPC for PC Updates		599.35
	Turbonomic Load Balancing		2,104.07
	VMware Hypervisor Services		1,448.76
	Zerto Replication		20,000.00
	Zoho Helpdesk		2,168.17
			51,678.76
Connectivity	Optimum Fiber from Whitehouse to Tyler City Hall		4,200.00
	Internet		790.77
	AT&T Primary Rate Interchange System		4,453.98
			9,444.75
Professional Services	Administrative Services		9,928.57
	Helpdesk Services		15,022.67
	Infrastructure Services		83,763.62
	Travel		493.90
			109,208.76
			Total \$224,438.74

New Requested Equipment (Exhibit B)

Category	Description	Qty	Total
Inventory	Laptops (hardware, 3-year amortized) PD New Vehicles	2	\$ 1,666.68
	(Annual Software Cost):		
	Darktrace Artificial Intelligence Behavioral Monitoring	2	\$ 212.66
	Dell MDR w/ CarbonBlack Anti-Virus Services	2	\$ 622.38
	Citrix Client PCs	2	\$ 153.92
	Commvault On-Site Backup	2	\$ 50.94
	ControlUp System Desktop Performance Monitoring	2	\$ 53.70
	Microsoft Tertiary Backups	2	\$ 48.70
	Microsoft Windows Licensing	2	\$ 62.64
	PatchMyPC for PC Updates	2	\$ 74.92
			<u>\$ 2,946.54</u>
	PCs (hardware, 3-year amortized) City Center	3	\$ 401.49
	(Annual Software Cost):		
	Darktrace Artificial Intelligence Behavioral Monitoring	3	\$ 318.99
	Dell MDR w/ CarbonBlack Anti-Virus Services	3	\$ 933.57
	Citrix Client PCs	3	\$ 230.88
	Commvault On-Site Backup	3	\$ 76.41
	ControlUp System Desktop Performance Monitoring	3	\$ 80.55
	Microsoft Tertiary Backups	3	\$ 73.05
	Microsoft Windows Licensing	3	\$ 93.96
	PatchMyPC for PC Updates	3	\$ 112.38
			<u>\$ 2,321.28</u>
	Switches (hardware, 5-year amortized) City Center	3	\$ 9,003.00
	390 5 Year	3	\$ 1,815.00
	MA-MOD-4X10G	3	\$ 922.80
	MA-PWR-1100WAC	3	\$ 1,398.00
	MA-SFP-10GB-LR	3	\$ 2,835.60
	STACK-T1-50CM-M	3	\$ 88.80
	MA-CBL-40G-50CM	3	\$ 78.60
			<u>\$ 16,141.80</u>
	APs (hardware, 5-year amortized) City Center	12	\$ 4,606.80
	MR46 5 Year	10	\$ 3,012.00
	MR76 5 Year	2	\$ 301.20
	MA-ANT-3-A1	8	\$ 75.20
			<u>\$ 7,995.20</u>
	Monitors (hardware 3-year amortized) City Center	6	\$ 387.99
			<u>\$ 387.99</u>
	Phones (hardware, 3-year amortized) City Center		
	Handset	4	\$ 122.67
	Cisco Unity License	4	\$ 843.87
	PRI		\$ 143.68
			<u>\$ 1,110.22</u>
	Printer (hardware, 3-year amortized) City Center		
	Unit like the Existing Small	1	\$ 97.22
			<u>\$ 97.22</u>

Article XX. Confidentiality

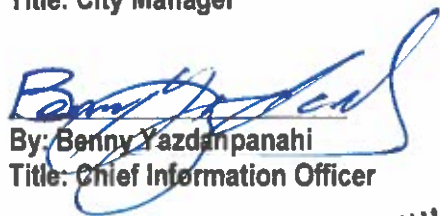
To the extent permitted by state and federal law, Tyler will employ any safeguards that are usually afforded to Tyler's internal affairs to prevent the disclosure of Whitehouse's records. In particular, Tyler and its agents and employees will not share any information, copies, or other knowledge of Whitehouse's records or passwords or information deemed confidential by law without Whitehouse's specific permission in writing.

IN WITNESS WHEREOF, the parties hereto have made and executed this agreement as of the day and year first above written.

CITY OF TYLER, TEXAS



By: Edward Broussard
Title: City Manager



By: Benny Yazdanpanahi
Title: Chief Information Officer

ATTEST:


Cassandra Brager
Title: City Clerk

APPROVED AS TO FORM:


Deborah Pullum
Title: City Attorney

CITY OF WHITEHOUSE, TEXAS



By: Leslie Black
Title: City Manager

ATTEST:


By: Susan Hargis
Title: City Secretary

APPROVED AS TO FORM:


N/A
City Attorney
Title: City of Whitehouse





THE STATE OF TEXAS	§	
	§	
COUNTY OF SMITH	§	SECOND AMENDMENT TO INTERLOCAL AGREEMENT FOR COMPUTER SUPPORT SERVICES BETWEEN CITY OF TYLER AND AND CITY OF WHITEHOUSE

THIS SECOND AMENDMENT TO THE INTERLOCAL AGREEMENT (“Second Amendment” or “Addendum”) **FOR COMPUTER SUPPORT SERVICES** is made and entered into by between the City of Tyler, Texas, a municipal corporation of Texas, hereinafter called “Tyler”, and the City of Whitehouse, hereinafter called “Whitehouse”, acting by and through their duly authorized representatives and as authorized by their respective governing bodies; and

WHEREAS, pursuant to authority under the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, the City of Tyler executed an Interlocal Agreement with the City of Whitehouse for computer support services on October 24, 2018; and

WHEREAS, such original Agreement outlined the scope of the computer services, equipment, and software to be provided by the City of Tyler to the City of Whitehouse; and

WHEREAS, on June 26, 2019, the Tyler City Council approved a ten-year extension of the Information Systems Facilities Management Interlocal Agreement for computer services with the City of Whitehouse; and

WHEREAS, on June 14, 2022, the Tyler City Council approved a First Amendment to the Interlocal Agreement for Computer Support Services with the City of Whitehouse; and

WHEREAS, the Parties have engaged in a comprehensive review and negotiation of the terms and conditions of all such prior agreements and amendments; and

WHEREAS, as a result of such renegotiation, the Parties entered into a new Computer Support Services Agreement, which was duly approved by the Tyler City Council and the City of Whitehouse, with the effective date of October 1, 2024; and

WHEREAS, said Interlocal Agreement between the City of Tyler and the City of Whitehouse, as amended, serves a public purpose and benefits the citizens of both municipalities; and

WHEREAS, it is often necessary to procure additional computer services, equipment, and software beyond the scope of the original Interlocal Agreement for Computer Support Services, as amended, to provide for proper computer support; and

WHEREAS, the Parties hereto now desire to adopt and incorporate a new **Exhibit C** into the Agreement to reflect the addition of services, equipment, and software not included initially in Exhibits A and B;

NOW, THEREFORE, THE PARTIES HERETO AGREE THAT THE INTERLOCAL AGREEMENT FOR COMPUTER SUPPORT SERVICES BETWEEN THE CITY OF TYLER, TEXAS, AND THE CITY OF WHITEHOUSE, TEXAS, AS AMENDED, IS HEREBY AMENDED AS FOLLOWS:

PART 1: ADDENDUM TO INTERLOCAL AGREEMENT. A new Exhibit “C” is hereby adopted and added as an Addendum to read as follows, and is incorporated herein:

EXHIBIT "C"

1. **Purpose.** Exhibit "C" is hereby created to document and authorize the procurement of additional computer services. Equipment and software beyond the original scope of the Interlocal Agreement for Computer Support Services between the City of Tyler and the City of Whitehouse, as amended, and as needed.
2. **Additional Costs.** Both Parties acknowledge and agree that the costs associated with obtaining additional computer services, equipment, and software as listed in this Exhibit "C" shall be in addition to the total contract amount specified in Exhibits "A" and "B".
3. **Maximum Amount of Additional Costs under Section 2.** Above. Costs associated with additional services, equipment, and software may be added to this Exhibit "C". **However, the Parties hereto recognize, understand, and agree that the total cost of any such additional computer services, equipment, and software to this Exhibit "C" shall not exceed a maximum amount of \$ 50,000.00** each fiscal year for the remaining term of the Agreement or any renewal term. Should the total cost of any such additional services, equipment, and equipment exceed this amount during the stated term, then the approval of both governing bodies shall be necessary to add such additional costs to the Agreement.
4. **Total Contract Value.** The total contract value of this Interlocal Agreement, as amended, shall be the sum of Exhibits "A", "B", and "C", plus any applicable adjustments for the ITCPI (Index-Tied Consumer Price Index) and the annual security cost increase, as described in the Original Agreement, as amended.

PART 2: Except as explicitly modified by this Addendum all other provisions of the Interlocal Agreement for Computer Support Services between the City of Tyler and the City of Whitehouse, as originally adopted on October 24, 2018, and as amended on June 26, 2019, June 14, 2022, and October 1, 2024 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed this 14th day of May, 2025.

CITY OF TYLER, TEXAS

BY: _____
EDWARD BROUSSARD, CITY MANAGER
City Council approved: _____

ATTEST:

CASSANDRA BRAGER, CITY CLERK

APPROVED: _____
CITY ATTORNEY

CITY OF WHITEHOUSE, TEXAS

BY: _____
City Council approved: _____

ATTEST:

WITNESS

APPROVED: _____
CITY ATTORNEY

