CITY COUNCIL AGENDA

Wednesday, January 10, 2024
9:00 am

CITY OF TYLER
A Natural Beauty

CITY COUNCIL

Donald P. Warren, Mayor
Stuart Hene, District 1
Broderick McGee, 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, January 10, 2024
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, obtain a speaker card from the receptionist's desk outside the Council Chambers, complete the information requested on the card, and deliver to the City Clerk before the meeting or as soon as you can. 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 meeting of the City Council of the City of Tyler, Texas held on November 8, 2023 and a Special Called meeting held on November 30, 2023.

AWARDS

A-1 Request that the City Council consider accepting the "Distinguished Budget Presentation Award" for its Fiscal Year 2022-2023 Budget document from the Government Finance Officers Association of the United States and Canada.

ZONING

Z-1 Z23-038 NEDWOL PROPERTIES LLC (2441, 2443, 2445, AND 2447 MOSAIC WAY)
Request that the City Council consider adoption of an Ordinance approving a zone change from "M-1", Light Industrial District to "C-1", Light Commercial District.

Z-2 PD23-023 JLLB HOLDINGS LLC (5038 PALUXY DRIVE)
Request that the City Council consider adoption of an Ordinance approving a zone change from "C-1", Light Commercial District to "PUR", Planned Unit Residential District with Final Site Plan.

Z-3 C23-008 PSS JOINT VENTURE (AN UNIMPROVED PORTION OF RIECK ROAD)
Request that the City Council consider adoption of an Ordinance approving the closure of a portion of Rieck Road.

Z-4 C23-009 ROUSE JESSE ROBERT JR (AN UNIMPROVED PORTION OF EDNA STREET AND REEDER LANE)
Request that the City Council consider adoption of an Ordinance approving the closure of a portion of Edna Street and Reeder Lane.

Z-5 Z23-036 DENNIS JOSEPH A & ELIZABETH ANNE (512 SOUTH FLEISHEL AVENUE)
Request that the City Council consider adoption of an Ordinance approving a zone change from "RPO", Restricted Professional Office District to "R-2", Two-Family Residential District.

Z-6 Z23-037 ROBLES JOSE EMILIANO & ANA BERTHA (1709 OLD OMEN ROAD)
Request that the City Council consider adoption of an Ordinance approving a zone change from "POD", Planned Office District to "R-1B", Single-Family Residential District.

Z-7 PD23-024 SHACKELFORD CREEK LAND COMPANY LLC (9506, 9507, 9512, 9513, 9519, 9520, 9525, 9530, 9531, 9537, 9538, 9543, 9546, 9549, 9554, 9555, 9560, 9561, 9566, 9567, 9570, 9573, 9574, 9578, 9581, 9582, 9586, 9590, 9594, 9602, AND 9606 FRIEDLANDER WAY AND 2000, 2001, 2005, 2006, 2010, 2011, 2014, 2017, 2020, 2023, 2026, 2029, 2030, 2032, 2035, 2041, 2044, 2047, 2050, 2053, 2056, 2059, 2062, 2065, 2068, 2069, 2072, 2075, 2078, 2079, 2082, 2083, 2086, 2087, 2090, 2091, 2095, AND 2099 LOCKLEAR LN, AND 8.40 ACRE PORTION OF 1067 MARSH FARM ROAD)
Request that the City Council consider adoption of an Ordinance approving a zone change from "R-1D", Single-Family Detached and Attached Residential District to "PUR", Planned Unit Residential District with a final site narrative.

Z-8 PD23-025 C&O ACQUISTIONS LLC AND BEXAR TRIPLE JEOPARDY LLC (220 AND 240 SOUTH SOUTHWEST LOOP 323)
Request that the City Council consider adoption of an Ordinance approving a "PCD", Planned Commercial District final site plan amendment.

Z-9 Z23-043 C&O ACQUISTIONS LLC (3809 WEST ELM STREET)
Request that the City Council consider adoption of an Ordinance approving a zone change from "PCD", Planned Commercial District to "R-1A". Single-Family Residential District.

Z-10 Z23-039 RENTAL CONNECTIONS LLC (1100, 1120, AND 1122 WEST FIFTH STREET)
Request that the City Council consider adoption of an Ordinance approving a zone change from "C-1", Light Commercial District to "C-2", General Commercial District.

PRESENTATION

P-1 Request that the City Council consider receiving a presentation on the 2023-2024 Annual Work Plan.

ORDINANCE

O-1 Request that the City Council consider adoption of an ordinance updating and amending Tyler City Code Chapter 1 related to policies and procedures governing the Disability Issues Review Board.

MISCELLANEOUS

M-1 Request that the City Council consider authorizing the City Manager to execute part 2 of the professional services contract, in the amount of $2,379,480 with Fitzpatrick Architects and Halff for the Downtown Improvement project.

M-2 Request that the City Council consider authorizing the City Manager to execute an engineering services contract, in the amount of $247,320.00 with Shermco Industries Inc for the Golden Road Water Treatment Plant Electrical Assessment.

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 a Personal Services Contract with Mr. Robin Smart for construction inspection services for City of Tyler streets and capital improvement projects in the amount of $50,000.

C-A-2 Request that the City Council ratify the expenditure of $ 90,743.10, for the mandated public water system fee to the Texas Commission on Environmental Quality.

C-A-3 Request that the City Council consider authorizing the City Manager to execute an additional services agreement with Halff Associates, Inc. in the amount of $23,000 for the Shiloh Road Improvements and Widening preliminary engineering report.

C-A-4 Request that the City Council consider amending and adopting a Resolution authorizing the application for and acceptance of Federal Transit Administration (FTA) Grant Funds passed through the Texas Department of Transportation (TxDOT) under the Section FY21-5339 Bus and Bus facilities Grant in the amount of $201,174 along with the acceptance of $40,235 in Transportation Development Credits (TDC).

C-A-5 Request that the City Council consider amending and adopting a Resolution authorizing the application for and acceptance of Federal Transit Administration (FTA) Grant Funds passed through the Texas Department of Transportation (TxDOT) under the Section FY21-5339 Bus and Bus facilities Grant in the amount of $186,507 along with the acceptance of $37,302 in Transportation Development Credits (TDC).

C-A-6 Request that the City Council consider authorizing the City Manager to add Addendum 1 to Downtown Janitorial contract with Office Pride Janitorial to provide janitorial services to six City of Tyler downtown facilities in the amount of $447,216.00 over the next five (5) years. Addenda 1 would add Transit Building at $65,265.00 over the next four (4) years remaining of the contract for a total of $512,481.00

C-A-7 Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional services with MHS Planning & Design, LLC.

C-A-8 Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional services with H.W. Lochner, Inc.

C-A-9 Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional services with HDR Engineering, Inc.

C-A-10 Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by $63,159.52 and the release of final retainage payment in the amount of $244,955.54 to A.E. Shull and Company for Consent Decree Capacity Work Group 1 Implementation Standard Bid, 22-033.

C-A-11 Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by $69,380.40 and the release of final retainage payment in the amount of $145,824.48 to Southern Trenchless Solutions for Consent Decree Group 5 Manhole Rehabilitation, Bid 23-007.

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 $490,672.14 and the release of final retainage payment in the amount of $101,908.84 to T Gray Utility AIMS, LLC for Consent Decree Group 4 Manhole Specialty Bid 22-016.

C-A-13 Request that the City Council consider authorizing the City Manager to execute a contract amendment with Elledge Engineering in the amount of $61,000 for additional services related to the FM 756 Utility Relocate Project.

CITY MANAGER'S REPORT

ADJOURNMENT

MINUTES OF THE REGULAR CALLED MEETING OF
THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
November 08, 2023

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, November 08, 2023 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:	Brad Curtis
Councilmembers:	Stuart Hene
	Shirley McKellar
	Broderick McGee
	James Wynne
	Lloyd Nichols
City Manager:	Edward Broussard
Deputy City Manager:	Stephanie Franklin
City Attorney:	Deborah G. Pullum
Senior Asst. City Attorney:	Alesha Buckner
Chief Financial Officer:	Keidric Trimble
Chief Information Officer:	Benny Yazdanpanahi
City Fire Chief:	David Coble
Police Chief:	Jimmy Toler
City Engineer:	Darin Jennings
Director of Utilities:	Kate Dietz
Parks Director:	Leanne Robinette
Director of Solid Waste, Transit:	Leroy Sparrow
Planner:	Caleb Mittanck
City Clerk:	Cassandra Brager

INVOCATION

The Invocation was given by Councilmember McGee.

MINUTES

Motion by Councilmember Wynne to approve the October 11, 2023 minutes; seconded by Mayor Pro Tem Curtis; motion carried 7 - 0 & approved as presented.

ZONING

Z-1 **PD23-019 JEREMY THOMAS PROPERTIES LLC (4719 OLD BULLARD ROAD) Request that the City Council consider adoption of an Ordinance approving a "PCD" Planned Commercial District final site plan. (O-2023-113)**

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

PRESENTATION

P-1 **Request that the City Council consider approving the updated Implementation Schedule to the current Parks, Recreation, and Open Spaces Master Plan.**

Leanne Robinette, Parks Director– Gave an overview of the updated Implementation Schedule to the current Parks, Recreation, and Open Spaces Master Plan.

RESOLUTION

R-1 **Request that the City Council consider adopting a Resolution appointing a City of Tyler representative to the Smith County Appraisal District Board of Directors. (R-2023-45)**

Motion by Councilmember McGee to appoint Mark Whatley; seconded by Councilmember McKellar; motion carried 7 - 0 & approved as presented.

ORDINANCE

O-1 **Request that the City Council consider approving the sale of Tyler Water and Sewer System Revenue Bonds, New Series 2023. (O-2023-114)**

Paul Jasin, Specialize Public Finance - Gave a brief update on the sale of the Tyler Water and Sewer System Revenue Bonds**.**

Motion by Councilmember McGee; seconded by Councilmember Hene; motion carried 7 - 0 & approved as presented.

MISCELLANEOUS

M-1 **Request that the City Council consider accepting the donation of $67,000.00 to erect a new memorial heart bell pavilion on the south end of the Rose Rudman/South Tyler Trail System**.

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

M-2 **Request that the City Council consider approving the Amendment to HTE, Inc. Software License and Services Agreement to replace the March 25, 1998 Agreement that acquired Licenses and Support for H.T.E. AS400 Enterprise software solution. The new amendment between the City of Tyler and Central Square, Inc. to migrate their legacy solution to Central Square Finance Enterprise and Enterprise Asset Management solutions, with Bamboo human resources solution, and Intellitime's timekeeping solution in the amount of $851,024.95.**

Motion by Councilmember McKellar; seconded by Mayor Pro Tem 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 Amendment to Via Mobility, LLC, RFP 21-008, to add additional vehicle usage from eight (8) vehicles to eleven (11) vehicles which will increase the monthly cost from $3,200 to $4,400.**

C-A-2 **Request that the City Council consider authorizing the City Manager to purchase one (1) camera van from Rausch USA through the Sourcewell Contract 120721-RAU for Waste Collection in the amount of $463,014.**

C-A-3 **Request that the City Council consider authorizing the City Manager to use Sourcewell Contract Vendor JF Petroleum Group (PSI INC.) Contract # 092920-JFA to replace the underground fuel storage tank for the City of Tyler Oakwood Complex in the total proposed amount of $443,855.89.**

C-A-4 **Request that the City Council consider authorizing the City Manager to renew multiple vendors for the Annual Price Agreement for various categories of automotive and truck services and repairs per bid 23-093.**

C-A-5 **Request that the City Council consider authorizing the City Manager to award Office Pride of East Texas to provide janitorial services to Oakwood Complex in the amount of $35,700.00 annually.**

C-A-6 **Request that the City Council consider authorizing the City Manager to award Enviro-Care Lawn service to maintain the Oakwood Complex lawn maintenance.**

C-A-7 **Request that the City Council consider authorizing the City Manager to award Hydraulic Power as the primary vendor for hydraulic services.**

C-A-8 **Request that the City Council consider authorizing the City Manager to award Crow Towing as the primary vendor for light duty towing, Fuller's Towing for heavy duty towing, and Liberty Towing Services for motorcycle towing as per bid 23-096 Annual Price Agreement for Wrecker Services.**

C-A-9 **Request that the City Council consider authorizing the City Manager to award Action Cleaning of Tyler as the primary vendor for wash bay chemicals and repairs, and AAA Sanitation as primary vendor to clean the grit traps.**

C-A-10 **Request that the City Council consider authorizing the City Manager to declare unit 25 (a 1991 Oshkosh Fire Truck) as surplus and ready to be auctioned.**

C-A-11 **Request that the City Council consider authorizing the City Manager to approve the amendment to NDMJ, LLC, RFP 21-009 Paratransit Overflow contract from $30.00 per trip to $33.00 per trip.**

Motion by Mayor Pro Tem Curtis to approve the consent agenda as written; seconded by Councilmember McGee; motion carried 7 - 0 & approved as presented.

CITY MANAGER'S REPORT

1. The Glass Recreation Center Staff is thankful for everyone who came out for the Annual Fall Family Fun Festival. The rain did not stop the families from having fun. Many were happy to hear it was not canceled. Approximately 500 families were able to enjoy the festivities inside the facility. A big thank you to all the sponsors and vendors who helped. The event would not be a success without them.
2. At your last Council meeting, you approved a major overhaul of all our building codes and the like. As a part of the outreach we did after your action, is that our Building Services hosted a 2021 Energy Conservation Code presentation. The presentation was from Spear, a D.F.W. Energy Efficiency Organization. The event took place at the Brookshire Conference Center. The event was well-attended by design professionals, developers, general contractors, subcontractors, and third-party Energy Inspectors. The information presented included different paths to reach compliance with the newly adopted energy codes that were a part of that.
3. One of the things we have an interesting piece is our Fire Department currently doesn't have any females. That's been a big outreach piece our Fire Chief, David Coble has been working on and looking at for other ways and different opportunities to go recruit females to consider applying for the Tyler Fire Department. One of the things they've been able to work up with he and our Communications Department is hosting an event for women ages 18 to 35 to learn about the Tyler Fire Department and how to successfully complete the hiring process. Our Communications Team designed a flier for the event and they're putting it on Facebook, Next Door, and Event Bright where women can R.S.V.P. if they're interested in attending. The event will be at 9:00 a.m. on Saturday, November 18, with a light breakfast while hearing from Chief David Coble about what it means to be a part of the Tyler Fire Department. Then, the participants will get a tour of the facility, including the living quarters, and then they'll be able to go to the fire drill building to learn the steps to successfully complete the hiring process from the testing as well as from the physical component. We hope to see some women applying for our Tyler Fire Department, and hopefully, we can recruit from that pool.
4. Finally, a successful news note, Tyler Transit during the budget session, and it may have been at the last meeting or the meeting before last, a presentation from our Transit Department in regards to some of the things we're having to work on like having to increase fees and changing of services due to increase in costs that the City was bearing for that. Tyler Transit attended the recent East Texas Council of Governments and was approved for $150,000 to help with our local match. The funding was granted in lieu of Transit going up on rates or removing services on Saturdays, so this will go before the City Council in December to adopt as a resolution. This will allow for micro-transit services to be implemented and still allow us to gain more data for future decisions in dealing with transit operations. That would be very grateful to the East Texas Council of Governments for looking at that issue and coming forward with financing to be able to say, hey, we can help you be able to as far as put all these decisions off for a while in order to be able to help your customers. We're very thankful for that. We're very grateful for Russ and the work he did in working with ETCoG to secure that funding for this coming year.

5. Also, it is Veteran's Day on Saturday. We have numerous different events. We have the Senior Center as an event tomorrow around lunch. There will also be different events throughout the community, including, I think at Brookhill on Saturday. We're very grateful for the Council in being part of that and I have two veterans up here on the Council. Anything you all wanted to add to that?
   Councilmember McKellar -Well, we wanted to say thank you for remembering. Happy Veterans Day to my colleague and all those in the City of Tyler who have served this nation as well. We say thank you and come and see us, Councilman Nichols and myself, speaking on Saturday at Brookhill.
   Councilmember Nichols – Stated that he would like to remind--most folks don't know this, but somebody like Mark Preistner might know this. The day before Veterans Day every year is the birthday of our beloved United States Marine Corps.

ADJOURNMENT

Motion by Councilmember McKellar to adjourn the meeting at 9:36 am; seconded by Councilmember McGee; 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

MINUTES OF THE SPECIAL CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
November 30, 2023

A special called meeting of the City Council of the City of Tyler, Texas, was held Thursday, November 30, 2023, at 4:00 p.m. in the City Council Chambers, 2nd floor of City Hall, Tyler, Texas, with the following present:

Mayor:	Don Warren
Mayor Pro Tem:	Brad Curtis
Councilmembers:	Stuart Hene
	Shirley McKellar
	James Wynne
City Manager:	Edward Broussard
City Attorney:	Deborah G. Pullum
Senior Asst. City Attorney:	Alesha Buckner
Senior Asst. City Attorney:	April Earley
Deputy City Attorney:	Steven Kean
Communications Director:	Julie Goodgame
Chief of Police:	James Toler
Strategic Planner:	Blake Cathey
Legal Secretary:	Chris Cambra

INVOCATION

The Invocation was given by Mayor Warren.

RESOLUTION

R-1 **Request that the City Council consider adopting a Resolution to suspend the December 4, 2023, effective date of CenterPoint Energy Resources Corp.'s requested rate change to permit the City time to study the request and establish reasonable rates. (R-2023-46)**

City Attorney, Deborah Pullum – Gave a presentation explaining the reason for the Special Called City Council Meeting and how CenterPoint Energy wanted to raise the rates that would affect the business and citizens of the City of Tyler. She went on to speak about how CenterPoint also wanted to combine the Houston, Texas Coast and Beaumont/East Texas Region into one "Texas Region". She spoke on the law and how as a member of the Steering Committee, the City of Tyler has the right to suspend the rate increase for a maximum of ninety days to review changes and ensure that the rate is fair.

With no further discussion, a motion was made by Councilmember Hene; seconded by Mayor Pro Tem Curtis; motion carried 5-0 & approved as presented.

ADJOURNMENT

Motion by Mayor Warren to adjourn the meeting at 4:05 p.m.; seconded by Councilmember McKellar; motion carried 5 - 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: A-1

Date: January 10, 2024

Subject: Request that the City Council consider accepting the "Distinguished Budget Presentation Award" for its Fiscal Year 2022-2023 Budget document from the Government Finance Officers Association of the United States and Canada.

Page: Page 1 of

Item Reference:

The Distinguished Budget Presentation Award has been granted to the City of Tyler by the Government Finance Officers Association of the United States and Canada (GFOA) for its Fiscal Year 2021-2022 Budget document. This is the fifteenth consecutive year that the City of Tyler's budget document has received this special recognition. The award represents a significant achievement by the entity. It reflects the commitment of the governing body and staff to meeting the highest principles of governmental budgeting. In order to receive the budget award, the entity had to satisfy nationally recognized guidelines for effective budget presentation. These guidelines are designed to assess how well an entity's budget serves as a policy document, a financial plan, an operations guide, and a communications device. Budget documents must be rated "proficient" in all four categories, and in the fourteen mandatory criteria within those categories, to receive the award. There are over 1,700 participants in the Budget Awards Program. Award recipients have pioneered efforts to improve the quality of budgeting and provide an excellent example for other governments throughout North America.

RECOMMENDATION:

It is recommended that the City Council consider accepting the "Distinguished Budget Presentation Award" for its Fiscal Year 2022-2023 Budget document from the Government Finance Officers Association of the United States and Canada.

ATTACHMENTS:

Budget Award

Drafted/Recommended By:
Department Leader

Keidric Trimble, Chief Financial Officer

Edited/Submitted By:

City Manager

Government Finance Officers Association

Certificate of Achievement for Excellence in Financial Reporting

Presented to

City of Tyler
Texas

For its Annual Comprehensive
Financial Report
For the Fiscal Year Ended

September 30, 2022

Christopher P. Morrill

Executive Director/CEO

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-1

Date: January 10, 2024

Subject: Z23-038 NEDWOL PROPERTIES LLC (2441, 2443, 2445, AND 2447 MOSAIC WAY)
Request that the City Council consider adoption of an Ordinance approving a zone change from "M-1", Light Industrial District to "C-1", Light Commercial District.

Page: Page 1 of

Item Reference:

The applicant is requesting the zone change to allow for commercial and office uses on Lots 13-H, 13-I, 13-J, and 13-K of NCB 852-T, four lots containing approximately 2.20 acres of land located at the northeast intersection of Earl Campbell Parkway and Mosaic Way (2441, 2443, 2445, and 2447 Mosaic Way).

According to the Unified Development Code (UDC), the "C-1", Light Commercial District allows restaurants, private clubs, antique shops, banks, service stations, offices and retail stores without any outdoor display or storage of merchandise or goods. The maximum building height allowed within this district is two and one-half stories or 42 feet in height. The setback requirements are 10 feet in the front, 10 feet in the rear, zero feet on the interior side (10 feet if abuts a residential district) and 15 feet on the corner side. The minimum lot area is 7,000 square feet. Off-street parking is determined by the specific use proposed. Properties with a commercial designation are subject to UDC Development Standards such as landscaping and tree preservation, bufferyards, and sign regulations.

According to UDC Section 10-617, the City Council will consider the following approval criteria for zoning changes:

a. The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action;
b. The zoning change is consistent with the Tyler 1st Comprehensive Plan;
c. The zoning change promotes the health, safety, or general welfare of the city and the safe, orderly, and healthful development of the city;
d. The zoning change is compatible with the present zoning and/or conforming uses of nearby property and with the character of the neighborhood; and
e. The property to be rezoned is suitable for uses permitted by the District that would be applied by the proposed amendment.

According to UDC Section 10-587, the burden of proof or persuasion is on the applicant to show that an application complies with approval criteria.

The adjacent properties to the north and east are zoned "M-1", Light Industrial District and are developed with commercial properties or are undeveloped. The adjacent property to the south is zoned "C-1", Light Commercial District and is undeveloped. The adjacent properties to the west are zoning "C-2" General Commercial District and are developed with commercial uses.

This request is consistent with the Tyler 1st Future Land Use Guide which identifies this property as Business/Office Park.

The applicant is requesting the zone change to utilize the properties for commercial and medical office uses. The current "M-1" Light Industrial District zoning district does not allow for the uses that are generally found in that area.

On December 5, 2023, the Planning and Zoning Commission held a public hearing for this request. Mark Priestner was present to speak on behalf of the applicant. There was no significant discussion.

As of Friday, January 5, 2024 of the four notices mailed, no notices were returned in favor or in opposition to the request.

All other departments have reviewed the application and anticipate no significant impact on services or facilities by the proposed rezoning request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of the zone change from "M-1", Light Industrial District to "C-1", Light Commercial District.

ATTACHMENTS:

Ordinance
Location Map
Future Land Use Guide Map
Notification Map

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM "M-1", LIGHT INDUSTRIAL DISTRICT TO "C-1", LIGHT COMMERCIAL DISTRICT ON LOTS 13-H, 13-I, 13-J, AND 13-K OF NCB 852-T, FOUR LOTS CONTAINING APPROXIMATELY 2.20 ACRES OF LAND LOCATED AT THE NORTHEAST INTERSECTION OF EARL CAMPBELL PARKWAY AND MOSAIC WAY (2441, 2443, 2445, AND 2447 MOSAIC WAY); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Tyler, Texas, and the City Council of the City of Tyler, Texas, in compliance with the Charter and the State law with reference to the zoning ordinance of the City of Tyler, Texas, and zoning map, have given requisite notices by publication and otherwise and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council is of the opinion that the zoning change should be made as set forth herein;

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

PART 1: That the following zone change is hereby approved as follows:

I. APPLICATION Z23-038

That the following described property, which has heretofore been zoned "M-1", Light Industrial District, shall hereafter bear the zoning classification of "C-1", Light Commercial District, to wit:

> Lots 13-H, 13-I, 13-J, and 13-K of NCB 852-T, four lots containing approximately 2.20 acres of land located at the northeast intersection of Earl Campbell Parkway and Mosaic Way (2441, 2443, 2445, and 2447 Mosaic Way).

PART 2: That the City Manager is hereby ordered and directed to cause the zoning map to be amended to reflect the above described zoning.

PART 3: Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance and same are deemed severable for this purpose.

PART 4: That this ordinance shall be effective on and after its date of passage and approval by the City Council.

PASSED AND APPROVED this the 10th day of January A.D., 2024.

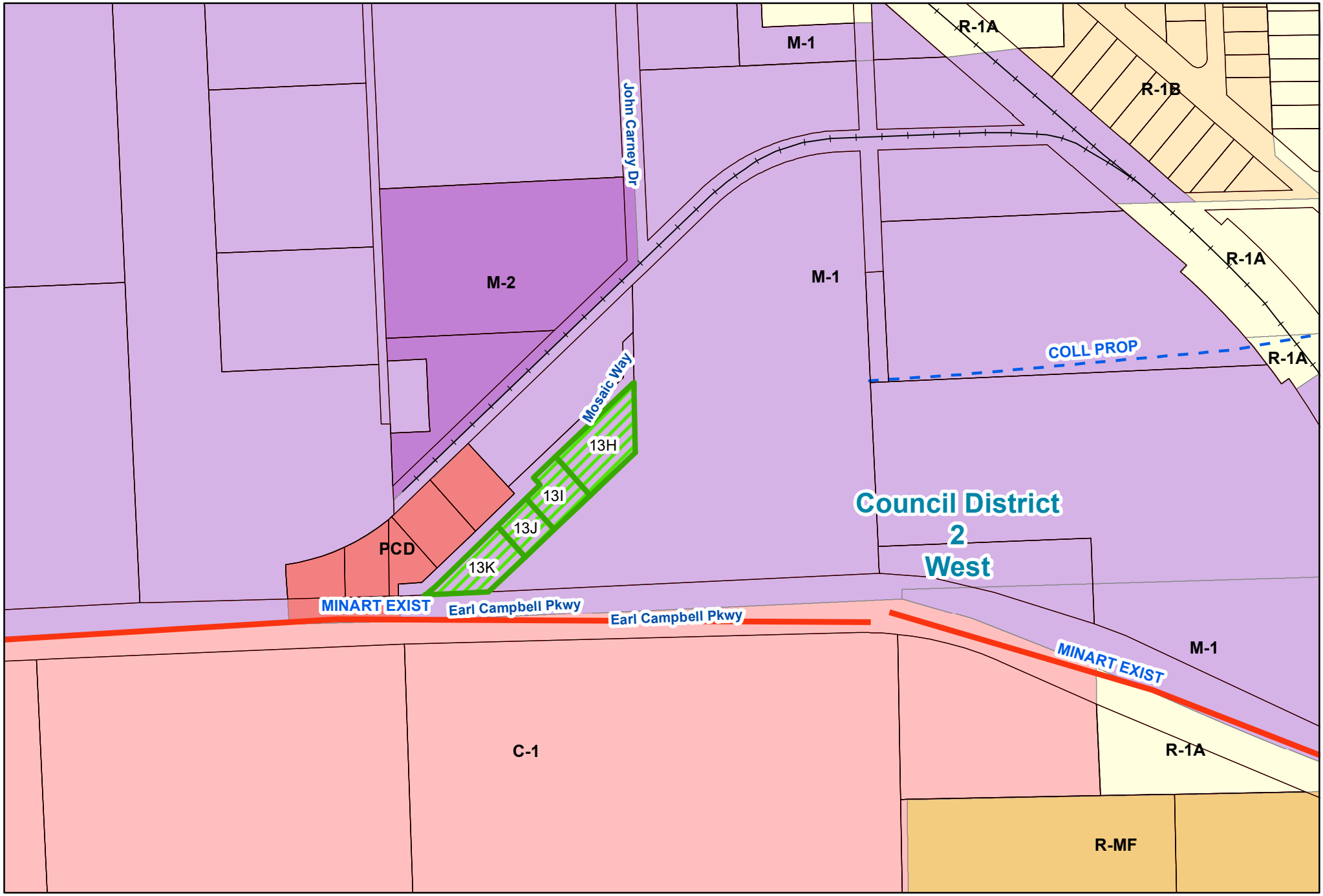
_____
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

_____
CASSANDRA BRAGER, CITY CLERK

_____
DEBORAH G. PULLUM,
CITY ATTORNEY



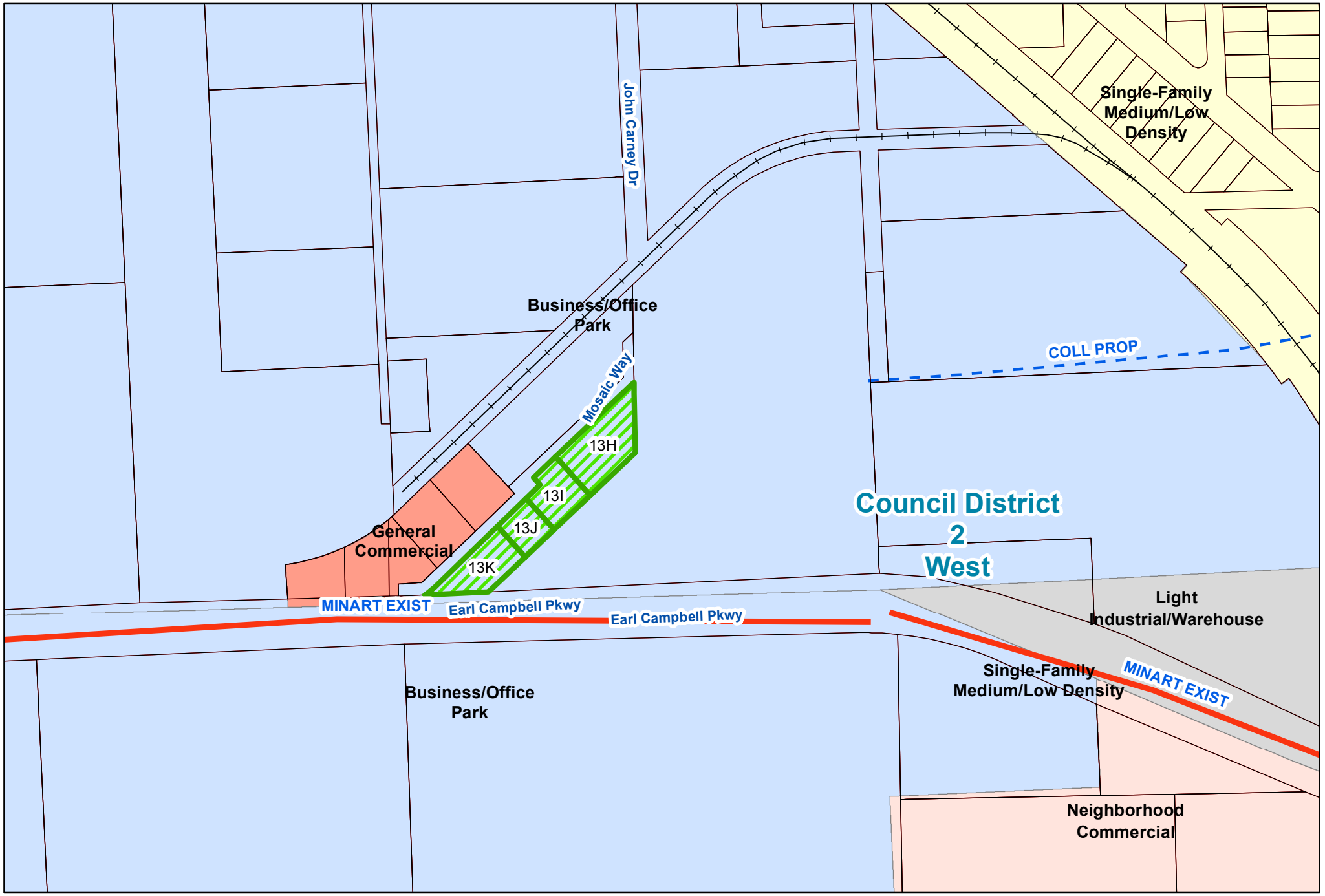
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350 0 350 Feet

ZONING CASE
Zoning Case #: Z23-038
Current Zoning: M-1
Proposed Zoning: C-1
NEDWOL PROPERTIES LLC

Subject Property

N W E S



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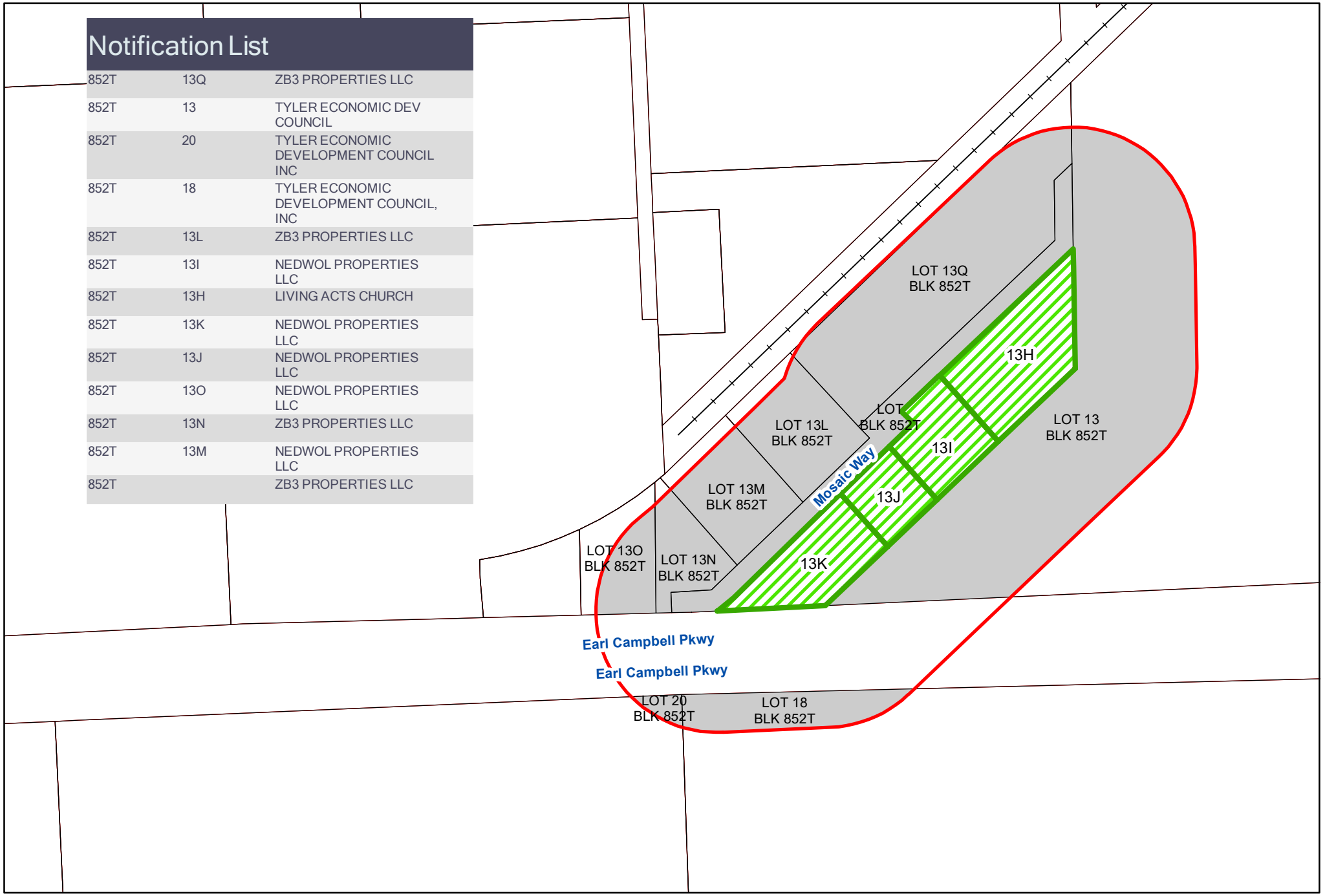
ZONING CASE
Zoning Case #: Z23-038
Current Zoning: M-1
Proposed Zoning: C-1
NEDWOL PROPERTIES LLC

Subject Property

N W E S

Notification List

852T	13Q	ZB3 PROPERTIES LLC
852T	13	TYLER ECONOMIC DEV COUNCIL
852T	20	TYLER ECONOMIC DEVELOPMENT COUNCIL INC
852T	18	TYLER ECONOMIC DEVELOPMENT COUNCIL, INC
852T	13L	ZB3 PROPERTIES LLC
852T	13I	NEDWOL PROPERTIES LLC
852T	13H	LIVING ACTS CHURCH
852T	13K	NEDWOL PROPERTIES LLC
852T	13J	NEDWOL PROPERTIES LLC
852T	13O	NEDWOL PROPERTIES LLC
852T	13N	ZB3 PROPERTIES LLC
852T	13M	NEDWOL PROPERTIES LLC
852T		ZB3 PROPERTIES LLC



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200 0 200 Feet

ZONING CASE
Zoning Case #: Z23-038
Current Zoning: M-1
Proposed Zoning: C-1
NEDWOL PROPERTIES LLC

Subject Property
200' Mailed Notification Area

N W E S

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-2

Date: January 10, 2024

Subject: PD23-023 JLLB HOLDINGS LLC (5038 PALUXY DRIVE)
Request that the City Council consider adoption of an Ordinance approving a zone change from "C-1", Light Commercial District to "PUR", Planned Unit Residential District with Final Site Plan.

Page: Page 1 of

Item Reference:

The applicant is requesting the zone change to develop townhomes on Lot 3A of NCB 1562, one lot containing approximately 3.27 acres of land located south of the southeast intersection of Shiloh Road and Paluxy Drive (5038 Paluxy Drive).

According to the Unified Development Code (UDC), the "PUR", Planned Unit Residential District is primarily for the medium to high density development of unique and innovative forms of detached single-family housing on individually platted lots. A PUR development uses the total space within a development by creating common open spaces, scenic and recreational areas and other spaces that will compensate for the reduction of land area dedicated for residential structures. It is the intent of the PUR to provide for residential developments that utilize private streets, owned and maintained by a Homeowner's Association. The PUR district is not intended as a convenience to circumvent regulations set forth in other residential districts, or as a tool for mass variance, without provisions of common areas. All developments created in a PUR district must be designed and developed in accordance with an approved site development plan and submitted for approval to the Planning Commission and City Council.

According to UDC Section 10-617, the City Council will consider the following approval criteria for zoning changes:

a. The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action;
b. The zoning change is consistent with the Tyler 1st Comprehensive Plan;
c. The zoning change promotes the health, safety, or general welfare of the city and the safe, orderly, and healthful development of the city;
d. The zoning change is compatible with the present zoning and/or conforming uses of nearby property and with the character of the neighborhood; and
e. The property to be rezoned is suitable for uses permitted by the District that would be applied by

the proposed amendment.

In addition to the zoning change criteria above, the City Council will consider the following specific objectives and criteria for approving any type of planned district currently permitted in this code:

a. A variety of housing types, employment opportunities, or commercial services to achieve a balanced community;
b. An orderly and creative arrangement of all land uses with respect to each other and to the entire community;
c. A planned and integrated comprehensive transportation system providing for a separation of pedestrian and vehicular traffic, to include facilities such as roadways, bicycle ways and pedestrian walkways;
d. The provisions of cultural or recreational facilities for all segments of the community;
e. The location of general building envelopes to take maximum advantage of the natural and manmade environment; and
f. The staging of development in a manner which can be accommodated by the timely provision of public utilities, facilities, and services.

According to UDC Section 10-587, the burden of proof or persuasion is on the applicant to show that an application complies with approval criteria.

All adjacent properties to the north are zoned "C-1", Light Commercial District and are developed with a gas station and a laundromat. The adjacent properties to the east and south are zoned "R-MF", Multi-Family Residential District and are developed with multi-family buildings. The adjacent properties to the west are zoned "RPO", Restricted Professional Office District and "R-1A", Single-Family Residential District and are developed with a church.

The Tyler 1st Future Land Use Guide (FLUG) identifies this property as General Commercial. This request would amend the FLUG to Single-Family and Single-Family Attached.

The applicant plans to subdivide the property into 30 lots and develop them with townhomes at a density of eight units per acre. The development would have setbacks of 20' Front, 10' Rear, 0' Side, and 12' Corner unless otherwise denoted on the site plan. All lots will be accessed from the internal private streets. The applicant is also proposing to construct a dog park on the northernmost portion of the property. Staff had initial concerns regarding the placement of the driveway due to TXDOT spacing requirements from an intersection. After speaking with the applicant, staff believes these concerns have been addressed as adequately as possible.

On December 5, 2023, the Planning and Zoning Commission held a public hearing for this request. There was no significant discussion.

As of Friday, January 5, 2024, of the ten notices mailed, no notices were returned in favor or in opposition to the request.

All other departments have reviewed the application and anticipate no impact on services and facilities by the proposed rezoning request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of the zone change from "C-1", Light Commercial District to "PUR", Planned Unit Residential District with Final Site Plan.

ATTACHMENTS:

Ordinance
Location Map
Future Land Use Guide Map
Notification Map

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM "C-1", LIGHT COMMERCIAL DISTRICT TO "PUR", PLANNED UNIT RESIDENTIAL DISTRICT WITH FINAL SITE PLAN ON LOT 3A OF NCB 1562, ONE LOT CONTAINING APPROXIMATELY 3.27 ACRES OF LAND LOCATED SOUTH OF THE SOUTHEAST INTERSECTION OF SHILOH ROAD AND PALUXY DRIVE (5038 PALUXY DRIVE); DIRECTING THE AMENDMENT OF THE ZONING MAP; DIRECTING THE AMENDMENT OF THE FUTURE LAND USE GUIDE MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Tyler, Texas, and the City Council of the City of Tyler, Texas, in compliance with the Charter and the State law with reference to the zoning ordinance of the City of Tyler, Texas, and zoning map, have given requisite notices by publication and otherwise and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council is of the opinion that the zoning change should be made as set forth herein;

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

PART 1: That the following zone change is hereby approved as follows:

I. APPLICATION PD23-023

That the following described property, which has heretofore been zoned "C-1", Light Commercial District, shall hereafter bear the zoning classification of "PUR", Planned Unit Residential District with final site plan, to wit:

> Lot 3A of NCB 1562, one lot containing approximately 3.27 acres of land located south of the southeast intersection of Shiloh Road and Paluxy Drive (5038 Paluxy Drive) and in accordance with the Final Site Narrative in Exhibit "A" attached hereto and incorporated herein.

PART 2: That the City Manager is hereby ordered and directed to cause the zoning map to be amended to reflect the above described zoning and the Future Land Use Guide to reflect Single-Family and Single-Family Attached.

PART 3: Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance and same are deemed severable for this purpose.

PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be January 12th, 2024..

PASSED AND APPROVED this the 10th day of January A.D., 2024.

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

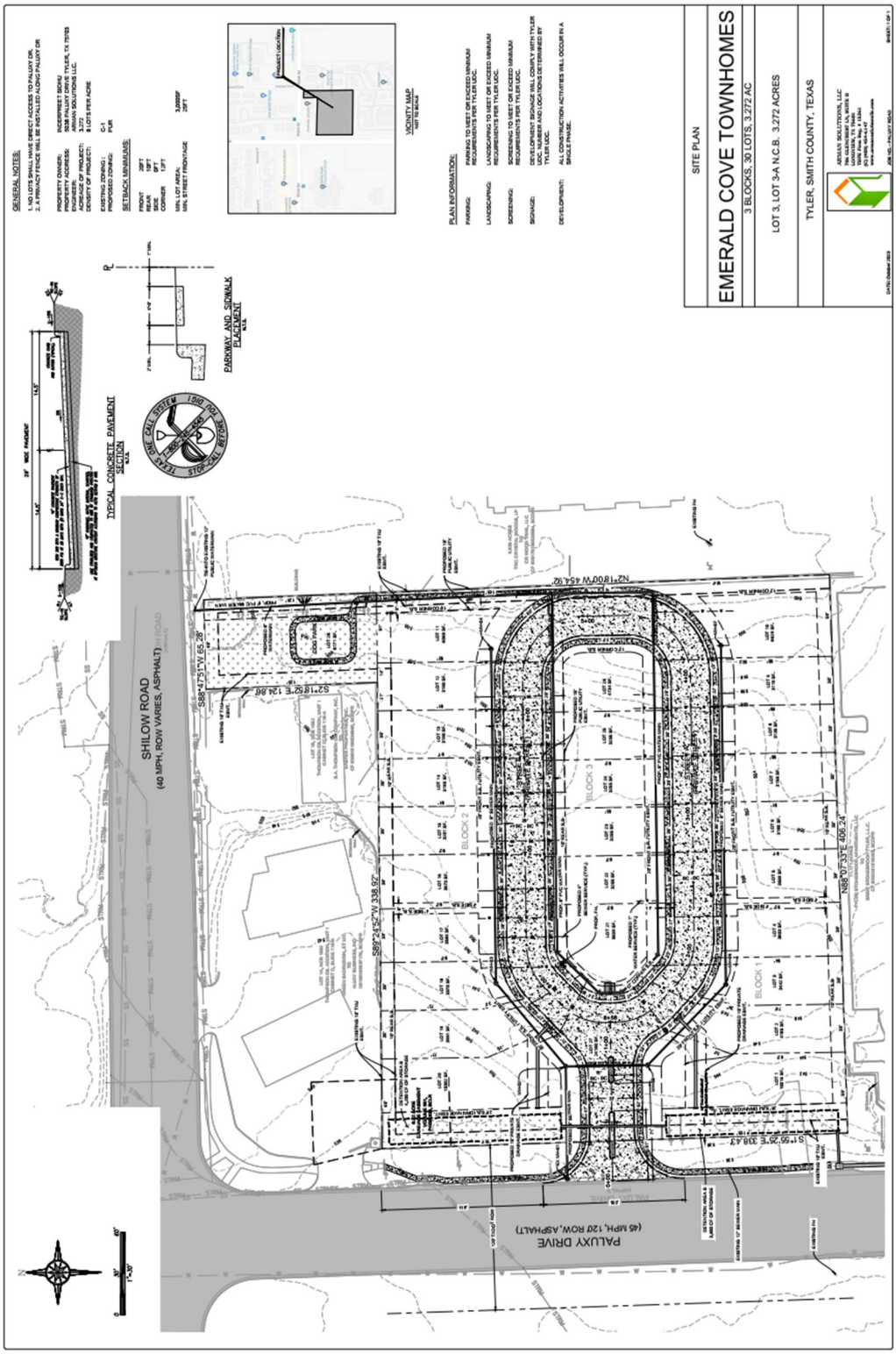
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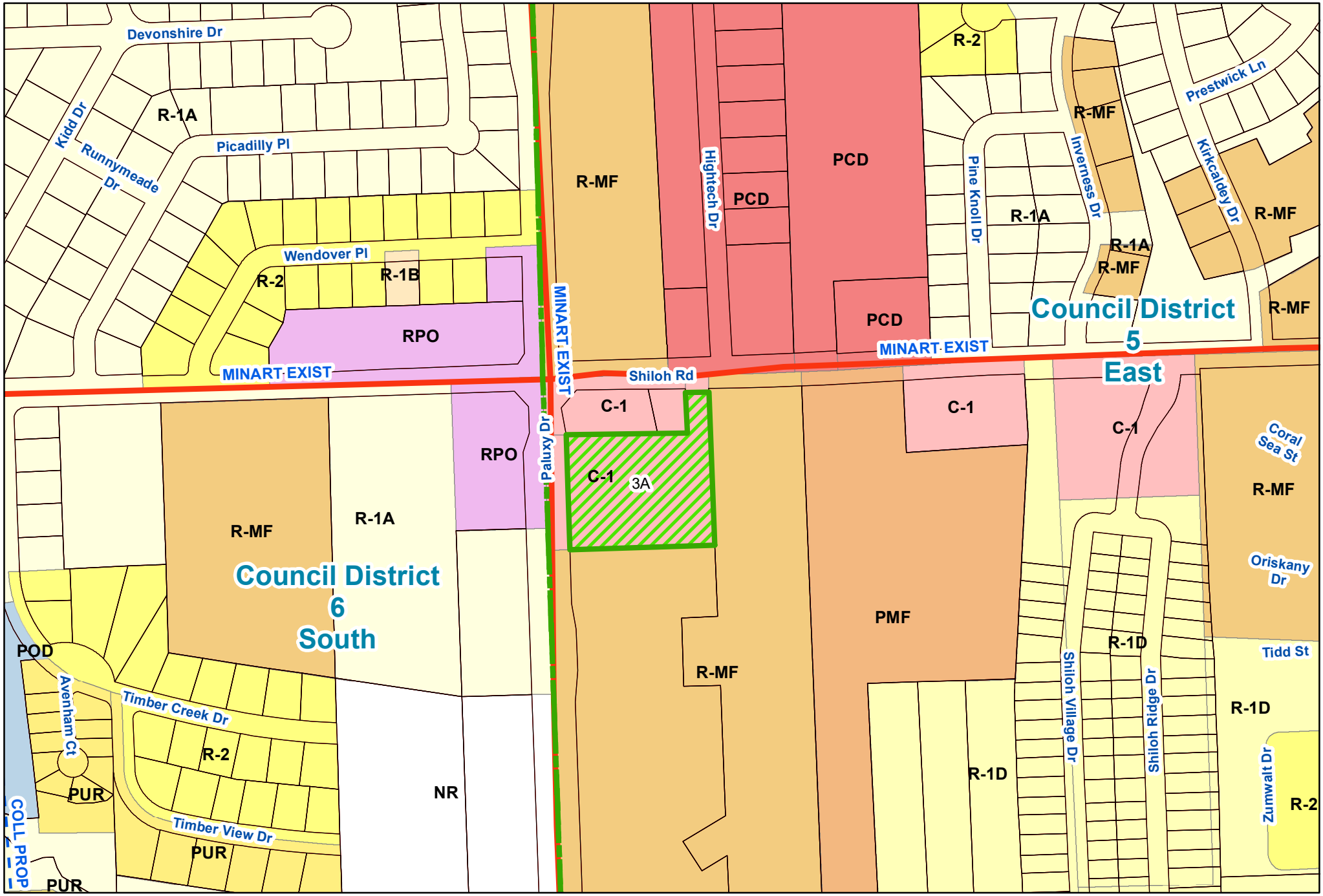
_____
CASSANDRA BRAGER, CITY CLERK

APPROVED:

_____
DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. O-2023-
EXHIBIT "A"
FINAL SITE PLAN





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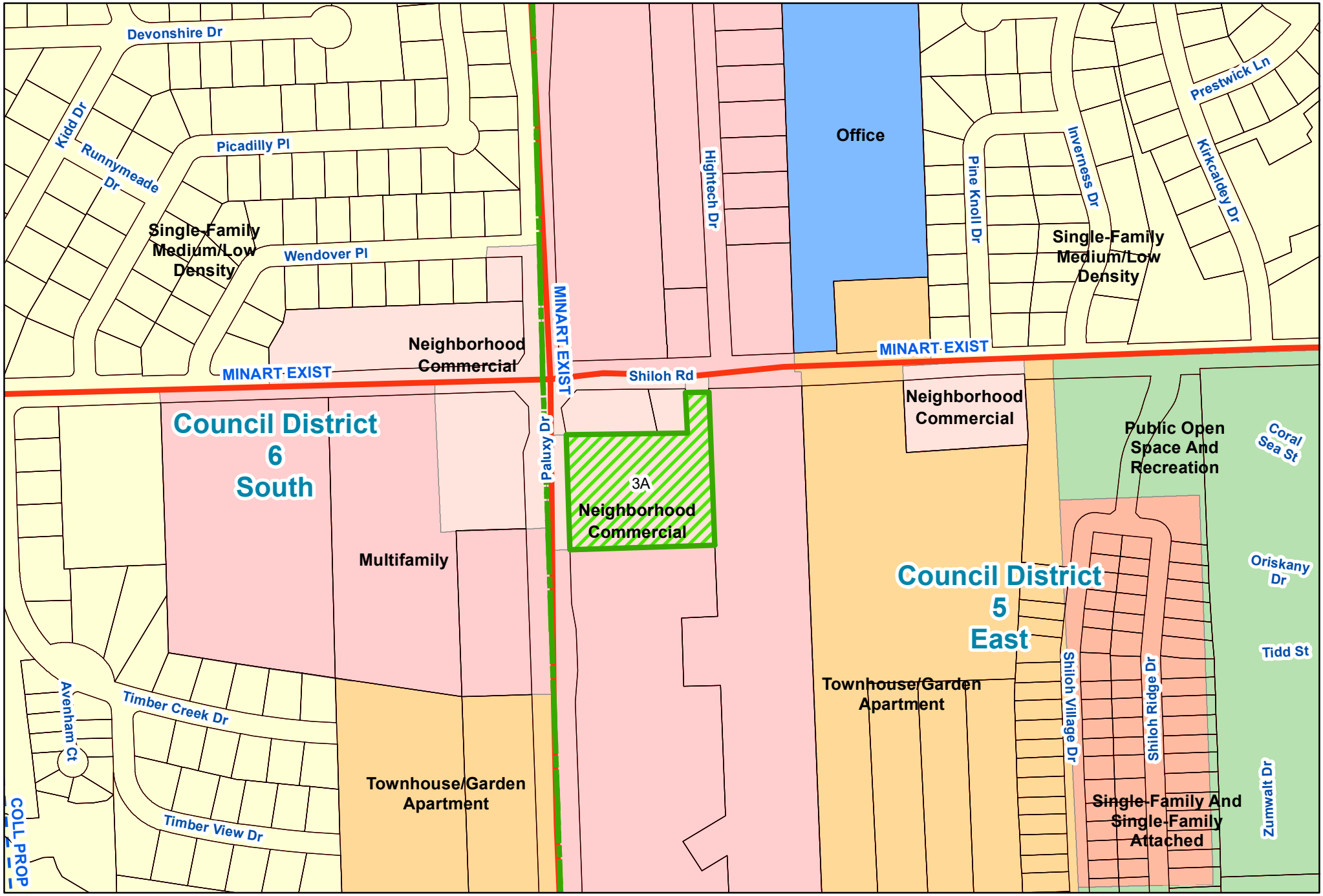
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ZONING CASE
Zoning Case #: PD23-023
Current Zoning: C-1
Proposed Zoning: PUR
JLLB HOLDINGS LLC

Subject Property

Council District Boundary

N W E S



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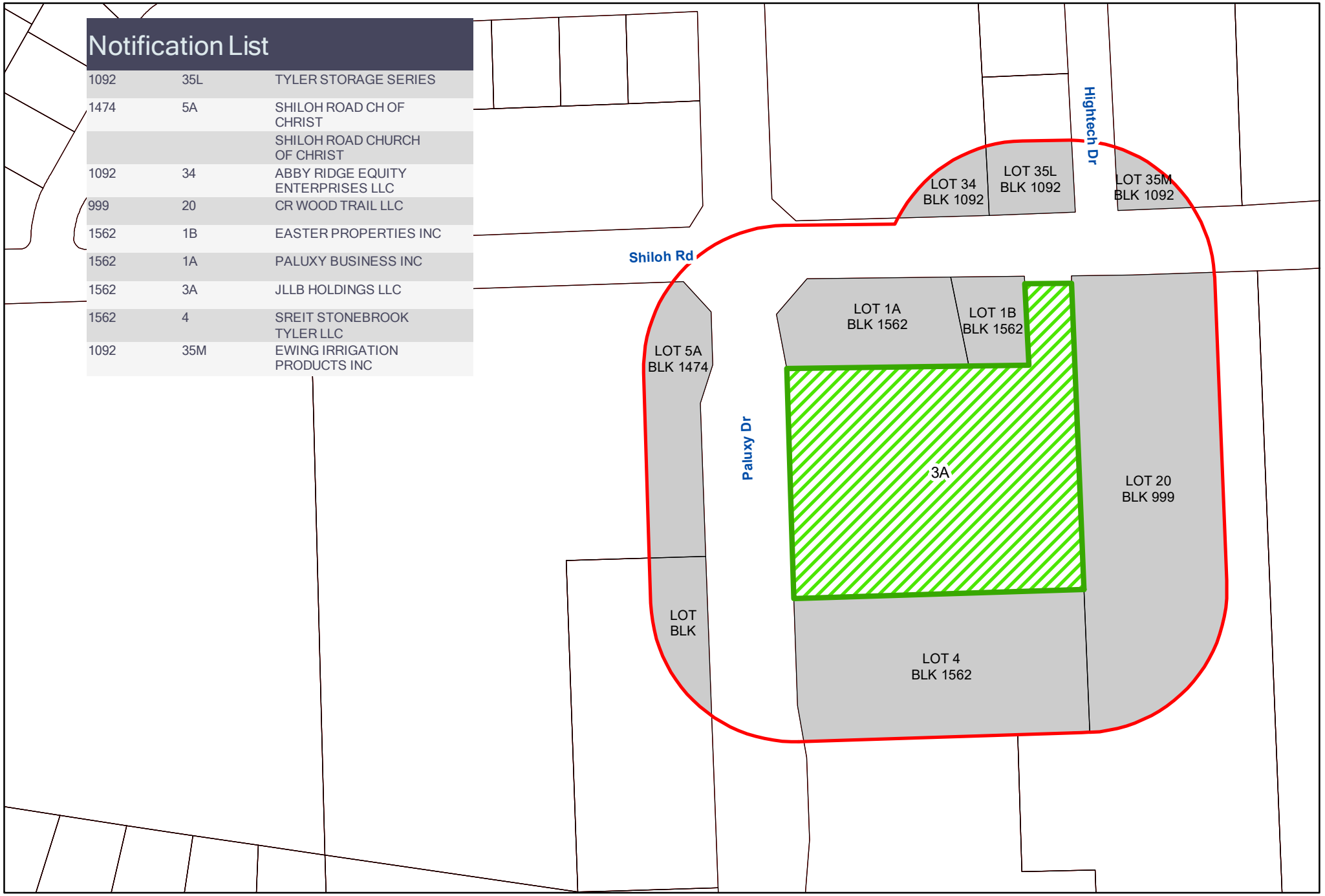
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ZONING CASE
Zoning Case #: PD23-023
Current Zoning: C-1
Proposed Zoning: PUR
JLLB HOLDINGS LLC

Subject Property

Council District Boundary

N W E S



Notification List

1092	35L	TYLER STORAGE SERIES
1474	5A	SHILOH ROAD CH OF CHRIST
		SHILOH ROAD CHURCH OF CHRIST
1092	34	ABBY RIDGE EQUITY ENTERPRISES LLC
999	20	CR WOOD TRAIL LLC
1562	1B	EASTER PROPERTIES INC
1562	1A	PALUXY BUSINESS INC
1562	3A	JLLB HOLDINGS LLC
1562	4	SREIT STONEBROOK TYLER LLC
1092	35M	EWING IRRIGATION PRODUCTS INC

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175 0 175 Feet

ZONING CASE
Zoning Case #: PD23-023
Current Zoning: C-1
Proposed Zoning: PUR
JLLB HOLDINGS LLC

Subject Property
200' Mailed Notification Area

N W E S

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-3

Date: January 10, 2024

Subject: C23-008 PSS JOINT VENTURE (AN UNIMPROVED PORTION OF RIECK ROAD)
Request that the City Council consider adoption of an Ordinance approving the closure of a portion of Rieck Road.

Page: Page 1 of

Item Reference:

The applicant is requesting the closure to replat the right-of-way into adjacent properties. The west side of the right-of-way is adjacent to West Rieck Road. The east side of the right-of-way is adjacent to West Rieck Road. The south side of the right-of-way is adjacent to Lots 8 and 9 of NCB 1544-A. The north side of the right-of-way is adjacent to Lots 2 and 7 of NCB 1544-A.

The subject portion of West Rieck Road was included on the 2012 Master Street Plan as a proposed collector but has since been removed with the adoption of the 2021 Master Street Plan. The applicant will be required to provide a temporary turnaround for the portion of West Rieck Road that currently dead-ends. With the replatting process, there will be a requirement for a permanent turnaround as a cul-de-sac must be provided per UDC Sec. 10-168.

The right-of-way is not shown or listed on the Master Street Plan. The applicant intends to replat the right-of-way into adjacent property.

On December 5, 2023, the Planning and Zoning Commission held a public hearing for this request. Steven Freeman spoke in favor of the request. No one spoke in opposition to the request.

As of Friday, January 5, 2024, of the seven notices mailed, one notice was returned in favor and none in opposition to the requested closure.

All other departments have reviewed the application and anticipate a positive impact on services and facilities by the proposed closure request.

RECOMMENDATION:
The Planning and Zoning Commission by a 7-0 vote recommends approval of the thoroughfare closure, subject to the right-of-way being replatted within six months.

ATTACHMENTS:
Ordinance
Location Map
Notification Map

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CLOSING AN UNIMPROVED PORTION OF RIGHT-OF-WAY OF RIECK ROAD. THE RIGHT-OF-WAY IS BOUNDED BY WEST RIECK ROAD, LOTS 8 AND 9 OF NCB 1544-A, AND LOTS 2 AND 7 OF NCB 1544-A; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH CLOSURE; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Texas Transportation Code Section 311.007 provides that a home-rule municipality may vacate, abandon or close a street or alley; and

WHEREAS, Tyler City Code Chapter 10, Article V., Division F. sets forth a process for right-of-way and thoroughfare closures; and

WHEREAS, the applicant is requesting the closure to replat rights-of-way into adjacent property;

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

PART 1: That the following thoroughfare closure is hereby approved as follows:

I. APPLICATION C23-008

That the public right-of-way described below, and the same is hereby abandoned, vacated and closed insofar as the right, or title of the public is concerned:

> Unimproved portion of right-of-way of Rieck Road. The rights-of-way are bounded by West Rieck Road, Lots 8 and 9 of NCB 1544-A, and Lots 2 and 7 of NCB 1544-A. The right-of-way to be closed is further shown in Exhibit “A”, which is attached hereto and incorporated herein.

PART 2: That closure is contingent upon and will not become effective until and unless the applicant replats the property within six (6) months.

PART 3: That said public right-of-way is not needed for public purposes and it is in the public interest of the City to abandon said described public right-of-way, other than the terms and conditions set out herein.

PART 4: That the abandonment provided for herein shall extend only to the public right, title and overlay with ingress/egress, public utility easements and to the tracts of land described in this ordinance, and shall be construed only to that interest that the governing body of the City of Tyler may legally and lawfully abandon.

PART 5: Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance and same are deemed severable for this purpose.

PART 6: That this ordinance shall be effective on and after its date of passage and approval by the City Council.

PASSED AND APPROVED this the 10th day of January A.D., 2024.

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

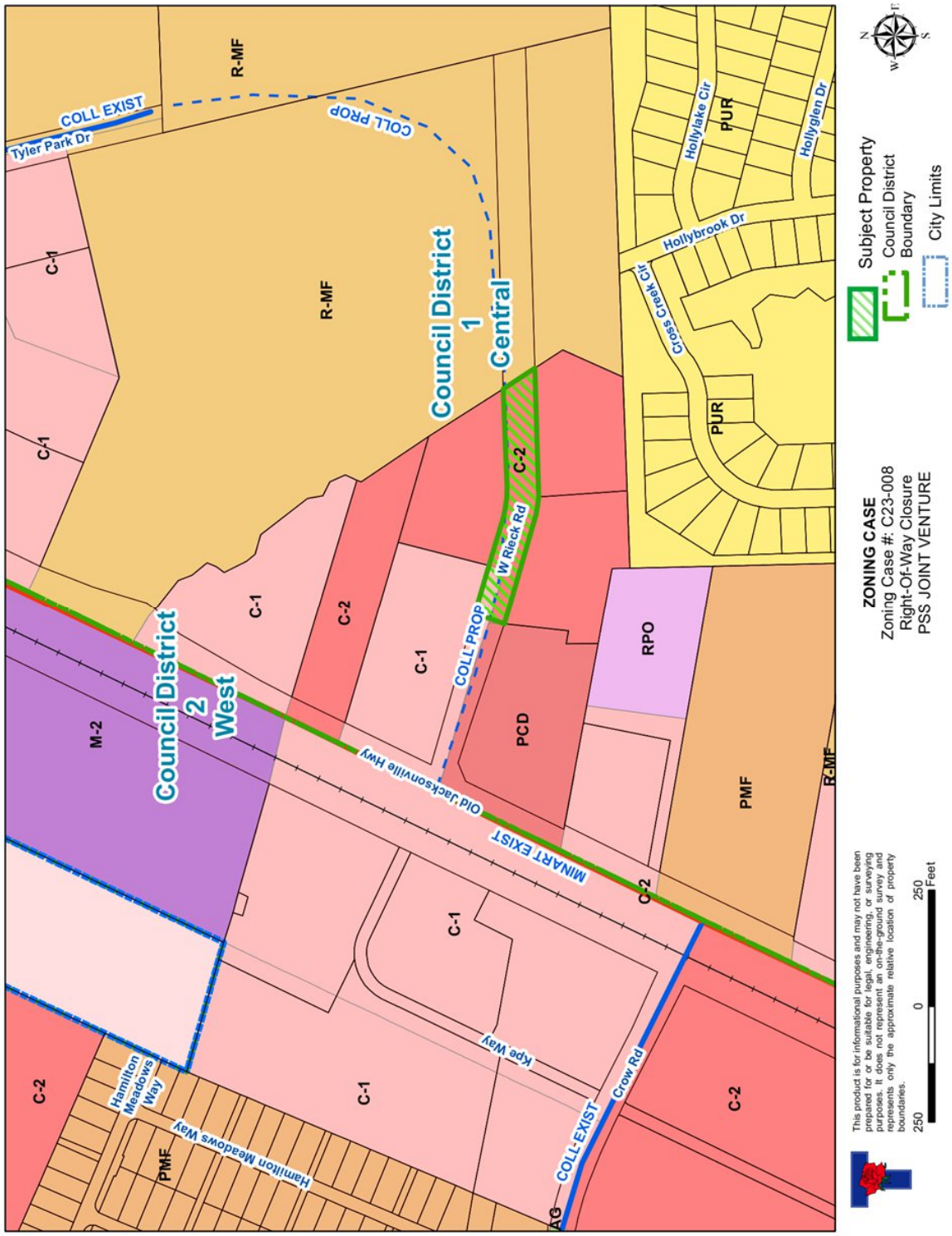
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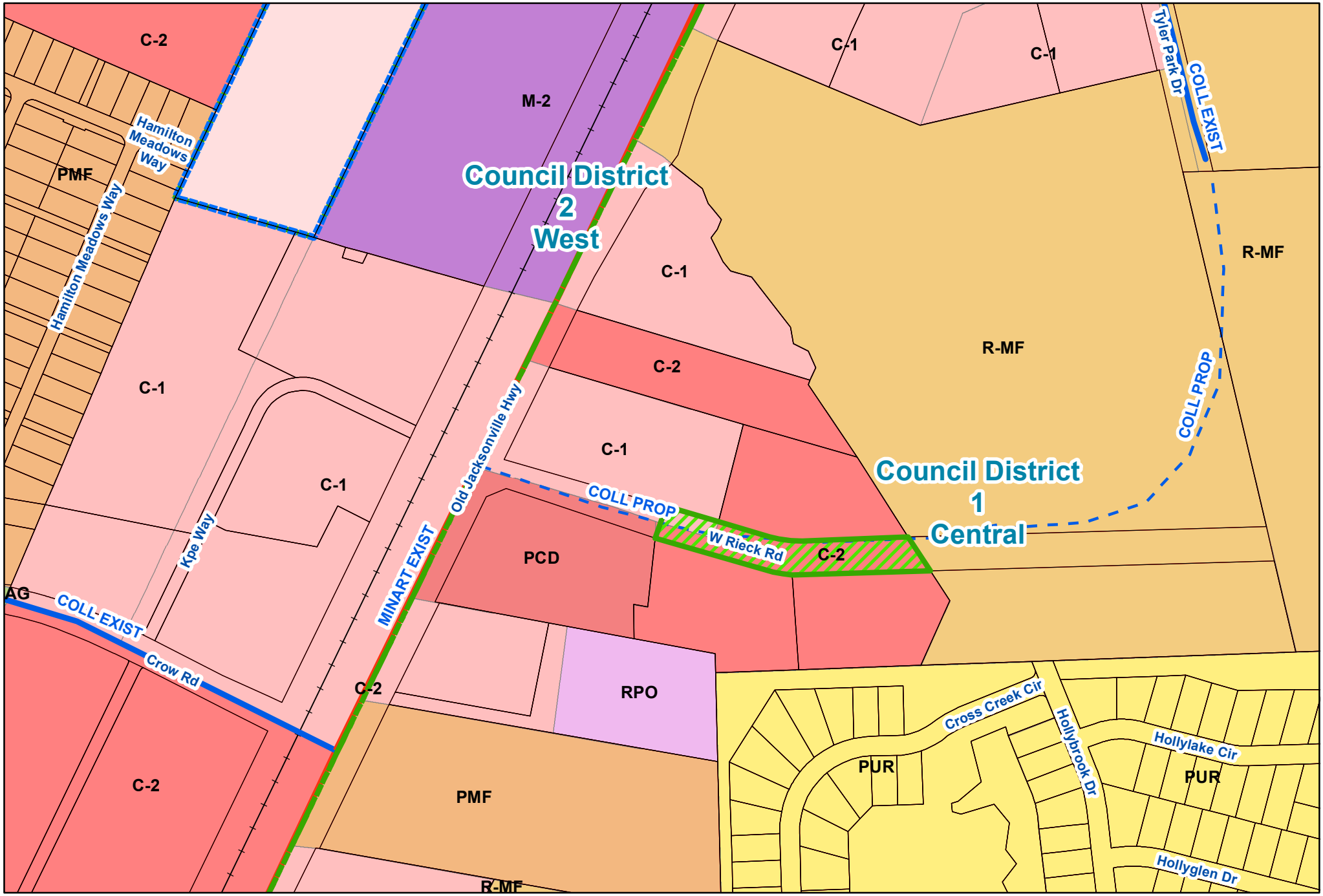
APPROVED:

_____
CASSANDRA BRAGER, CITY CLERK

_____
DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. O-2024-
EXHIBIT "A"
LOCATION MAP





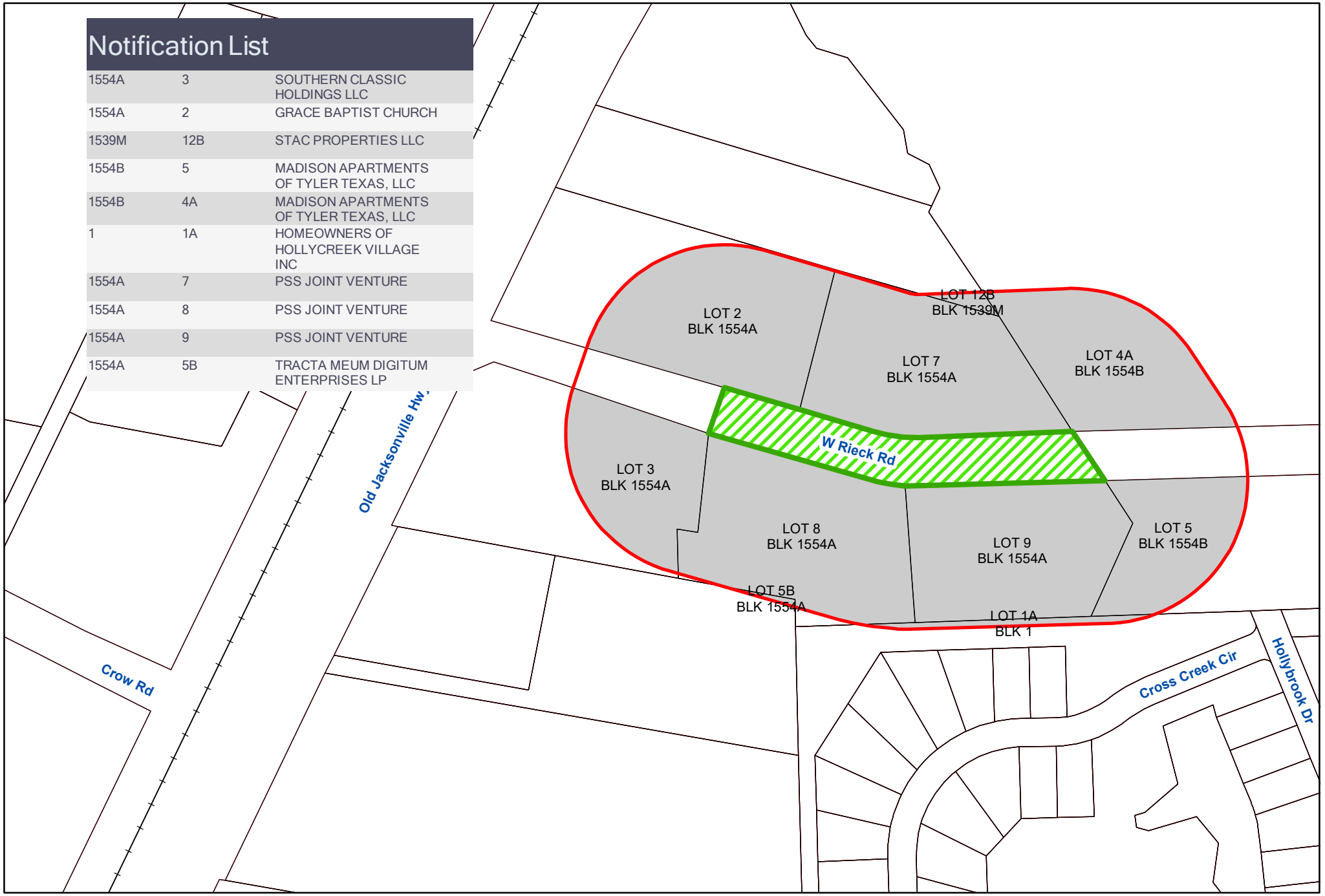
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250 0 250 Feet

ZONING CASE
Zoning Case #: C23-008
Right-Of-Way Closure
PSS JOINT VENTURE

Subject Property
Council District Boundary
City Limits

N W E S



Notification List

1554A	3	SOUTHERN CLASSIC HOLDINGS LLC
1554A	2	GRACE BAPTIST CHURCH
1539M	12B	STAC PROPERTIES LLC
1554B	5	MADISON APARTMENTS OF TYLER TEXAS, LLC
1554B	4A	MADISON APARTMENTS OF TYLER TEXAS, LLC
1	1A	HOMEOWNERS OF HOLLYCREEK VILLAGE INC
1554A	7	PSS JOINT VENTURE
1554A	8	PSS JOINT VENTURE
1554A	9	PSS JOINT VENTURE
1554A	5B	TRACTA MEUM DIGITUM ENTERPRISES LP

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175 0 175 Feet

ZONING CASE
Zoning Case #: C23-008
Right-Of-Way Closure
PSS JOINT VENTURE

Subject Property

200' Mailed Notification Area

N W E S

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-4

Date: January 10, 2024

Subject: C23-009 ROUSE JESSE ROBERT JR (AN UNIMPROVED PORTION OF EDNA STREET AND REEDER LANE)
Request that the City Council consider adoption of an Ordinance approving the closure of a portion of Edna Street and Reeder Lane.

Page: Page 1 of

Item Reference:

The applicant is requesting the closure to replat the right-of-way into adjacent properties. The west side of the right-of-way is adjacent to Lots 32, 33, and 34 of ABST Crossland Hills. The east side of the right-of-way is adjacent to Old Troup Highway. The south side of the right-of-way is adjacent to Lots 23-31 of ABST Crossland Hills and Edna Street. The north side of the right-of-way is adjacent to Tract 47.2 NCB 1536, Lots 35-39, 40, and 41 of ABST Crossland Hills.

The applicant is requesting the closure to replat the right-of-way into adjacent properties as a part of a plan for future development. The right-of-way is not shown or listed on the Master Street Plan. The applicant will be required to provide a temporary turnaround for the portion of Edna Street that currently dead-ends. With the replatting process, there will be a requirement for a permanent turnaround as a cul-de-sac must be provided per Sec. 10-168 of the UDC.

The right-of-way is not shown or listed on the Master Street Plan. The applicant intends to replat the right-of-way into adjacent property.

On December 5, 2023, the Planning and Zoning Commission held a public hearing for this request. No one spoke in favor or in opposition to the request.

As of Friday, January 5, 2024, of the 17 notices mailed, one notice was returned in favor and one notice was returned in opposition to the requested closure.

All other departments have reviewed the application and anticipate a positive impact on services and facilities by the proposed closure request.

RECOMMENDATION:
The Planning and Zoning Commission by a 7-0 vote recommends approval of the thoroughfare closure,

subject to the right-of-way being replatted within six months.

ATTACHMENTS:
Ordinance
Location Map
Protest Map

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CLOSING UNIMPROVED PORTIONS OF RIGHTS-OF-WAY OF EDNA STREET AND REEDER LANE. THE RIGHTS-OF-WAY ARE BOUNDED BY LOTS 32, 33, AND 34 OF ABST CROSSLAND HILLS, OLD TROUP HIGHWAY, LOTS 23-31 OF ABST CROSSLAND HILLS AND EDNA STREET AND TRACT 47.2 NCB 1536, LOTS 35-39, 40, AND 41 OF ABST CROSSLAND HILLS; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH CLOSURE; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Texas Transportation Code Section 311.007 provides that a home-rule municipality may vacate, abandon or close a street or alley; and

WHEREAS, Tyler City Code Chapter 10, Article V., Division F. sets forth a process for right-of-way and thoroughfare closures; and

WHEREAS, the applicant is requesting the closure to replat rights-of-way into adjacent property;

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

PART 1: That the following thoroughfare closure is hereby approved as follows:

I. APPLICATION C23-009

That the public right-of-way described below, and the same is hereby abandoned, vacated and closed insofar as the right, or title of the public is concerned:

> Unimproved portions of right-of-way of Commercial Drive and Republic Drive. The rights-of-way are bounded by Lots 32, 33, and 34 of ABST Crossland Hills, Old Troup Highway, Lots 23-31 of ABST Crossland Hills and Edna Street, and Tract 47.2 NCB 1536, Lots 35-39, 40, and 41 of ABST Crossland Hills. The right-of-way to be closed is further shown in Exhibit “A”, which is attached hereto and incorporated herein.

PART 2: That closure is contingent upon and will not become effective until and unless the applicant replats the property within six (6) months.

PART 3: That said public right-of-way is not needed for public purposes and it is in the public interest of the City to abandon said described public right-of-way, other than the terms and conditions set out herein.

PART 4: That the abandonment provided for herein shall extend only to the public right, title and overlay with ingress/egress, public utility easements and to the tracts of land described in this ordinance, and shall be construed only to that interest that the governing body of the City of Tyler may legally and lawfully abandon.

PART 5: Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance and same are deemed severable for this purpose.

PART 6: That this ordinance shall be effective on and after its date of passage and approval by the City Council.

PASSED AND APPROVED this the 10th day of January A.D., 2024.

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

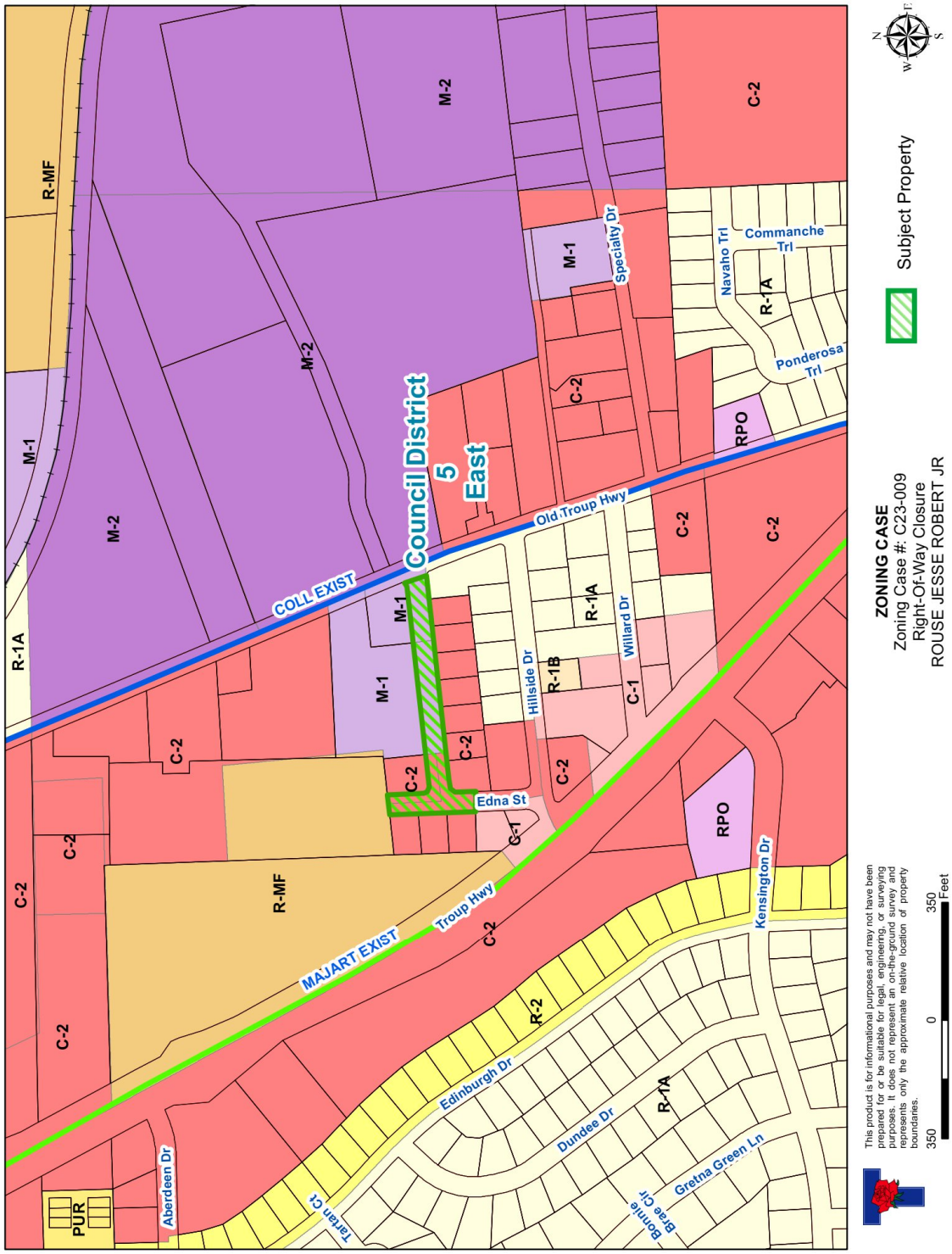
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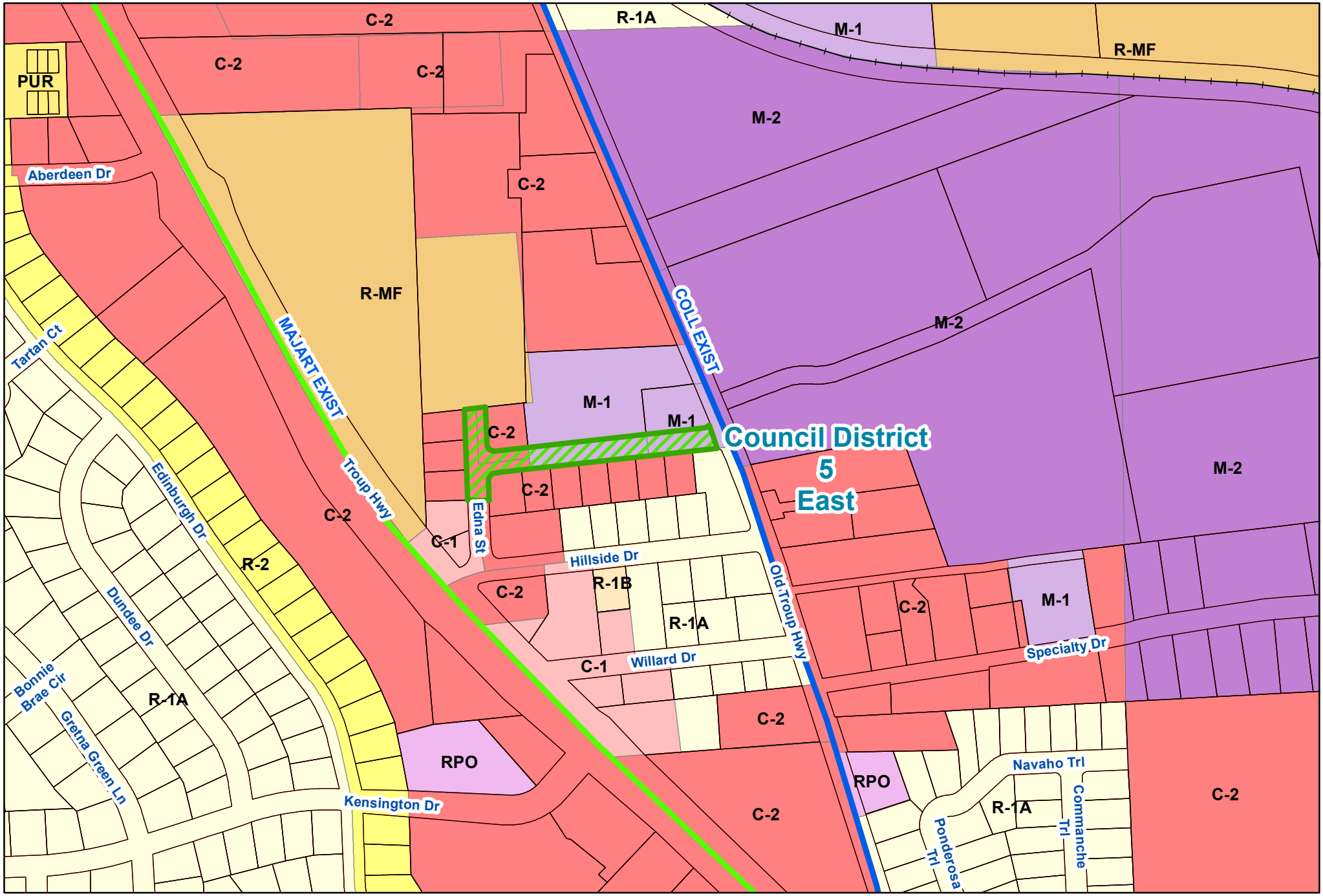
APPROVED:

_____
CASSANDRA BRAGER, CITY CLERK

_____
DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. O-2024-
EXHIBIT "A"
LOCATION MAP





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350 0 350 Feet

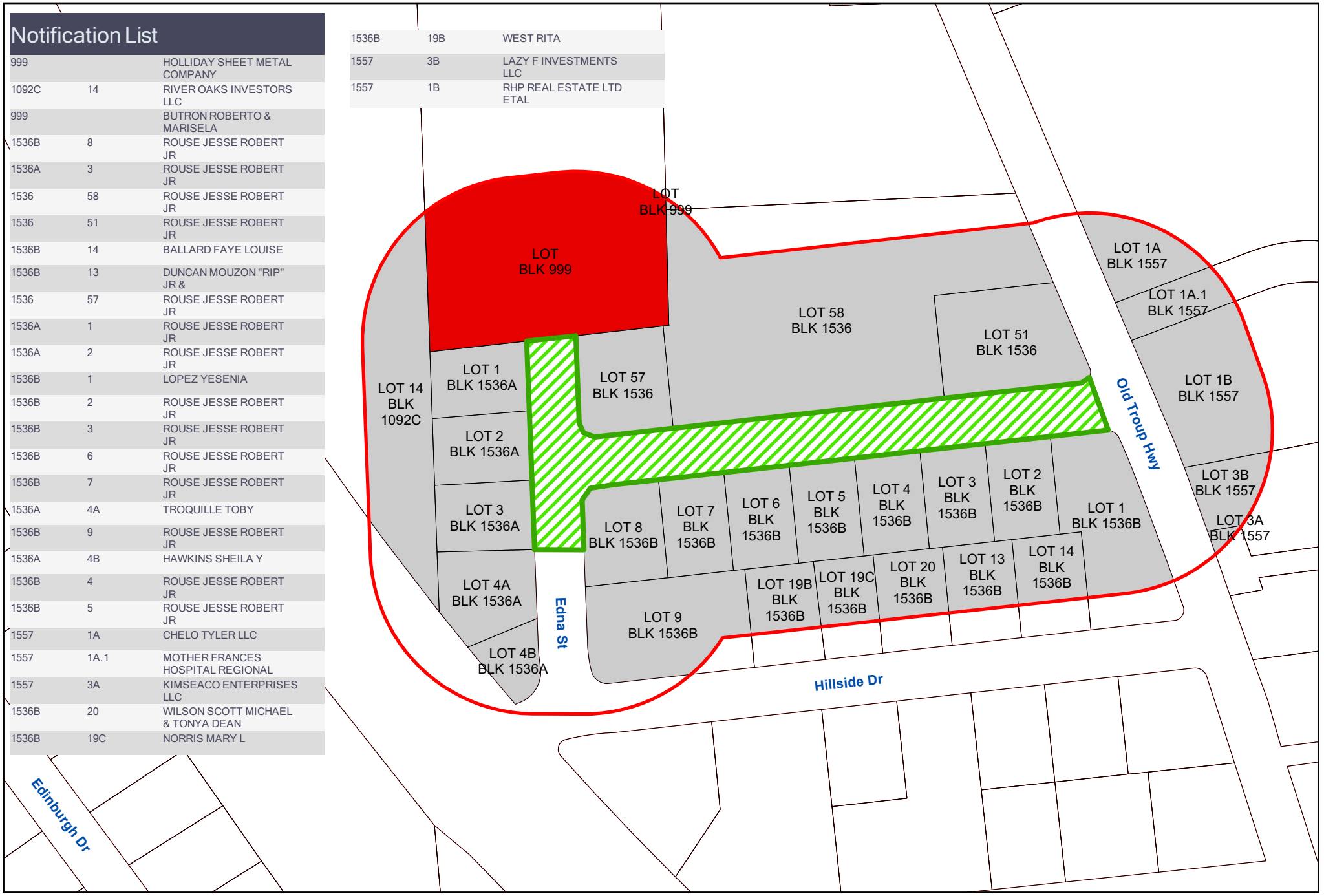
ZONING CASE
Zoning Case #: C23-009
Right-Of-Way Closure
ROUSE JESSE ROBERT JR

Subject Property

N W E S

Notification List

999		HOLLIDAY SHEET METAL COMPANY
1092C	14	RIVER OAKS INVESTORS LLC
999		BUTRON ROBERTO & MARISELA
1536B	8	ROUSE JESSE ROBERT JR
1536A	3	ROUSE JESSE ROBERT JR
1536	58	ROUSE JESSE ROBERT JR
1536	51	ROUSE JESSE ROBERT JR
1536B	14	BALLARD FAYE LOUISE
1536B	13	DUNCAN MOUZON "RIP" JR &
1536	57	ROUSE JESSE ROBERT JR
1536A	1	ROUSE JESSE ROBERT JR
1536A	2	ROUSE JESSE ROBERT JR
1536B	1	LOPEZ YESENIA
1536B	2	ROUSE JESSE ROBERT JR
1536B	3	ROUSE JESSE ROBERT JR
1536B	6	ROUSE JESSE ROBERT JR
1536B	7	ROUSE JESSE ROBERT JR
1536A	4A	TROQUILLE TOBY
1536B	9	ROUSE JESSE ROBERT JR
1536A	4B	HAWKINS SHEILA Y
1536B	4	ROUSE JESSE ROBERT JR
1536B	5	ROUSE JESSE ROBERT JR
1557	1A	CHELO TYLER LLC
1557	1A.1	MOTHER FRANCES HOSPITAL REGIONAL
1557	3A	KIMSEACO ENTERPRISES LLC
1536B	20	WILSON SCOTT MICHAEL & TONYA DEAN
1536B	19C	NORRIS MARY L
1536B	19B	WEST RITA
1557	3B	LAZY F INVESTMENTS LLC
1557	1B	RHP REAL ESTATE LTD ETAL



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150 0 150 Feet

ZONING CASE
Zoning Case #: C23-009
Right-Of-Way Closure
ROUSE JESSE ROBERT JR

Subject Property
200' Mailed Notification Area

N W E S

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-5

Date: January 10, 2024

Subject: Z23-036 DENNIS JOSEPH A & ELIZABETH ANNE (512 SOUTH FLEISHEL AVENUE)
Request that the City Council consider adoption of an Ordinance approving a zone change from "RPO", Restricted Professional Office District to "R-2", Two-Family Residential District.

Page: Page 1 of

Item Reference:

The applicant is requesting the zone change to build a duplex on Lot 8A of NCB 200, one lot containing approximately 0.18 acres of land located at the northeast intersection of South Fleishel Avenue and East Lawrence Street (512 South Fleishel Avenue).

According to the Unified Development Code (UDC), the R-2 district is primarily intended to accommodate single-family detached and two-family (duplex) housing on individual lots. In addition, the district allows churches, schools, and accessory buildings and uses. The maximum building height is 42 feet. Setback requirements are 25 feet in the front, 25 feet in the rear, 6 feet on the interior side and 12 feet on the corner side. Minimum lot size is 7,500 square feet.

According to UDC Section 10-617, the City Council will consider the following approval criteria for zoning changes:

a. The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action;
b. The zoning change is consistent with the Tyler 1st Comprehensive Plan;
c. The zoning change promotes the health, safety, or general welfare of the city and the safe, orderly, and healthful development of the city;
d. The zoning change is compatible with the present zoning and/or conforming uses of nearby property and with the character of the neighborhood; and
e. The property to be rezoned is suitable for uses permitted by the District that would be applied by the proposed amendment.

According to UDC Section 10-587, the burden of proof or persuasion is on the applicant to show that an application complies with approval criteria.

The adjacent property to the north is zoned "R-1B", Single-Family Residential District and is developed with a single-family home. The adjacent property to the east is zoned "R-2", Two-Family Residential District and is developed with a single-family home. The adjacent property to the south is zoned "POD", Planned Office District and is the location of The Lab, a medical facility. The adjacent property to the west is zoned "INT", Institutional District and is the location of a parking lot for the Christus Trinity Mother Frances campus.

The request is consistent with the adopted Tyler 1st Future Land Use Guide which identifies this property as Mixed-Use Center.

This property is located within the Midtown District. The proposed development fulfills the goal of providing new housing within the district. In 2006, the property was rezoned from "R-2", Two-Family Residential District to "RPO", Restricted Professional Office District for the development of a medical office building. The current proposal is for a duplex, which was an allowable use under the previous zoning.

On December 5, 2023, the Planning and Zoning Commission held a public hearing for this request. There was no significant discussion.

As of Friday, January 5, 2024, of the 23 notices mailed, two notices were returned in favor and none in opposition to the request.

All other departments have reviewed the application and anticipate no significant impact on services or facilities by the proposed rezoning request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of the zone change from "RPO", Restricted Professional Office District to "R-2", Two-Family Residential District.

ATTACHMENTS:

Ordinance
Location Map
Future Land Use Guide Map
Notification Map

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM "RPO", RESTRICTED PROFESSIONAL OFFICE DISTRICT TO "R-2", TWO-FAMILY RESIDENTIAL DISTRICT ON LOT 8A OF NCB 200, ONE LOT CONTAINING APPROXIMATELY 0.18 ACRES OF LAND LOCATED AT THE NORTHEAST INTERSECTION OF SOUTH FLEISHEL AVENUE AND EAST LAWRENCE STREET (512 SOUTH FLEISHEL AVENUE); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Tyler, Texas, and the City Council of the City of Tyler, Texas, in compliance with the Charter and the State law with reference to the zoning ordinance of the City of Tyler, Texas, and zoning map, have given requisite notices by publication and otherwise and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council is of the opinion that the zoning change should be made as set forth herein;

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

PART 1: That the following zone change is hereby approved as follows:

I. APPLICATION Z23-036

That the following described property, which has heretofore been zoned "RPO", Restricted Professional Office District, shall hereafter bear the zoning classification of "R-2", Two-Family Residential District, to wit:

> Lot 8A of NCB 200, one lot containing approximately 0.18 acres of land located at the northeast intersection of South Fleishel Avenue and East Lawrence Street (512 South Fleishel Avenue).

PART 2: That the City Manager is hereby ordered and directed to cause the zoning map to be amended to reflect the above described zoning.

PART 3: Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause, or phrase of this ordinance and same are deemed severable for this purpose.

PART 4: That this ordinance shall be effective on and after its date of passage and approval by the City Council.

PASSED AND APPROVED this the 10th day of January A.D., 2024.

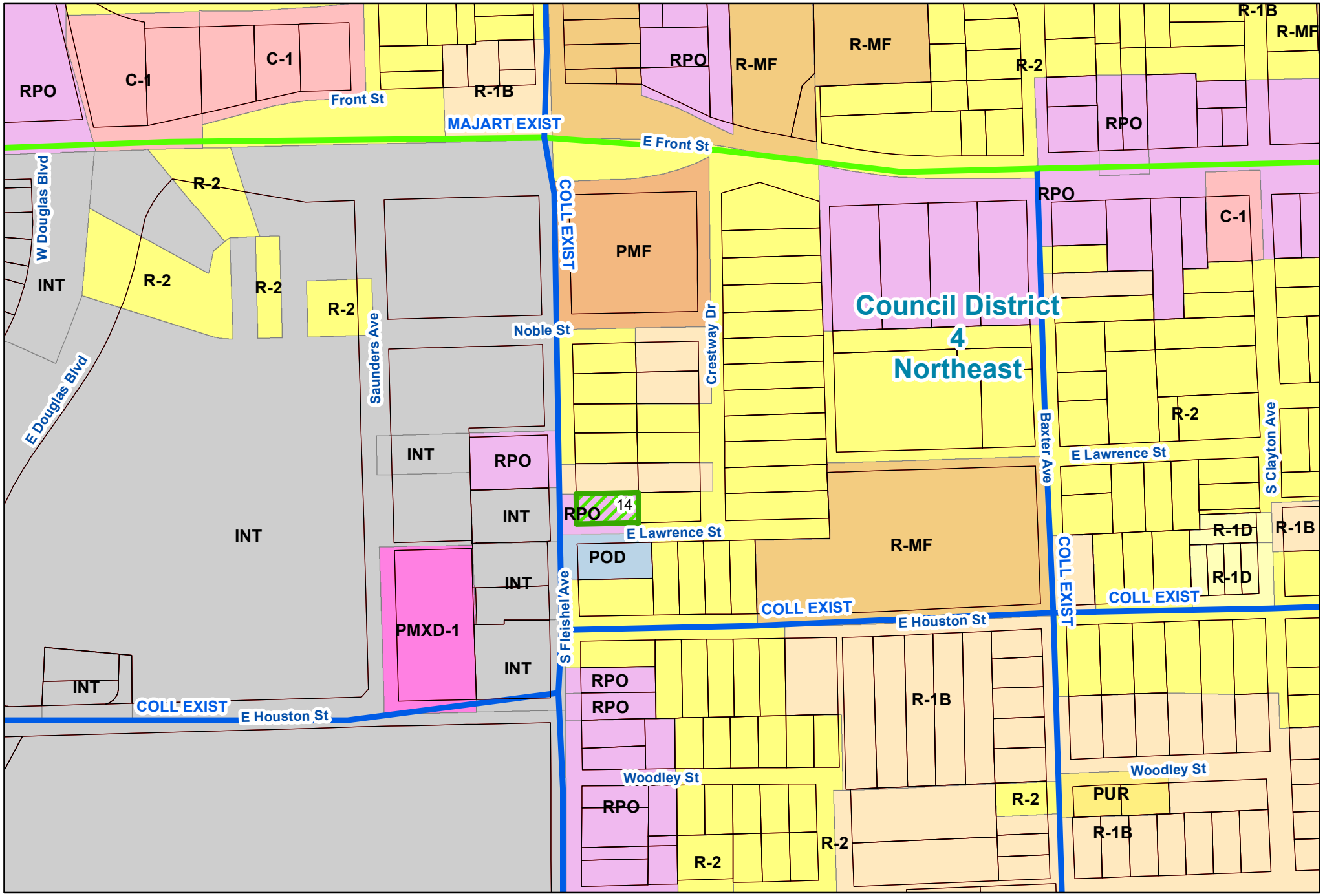
_____
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

_____
CASSANDRA BRAGER, CITY CLERK

_____
DEBORAH G. PULLUM,
CITY ATTORNEY



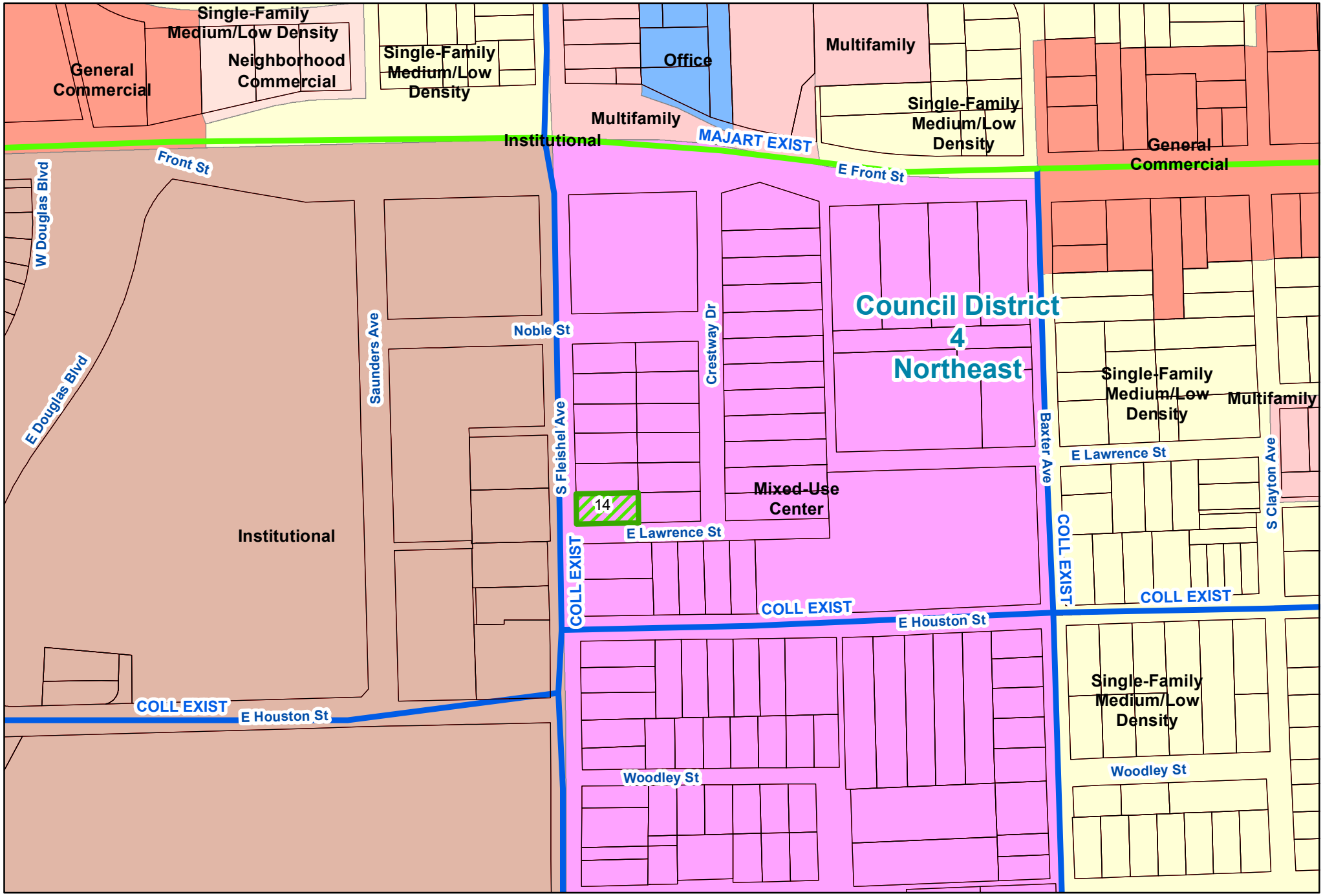
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

250 0 250 Feet

ZONING CASE
Zoning Case #: Z23-036
Current Zoning: RPO
Proposed Zoning: R-2
512 SOUTH FLEISHEL AVENUE

Subject Property

N W E S



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250 0 250 Feet

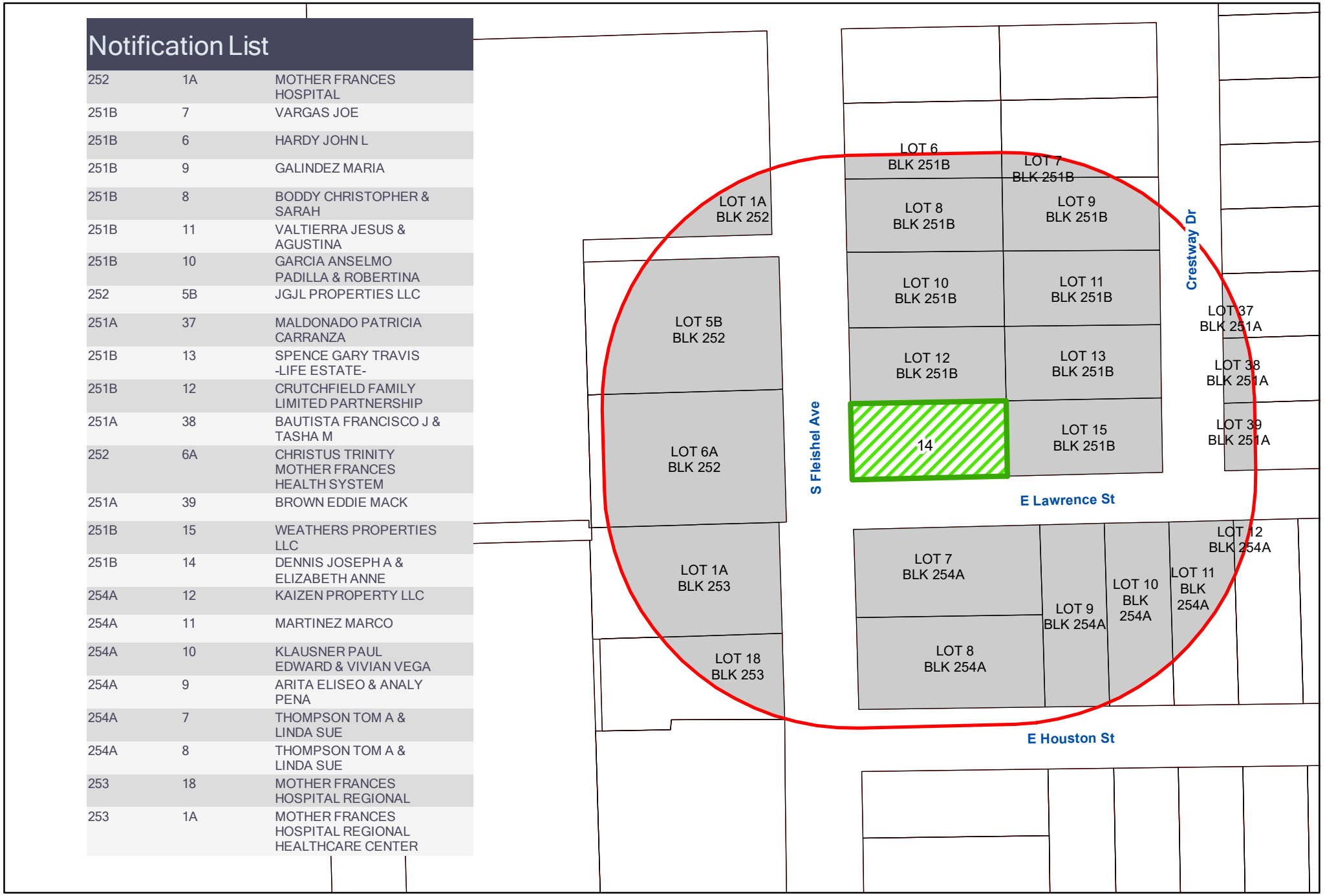
ZONING CASE
Zoning Case #: Z23-036
Current Zoning: RPO
Proposed Zoning: R-2
512 SOUTH FLEISHEL AVENUE

Subject Property

N W E S

Notification List

252	1A	MOTHER FRANCES HOSPITAL
251B	7	VARGAS JOE
251B	6	HARDY JOHN L
251B	9	GALINDEZ MARIA
251B	8	BODDY CHRISTOPHER & SARAH
251B	11	VALTIERRA JESUS & AGUSTINA
251B	10	GARCIA ANSELMO PADILLA & ROBERTINA
252	5B	JGJL PROPERTIES LLC
251A	37	MALDONADO PATRICIA CARRANZA
251B	13	SPENCE GARY TRAVIS -LIFE ESTATE-
251B	12	CRUTCHFIELD FAMILY LIMITED PARTNERSHIP
251A	38	BAUTISTA FRANCISCO J & TASHA M
252	6A	CHRISTUS TRINITY MOTHER FRANCES HEALTH SYSTEM
251A	39	BROWN EDDIE MACK
251B	15	WEATHERS PROPERTIES LLC
251B	14	DENNIS JOSEPH A & ELIZABETH ANNE
254A	12	KAIZEN PROPERTY LLC
254A	11	MARTINEZ MARCO
254A	10	KLAUSNER PAUL EDWARD & VIVIAN VEGA
254A	9	ARITA ELISEO & ANALY PENA
254A	7	THOMPSON TOM A & LINDA SUE
254A	8	THOMPSON TOM A & LINDA SUE
253	18	MOTHER FRANCES HOSPITAL REGIONAL
253	1A	MOTHER FRANCES HOSPITAL REGIONAL HEALTHCARE CENTER



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100 0 100 Feet

ZONING CASE
Zoning Case #: Z23-036
Current Zoning: RPO
Proposed Zoning: R-2
512 SOUTH FLEISHEL AVENUE

Subject Property
200' Mailed Notification Area

N W E S

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-6

Date: January 10, 2024

Subject: Z23-037 ROBLES JOSE EMILIANO & ANA BERTHA (1709 OLD OMEN ROAD)
Request that the City Council consider adoption of an Ordinance approving a zone change from "POD", Planned Office District to "R-1B", Single-Family Residential District.

Page: Page 1 of

Item Reference:

The applicant is requesting the zone change to allow for a single-family home on Lot 3A of NCB 965, one lot containing approximately 1.00 acre of land located north of the northwest intersection of Old Omen Road and Cornerstone Trail (1709 Old Omen Road).

According to the Unified Development Code (UDC), the "R-1B", Single-Family Residential District is primarily intended to accommodate development of detached, single-family housing on smaller individual lots. In addition, the district allows churches, schools, and accessory buildings and uses. The maximum building height is 42 feet. Setback requirements are 25 feet in the front and rear, six feet on the interior side and 12 feet on the corner side. Minimum lot size is 6,000 square feet.

According to UDC Section 10-617, the City Council will consider the following approval criteria for zoning changes:

a. The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action;
b. The zoning change is consistent with the Tyler 1st Comprehensive Plan;
c. The zoning change promotes the health, safety, or general welfare of the city and the safe, orderly, and healthful development of the city;
d. The zoning change is compatible with the present zoning and/or conforming uses of nearby property and with the character of the neighborhood; and
e. The property to be rezoned is suitable for uses permitted by the District that would be applied by the proposed amendment.

According to UDC Section 10-587, the burden of proof or persuasion is on the applicant to show that an application complies with approval criteria.

All adjacent properties to the north, east, west, and south are zoned "R-1A", Single-Family Residential District.

The request is consistent with the Tyler 1st Future Land Use Guide as it identifies this property as Single-Family Medium/Low Density.

The subject property is located along Old Omen Road, a minor arterial roadway. If the zoning change is approved, the applicant anticipates to replat the current one lot into three lots. Each lot would be accessed from Old Omen Road, with a shared access. This request would allow for a use that is consistent with the rest of the area. The University Woods Area Development Plan (ADP) identifies this area as being recommended for single-family medium density. One recommendation to achieve this is to promote single-family infill projects.

On December 5, 2023, the Planning and Zoning Commission held a public hearing for this request. There was no significant discussion.

As of Friday, January 5, 2024, of the 20 notices mailed, one notice was returned in favor and none in opposition to the request.

All other departments have reviewed the application and anticipate no significant impact on services or facilities by the proposed rezoning request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of the zone change from "RPO", Restricted Professional Office District to "R-2", Two-Family Residential District.

ATTACHMENTS:

Ordinance
Location Map
Future Land Use Guide Map
Notification Map

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM "POD", PLANNED OFFICE DISTRICT TO "R-1B", SINGLE-FAMILY RESIDENTIAL DISTRICT ON LOT 3A OF NCB 965, ONE LOT CONTAINING APPROXIMATELY 1.00 ACRE OF LAND LOCATED NORTH OF THE NORTHWEST INTERSECTION OF OLD OMEN ROAD AND CORNERSTONE TRAIL (1709 OLD OMEN ROAD); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Tyler, Texas, and the City Council of the City of Tyler, Texas, in compliance with the Charter and the State law with reference to the zoning ordinance of the City of Tyler, Texas, and zoning map, have given requisite notices by publication and otherwise and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council is of the opinion that the zoning change should be made as set forth herein;

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

PART 1: That the following zone change is hereby approved as follows:

I. APPLICATION Z23-037

That the following described property, which has heretofore been zoned "POD", Planned Office District, shall hereafter bear the zoning classification of "R-1B", Single-Family Residential District, to wit:

> Lot 3A of NCB 965, one lot containing approximately 1.00 acre of land located north of the northwest intersection of Old Omen Road and Cornerstone Trail (1709 Old Omen Road).

PART 2: That the City Manager is hereby ordered and directed to cause the zoning map to be amended to reflect the above described zoning.

PART 3: Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause, or phrase of this ordinance and same are deemed severable for this purpose.

PART 4: That this ordinance shall be effective on and after its date of passage and approval by the City Council.

PASSED AND APPROVED this the 10th day of January A.D., 2024.

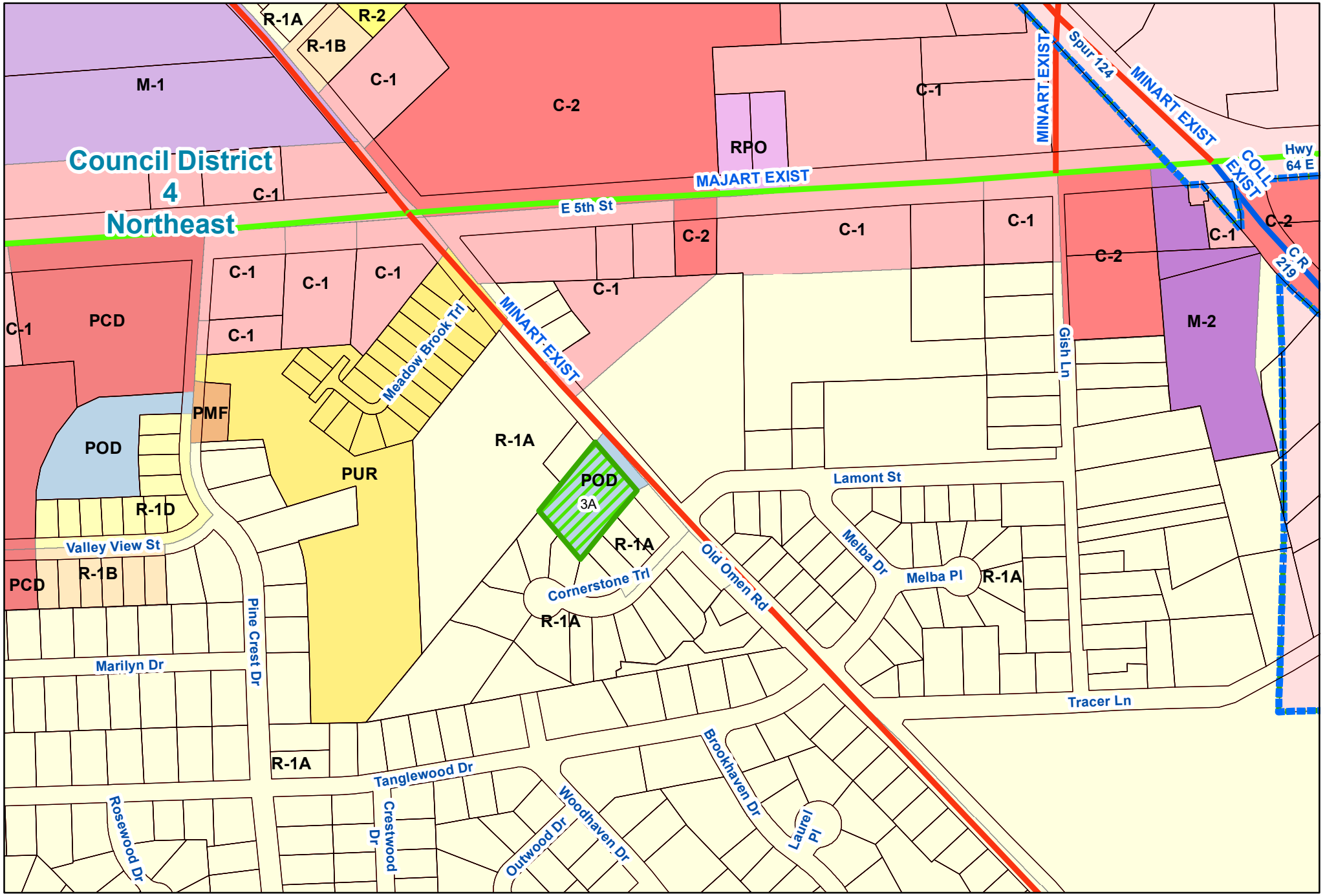
_____
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

_____
CASSANDRA BRAGER, CITY CLERK

_____
DEBORAH G. PULLUM,
CITY ATTORNEY



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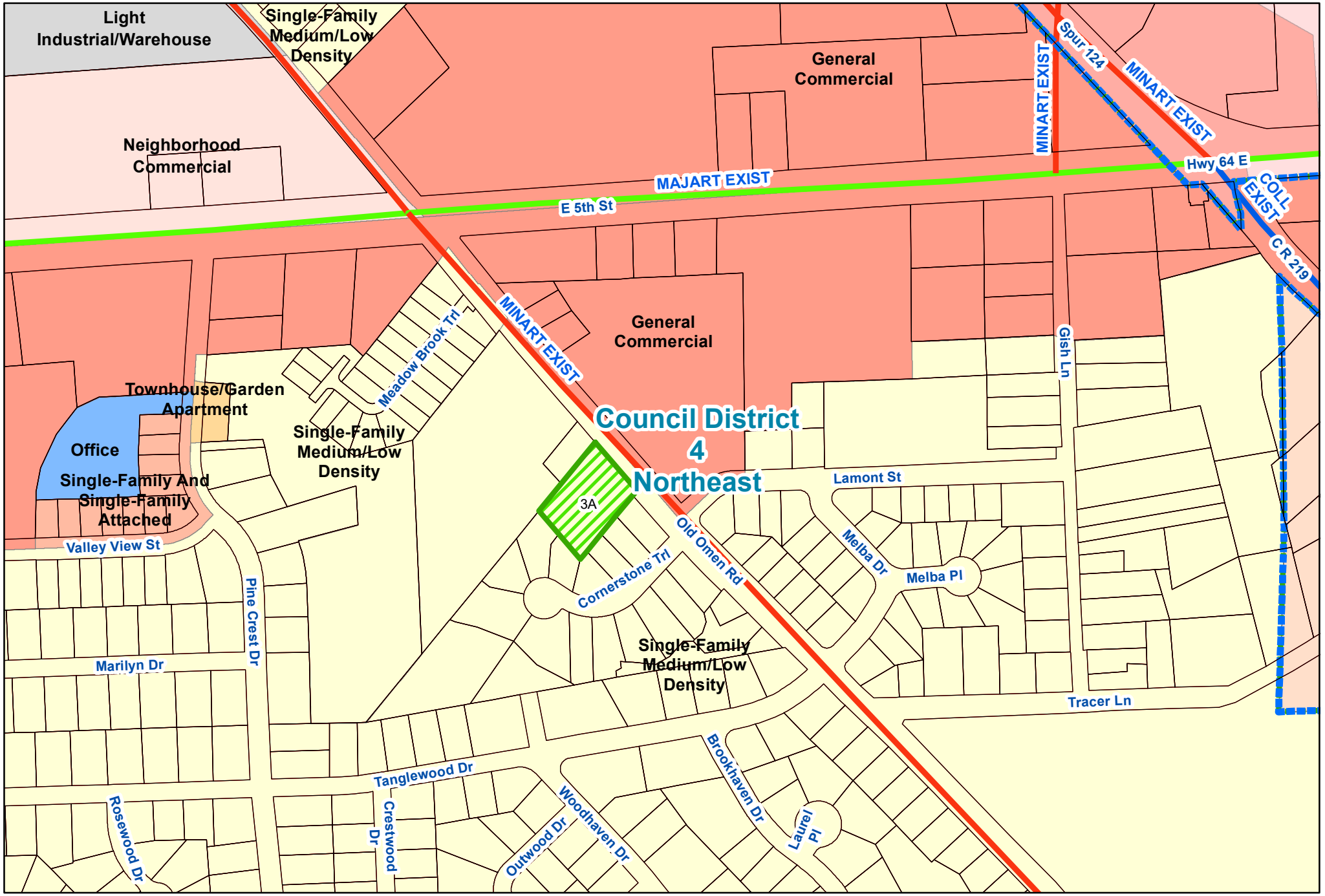
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ZONING CASE
Zoning Case #: Z23-037
Current Zoning: POD
Proposed Zoning: R-1B
ROBLES JOSE EMILIANO & ANA BERTHA

Subject Property

City Limits

N W E S



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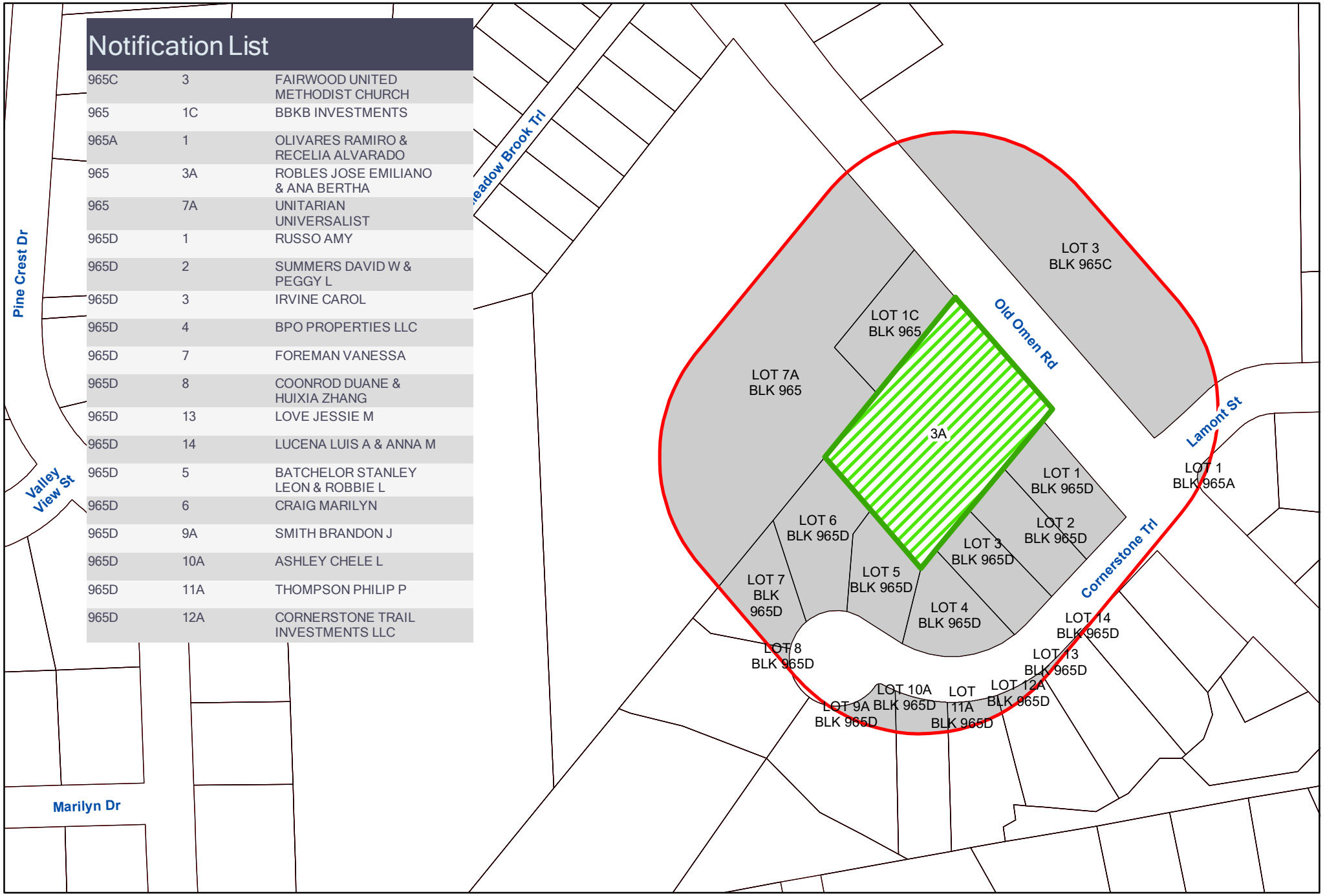
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ZONING CASE
Zoning Case #: Z23-037
Current Zoning: POD
Proposed Zoning: R-1B
ROBLES JOSE EMILIANO & ANA BERTHA

Subject Property

City Limits

N W E S



Notification List

965C	3	FAIRWOOD UNITED METHODIST CHURCH
965	1C	BBKB INVESTMENTS
965A	1	OLIVARES RAMIRO & RECELIA ALVARADO
965	3A	ROBLES JOSE EMILIANO & ANA BERTHA
965	7A	UNITARIAN UNIVERSALIST
965D	1	RUSSO AMY
965D	2	SUMMERS DAVID W & PEGGY L
965D	3	IRVINE CAROL
965D	4	BPO PROPERTIES LLC
965D	7	FOREMAN VANESSA
965D	8	COONROD DUANE & HUIXIA ZHANG
965D	13	LOVE JESSIE M
965D	14	LUCENA LUIS A & ANNA M
965D	5	BATCHELOR STANLEY LEON & ROBBIE L
965D	6	CRAIG MARILYN
965D	9A	SMITH BRANDON J
965D	10A	ASHLEY CHELE L
965D	11A	THOMPSON PHILIP P
965D	12A	CORNERSTONE TRAIL INVESTMENTS LLC

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150 0 150 Feet

ZONING CASE
Zoning Case #: Z23-037
Current Zoning: POD
Proposed Zoning: R-1B
ROBLES JOSE EMILIANO & ANA BERTHA

Subject Property
200' Mailed Notification Area

N W E S

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-7

Date: January 10, 2024

Subject: PD23-024 SHACKELFORD CREEK LAND COMPANY LLC (9506, 9507, 9512, 9513, 9519, 9520, 9525, 9530, 9531, 9537, 9538, 9543, 9546, 9549, 9554, 9555, 9560, 9561, 9566, 9567, 9570, 9573, 9574, 9578, 9581, 9582, 9586, 9590, 9594, 9602, AND 9606 FRIEDLANDER WAY AND 2000, 2001, 2005, 2006, 2010, 2011, 2014, 2017, 2020, 2023, 2026, 2029, 2030, 2032, 2035, 2041, 2044, 2047, 2050, 2053, 2056, 2059, 2062, 2065, 2068, 2069, 2072, 2075, 2078, 2079, 2082, 2083, 2086, 2087, 2090, 2091, 2095, AND 2099 LOCKLEAR LN, AND 8.40 ACRE PORTION OF 1067 MARSH FARM ROAD)
Request that the City Council consider adoption of an Ordinance approving a zone change from "R-1D", Single-Family Detached and Attached Residential District to "PUR", Planned Unit Residential District with a final site narrative.

Page: Page 1 of

Item Reference:

The applicant is requesting the zone change to allow for single-family homes with smaller setbacks on Lots 1-69 of ABST I-22.2D and 8.40 acre portion of Tract 1A, 70 lots containing approximately 23.70 acres of land located south of the southeast intersection of Marsh Farm Road and Caddo Ridge Cv (9506, 9507, 9512, 9513, 9519, 9520, 9525, 9530, 9531, 9537, 9538, 9543, 9546, 9549, 9554, 9555, 9560, 9561, 9566, 9567, 9570, 9573, 9574, 9578, 9581, 9582, 9586, 9590, 9594, 9602, and 9606 Friedlander Way and 2000, 2001, 2005, 2006, 2010, 2011, 2014, 2017, 2020, 2023, 2026, 2029, 2030, 2032, 2035, 2041, 2044, 2047, 2050, 2053, 2056, 2059, 2062, 2065, 2068, 2069, 2072, 2075, 2078, 2079, 2082, 2083, 2086, 2087, 2090, 2091, 2095, and 2099 Locklear Lane, and 8.40 acre portion of 1067 Marsh Farm Road).

According to the Unified Development Code (UDC), the "PUR", Planned Unit Residential District is primarily for the medium to high density development of unique and innovative forms of detached single-family housing on individually platted lots. A PUR development uses the total space within a development by creating common open spaces, scenic and recreational areas and other spaces that will compensate for the reduction of land area dedicated for residential structures. It is the intent of the PUR to provide for residential developments that utilize private streets, owned and maintained by a Homeowner's Association. The PUR district is not intended as a convenience to circumvent regulations set forth in other residential districts, or as a tool for mass variance, without provisions of common areas.

All developments created in a PUR district must be designed and developed in accordance with an approved site development plan and submitted for approval to the Planning Commission and City Council.

According to UDC Section 10-617, the City Council will consider the following approval criteria for zoning changes:

a. The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action;
b. The zoning change is consistent with the Tyler 1st Comprehensive Plan;
c. The zoning change promotes the health, safety, or general welfare of the city and the safe, orderly, and healthful development of the city;
d. The zoning change is compatible with the present zoning and/or conforming uses of nearby property and with the character of the neighborhood; and
e. The property to be rezoned is suitable for uses permitted by the District that would be applied by the proposed amendment.

In addition to the zoning change criteria above, the City Council will consider the following specific objectives and criteria for approving any type of planned district currently permitted in this code:

a. A variety of housing types, employment opportunities, or commercial services to achieve a balanced community;
b. An orderly and creative arrangement of all land uses with respect to each other and to the entire community;
c. A planned and integrated comprehensive transportation system providing for a separation of pedestrian and vehicular traffic, to include facilities such as roadways, bicycle ways and pedestrian walkways;
d. The provisions of cultural or recreational facilities for all segments of the community;
e. The location of general building envelopes to take maximum advantage of the natural and manmade environment; and
f. The staging of development in a manner which can be accommodated by the timely provision of public utilities, facilities, and services.

According to UDC Section 10-587, the burden of proof or persuasion is on the applicant to show that an application complies with approval criteria.

The adjacent properties to the east and west are zoned "R-1B", Single-Family Residential District and are undeveloped. The adjacent property to the south is outside the City limits and is undeveloped. The adjacent properties to the north are zoned "R-1A", Single-Family Residential District and are undeveloped.

The request is consistent with the adopted Tyler 1st Future Land Use Guide which identifies this property as Single-Family Medium/Low Density.

The properties are proposed to be developed with single-family homes with front yard setbacks of 20 feet and all other "R-1D" development standards.

On December 5, 2023, the Planning and Zoning Commission held a public hearing for this request. The

agent, Mark Priestner, spoke in favor of the application.

As of Friday, December 29, 2023, of the four notices mailed, no notices were returned in favor or in opposition to the request.

All other departments have reviewed the application and anticipate no significant impact on services or facilities by the proposed rezoning request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 recommends approval of the zone change from "R-1D", Single-Family Detached and Attached Residential District to "PUR", Planned Unit Residential District with a final site narrative.

ATTACHMENTS:

Ordinance
Location Map
Future Land Use Guide Map
Notification Map

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM "R-1D", SINGLE-FAMILY DETACHED AND ATTACHED RESIDENTIAL DISTRICT TO "PUR", PLANNED UNIT RESIDENTIAL DISTRICT WITH A FINAL SITE NARRATIVE ON LOTS 1-69 OF ABST I-22.2D AND 8.40 ACRE PORTION OF TRACT 1A, 70 LOTS CONTAINING APPROXIMATELY 23.70 ACRES OF LAND LOCATED SOUTH OF THE SOUTHEAST INTERSECTION OF MARSH FARM ROAD AND CADDO RIDGE CV (9506, 9507, 9512, 9513, 9519, 9520, 9525, 9530, 9531, 9537, 9538, 9543, 9546, 9549, 9554, 9555, 9560, 9561, 9566, 9567, 9570, 9573, 9574, 9578, 9581, 9582, 9586, 9590, 9594, 9602, AND 9606 FRIEDLANDER WAY AND 2000, 2001, 2005, 2006, 2010, 2011, 2014, 2017, 2020, 2023, 2026, 2029, 2030, 2032, 2035, 2041, 2044, 2047, 2050, 2053, 2056, 2059, 2062, 2065, 2068, 2069, 2072, 2075, 2078, 2079, 2082, 2083, 2086, 2087, 2090, 2091, 2095, AND 2099 LOCKLEAR LANE, AND 8.40 ACRE PORTION OF 1067 MARSH FARM ROAD); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Tyler, Texas, and the City Council of the City of Tyler, Texas, in compliance with the Charter and the State law with reference to the zoning ordinance of the City of Tyler, Texas, and zoning map, have given requisite notices by publication and otherwise and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council is of the opinion that the zoning change should be made as set forth herein;

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

PART 1: That the following zone change is hereby approved as follows:

I. APPLICATION PD23-024

That the following described property, which has heretofore been zoned "R-1D", Single-Family Detached and Attached Residential District, shall hereafter bear the zoning classification of "PUR", Planned Unit Residential District with a final site narrative, to wit:

> On Lots 1-69 of ABST I-22.2D and 8.40 acre portion of Tract 1A, 70 lots containing approximately 23.70 acres of land located south of the southeast intersection of Marsh Farm Road and Caddo Ridge Cv (9506, 9507, 9512, 9513, 9519, 9520, 9525, 9530, 9531, 9537, 9538, 9543, 9546, 9549, 9554, 9555, 9560, 9561, 9566, 9567, 9570, 9573, 9574, 9578, 9581, 9582, 9586, 9590, 9594, 9602, and 9606 Friedlander Way and 2000, 2001, 2005, 2006, 2010, 2011, 2014, 2017, 2020, 2023, 2026, 2029, 2030, 2032, 2035, 2041, 2044, 2047, 2050, 2053, 2056, 2059, 2062, 2065, 2068, 2069, 2072, 2075, 2078, 2079, 2082, 2083, 2086, 2087, 2090, 2091, 2095, and 2099 Locklear Lane, and 8.40 acre portion of 1067 Marsh Farm Road) and in accordance with the Final Site Narrative in Exhibit "A" attached hereto and incorporated herein.

PART 2: That the City Manager is hereby ordered and directed to cause the zoning map to be amended to reflect the above described zoning.

PART 3: Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance and same are deemed severable for this purpose.

PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be January 12th, 2024.

PASSED AND APPROVED this the 10th day of January A.D., 2024.

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

A T T E S T:

_____
CASSANDRA BRAGER, CITY CLERK

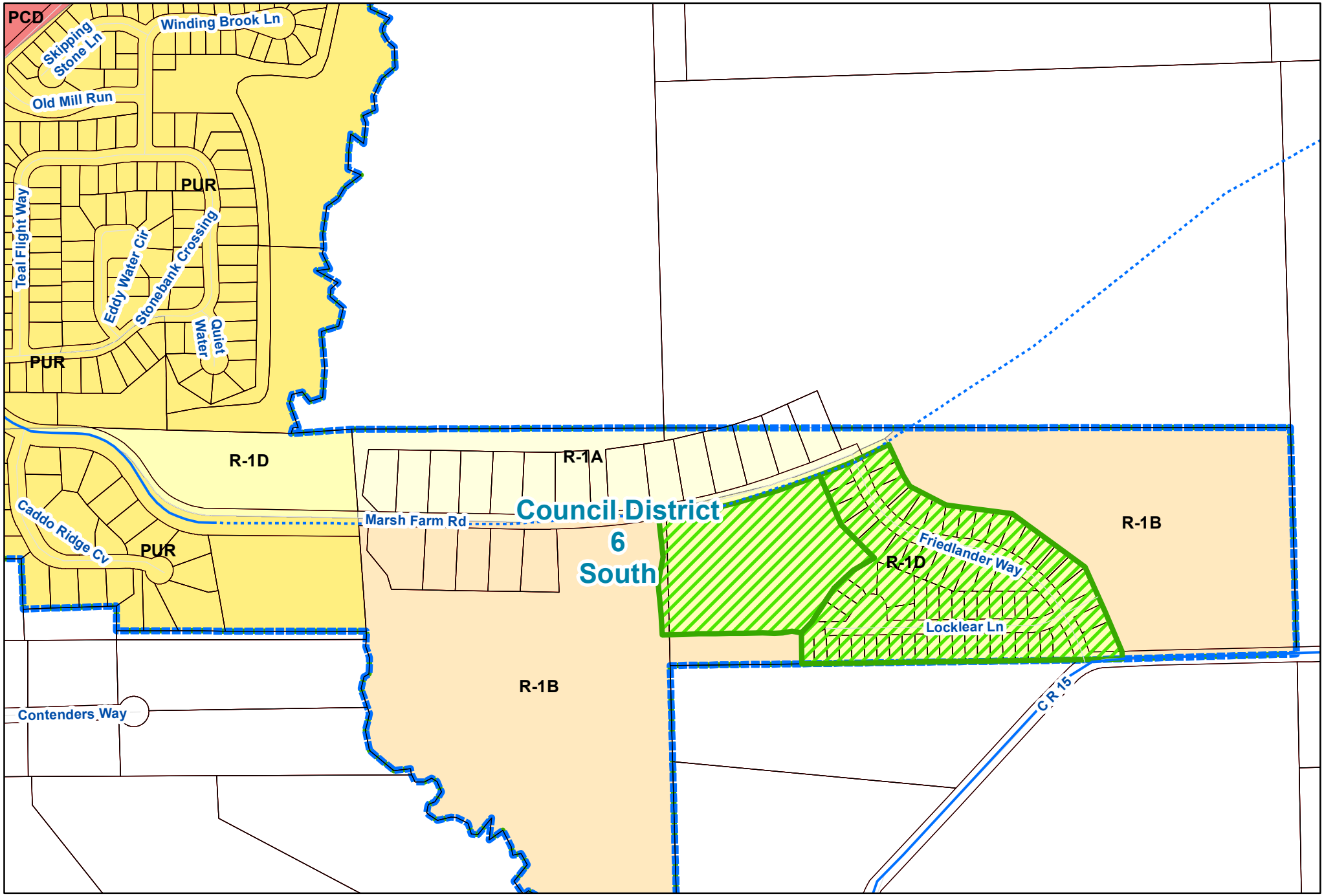
APPROVED:

_____
DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. O-2024-
EXHIBIT "A"
FINAL SITE NARRATIVE

Front yard setback: 20 feet

All other R-1D regulations apply.



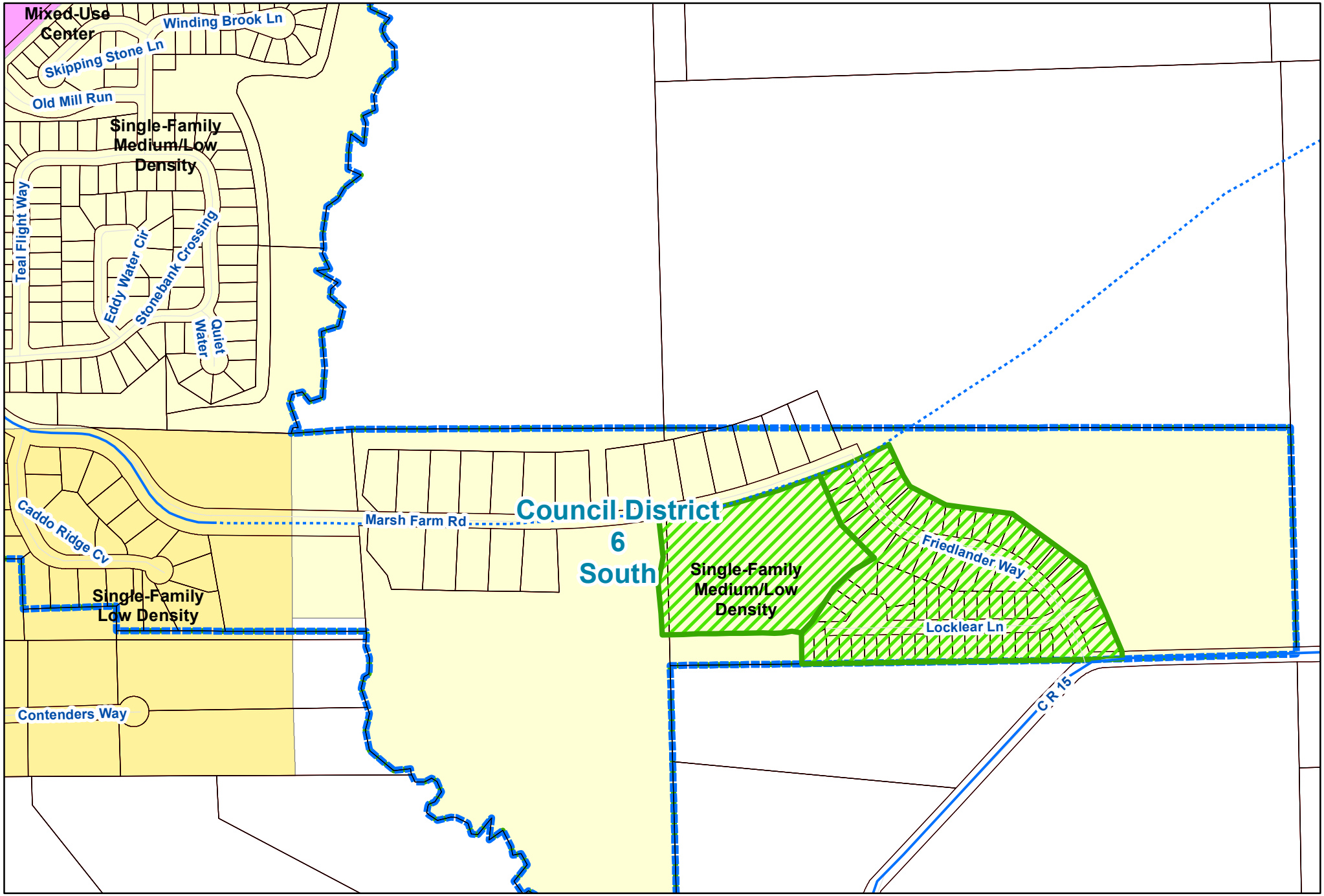
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

500 0 500 Feet

ZONING CASE
Zoning Case #: PD23-024
Current Zoning: R-1D
Proposed Zoning: PUR
SHACKELFORD CREEKLAND COMPANY LLC

Subject Property
City Limits

N W E S



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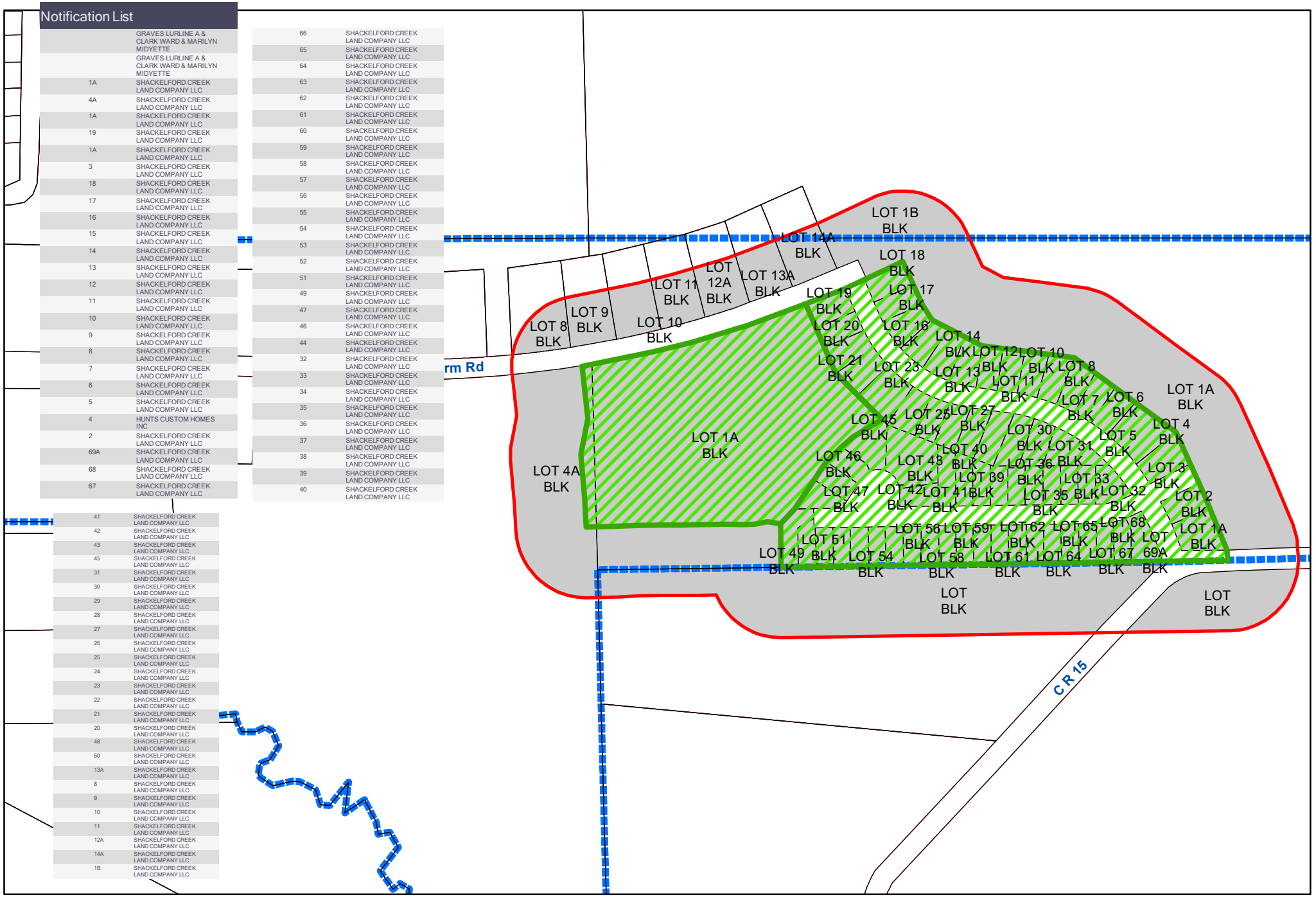
500 0 500 Feet

ZONING CASE
Zoning Case #: PD23-024
Current Zoning: R-1D
Proposed Zoning: PUR
SHACKELFORD CREEKLAND COMPANY LLC

Subject Property

City Limits

N W E S



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350 0 350 Feet

ZONING CASE
Zoning Case #: PD23-024
Current Zoning: R-1D
Proposed Zoning: PUR
SHACKELFORD CREEKLAND COMPANY LLC

Subject Property
200' Mailed Notification Area
City Limits

N W E S

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-8

Date: January 10, 2024

Subject: PD23-025 C&O ACQUISTIONS LLC AND BEXAR TRIPLE JEOPARDY LLC (220 AND 240 SOUTH SOUTHWEST LOOP 323)
Request that the City Council consider adoption of an Ordinance approving a "PCD", Planned Commercial District final site plan amendment.

Page: Page 1 of

Item Reference:

The applicant is requesting the site plan amendment for an oil change facility on Lots 1A and 2A of NCB 908A, two lots containing approximately 0.96 acres of land located at the northeast intersection of South Southwest Loop 323 and West Elm Street (220 and 240 South Southwest Loop 323).

According to the Unified Development Code (UDC), the "PCD", Planned Commercial Development District will be designated where retail, commercial, office and limited industrial facilities are needed throughout the city. All development created in a PCD district must be designed and developed in accordance with an approved site development plan and submitted for approval to the Planning Commission and City Council.

a. The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action;
b. The zoning change is consistent with the Tyler 1st Comprehensive Plan;
c. The zoning change promotes the health, safety, or general welfare of the city and the safe, orderly, and healthful development of the city;
d. The zoning change is compatible with the present zoning and/or conforming uses of nearby property and with the character of the neighborhood; and
e. The property to be rezoned is suitable for uses permitted by the District that would be applied by the proposed amendment.

In addition to the zoning change criteria above, the City Council will consider the following specific objectives and criteria for approving any type of planned district currently permitted in this code:
a. A variety of housing types, employment opportunities, or commercial services to achieve a balanced community;
b. An orderly and creative arrangement of all land uses with respect to each other and to the entire community;
c. A planned and integrated comprehensive transportation system providing for a

separation of pedestrian and vehicular traffic, to include facilities such as roadways, bicycle ways and pedestrian walkways;

d. The provisions of cultural or recreational facilities for all segments of the community;

e. The location of general building envelopes to take maximum advantage of the natural and manmade environment; and

f. The staging of development in a manner which can be accommodated by the timely provision of public utilities, facilities, and services.

According to UDC Section 10-587, the burden of proof or persuasion is on the applicant to show that an application complies with approval criteria.

The adjacent properties to the north and south are zoned "C-2", General Commercial District and are developed with commercial uses. The adjacent property to the east is zoned "PCD", Planned Commercial District and is developed with a single-family home. The adjacent property to the west is zoned "C-1", Light Commercial District and is developed with a restaurant.

The request is consistent with Tyler 1st Future Land Use Guide which identifies this property as Mixed-Use Center.

In 2019, the subject property was rezoned "C-2", Light Commercial District to "PCD", Planned Commercial District with a site plan to allow for a Braum's Ice Cream & Dairy Store. The approved site plan for the site proposes a 30-foot-wide Type "B" bufferyard that includes a six-foot fence along the eastern property line. This proposal did not come to fruition. In 2022, the applicant proposed a "PCD" site plan amendment for an oil change facility, and the proposal was indefinitely tabled. The current proposal shows the site plan with two lots fronting Loop 323 for a Take 5 oil change facility. The site plan also proposes Type 'B' bufferyard to the property to the east.

On December 5, 2023, the Planning and Zoning held a meeting for this request. One of the neighbors had concerns about water runoff and other environmental concerns. The staff explained that all the TCEQ and City development regulations needs to be met during the development process, which will address those concerns.

As of Friday, December 29, 2023, of the ten notices mailed, no notices were returned in favor or in opposition to the request.

All other departments have reviewed the application and anticipate no significant impact on services and facilities by the proposed rezoning request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 recommends approval of the "PCD", Planned Commercial District final site plan amendment.

ATTACHMENTS:

Ordinance
Location Map
Future Land Use Guide Map

Notification Map

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY APPROVING THE "PCD", PLANNED COMMERCIAL DISTRICT FINAL SITE PLAN AMENDMENT ON LOTS 1A AND 2A OF NCB 908A, TWO LOTS CONTAINING APPROXIMATELY 0.96 ACRES OF LAND LOCATED AT THE NORTHEAST INTERSECTION OF SOUTH SOUTHWEST LOOP 323 AND WEST ELM STREET (220 AND 240 SOUTH SOUTHWEST LOOP 323); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Tyler, Texas, and the City Council of the City of Tyler, Texas, in compliance with the Charter and the State law with reference to the zoning ordinance of the City of Tyler, Texas, and zoning map, have given requisite notices by publication and otherwise and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council is of the opinion that the zoning change should be made as set forth herein;

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

PART 1: That the following zone change is hereby approved as follows:

I. APPLICATION PD23-025

That the existing site development plan is hereby amended by approving the final site plan attached hereto as Exhibit "A" on the following described property zoned "PCD", Planned Commercial District Final Site Plan Amendment, to wit:

> On Lots 1A and 2A of NCB 908A, two lots containing approximately 0.96 acres of land located at the northeast intersection of South Southwest Loop 323 and West Elm Street (220 and 240 South Southwest Loop 323) and in accordance with the Final Site Plan in Exhibit "A" attached hereto and incorporated herein.

PART 2: That the City Manager is hereby ordered and directed to cause the zoning map to be amended to reflect the above described zoning.

PART 3: Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance and same are deemed severable for this purpose.

PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or

be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be January 12th, 2024.

PASSED AND APPROVED this the 10th day of January A.D., 2024.

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

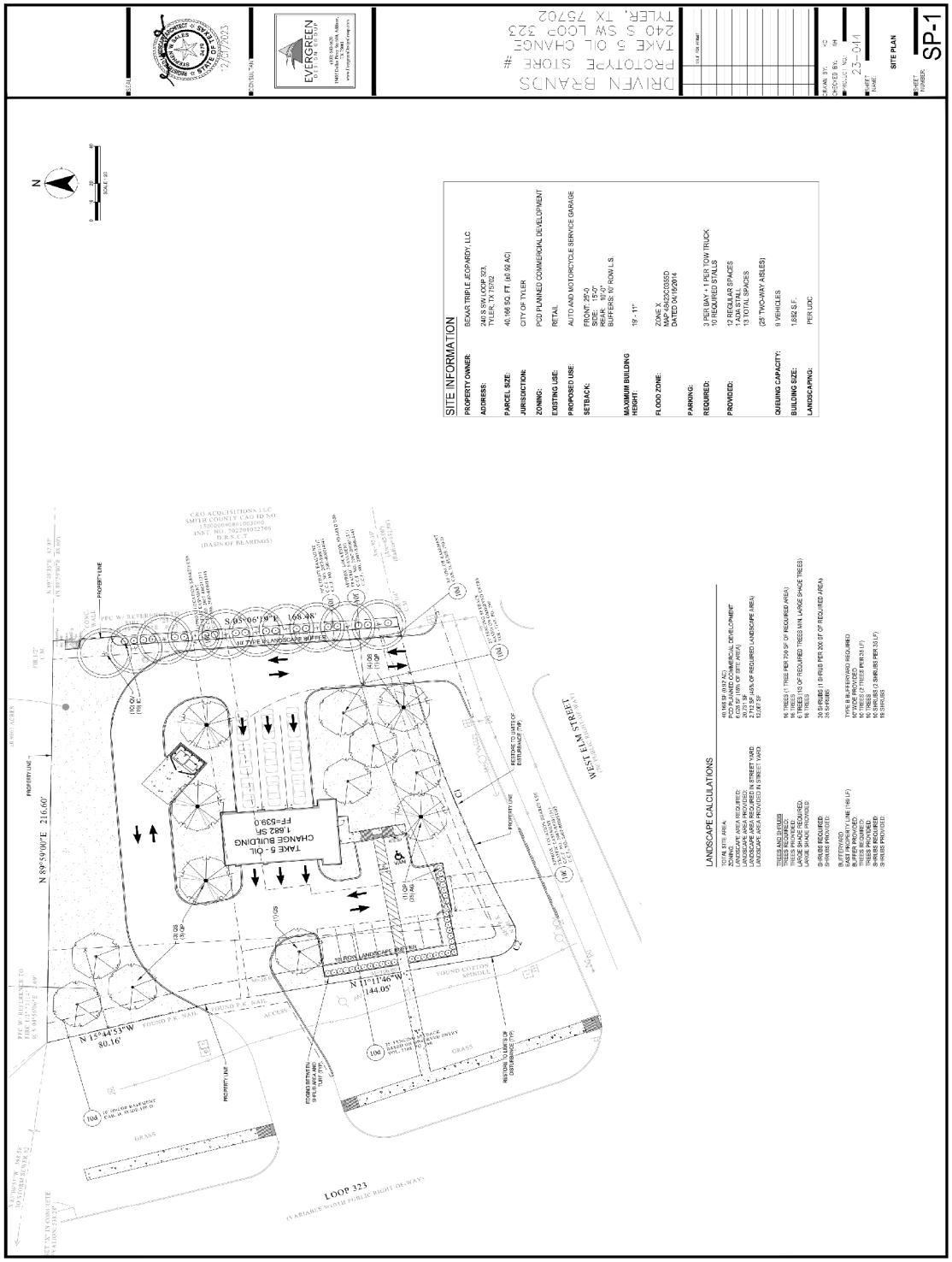
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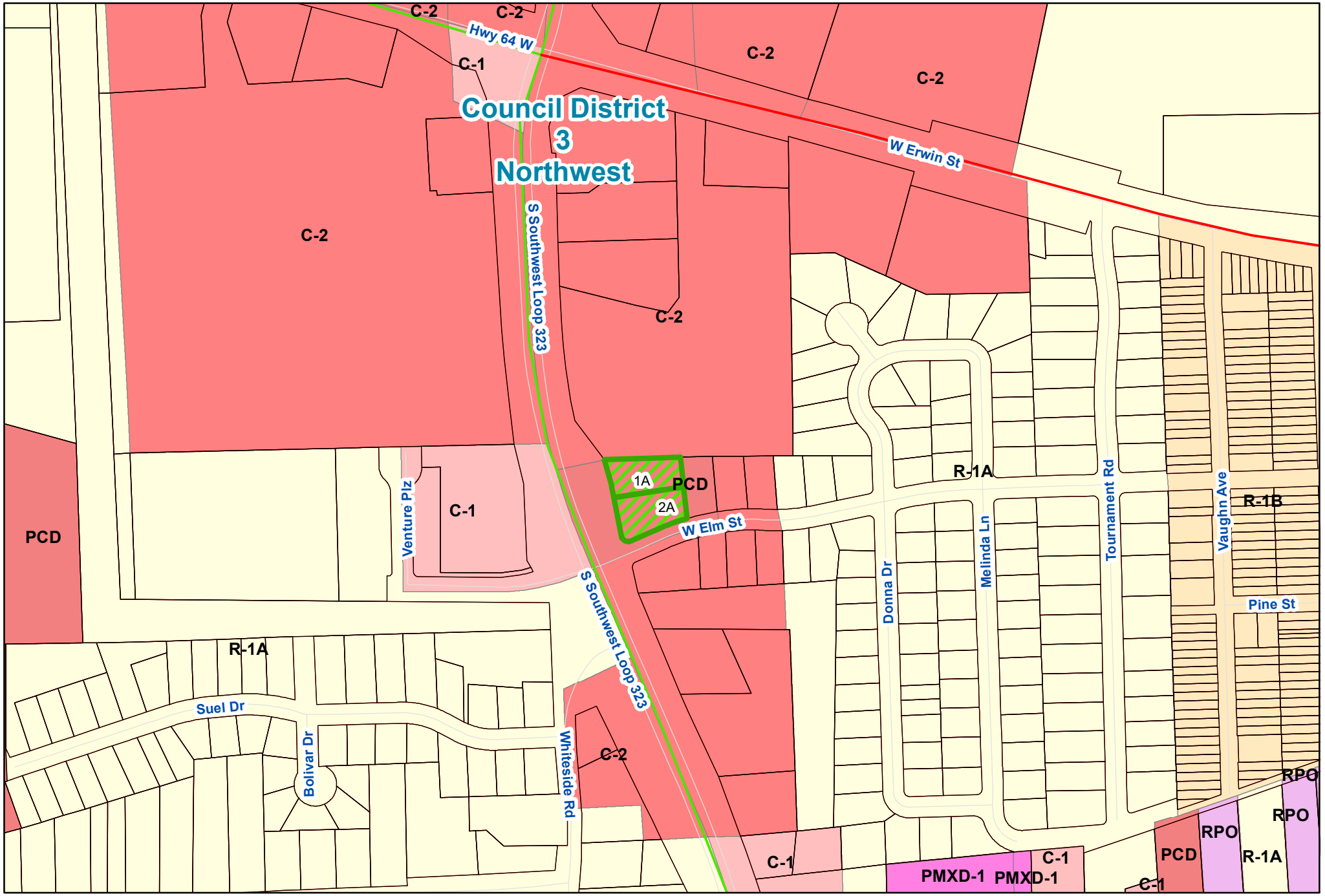
APPROVED:

_____
CASSANDRA BRAGER, CITY CLERK

_____
DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. O-2024-
EXHIBIT "A"
FINAL SITE PLAN





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350 0 350 Feet

ZONING CASE
Zoning Case #: PD23-025
Current Zoning: PCD
Proposed Zoning: PCD Amendment
C&O ACQUISTIONS LLC AND BEXAR TRIPLE JEOPARDY LLC

Subject Property

N W E S



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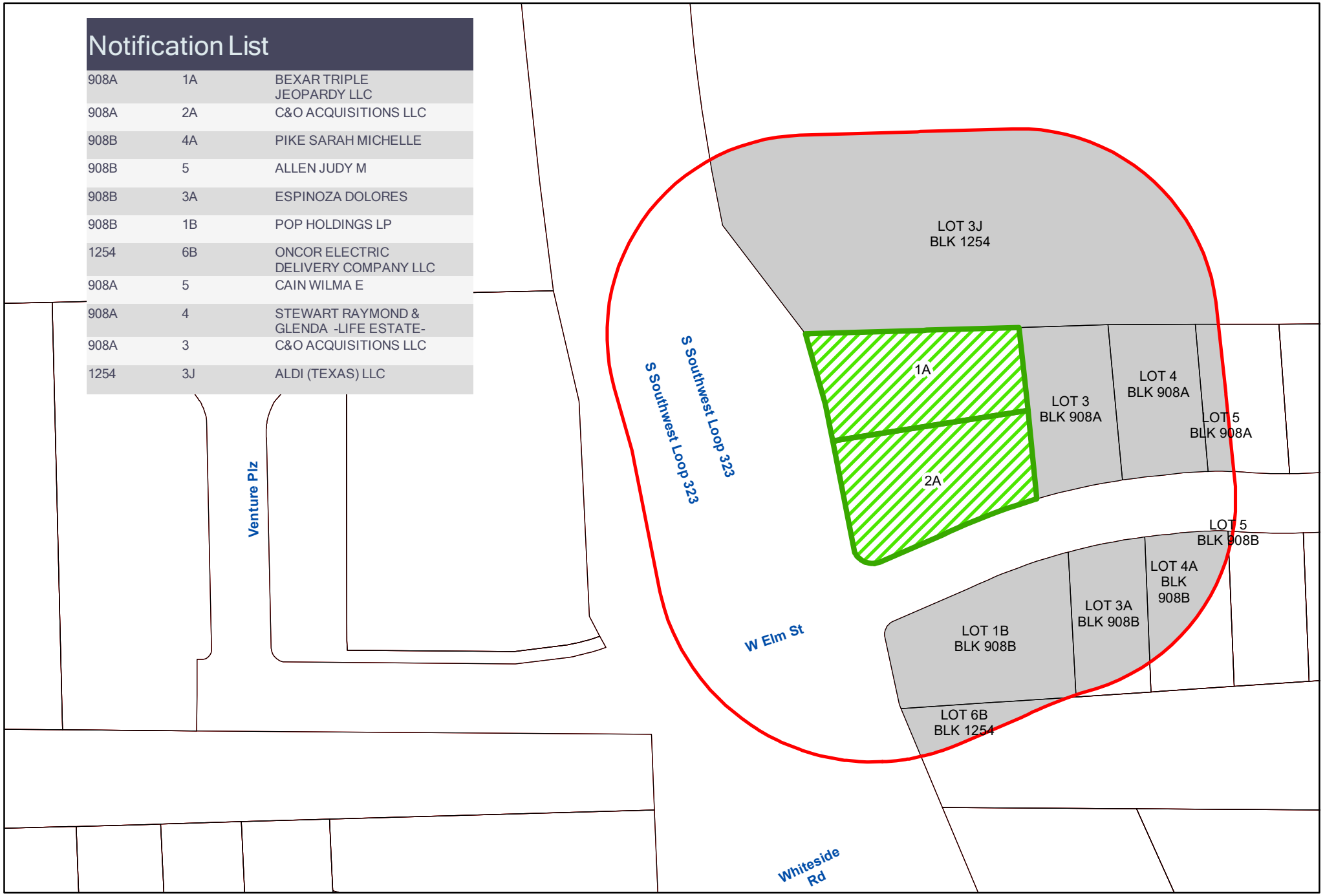
ZONING CASE
Zoning Case #: PD23-025
Current Zoning: PCD
Proposed Zoning: PCD Amendment
C&O ACQUISTIONS LLC AND BEXAR TRIPLE JEOPARDY LLC

Subject Property

N W E S

Notification List

908A	1A	BEXAR TRIPLE JEOPARDY LLC
908A	2A	C&O ACQUISITIONS LLC
908B	4A	PIKE SARAH MICHELLE
908B	5	ALLEN JUDY M
908B	3A	ESPINOZA DOLORES
908B	1B	POP HOLDINGS LP
1254	6B	ONCOR ELECTRIC DELIVERY COMPANY LLC
908A	5	CAIN WILMA E
908A	4	STEWART RAYMOND & GLENDA -LIFE ESTATE-
908A	3	C&O ACQUISITIONS LLC
1254	3J	ALDI (TEXAS) LLC



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125 0 125 Feet

ZONING CASE
Zoning Case #: PD23-025
Current Zoning: PCD
Proposed Zoning: PCD Amendment
C&O ACQUISTIONS LLC AND BEXAR TRIPLE JEOPARDY LLC

Subject Property
200' Mailed Notification Area

N W E S

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-9

Date: January 10, 2024

Subject: Z23-043 C&O ACQUISTIONS LLC (3809 WEST ELM STREET)
Request that the City Council consider adoption of an Ordinance approving a zone change from "PCD", Planned Commercial District to "R-1A". Single-Family Residential District.

Page: Page 1 of

Item Reference:

The applicant is requesting the zone change to bring the existing home into conformance on Lot 3 of NCB 908A, one lot approximately 0.33 acres of land located at the east of the southeast intersection of South Southwest Loop 323 and West Elm Street (3809 West Elm Street). The subject property was a part of the "PCD" along the Loop 323. However, the two lots fronting Loop 323 are requested to be rezoned for the oil change facility, leaving this lot as PCD. Since there is an existing home on the property, the applicant is requesting to rezone to single-family.

According to the Unified Development Code (UDC), the "R-1A", Single-Family Residential District is primarily intended to accommodate development of detached, single-family housing on large individual lots. In addition, the district allows churches, schools, and accessory buildings and uses. The maximum building height is 42 feet. Setback requirements are 25 feet in the front and rear, seven and one-half feet on the interior side and 12 feet on the corner side. Minimum lot size is 9,000 square feet.

According to UDC Section 10-617, the City Council will consider the following approval criteria for zoning changes:

a. The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action;
b. The zoning change is consistent with the Tyler 1st Comprehensive Plan;
c. The zoning change promotes the health, safety, or general welfare of the city and the safe, orderly, and healthful development of the city;
d. The zoning change is compatible with the present zoning and/or conforming uses of nearby property and with the character of the neighborhood; and
e. The property to be rezoned is suitable for uses permitted by the District that would be applied by the proposed amendment.

According to UDC Section 10-587, the burden of proof or persuasion is on the applicant to show that an application complies with approval criteria.

The adjacent properties to the north, south, and east are zoned "C-2", General Commercial District, and are the location of an ALDI grocery store and single-family homes. The adjacent properties to the west are zoned "PCD", Planned Commercial District and are developed with commercial uses.

This request would amend the Tyler 1st Future Land Use Guide (FLUG) from Mixed-Use Center to Single-Family Medium/Low Density.

In 2019, the subject property was rezoned from "R-1A", Single-Family Residential District to "PCD", Planned Commercial District with a site plan to allow for a Braum's Ice Cream & Dairy Store. The approved site plan for the site proposes a 30-foot-wide Type "B" bufferyard that included a six-foot fence along the eastern property line. This proposal did not come to fruition. In 2022, the applicant proposed a "PCD" site plan amendment for an oil change facility and the proposal was indefinitely tabled. The applicant is currently requesting the zone change to bring the subject property to conformance.

On December 5, 2023, the Planning and Zoning Commission held a public hearing for this request. No one spoke in favor or opposition to the request.

As of Friday, December 29, 2023, of the 11 notices mailed, one notice was returned in favor and none in opposition to the request.

All other departments have reviewed the application and anticipate a positive impact on services or facilities by the proposed rezoning request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of the zone change from "PCD", Planned Commercial District to "R-1A". Single-Family Residential District.

ATTACHMENTS:

Ordinance
Location Map
Future Land Use Guide Map
Notification Map

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM "PCD", PLANNED COMMERCIAL DISTRICT TO "R-1A", SINGLE-FAMILY RESIDENTIAL DISTRICT ON LOT 3 OF NCB 908A, ONE LOT APPROXIMATELY 0.33 ACRES OF LAND LOCATED AT THE EAST OF THE SOUTHEAST INTERSECTION OF SOUTH SOUTHWEST LOOP 323 AND WEST ELM STREET (3809 WEST ELM STREET); DIRECTING THE AMENDMENT OF THE ZONING MAP; DIRECTING THE AMENDMENT OF THE FUTURE LAND USE GUIDE MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Tyler, Texas, and the City Council of the City of Tyler, Texas, in compliance with the Charter and the State law with reference to the zoning ordinance of the City of Tyler, Texas, and zoning map, have given requisite notices by publication and otherwise and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council is of the opinion that the zoning change should be made as set forth herein;

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

PART 1: That the following zone change is hereby approved as follows:

I. APPLICATION Z23-043

That the following described property, which has heretofore been zoned "PCD", Planned Commercial District, shall hereafter bear the zoning classification of "R-1A", Single-Family Residential District, to wit:

> On Lot 3 of NCB 908A, one lot approximately 0.33 acres of land located at the east of the southeast intersection of South Southwest Loop 323 and West Elm Street (3809 West Elm Street).

PART 2: That the City Manager is hereby ordered and directed to cause the zoning map to be amended to reflect the above described zoning and the Future Land Use Guide to reflect Single-Family Medium/Low Density.

PART 3: Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance and same are deemed severable for this purpose.

PART 4: That this ordinance shall be effective on and after its date of passage and approval by the City Council.

PASSED AND APPROVED this the 10th day of January A.D., 2024.

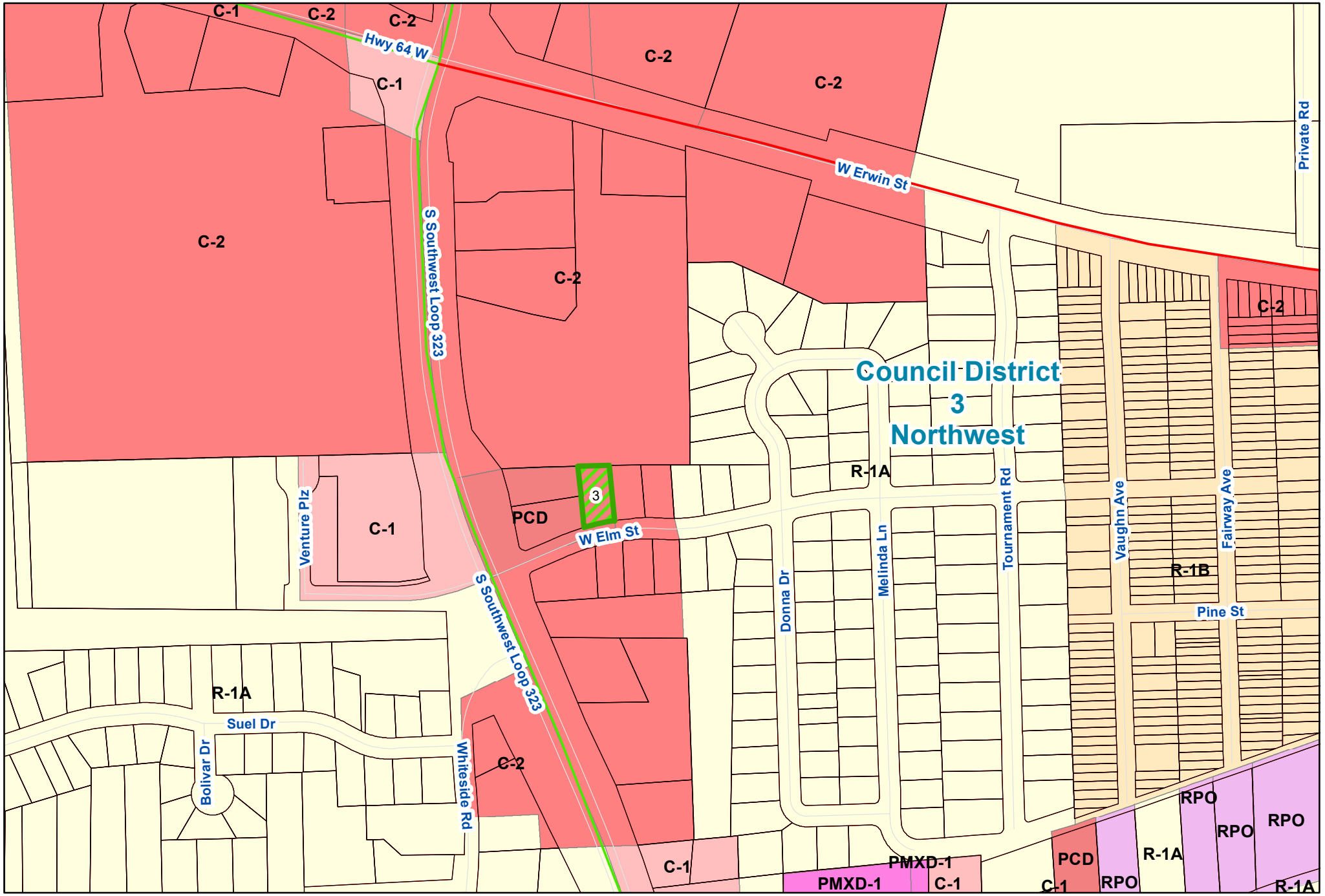
_____
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

_____
CASSANDRA BRAGER, CITY CLERK

_____
DEBORAH G. PULLUM,
CITY ATTORNEY



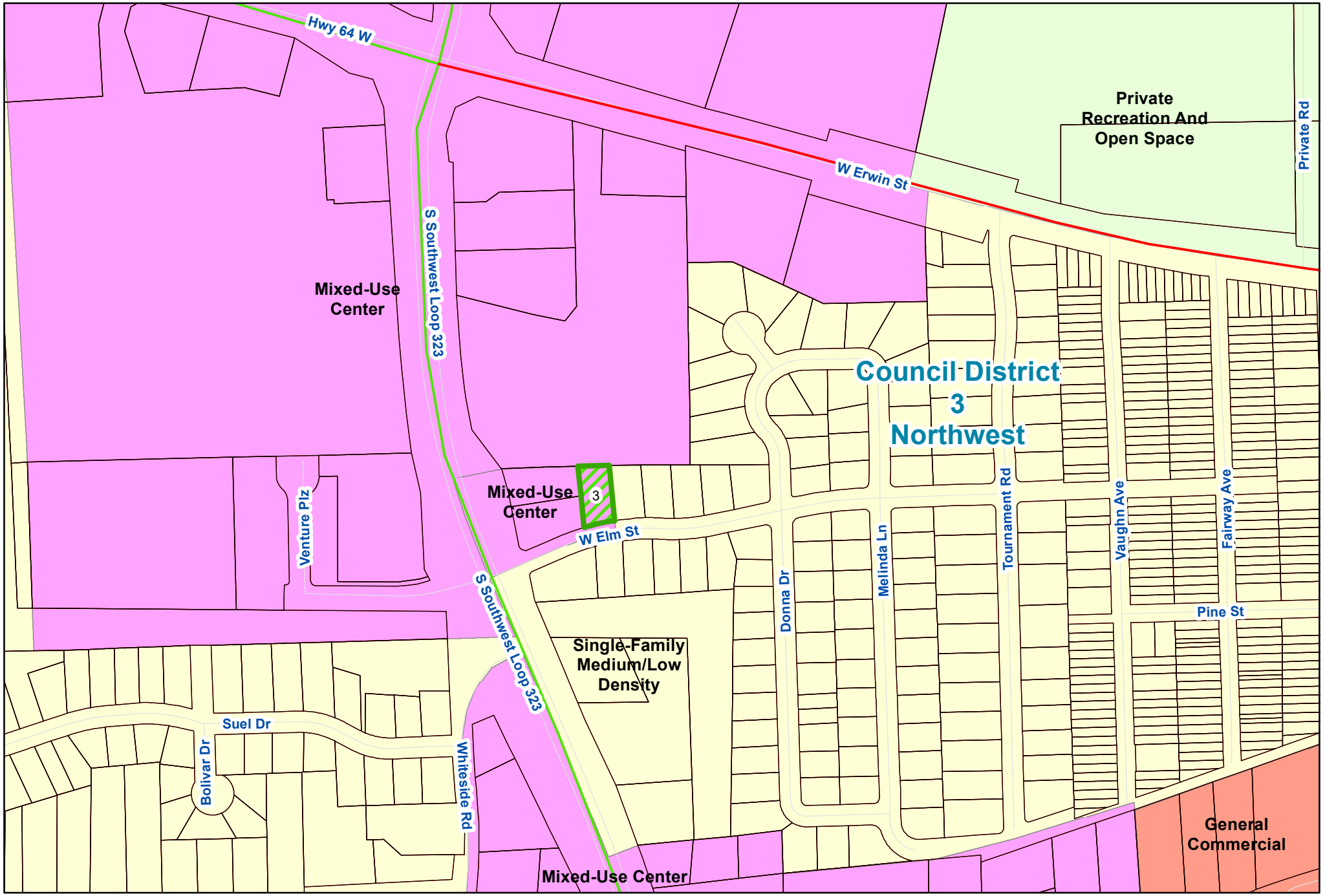
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350 0 350 Feet

ZONING CASE
Zoning Case #: Z23-043
Current Zoning: PCD
Proposed Zoning: R-1A
C&O ACQUISTIONS LLC

Subject Property

N W E S



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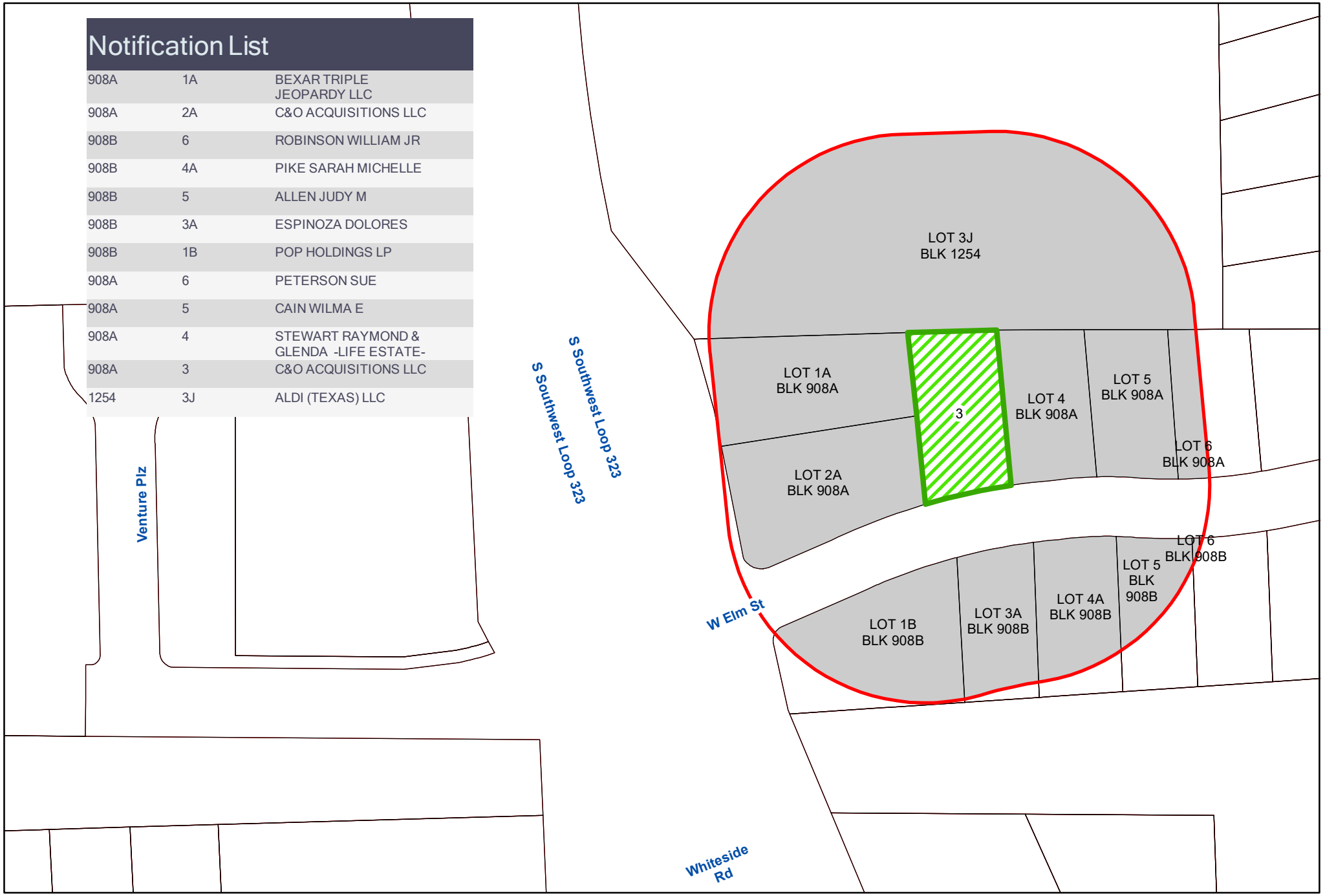
ZONING CASE
Zoning Case #: Z23-043
Current Zoning: PCD
Proposed Zoning: R-1A
C&O ACQUISTIONS LLC

Subject Property

N W E S

Notification List

908A	1A	BEXAR TRIPLE JEOPARDY LLC
908A	2A	C&O ACQUISITIONS LLC
908B	6	ROBINSON WILLIAM JR
908B	4A	PIKE SARAH MICHELLE
908B	5	ALLEN JUDY M
908B	3A	ESPINOZA DOLORES
908B	1B	POP HOLDINGS LP
908A	6	PETERSON SUE
908A	5	CAIN WILMA E
908A	4	STEWART RAYMOND & GLENDA -LIFE ESTATE-
908A	3	C&O ACQUISITIONS LLC
1254	3J	ALDI (TEXAS) LLC



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125 0 125 Feet

ZONING CASE
Zoning Case #: Z23-043
Current Zoning: PCD
Proposed Zoning: R-1A
C&O ACQUISTIONS LLC

Subject Property
200' Mailed Notification Area

N W E S

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-10

Date: January 10, 2024

Subject: Z23-039 RENTAL CONNECTIONS LLC (1100, 1120, AND 1122 WEST FIFTH STREET)
Request that the City Council consider adoption of an Ordinance approving a zone change from "C-1", Light Commercial District to "C-2", General Commercial District.

Page: Page 1 of

Item Reference:

The applicant is requesting the zone change to allow for an automobile dealership and outdoor storage on Lots 101-103 of NCB 659A, three lots containing approximately 0.42 acres of land located at the southwest intersection of South Vine Avenue and West Fifth Street (1100, 1120, and 1122 West Fifth Street).

According to the Unified Development Code (UDC), the "C-2", General Commercial District allows automobile garages and sales lots, hotels, restaurants, warehouses, offices, and retail establishments with outdoor display or storage of merchandise. The maximum building height allowed within the "C-2" District is three stories or 45 feet in height. The setback requirements are 10 feet in the front, 10 feet in the rear, zero feet on the interior side (10 feet if abuts a residential district) and 15 feet on the corner side. The minimum lot area is 14,000 square feet. Off-street parking for commercial-type uses is determined by the specific use proposed. Properties with a commercial designation are subject to UDC Development Standards such as landscaping and tree preservation, bufferyards, and sign regulations.

According to UDC Section 10-617, the City Council will consider the following approval criteria for zoning changes:

a. The application is complete and the information contained within the application is sufficient and correct enough to allow adequate review and final action;
b. The zoning change is consistent with the Tyler 1st Comprehensive Plan;
c. The zoning change promotes the health, safety, or general welfare of the city and the safe, orderly, and healthful development of the city;
d. The zoning change is compatible with the present zoning and/or conforming uses of nearby property and with the character of the neighborhood; and
e. The property to be rezoned is suitable for uses permitted by the District that would be applied by the proposed amendment.

According to UDC Section 10-587, the burden of proof or persuasion is on the applicant to show that an application complies with approval criteria.

The adjacent properties to the west and south are zoned "C-1", Light Commercial District and are developed with commercial uses. The adjacent property to the north is zoned "C-2", General Commercial District and is the location of Firestation Service Center. The adjacent property to the east is zoned "AR", Adaptive Reuse District and is developed with a single-family home.

The Tyler 1st Future Land Use Guide (FLUG) identifies this property as Neighborhood Commercial. This request would amend the FLUG to be General Commercial.

The parking lot is currently used for employee parking and overflow parking for the automobile dealership. The applicant also owns the property to the north of the subject property. Since "C-1" does not allow for outdoor storage, the applicant has requested three lots adjacent to South Vine Avenue to be rezoned to "C-2". South Vine Avenue is a major arterial road, and there are other "C-2" zoning to the north of the subject property. This will be a transition to the residential properties further west, which is common in the area.

On December 5, 2023, the Planning and Zoning Commission held a public hearing on this request. No significant discussion on this application. As of Friday, December 29, 2023, of the nine notices mailed, no notices were returned in favor or in opposition to the request.

All other departments have reviewed the application and anticipate no significant impact on services or facilities by the proposed rezoning request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of the zone change from "C-1", Light Commercial District to "C-2", General Commercial District.

ATTACHMENTS:

Ordinance
Location Map
Future Land Use Guide Map
Notification Map

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM "C-1", LIGHT COMMERCIAL DISTRICT TO "C-2", GENERAL COMMERCIAL DISTRICT ON LOTS 101-103 OF NCB 659A, THREE LOTS CONTAINING APPROXIMATELY 0.42 ACRES OF LAND LOCATED AT THE SOUTHWEST INTERSECTION OF SOUTH VINE AVENUE AND WEST FIFTH STREET (1100, 1120, AND 1122 WEST FIFTH STREET); DIRECTING THE AMENDMENT OF THE ZONING MAP; DIRECTING THE AMENDMENT OF THE FUTURE LAND USE GUIDE MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Tyler, Texas, and the City Council of the City of Tyler, Texas, in compliance with the Charter and the State law with reference to the zoning ordinance of the City of Tyler, Texas, and zoning map, have given requisite notices by publication and otherwise and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council is of the opinion that the zoning change should be made as set forth herein;

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

PART 1: That the following zone change is hereby approved as follows:

I. APPLICATION Z23-039

That the following described property, which has heretofore been zoned "C-1", Light Commercial District, shall hereafter bear the zoning classification of "C-2", General Commercial District, to wit:

> On Lots 101-103 of NCB 659A, three lots containing approximately 0.42 acres of land located at the southwest intersection of South Vine Avenue and West Fifth Street (1100, 1120, and 1122 West Fifth Street).

PART 2: That the City Manager is hereby ordered and directed to cause the zoning map to be amended to reflect the above described zoning and the Future Land Use Guide to reflect General Commercial.

PART 3: Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause, or phrase of this ordinance and same are deemed severable for this purpose.

PART 4: That this ordinance shall be effective on and after its date of passage and approval by the City Council.

PASSED AND APPROVED this the 10th day of January A.D., 2024.

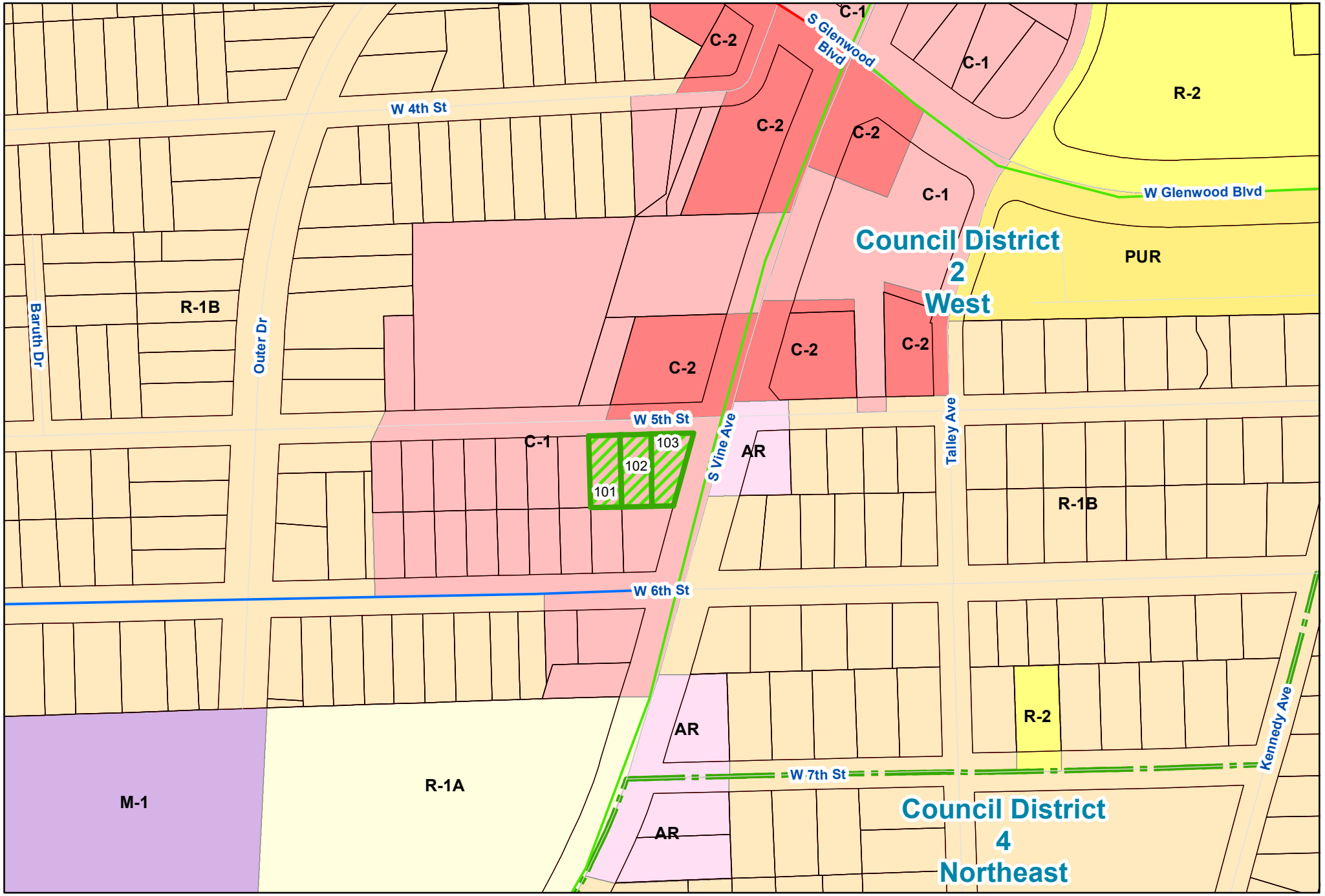
_____
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

_____
CASSANDRA BRAGER, CITY CLERK

_____
DEBORAH G. PULLUM,
CITY ATTORNEY



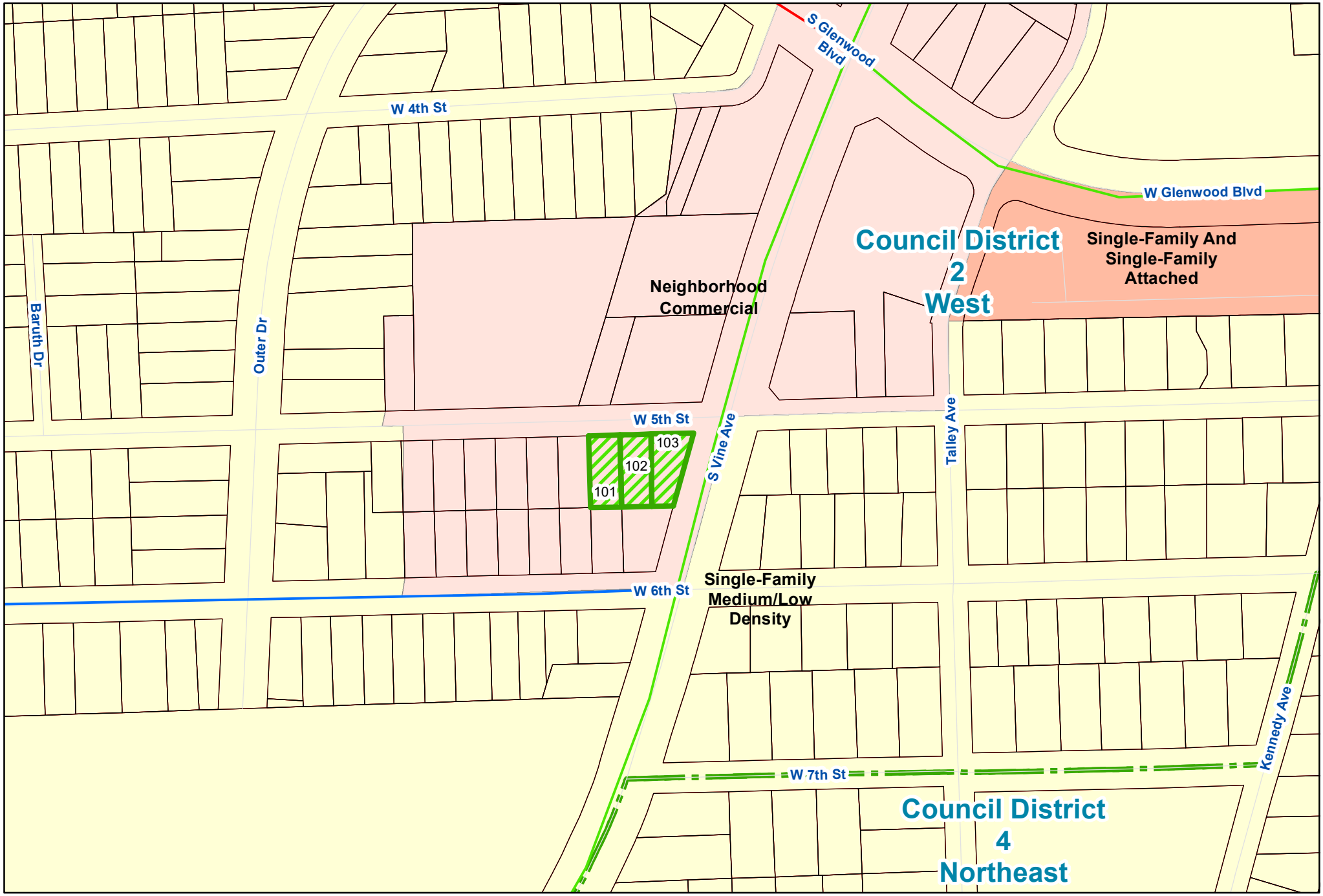
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

200 0 200 Feet

ZONING CASE
Zoning Case #: Z23-039
Current Zoning: C-1
Proposed Zoning: C-2
RENTAL CONNECTIONS LLC

Subject Property

N W E S



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200 0 200 Feet

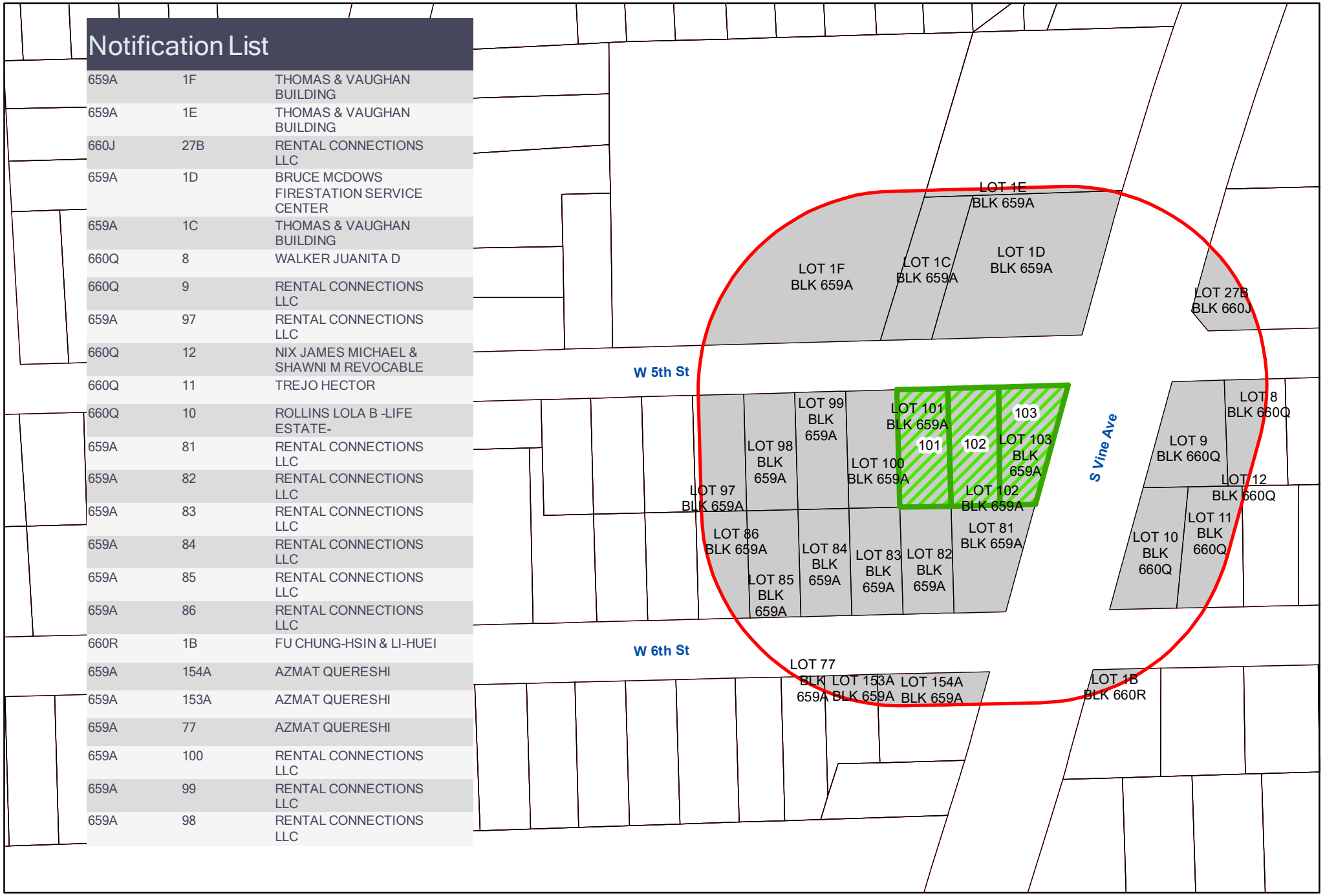
ZONING CASE
Zoning Case #: Z23-039
Current Zoning: C-1
Proposed Zoning: C-2
RENTAL CONNECTIONS LLC AND JOSE SAUCEDO

Subject Property

N W E S

Notification List

659A	1F	THOMAS & VAUGHAN BUILDING
659A	1E	THOMAS & VAUGHAN BUILDING
660J	27B	RENTAL CONNECTIONS LLC
659A	1D	BRUCE MCDOWS FIRESTATION SERVICE CENTER
659A	1C	THOMAS & VAUGHAN BUILDING
660Q	8	WALKER JUANITA D
660Q	9	RENTAL CONNECTIONS LLC
659A	97	RENTAL CONNECTIONS LLC
660Q	12	NIX JAMES MICHAEL & SHAWNI M REVOCABLE
660Q	11	TREJO HECTOR
660Q	10	ROLLINS LOLA B -LIFE ESTATE-
659A	81	RENTAL CONNECTIONS LLC
659A	82	RENTAL CONNECTIONS LLC
659A	83	RENTAL CONNECTIONS LLC
659A	84	RENTAL CONNECTIONS LLC
659A	85	RENTAL CONNECTIONS LLC
659A	86	RENTAL CONNECTIONS LLC
660R	1B	FU CHUNG-HSIN & LI-HUEI
659A	154A	AZMAT QUERESHI
659A	153A	AZMAT QUERESHI
659A	77	AZMAT QUERESHI
659A	100	RENTAL CONNECTIONS LLC
659A	99	RENTAL CONNECTIONS LLC
659A	98	RENTAL CONNECTIONS LLC



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125 0 125 Feet

ZONING CASE
Zoning Case #: Z23-039
Current Zoning: C-1
Proposed Zoning: C-2
RENTAL CONNECTIONS LLC

Subject Property
200' Mailed Notification Area

N W E S

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: P-1

Date: January 10, 2024

Subject: Request that the City Council consider receiving a presentation on the 2023-2024 Annual Work Plan.

Page: Page 1 of

Item Reference:

The City of Tyler maintains a comprehensive Capital Improvement Projects (CIP) program that identifies capital needs for various departments within the city. This presentation will focus on those projects in the CIP program that are funded or may be funded through the Half Cent Sales Tax Program.

RECOMMENDATION:

It is recommended* that the City Council consider receiving a presentation on the 2023-2024 Annual Work Plan.

ATTACHMENTS:

2023-24_HCST_Project_Rankings1

Drafted/Recommended By:
Department Leader

Darin Jennings, PE, City Engineer

Edited/Submitted By:
City Manager

HALF CENT SALES TAX
2023-24 Annual Work Plan

Project Type	Project Name	Estimated Cost
IN PROGRESS		
Airport	Taxiway A (Alpha) Rehabilitation Design and Construction	$ 693,029.00
Airport	Airport Runway Painting	$ 25,000.00
Airport	Airport Drainage Infrastructure Repair	$ 111,100.00
Airport	Airport Rehabilitation of Passenger Boarding Bridge	$ 100,000.00
Airport	Runway & Taxiway Lighting Vault Rehabilitation (Design)	$ 13,884.00
Airport	Taxiway H (Hotel) Rehabilitation Design and Construction	$ -
Drainage	Thompson Ave. Drainage	$ 1,413,590.00
Drainage	Stagecoach Drainage	$ 2,190,580.00
Drainage	Drainage Repairs and Improvements - Off System (Non TxDOT)	$ 845,496.00
Drainage	Drainage Repairs and Improvements - CIPP Projects	$ 1,046,175.00
Drainage	West Mud Creek Trib A (Glenwood Church of Christ at Rice Rd)	$ 3,960,000.00
Drainage	Storm Drainage Improvements (Keaton Ave, West Mud Creek Trib C-1.1, De Charles St to Wynnwood Dr)	$ 4,747,200.00
Drainage	Numerous Drainage Improvments	$ 976,338.00
Streets	Cambridge Road	$ 9,479,576.00
Streets	New Copeland Rd Additional Turn Lane	$ 3,500,000.00
Streets	Pedestrian Improvements - Year 1 (ADA Transition Plan)	$ 500,000.00
Streets	Neighborhood Connections - Hankerson and Tenneha	$ 1,500,000.00
Traffic Signals	Railroad Inventory and Improvements Program	$ -
Traffic Signals	South Tyler Mobility Study (PER)	$ 493,411.00
Traffic Signals	Grande Blvd and Old Noonday Rd Traffic Signal	$ 397,123.00
Traffic Signals	W Gentry Parkway at W Martin Luther King Jr Boulevard Traffic Signal Reconstruction	$ 646,625.00
Traffic Signals	Traffic Signal Modernization Year 3 ($1,500,000/yr)	$ 1,500,000.00
Traffic Signals	Traffic Signal Inventory	$ 158,000.00
Drainage	Douglas Blvd Drainage Study	$ 104,758.00
Facilities	New IT Department Building	$ 1,600,000.00
Facilities	New Municipal Court Complex - Facilities Master Plan	$ 250,000.00
Streets	Settlers Landing & Centennial Blvd Extension	$ 1,700,000.00
Streets	Traffic Signal - Old Jacksonville @ Capital Dr	$ 300,000.00
Streets/Traffic	Retroflective Backplates & LED Signal indications @ 106 intersections	$ 43,600.00
Streets/Traffic	Reconstruct Traffic Signal @ US 69 & Amherst	$ 63,333.00
Streets/Traffic	Reconstruct Traffic Signal- (271 @ N NE Loop 323 ext)	$ 63,333.00
Streets/Traffic	Reconstruct Traffic Signal - Paluxy @ Shiloh	$ 63,333.00
Streets/Traffic	LED Curve Warning System Shiloh Rd	$ 15,800.00
	Total =	**$ 38,501,284.00**
RECURRING PROJECTS (CURRENT)		
Streets/Traffic	Railroad Crossing Improvements	$ 673,000.00
Streets/Traffic	Annual Street Maintenance	$ 3,700,000.00
Streets/Traffic	Traffic Signal Modernization Year 4 - 10 ($1,500,000/yr)	$ 1,555,000.00
Streets/Traffic	Pedestrian Improvements	$ 500,000.00
	Total =	**$ 6,428,000.00**
	Total Current Projects =	**$ 44,929,284.00**

Project Type	Project Name	Estimated Cost
TIER 1 - 2023-24		
Airport	Runway & Taxiway Lighting Vault Rehabilitation (Construction)	$ 186,000.00
Parks	Legacy Trail Phase 3 - Design & 20% Construction Match	$ 500,000.00
Parks	Midtown to Downtown Trail Design Study	$ 225,000.00
ED Program	Three Lakes Parkway - Developer Participation	$ 250,000.00
Streets/Traffic	Traffic Signal at Lake & Fleishel	$ 450,000.00
Streets	Principal Arterial (as approved in the City of Tyler's adopted version of the 2021 Master Street Plan)	$ 1.00
Streets	Minor Arterial (as approved in the City of Tyler's adopted version of the 2021 Master Street Plan)	$ 1.00
Streets	Major Collector (as approved in the City of Tyler's adopted version of the 2021 Master Street Plan)	$ 1.00
Streets	Minor Collector (as approved in the City of Tyler's adopted version of the 2021 Master Street Plan)	$ 1.00
	Total =	**$ 1,611,004.00**
RECURRING PROJECTS (PROPOSED)		
Drainage	Emergency Stormwater Improvements	$ 500,000.00
Streets/Traffic	Downtown Improvements - 3 Years	$ 1,000,000.00
	Total =	**$ 1,500,000.00**
	Total Tier 1 Projects =	**$ 3,111,004.00**
TIER 2 - 2024-26		
Facilities	New Municipal Court Complex	$ 8,625,000.00
Fire	Fire Station #2 Demolition and Reconstruction	$ 5,286,400.00
Fire	Tyler Fire Training Grounds and Maintenance Center	$ 8,442,375.00
Fire	Fire Station #6 Relocation	$ 4,614,250.00
Drainage	Storm Drainage Improvements (Rockwood Dr, West Mud Creek Trib M-11)	$ 1,815,200.00
Drainage	BFC Trib D-5 (Shaw St to W Dobbs St)	$ 1,385,200.00
Streets	Jeff Davis Intersection Improvements	$ 500,000.00
	Total =	**$ 30,668,425.00**

TIER 3		
Drainage	West Mud Creek Trib C-2 (from Broadway to Fair Lane)	$ 2,950,000.00
Drainage	West Mud Creek (Copeland to Easy - Behind TK Gorman)	$ 1,750,000.00
Drainage	Drainage Repairs and Improvements - On System (TxDOT)	$ 825,000.00
Drainage	West Mud Creek Trib M-3 (Richmond Rd to Rice Rd)	$ 4,000,000.00
Drainage	Reconstruction of Channel Walls (West Mud Creek - Easy to Rickety)	$ 150,000.00
Drainage	High Ave & Saunders Ave Culvert Replacement (Black Fork Creek Trib D, south of E Erwin St)	$ 2,625,000.00
Drainage	Storm Drainage Improvements – Lexington and Westminster Drive	$ 477,000.00
Drainage	Shackleford Creek Unnamed Trib (North Dr to Roy Rd, east of Paluxy Dr)	$ 360,000.00
Parks	Woldert Park Tennis/Pickleball Court Renovation	$ 100,000.00
Traffic Signals	Briarwood Intersection Improvements	$ 280,000.00
Streets	Roy Road Widening (Paluxy Drive to Rhones Quarter Road)	$ 8,300,000.00
Streets	Shiloh Road Improvements	$ -
Streets	Centennial Parkway Extension - Construction	$ 8,200,000.00
	Total =	**$ 30,017,000.00**

Project Type	Project Name	Estimated Cost
TIER 4		
Airport	Airport Runway 13/31 Design and Construction	$ 1,860,000.00
Drainage	West Mud Creek Trib C-2 (from Pollard to Copeland)	
Drainage	West Mud Creek Trib C-2.1 & C-2 (at Loftin Street)	
Drainage	Willow Creek Trib W-1 (behind Trinity Dr.)	
Drainage	Willow Creek Trib W-12 (at Front Street)	
Drainage	Bonner Avenue Drainage Improvements	
Drainage	West Mud Creek Trib C (from Camellia to Hamvasy)	
Drainage	Black Fork Creek Trib D-1.1 (from Broadway to Spring)	
Drainage	Black Fork Creek (at E. Fifth Street)	$ 1,600,000.00
Drainage	BFC Trib D (N Fleishel Ave & E Line St)	$ 2,475,000.00
Drainage	BFC (Golden Rd & Pinkerton St)	$ 1,200,000.00
Drainage	Shackleford Creek (at Cumberland Road)	$ 1,986,975.00
Drainage	West Mud Creek Trib B (at New Copeland)	
Drainage	BFC Trib D-2 Channel Repair (S Bonner to S Bois D'Arc Ave)	$ 425,000.00
Drainage	WMC (Southside Park and Rose Rudman Trail Erosion)	$ 1,188,000.00
Drainage	BCF Trib D- 2 Box Culvert Repair (Lake Ronel Oil on E Elm St)	$ 1,250,000.00
Parks	Miracle League Ball Park	$ 1,000,000.00
Parks	W.E. Winters Park Renovation	$ 800,000.00
Parks	Lindsey Park Drainage Study and Renovation	$ 1,600,000.00
Parks	Golden Road Park Renovation	$ 705,000.00
Parks	Hillside Park and Soccer Field Renovation	$ 1,000,000.00
Parks	Stewart Park Implementation	$ 750,000.00
Parks	Goodman LeGrand Improvments	$ 100,000.00
Streets	Patton Circle Widening (at Patton Ln)	$ 2,900,000.00
Streets	Vine St. Brick Street Reconstruction	$ 1,800,000.00
Streets	Cumberland Road Widening (S. Broadway to Paluxy Drive)	$ 13,000,000.00
Streets	Donnybrook Ave Widening (at Houston Ave.)	$ 200,000.00
Streets	Brick Street Repair - Vine St.	$ 4,200,000.00
	Total	**$ 40,039,975.00**

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: O-1

Date: January 10, 2024

Subject: Request that the City Council consider adoption of an ordinance updating and amending Tyler City Code Chapter 1 related to policies and procedures governing the Disability Issues Review Board.

Page: Page 1 of

Item Reference: City of Tyler Code of Ordinances Chapter 1 Sections 1-91 and 1-92

The Tyler City Council created the Disability Issues Review Board (DIRB) in 1998 in response to the Americans with Disabilities Act (ADA). The purpose of the DIRB is to support City efforts to make our community more accessible for people with disabilities.

After performing a periodic review of the current ordinances and comparing them with similar boards, the staff is proposing amendments to Chapter 1 of the Tyler Code of Ordinances related to the DIRB that are intended to clarify the purpose, roles, and responsibilities of the Board. Highlights of the updates include:

- Clarifying a quorum of the board;
- Adding the goal to promote the participation in City events and the usage of City amenities among citizens with disabilities; and
- Clarify that the scope of the Board's review does not extend to private property.

RECOMMENDATION:

It is recommended that the City Council consider approving the proposed amendments to Tyler City Code Chapter 1 related to policies and procedures governing the Disability Issues Review Board.

ATTACHMENTS:

DIRB Ordinance Update

Drafted/Recommended By:
Department Leader

Michael Howell

Edited/Submitted By:
City Manager

ORDINANCE NO. 0-2024-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 1, "GENERAL PROVISIONS", ARTICLE IX., "DISABILITY ISSUES REVIEW BOARD", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY CLARIFYING THE PURPOSE, ROLES, AND RESPONSIBILITIES OF THE BOARD; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, Title II of the Americans with Disabilities Act (ADA), signed into law on July 26, 1990, requires States and local governments to make accommodations for people with disabilities; and

WHEREAS, the City of Tyler has established the Disabilities Issues Review Board to guide public improvements to increase access to City facilities by people with disabilities; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City Council is acting under the authority of Texas Local Government Code Sections 51.001 and 51.072; and

WHEREAS, the City Council is acting under the authority of Tyler City Charter Sections 1, 2, and 6;

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

PART 1: That Tyler City Code Chapter 1, "General Provisions", Article IX., "Disability Issues Review Board", is hereby amended by amending Sections 1-91 and 1-92 to read as follows:

Sec. 1-91. Creation; appointments and officers.

a. There is hereby established the Disability Issues Review Board. The Board shall be composed of seven (7) interested Tyler citizens appointed by the City Council and serving terms as set forth in Section 1-20 of this Code. Appointees should be interested in some phase of service to persons who have a physical, emotional or mental disability. (Ord. No. 0-2008-106, 8/27/08) (Ord. No. 0-2012-80; 9/26/12)

b. ~~The chairperson may appoint subcommittees and each subcommittee will select a chairperson as necessary.~~ All cases to be heard by the board will always be heard by a minimum of four members. (Ord. No. 0-2024-XX; 01/10/24)

c. The City's Americans With Disabilities Act (ADA) Coordinator will serve as the departmental liaison between the Board and the City Council. (Ord. No. O–98-45, 5/27/98) (Ord. No. 0-2009-127, 12/9/09)

Sec. 1-92. Objectives and functions.

a. The objectives and functions of the Disability Issues Review Board include the following:

~~a.~~1. To promote better community ~~and employer~~ understanding, and active cooperation and support for furthering ~~employment~~ opportunities for persons with disabilities;

~~b. To promote increased employment of worker's with disabilities on a year-round basis and to encourage retention and advancement of those workers with disabilities already employed by planning and implementing related activities and emphasizing the needs of individuals with disabilities;~~

~~c. To develop, implement, or otherwise support the better understanding by persons with disabilities of rehabilitation, training, and placement services available to them and to encourage the use of those services;~~

2. To promote the participation in City events and the usage of City amenities among citizens with disabilities;

3. To review and make recommendations for prioritizing City efforts to:

~~d.~~i. ~~To~~ remove all architectural barriers preventing access to or use of City facilities;

~~e. In its capacity as a City board, to make recommendations to and/or advise the City Council as related to employment, accessibility, and educational issues of importance to persons with disabilities and to the community.~~

~~f.~~ ii. ~~To~~ address para-transit issues in conjunction with the City's para-transit plan~~.~~; and

iii. evaluate the City's compliance with federal, state, and local laws relative to persons with disabilities and make recommendations to the City Council as required.

b. The powers and duties of the Board are:

1. Act in an advisory capacity and make recommendations to the City Manager, City Council, and other City departments concerning accessibility and educational issues of importance to persons with disabilities and to the community.

1. Conduct research to determine the feasibility of recommending to the City Manager, City Council, and other City departments improvements to address identified architectural barriers, amendments to the City's para-transit plan or other issues of importance to persons with disabilities.
2. Review and discuss matters referred to the Board by the City Council and the City Manager.

4. The authority of the Board shall be limited to making recommendations, and it shall in no way have authority to direct City staff to implement specific improvements or enforce ADA improvements on private property.

(Ord. No. O-98-45, 5/27/98) (Ord. No. 0-2009-127, 12/9/09) (Ord. No. 0-2010-80, 8/11/10)(Ord. No. 0-2012-80; 9/26/12) (Ord. No. 0-2024-XX; 01/10/24)

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That this ordinance shall take effect immediately upon its adoption.

PASSED AND APPROVED this the 10th day of January, A.D., 2024.

_____

DONALD P. WARREN, MAYOR

OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

_____

CASSANDRA BRAGER, CITY CLERK

_____

DEBORAH G. PULLUM, CITY ATTORNEY

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: M-1

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute part 2 of the professional services contract, in the amount of $2,379,480 with Fitzpatrick Architects and Halff for the Downtown Improvement project.

Page: Page 1 of

Item Reference:

For the past nine months, collaborative efforts between the City, County, Fitzpatrick Architects, and Halff resulted in finalized design plans for Downtown Tyler. Fitzpatrick Architects and Halff created a video and concept images to convey the final design. The design was reviewed at a joint meeting with the County and City, Main Street Board, and at the quarterly downtown discussion meeting. Along with the presentations, the video and concept images were released publicly.

Following the completion of the design portion of the Downtown Improvement project, the next steps include developing plans for bidding on the project and construction management during the duration of the project. The project boundary for this phase will include the current square and adjacent rights-of-way (Broadway Avenue from Locust Street to Elm Street and extended portions of Ferguson Street and Erwin Street to the east, aligning with the Smith County Courthouse and parking structure).

Fitzpatrick Architects and Halff have submitted their proposal for the continuation of the Downtown Improvement project. The proposed fee of $2,379,480 includes the Architectural and Engineering services outlined in the attached proposals for the project's design/plan production, bidding, and construction.

The project will be broken into two phases due to each phase's construction schedule and complexity.

Phase 1 (Halff's proposal) includes everything within the right-of-way along Erwin Street, Broadway Avenue, Ferguson Street, and College Avenue.

Phase 2 (Fitzpatrick Architects' proposal) is for the design and construction of the West Park ("The Square"), along with overseeing both projects as General Project Coordinator.

The same key personnel will be associated with both contracts to ensure continuity between phases. Fitzpatrick Architects and Halff will collaborate closely with the City to create and deliver a true statement

project that will provide a beautiful downtown for future generations to come. During this project, the consultants will assist the City in creating a Downtown District Standards manual for the use of this project and future downtown projects.

Schedule

The consultant team understands the importance of maintaining public engagement throughout the project. A website specifically for this project is being developed and will be updated throughout its duration. Below is the summary of the proposed schedule for both phases of the project:

- Begin Project Design (Phases 1 and 2) January 2024
- Submit 20% Design (Phases 1 and 2) January 2024
- Finalize Downtown District Standards February 2024
- Submit 60% Design (Phases 1 and 2) April 2024
- Submit 90% Design (Phases 1 and 2) June 2024
- Submit Final Design (Phases 1 and 2) August 2024
- Bid/ Begin Construction of Phase 1 Project Late Summer 2024
- End Construction of Phase 1 Spring 2026
- Bid/ Begin Construction Phase 2 Summer 2026
- End Construction of Phase 2 Summer 2027

RECOMMENDATION:

Request that the City Council consider authorizing the City Manager to execute part 2 of the professional services contract, in the amount of $2,379,480 with Fitzpatrick Architects and Halff for the Downtown Improvement project.

ATTACHMENTS:

Fitzpatrick Architects Proposal
Executive Summary
Halff Proposal

Drafted/Recommended By:
Department Leader

Stephanie Franklin, Deputy City Manager

Edited/Submitted By:
City Manager

fitzpatrick ARCHITECTS

110 N. COLLEGE AVE., SUITE 100
TYLER, TX 75702
903.592.0728

Fee Proposal

December 20, 2023

Downtown Square and Street Improvements – Documentation, Bidding, and Construction

City of Tyler

SUMMARY

Thank you for the opportunity to work with The City of Tyler on this project. We are very excited to be part of the team making these vital improvements a reality and look forward to the continued revitalization of our downtown core.

Key tasks include:

DESIGN OVERSIGHT (PHASES ONE AND TWO)

- Develop downtown district standards for roadway paving, site, and sidewalk paving
- Develop downtown district standards for roadway, site, and sidewalk lighting
- Develop downtown district standards for exterior furnishings, and accessories
- Develop downtown district standards for landscaping and other ground cover
- Develop downtown district standards and details for vertical elements such as seat walls, elevated planters, bollards, and signage (traffic poles and wayfinding)
- Produce downtown district standards packet for the City's use and distribution for all future work beyond what is included within our documentation deliverables described below
- Work closely with Halff's team of engineers, designers, and subconsultants to incorporate downtown district standards into their documents for bidding and construction of Roadways and Public Right of Ways outside of the West Park
- Develop and maintain a website tracking progress of the project throughout documentation and construction. The website will be a source for the community to find information on important milestones and pertinent vehicle and pedestrian route changes.

DOCUMENTATION (PHASE TWO)

- Engage Civil (HALFF,) Structural (TBD,) Mechanical (EMA,) Electrical (EMA,) Plumbing (EMA,) and Aquatic Engineers (Aqueous) as well as Landscape Architects (HALFF)
- Code Review and Life Safety Plans
- Demolition plans and associated Details
- Architectural, Civil, MEP, Landscaping and Irrigation Site plans and associated Details
- Dimensioned and Noted Floor Plans, Finish Plans, Reflected Ceiling Plans, and associated Details
- Exterior Elevations
- Roof Plan
- Interior Finish Selection and Schedules
- Interior Elevations
- Structural Plans and Details
- Lighting and Electrical Plans and Details
- Mechanical & Plumbing Plans and Details
- Umbrella Shade Feature Plans and Details
- Water Feature Plans and Details
- Project Manual Including All Bidding Instructions and Product Specifications

fitzpatrick ARCHITECTS

110 N. COLLEGE AVE., SUITE 100
TYLER, TX 75702
903.592.0728

BIDDING AND CONSTRUCTION (PHASE TWO)

- Prepare bid packages for contractor and subcontractors for preparing their bids
- Clarify the content of the drawings and specifications and answer questions
- Evaluate alternate pricing if input is needed from the contractor
- Evaluate the final bids with Client
- Site visits will be made weekly to ensure conformity to the Construction Documents
- Inform the Client of the progress of the work and schedule changes
- Review construction submittals for all materials and products to be installed
- Review Pay Requests submitted by the Contractor for the Client
- Complete a punch list of items to correct as a final review of the construction

COMPENSATION

We propose a lump sum fee of $879,750.00 that includes promotional, architectural, landscape, and engineering design for the tasks listed above.

Listed below are several, required items that may be incurred during outside of the Architectural Services fee above. These are reimbursable with no markup. All coordination with and between these services/consultants are included in our services.

Texas Accessibility Standards (TAS) Plan Review and Inspection (Required by State of Texas)
Printing Construction Documents as required for City or TAS review, or for Owner use.
Shipping and delivery services (if required)
Additional Site Topographic Survey – If required for civil engineering design of site and drainage, etc.
Geotechnical Report – Required for structural design of foundations and paving.
We are excited about the opportunity to work with you on this project.

Upon approval of the above fee arrangement by the City Council we are prepared to execute the City of Tyler's standard contract for Architecture and Engineering services.

Executive Summary

December 22, 2023

Fitzpatrick Architects and Halff are pleased to offer the attached fee proposals for the continuation of the Downtown Improvement project. The fee of $2,379,480 includes the Architectural and Engineering services outlined in the attached proposals for the design/ plan production, bidding, and construction of the project.

The project will be broken into two phases due to the construction schedule and complexity of each phase. Phase 1 (Halff's proposal) includes everything within the right-of-way along Erwin St., Broadway Ave., Ferguson St., and College Ave. Phase 2 (Fitzpatrick Architects' proposal) is for the design and construction of the West Park ("The Square") along with overseeing both projects as General Project Coordinator. The attached exhibit graphically outlines the two phases of work. To ensure continuity between phases, the same key personnel will be associated with both contracts (see below list). We want to collaborate closely with the City to create and deliver a true statement project that will provide a beautiful downtown for the future generations to come. During this project, we plan to help the City create a Downtown District Standards manual for the use of this project and future downtown projects to come.

Project Team

Below is the list of involved firms and support consultants that will be working on both phases. All parties will work together closely throughout the lifespan of the project.

Role	Company
General Project Coordinator	Fitzpatrick Architects
Architectural	Fitzpatrick Architects
Roadway and Site Grading	Halff
Storm Drain, Water, and Wastewater	Halff
Electrical, Mechanical, and Plumbing	EMA Engineering
Landscape, Irrigation, and Hardscape	Halff
TDLR	Ron Davis Consulting
Geotechnical	Terracon
Interactive Water Feature	Aqueous

Schedule

The design team understands the importance of maintaining public engagement throughout the project. A project website specifically for this project is being developed and it will be updated throughout its duration. Below is the summary of the proposed schedule for both phases of the project:

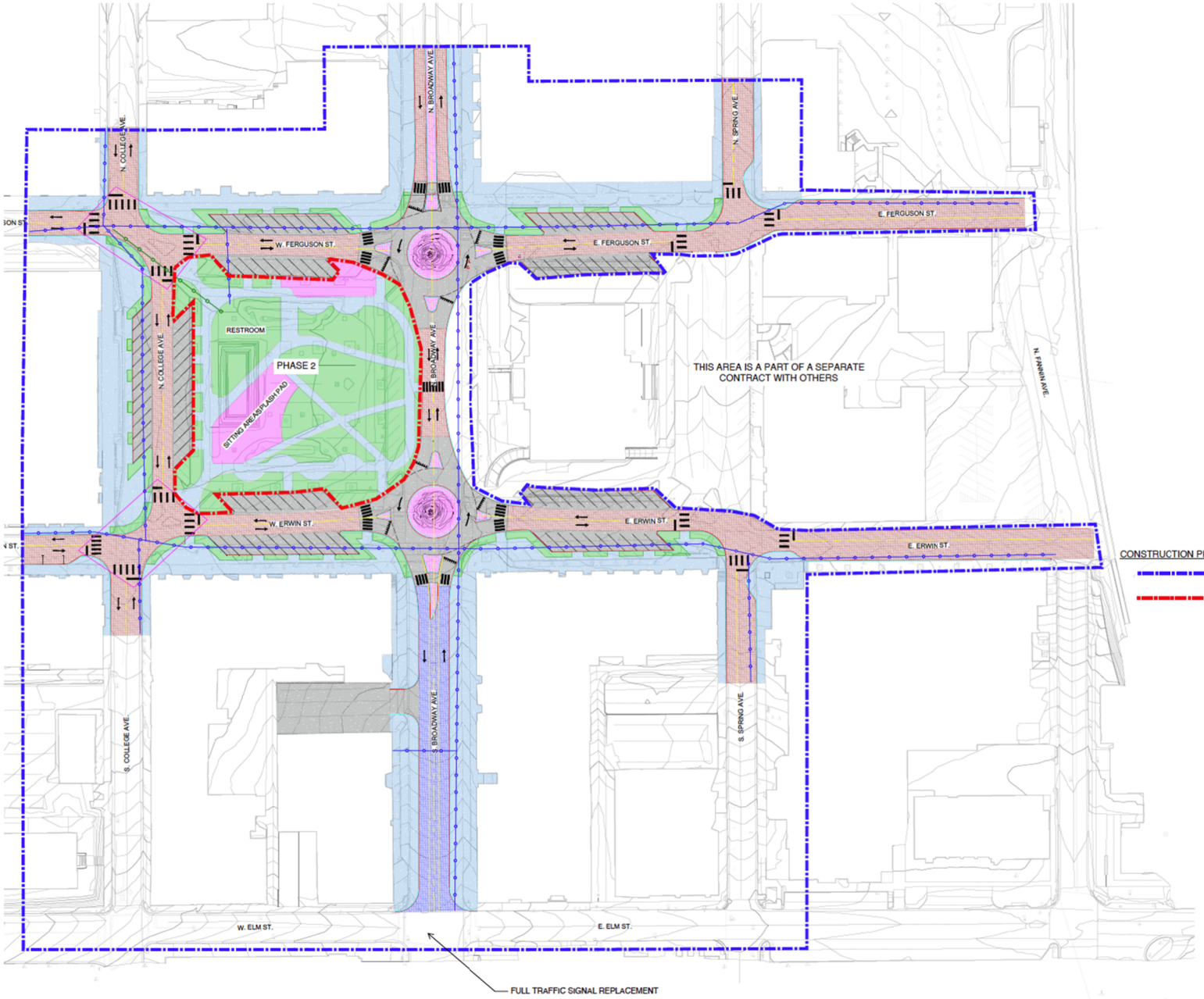
- Begin Project Design (Phases 1 and 2) — January 2024
- Submit 20% Design (Phases 1 and 2) — January 2024
- Finalize Downtown District Standards — February 2024
- Submit 60% Design (Phases 1 and 2) — April 2024
- Submit 90% Design (Phases 1 and 2) — June 2024
- Submit Final Design (Phases 1 and 2) — August 2024
- Bid/ Begin Construction of Phase 1 Project — Late Summer 2024
- End Construction of Phase 1 — Spring 2026
- Bid/ Begin Construction Phase 2 — Summer 2026
- End Construction of Phase 2 — Summer 2027

We look forward to working with the City for a successful completion of the Downtown Improvement Project.

Thanks,

Fitzpatrick Architects
Chad Humphries
Partner

Halff
Michael W. Medford, P.E.
Vice President



50 0 50 100

ORIGINAL SCALE: 1" = 50

LEGEND

- PROP 8" WATER LINE
- PROP SS LINE
- CENTERLINE
- SIGHT DISTANCES
- PROPOSED EXISTING BRICK
- PROPOSED BRICK W/ TRACTION CONTROL
- PROPOSED CONCRETE PAVEMENT
- PROPOSED STAMPED STAINED CONCRETE
- TRAFFIC ARROW
- PROPOSED LANDSCAPING/HARDSCAPE
- PROPOSED SIDEWALK

NOTES:

1. THE ROUNDABOUT DESIGN VEHICLE IS A SU-30. ANY OTHER VEHICLE WOULD HAVE TO BE REEVALUATED.
2. ROUNDABOUT EXHIBITS SHOWING FASTEST PATH, SIGHT DISTANCE TRIANGLES, AND TRUCK TURNS WILL BE PROVIDED DURING THE DESIGN PHASE. THE ROUNDABOUTS SHOWN HAVE BEEN LAID OUT USING NCHRP 1043.

CONSTRUCTION PHASE SCHEDULE

- PHASE 1 (HALFF)
- PHASE 2 (FITZPATRICK ARCHITECTS)

EXHIBIT A
SCOPE OF SERVICES

CITY OF TYLER
Downtown Tyler Improvements Phase 1 – Construction Documents (Infrastructure Improvements)
December 22, 2023

Project Introduction and Understanding

Upon completion of the Schematic Design Phase for this project, Halff has developed a scope of work and associated fees and expenses for the City of Tyler's Downtown Tyler Improvements Phase 1.

Following a meeting with the design team and the City of Tyler on Tuesday, October 24, 2023, Halff has developed a scope of work for the proposed improvements associated with this project.

As design documents are developed, Halff will closely coordinate efforts with the City of Tyler to determine the logical and practical transitions and delineations between each construction phase. Certain elements of this phasing cannot be determined at the time of preparation of this scope of work and must be defined as the development of design and construction documents progresses. Halff has prepared a graphical representation of the project's limits which may be found in **Exhibit A.4.**

Project Scope Outline & Contents

The following is a list of tasks that will be included in this project's scope of work. Each task listed below is described in detail in the scope narratives.

Exhibit A	Scope of Work
Task 1:	Project Meetings
Task 2:	Project Management
Task 3:	Public Meetings/Public Involvement
Task 4:	20% Design Documents
Task 5:	60% Design Documents
Task 6:	90% -100% Design Documents
Task 7:	Broadway Ave.-Elm Street Signal Design
Task 8:	Landscape, Irrigation and Hardscape & Amenity Design
Task 9:	Environmental and Cultural Resources Management Services
Task 10:	Geotechnical Services
Task 11:	Subsurface Utility Engineering (SUE) Contingency
Task 12:	Field Survey Contingency
Task 13:	TDLR Permitting
Task 14:	Bid Phase Services
Task 15:	Construction Administration
Task 16:	Construction Inspection Services

Exhibits	Additional Exhibits Included
Exhibit A.1:	Proposed Project Schedule
Exhibit A.2:	Project Fee Summary
Exhibit A.3:	Project Management Plan
Exhibit A.4:	Project Limits
Exhibit A.5:	Exclusions

SCOPE OF WORK

TASK 1: Project Meetings

1. Meetings - This task includes periodic meetings with the design team and the City of Tyler for project design collaboration and troubleshooting, status updates, and project management decision making. Design coordination with the City of Tyler, Fitzpatrick Architects, EMA Engineering & Consulting, and franchise utility companies, along with collection of requisite information pertinent to the design of the proposed improvements is also included in this task. These meetings may take place in person or virtually through Microsoft Teams.

2. For the purposes of this scope of work, Halff will assume one (1) project kickoff meeting and bi-weekly status update meetings for the duration of the project. These meetings will be included in a lump sum fee. Meetings held in addition to those described above that are associated with this task will be billed on an hourly basis, as the total number and length of meetings may vary greatly and is not possible to determine at this time.

TASK 2: Project Management

1. Field Visits – Verifying field conditions will be a crucial element to this project. This item includes visits to Downtown Tyler to photograph and measure existing elements and optically verify record drawings and location data supplied by the City of Tyler.

2. Progress Reports and Invoicing – This task includes review and preparation of monthly progress reports and invoices.

3. Project Schedule Preparation – This task includes the preparation of an overall project design schedule for review by the City of Tyler. The proposed project schedule may be found in **Exhibit A.1.**

4. Miscellaneous Project Management/Coordination – This item includes all phone calls, conference calls, email correspondence, internal team coordination, project scheduling and updates, and online meetings necessary for the completion of the project with the City of Tyler, Fitzpatrick Architects, and/or other stakeholders or authorities having jurisdiction.

Task 2: Project Management Assumptions

- Fitzpatrick Architects will serve as the General Project Coordinator for the purposes of this scope of work. Their role will serve to ensure that various portions of the overall project are well-coordinated and that design and construction document control handled in a well-defined and organized manner. **These services will be described and billed by Fitzpatrick Architects through their direct contract with the City of Tyler, separate from this contract.**

TASK 3: Public Meetings/Public Involvement

1. Public Meetings/Public Involvement – Halff will conduct public coordination meetings with downtown stakeholders and the City of Tyler on an hourly basis.

2. Halff will prepare and provide updates to the Tyler City Council as desired by the City of Tyler. This scope of work accounts for quarterly updates to the city council for the duration of the project.

3. The City will support Halff by using City of Tyler media sources for public notices, advertisements, etc.

4. The City will reimburse Halff for any costs associated with advertisements, facilities rentals, or other expenses associated with public involvement efforts, as approved by the City and according with the reimbursement conditions described in **Exhibit A.2.**

5. As with the general project meetings described above in **Task 1**, this task will be billed on an hourly basis, as the total number and length of meetings may vary greatly and is not possible to determine at this time.

TASK 4: 20% Design Documents

The 20% phase will primarily be focused on refining the schematic site layout design. The following summary outlines the tasks included in this phase:

1. Curb Management Options – Provide the City of Tyler with two options for curbed and curbless for directions
2. Site Design – refine site design layout for streets, sidewalks, flatwork, parking areas, roundabouts, intersections, and green spaces.
    - Conceptual-level dimensions will be added to this plan.
    - Parking stripes, ADA parking spaces, and pedestrian facilities such as curb ramps (where needed) will be included in this phase.
    - Halff will also perform preliminary design evaluations of where curb and gutter will be necessary and areas where curb and gutter could be eliminated in favor of flush pavement.
    - Refine roundabout design per City of Tyler comments and discussions (use of SU-30 for design vehicle). Provide roundabout exhibits based on SU-30:
        - Exhibits will include sight triangles, fastest path analysis, and SU-30 truck movements.
3. Review & Comments – Halff will submit deliverables (see below) to the City of Tyler for review and comment.

Task 4: 20% Design Documents Deliverables

- Two (2) Curb Management Options
- One (1) .pdf copy of the 20% design documents drawing package (consolidated conceptual drawing showing elements in plan view).
- One (1) set of Roundabout Exhibits
- Paper copies of these documents will be provided upon request

Task 4: 20% Design Documents Assumptions

- The 20% review is a consensus approved overall layout for the project.
- Locations of curbed and curbless areas are to be discussed and confirmed at the 20% stage before proceeding to the 60% design phase.
- City of Tyler must review and provide feedback on intersection and roundabout layout and design prior to Halff proceeding with 60% design phase.
- Right-of-way and property corners will be provided to Halff following a survey conducted by Summit Surveying under a separate contract. This information is critical to the design of this project.
- Any exhibits or documents related to public and/or stakeholder meetings are not included in the above deliverable list but will be provided as needed.

Task 5: 60% Design Documents

The 60% phase will serve to further develop the design documents by adding elements and City comments to the plan set. A 60% milestone quantities takeoff and opinion of probable construction costs (OPCC) will be prepared as a part of this task. The following summary outlines the tasks included in this phase:

1. Cover Sheet – a cover sheet with an index of sheets will be added to the design documents at this stage.
2. General Notes and Survey Legend- prepare project general note sheet that includes the survey legend.
3. Horizontal Control Plan- the plan that includes the project survey data and provides alignment data
4. Proposed Typical Section- prepare typical sections for the street sections including roundabouts.
5. Demolition Plan– prepare plan by adding notation, limits, dimensions, and updated phasing to match construction phasing. Demolition of existing square elements in preparation for use of the area as temporary parking during street construction will be included, as well as demolition of remaining existing and temporary pavement elements in preparation for construction of the park elements (park design under a separate contract).
6. Existing Conditions Plan – the plan will serve to depict the project area as it currently exists (for reference purposes).
7. Site Design – advance site design layout for streets, sidewalks, flatwork, parking areas, roundabouts, and green spaces.
    - Dimensions and horizontal/vertical control will be added to this plan, along with horizontal and vertical design of proposed street alignments.
    - Plan and profile sheets for the proposed street alignments will be developed during this stage. The profile will be based on the centerline.
    - Address comments of locations where curb and gutter will be necessary and areas where curb and gutter could be eliminated in favor of flush pavement.
8. Grading Plan– proposed topographic design will include:
    - Overall grading plan showing 1-foot contours. Spot elevations at critical locations. Additional spot elevations will be added during the 90%-100% design phase.

9. Drainage –drainage design to include:
    - Completion of existing conditions drainage area map and runoff calculations.
    - Completion of proposed conditions drainage area map and runoff calculations.
10. Storm Sewer –storm sewer plans to include:
    - Preliminary storm sewer pipe and inlet hydraulic calculations.
    - Preliminary storm sewer invert elevations, pipe slopes, and lengths.
    - Preliminary plan and profile sheets for storm sewer infrastructure.
    - Design and locate proposed storm sewer inlets.
    - Construction notes.
    - Coordination with landscape architects to develop design of underdrains in green spaces in downtown square.
11. Sanitary Sewer –sanitary sewer plans to include:
    - Preliminary sanitary sewer invert elevations and pipe slope.
    - Proposed sanitary sewer manhole and cleanout location(s) and invert elevations.
    - Preliminary plan and profile sheets for sanitary sewer infrastructure.
    - Construction notes.
12. Water –water plans to include:
    - Preliminary locations of taps and new service lines to tenants.
    - Preliminary plan and profile sheets for water infrastructure.
    - Construction notes.
13. Franchise Utilities – advance plans to include:
    - Refined locations of any franchise utilities per coordination with EMA.
    - Construction notes.
    - Affected franchise utility companies to receive 60% submittal for review and comment.
14. Retaining Walls, Railing, and Ramps – determine where retaining walls, railing, and ramps may be needed due to changes in adjacent street grade. Show plan view location of these potential design elements.
15. Structural Engineering – advance plans to include:
    - Preliminary plan and profile, typical details, and general notes
    - Structural design of luminaire pole foundations
16. Street Lighting
    - Wiring, conduit (and conduit for future needs at key intersections), and electrical design to be completed for streetside lighting outside the limits of the park (under a separate contract).
    - Point-by-point photometric analysis to illustrate design meeting required foot-candle levels. Included are proposed streets, walkways, roundabouts, and square-side parking.
17. Traffic Signal Improvements at Elm and Broadway
    - Plan view layout of signal modifications north of Elm Street. Specific design tasks related to this item may be found in **Task 7**).
18. Pavement Marking and Signage Plan- This will include preliminary layout of all signing and pavement marketing. All required dimensions will be added at 90%.
19. Striping and Signage Plan for Streets Outside the Project Limits – one (1) overall striping and signage plan will be developed for the transition of traffic flow and signage for Erwin and Ferguson Streets to the west of the square, College Avenue, and Spring Street.

20. Construction Sequencing –plans to include:
    - Construction notes.
    - Construction phasing limits and sequencing.
    - Coordination of design elements for aspects of the project listed above to match construction phasing.
21. Landscape Architecture– landscape elements of the project will be included in this phase of the design in accordance with the landscape and irrigation scope of work shown in **Task 8.**
22. Standard Details – begin preparation of standard detail sheets for the project to include relevant design elements.
23. Roadway Cross Sections- Roadway cross sections will be provided every 50 ft and at any driveways
24. Review & Comments – Halff will submit deliverables (see below) to the City of Tyler for review and comment.

Task 5: 60% Design Documents Deliverables

- One (1) .pdf copy of the 60% design documents drawing package
- Paper copies of these documents will be provided upon request
- 60% design document quantities takeoff and OPCC

Task 5: 60% Design Documents Assumptions

- Halff will use City of Tyler and/or TxDOT standard details unless noted otherwise.
- Irrigation design will be completed as a part of the 90%-100% Design Documents and will not be included in **Task 5.**
- Halff will closely coordinate and look to City of Tyler staff for recommendations for incremental implementation of two-way traffic flow on roadways, as this will affect construction phasing.
- Traffic control plans will be completed by the Contractor and must be signed and sealed.
- Halff will not proceed with **Task 6** without express approval by the City of Tyler following 60% Design Document review and comment.
- Halff will keep the existing signals in place and add stop signs when needed outside of the project limits shown in **Exhibit A.4**.
- Halff will add the storm sewer calculations (Q boxes etc.) at 90%, if required.
- Electrical engineering design will meet City of Tyler/TxDOT criteria for lighting design standards.
- The project will begin at the north curb return of the intersection of Broadway Avenue and Elm Street. Halff will only replace the ramps, as required to meet ADA, and existing signal.

Task 6: 90% -100% Design Documents

The 90%-100% phase will serve to complete the develop of the design documents by adding any remaining elements and City comments to the plan set. At the conclusion of this phase, the project will be ready for advertisement for bids. **A 90% design review plan set will be issued to the City of Tyler for review and comment prior to the preparation of the final 100% plan set.** A 90%-100% milestone quantities takeoff and opinion of probable construction costs (OPCC)

will be prepared as a part of this task, as well as bid documents and the specifications manual. The following summary outlines the tasks included in this phase:

1. All plan sheets listed in **Task 5** above will be advanced to the 90% and 100% level.
2. Erosion Control Design (SWPPP Site Map) – erosion control plans and details will be added to the design documents set and will be produced in accordance with accepted standards and best management practices. Halff will prepare the SWPPP site map; the preparation of the SWPPP manual and related documents and permits are excluded from this scope of work and is the responsibility of the successful bidder to prepare and obtain approval.
3. Construction Sequencing – construction phasing plans will be finalized and proposed infrastructure design for elements listed in **Task 5** above will be designed and phased in accordance with the overall construction phasing plan.
4. Franchise Utilities – Final coordination with affected franchise utility companies and EMA to review design documents.
5. Bid Documents and Project Manual – Halff will prepare all bid documents using City of Tyler standard documents as well as the project manual, which will contain standard specifications for the project.
6. Review and Comments – Halff will submit deliverables (see below) to the City of Tyler for review and comment.

Task 6: 90%-100% Design Documents Deliverables

- One (1) .pdf copy of the Draft (90%) and Final (100%) design documents drawing package.
- Paper copies of these documents will be provided upon request
- Draft (90%) and Final (100%) design document quantities takeoff and OPCC
- Draft (90%) and Final (100%) Project Manual

Task 6: 90%-100% Design Documents Assumptions

- Contractor will be required to prepare, submit, and implement the SWPPP for this project.
- Any submittals beyond the Draft (90%) and Final (100%) Design Documents are not included in this scope of work and would be performed under an additional services agreement.

Task 7: Broadway Avenue-Elm Street Signal Design

Halff will provide intersection improvement design plans as a part of the design documents for this project. This item includes:

1. Existing Conditions and Removals Layout Sheet (60%)
   - Existing signal infrastructure, proposed removals, and existing pavement markings.
2. Traffic Signal Layout Sheet (60%)
   - Proposed signal layout plan, overhead signs, pedestrian elements, ADA-compliant pedestrian ramp design, and proposed signal phasing diagram.

3. Traffic Signalization Detail Sheet (90% and 100%)
    - Tabulation of quantities, APS chart, conductor routing chart, electrical chart, detection details, and general notes.

Task 7: Broadway Avenue-Elm Street Signal Design Assumptions

- City of Tyler and TxDOT standard details will be used in the design of intersection elements.

Task 8: Landscape, Irrigation and Hardscape & Amenity Design

Based on the City-approved Concept Plan, Halff will prepare 60%, 90% and Final Landscape, Irrigation and Hardscape and Amenities Construction Documents for approval by the City. Plans shall be prepared in compliance with the City of Tyler's land development code. The 60% landscape plan set will denote tree and landscape bed locations. The 60% irrigation plans will denote the point of connection, irrigation equipment to be used and the mainline route only. The 60% Hardscape and Amenities Layout Plan will denote hardscape material options, amenity type and color options, paving pattern options and paving material options. Upon receiving comments from the City on the 60% plan set submittal, Halff will prepare 90% landscape, irrigation and Hardscape and Amenities layout plans. The 90% plan set will denote actual plant species information. The 90% irrigation plan will include all emission devices, valves and lateral piping. The 90% Hardscape and Amenities Layout Plan wiil include hardscape materials, amenity types and locations, paving materials and paving patterns. Upon receiving comments from the City on the 90% plan set submittal, Halff will prepare 100% landscape, irrigation and hardscape and amenities Construction Documents. Halff will prepare each submittal for review and comment. Halff will provide the following drawings and deliverables:

- Landscape Plan – Halff will prepare a landscape plan that will show all plantings, arrangement of plant material, including trees, shrubs and groundcover. The plant palette will prioritize the use of low maintenance and low water usage plants. The quantity, species, size and spacing of all plant material will be specified in a plant schedule on the plan. Details and notes for the proper installation of plants will be included.

- Irrigation Plans – Halff will prepare irrigation plans and details to irrigate all proposed landscape improvements. Client to provide the consultant with a list of approved irrigation equipment to be used on the project.

- Hardscape & Amenities Layout Plan – Halff will prepare a landscape hardscape and amenities layout plan that will show all park amenities, including picnic tables and chairs, benches, trash receptacles and bike racks. The landscape hardscape and amenities layout plan will also specify the type and location paving materials and paving patterns. Details and notes for the proper installation of all park amenities will be included.

Task 9: Environmental and Cultural Resources Management Services

Halff will provide cultural resources management services in compliance with the Antiquities Code of Texas and Section 106 of the National Historic Preservation Act (Section 106). Environmental and Cultural Resources Management Services as described below will apply to the infrastructure portion of the project (this scope of work and contract), as well as the park portion of the project (separate scope of work and contract).

1. Archeological Resources: A Secretary of the Interior (SOI) qualified Principal Investigator will evaluate potential project impacts to below-ground archeological resources through Background Research, Letter Report and Project Coordination.
    a. Background Research: The Principal Investigator will consult the Texas Archeological Sites Atlas, historical maps and other relevant background information to evaluate the potential for project impacts to archeological sites listed on or eligible for listing on the National Register of Historic Places (NRHP) or State Antiquities Landmarks (SAL).
    b. Letter Report: The Principal Investigator will prepare and submit a letter report for THC review. The report will overview the proposed project and its regulatory contexts, summarize the results of the background research, and provide a recommendation regarding potential construction impacts to archeological eligible for NRHP listing and SAL designation.
    c. Project Coordination: The Principal Investigator will consult with the THC in compliance with the Antiquities Code of Texas and Section 106. The Principal Investigator will coordinate and oversee the work performed for Task 2: Historic Resources and submit the above and below described deliverables to the THC.
2. Historic Resources: An SOI-qualified Historian will evaluate potential project impacts to above-ground historic age resources through Background Research, Field Survey, Architectural Assessment Report and Project Coordination.
    a. Background Research: The Historian will conduct research to determine the historical significance of the project area and identify resources that are listed on or eligible for listing in the National Register of Historic Places (NRHP). The project area falls primarily within the boundaries of the Tyler Downtown Historic and adjacent to the People's National Bank Building, and the Tyler US Post Office and Courthouse, both of which are listed individually in the NRHP. Research will include reviewing Sanborn Fire Insurance Maps, historical aerial photographs and other historical maps to assist in understanding the development pattern of the downtown historic district, the brick streets and landscaping features.
    b. Field Survey: The Historian will conduct a field survey to document the existing condition of the project area. The field survey will include taking photographs of the buildings within the project area, and the existing landscape and roadway features, and notating where historical features and/or resources are located within the project area.
    c. Architectural Assessment Report: The Historian will prepare a report that includes the identification of historically significant resources (those considered eligible for or listed in the NRHP) within the project area, and recommendations on effects that the proposed project may have on these resources. This report will include the assessment of indirect, visual effects that may be imposed on historically significant resources within the project area. The Area of Potential Effect (APE)

would be considered the boundaries of the proposed project extent and the parcels that are adjacent to (or include portions of) the proposed roadway, sidewalks, and/or landscape improvements. The report will include a summation of the historical research and maps.

d. Project Coordination: The Historian will coordinate with the THC to seek consultation on the effects of the proposed project and concurrence with the findings. The Historian will consult with project engineers on modifications to the proposed project design should the THC determine elements of the proposed design may adversely affect historically significant resources. Coordination will be under the Antiquities Code of Texas and Section 106.

Task 9: Environmental and Cultural Resources Management Services Assumptions

The following lists the tasks that are not included in the current scope of work. If such tasks are required, they will require additional services.

- The scope of work does not include public involvement or public notification steps of the Section 106 process.
- The scope of work does not include the preparation or coordination of a Memorandum of Agreement (MOA) or mitigation work, if requested by THC.
- The scope of work does not include contacting or informing additional consulting parties.
- The scope of work does not include subsurface archeological surveys or construction monitoring.
- Should federal funding (grant funds) be applied to any aspect of this project, the scope of work for Task 9 will be amended to include additional services to comply with cultural resources requirements which may be a condition for accepting such funding.

TASK 10: Geotechnical Services

Halff will engage a geotechnical engineer to complete the following tasks:

- Soil investigations, including field and laboratory tests, borings, related engineering analysis and recommendations for determining soil conditions will be made. In addition to the above investigations, borings and appropriate field and laboratory analysis will be made at reasonable intervals along the project alignment for the Contractor's use in determining soil conditions for preparing bids and a Trench Safety Plan.
- The pavement and wall borings for the project will be 7 borings at a depth of 10' below grade for subgrade recommendations and pavement design and 2 borings at a depth of 20' below grade for retaining wall and brick street recommendations. These borings will be drilled at night and the geotechnical engineer will oversee the traffic control.
- The Park borings will be included in this contract. It will be 2 borings for the restroom (1-30 feet deep and 1- 15 feet deep) and 2 borings for canopy area (1-30 feet deep and 1- 15 feet deep).
- A detailed geotechnical engineering study report will be completed after the site investigation.

TASK 11: Subsurface Utility Engineering (SUE) Contingency

Halff completed SUE tasks during the schematic design phase and has submitted final deliverables. As design and construction phases begin, it is possible that SUE services (by Halff) could be required, as the project is located in the oldest part of the city and supplemental field work and investigations may be necessary.

TASK 12: Field Survey Contingency

Halff completed field survey tasks during the schematic design phase and has submitted final deliverables. As design and construction phases begin, it is possible that survey services (by Halff) could be required, given the intricate nature of the project and its design.

TASK 13: TDLR Permitting

This task includes coordination with, and subcontracting of, a Registered Accessibility Specialist (RAS) to perform required TDLR registration of the project and reviews of the design documents to ensure compliance with Texas ADA requirements. TDLR permitting as described in this task will only apply to the infrastructure portion of the project (this scope of work and contract).

TASK 14: Bid Phase Services

Halff will include the following tasks as a part of bid phase services for this project:

1. Assist the City in advertising for bids as required by law. The City of Tyler will place bid advertisements. Halff will distribute the contract/bid documents and construction plans to bidders.
2. Halff will respond to bidders' questions during the bidding process and keep a log of all inquiries.
3. Halff will issue addenda as needed during the bidding process and maintain a log of all addenda. These addenda will be incorporated into all affected project documents and released to bidders.
4. Halff will attend (1) pre-bid meeting, which will be arranged and conducted by the City of Tyler (this meeting is not included in the meetings described in **Task 1**).
5. Halff will attend the bid opening for this project and tabulate bids. The bid tabulation will be submitted to the City of Tyler for review and approval.
6. This scope of work accounts for one (1) bid package. **The preparation of more than one (1) bid package will be considered an additional service and is not included in this scope of work.** An additional services agreement for this work would be required to prepare additional bid packages and would be issued to the City of Tyler for execution at the time of the additional services request.

TASK 15: Construction Administration

Halff will include the following tasks as a part of construction administration services for this project:

1. Assist the City in conducting a pre-construction meeting with the selected bidder during which the parties in attendance will discuss the project in detail prior to the commencement of construction.
2. During construction, Halff will perform the following tasks:

- Coordination and correspondence with the contractor.
- Review and approval of submittals from the contractor.
- Respond to requests for information (RFIs).
- Process pay applications received from the contractor.
- Conduct site visits on an as-needed basis during the project's construction (minimum of one (1) visit per month by engineer of record).

Note: Meetings and site visits included in this task are not included in **Tasks 1 or 2.** These activities included in this task will be considered separate from those in earlier tasks.

TASK 16: Construction Inspection Services

Halff will include the following tasks as a part of construction inspection services for this project:

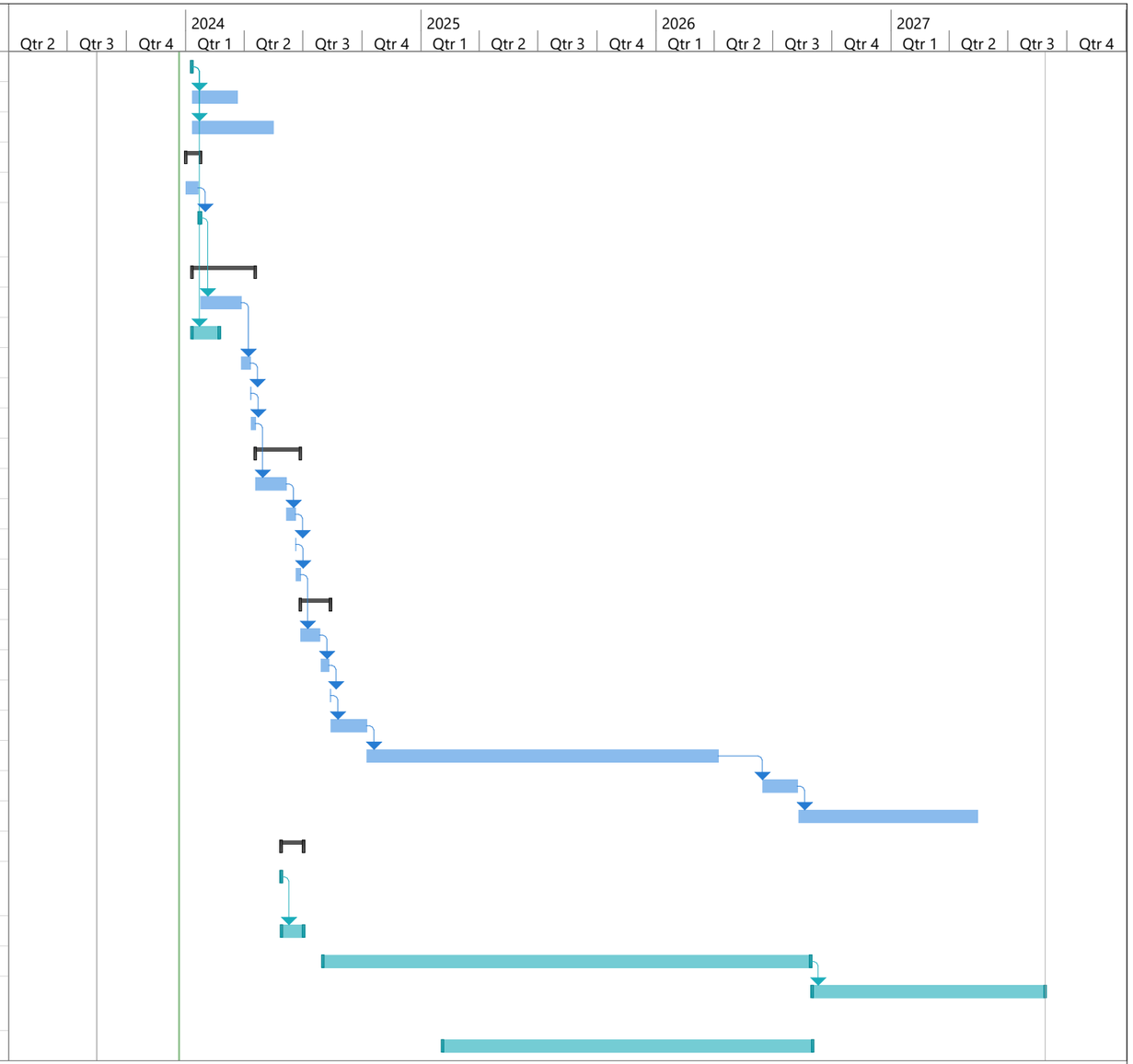
1. Halff will provide inspection services for this project on an **hourly, not-to-exceed basis**.
2. Halff will conduct inspections with the frequency dictated by the City of Tyler. These inspections will be conducted in accordance with City of Tyler standards and requirements. Inspection services will include coordination of requisite laboratory and field testing and reporting. Inspection reports following each visit will be prepared and distributed to the City of Tyler and the contractor.
3. This scope of work assumes that inspections will occur an average of five (5) times per week, for an average duration of four (4) hours per inspection. In addition, inspections will take place as needed for project-specific construction activities, such as concrete pours, street base inspections, etc. This task also includes periodic inspection and documentation of the Traffic Control Plan (TCP) developed and implemented by the contractor. These inspections are anticipated to occur throughout the course of the construction phase of this project, which is assumed to be approximately five hundred fifty (550) calendar days (18 months). Should additional inspection work be needed exceeding the not-to-exceed limit of the fee associated with this task, the City of Tyler will be consulted to discuss extending the limit on a time and materials basis.
4. Halff will coordinate construction materials testing.
5. This task includes project construction record keeping for the duration of construction.

EXHIBIT A.1
PROPOSED PROJECT SCHEDULE

CITY OF TYLER
Downtown Tyler Improvements Phase 1– Construction Documents (Infrastructure Improvements)

December 22, 2023

ID	Task Mode	Task Name	Duration	Start	Finish
1		**Receive Signed Contract**	1 day	Wed 1/10/24	Wed 1/10/24
2		**Geotech**	50 days	Thu 1/11/24	Wed 3/20/24
3		**Environmental**	90 days	Thu 1/11/24	Wed 5/15/24
4		**20% Submittal**	**17 days**	**Mon 1/1/24**	**Tue 1/23/24**
5		20% Design	15 days	Mon 1/1/24	Fri 1/19/24
6		Layout Approval by City (Over the Shoulder Review)	2 days	Mon 1/22/24	Tue 1/23/24
7		**60% Submittal**	**70 days**	**Thu 1/11/24**	**Wed 4/17/24**
8		60% Design	45 days	Wed 1/24/24	Tue 3/26/24
9		Finalize Downtown District Standards	30 days	Thu 1/11/24	Wed 2/21/24
10		60% Internal Submittal (QA/QC)	10 days	Wed 3/27/24	Tue 4/9/24
11		60% External Submittal	1 day	Wed 4/10/24	Wed 4/10/24
12		City Review	5 days	Thu 4/11/24	Wed 4/17/24
13		**90% Submittal**	**50 days**	**Thu 4/18/24**	**Wed 6/26/24**
14		90% Design	34 days	Thu 4/18/24	Tue 6/4/24
15		90% Internal Submittal (QA/QC)	10 days	Wed 6/5/24	Tue 6/18/24
16		90% External Submittal	1 day	Wed 6/19/24	Wed 6/19/24
17		City Review	5 days	Thu 6/20/24	Wed 6/26/24
18		**100% Submittal**	**33 days**	**Thu 6/27/24**	**Mon 8/12/24**
19		100% Design	22 days	Thu 6/27/24	Fri 7/26/24
20		100% Internal Submittal (QA/QC)	10 days	Mon 7/29/24	Fri 8/9/24
21		100% External Submittal	1 day	Mon 8/12/24	Mon 8/12/24
22		**Phase 1 Bid**	40 days	Tue 8/13/24	Mon 10/7/24
23		**Phase 1 Construction**	390 days	Tue 10/8/24	Mon 4/6/26
24		**Phase 2 Bid**	40 days	Mon 6/15/26	Fri 8/7/26
25		**Phase 2 Construction**	200 days	Mon 8/10/26	Fri 5/14/27
26		**Plat/ Interlocal Aggrement**	**25 days**	**Tue 5/28/24**	**Mon 7/1/24**
27		Present Interlocal and Plat to Commissioner Court	1 day	Tue 5/28/24	Tue 5/28/24
28		Submit Plat and City Review	24 days	Wed 5/29/24	Mon 7/1/24
29		**Courthouse Construction (By Others)**	542 days	Thu 8/1/24	Fri 8/28/26
30		**Move into Courthouse, demo existing Courthouse, and Constructing East Park (By Others)**	260 days	Mon 8/31/26	Fri 8/27/27
31		**Hotel Construction (By Others)**	411 days	Mon 2/3/25	Mon 8/31/26



Project: 52651- Downtown Tyle
Date: Fri 12/22/23

Task	Project Summary	Manual Task	Start-only	Deadline
Split	Inactive Task	Duration-only	Finish-only	Progress
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress
Summary	Inactive Summary	Manual Summary	External Milestone	

EXHIBIT A.2
PROJECT FEE SUMMARY

CITY OF TYLER

Downtown Tyler Improvements Phase 1 – Construction Documents (Infrastructure Improvements)

December 22, 2023

Fee Breakdown by Task

TASK 1: PROJECT MEETINGS[1]	$38,000.00
TASK 2: PROJECT MANAGEMENT	$36,180.00
TASK 3: PUBLIC MEETINGS/PUBLIC INVOLVEMENT	$15,000.00
TASK 4: 20% DESIGN DOCUMENTS	$76,500.00
TASK 5: 60% DESIGN DOCUMENTS	$459,000.00
TASK 6: 90% -100% DESIGN DOCUMENTS	$229,500.00
TASK 7: BROADWAY AVE. – ELM ST. SIGNAL DESIGN	$30,000.00
TASK 8: LANDSCAPE, IRRIGATION, AND HARDSCAPE & AMENITY DESIGN	$60,000.00
TASK 9: ENVIRONMENTAL & CULTURAL RESOURCES MGMT. SERVICES	$17,400.00
TASK 10: GEOTECHNICAL SERVICES	$20,650.00
TASK 11: SUBSURFACE UTILITY ENGINEERING (SUE) CONTINGENCY	$10,000.00
TASK 12: FIELD SURVEY CONTINGENCY	$10,000.00
TASK 13: TDLR PERMITTING	$4,500.00
TASK 14: BID PHASE SERVICES	$30,000.00
TASK 15: CONSTRUCTION ADMINISTRATION	$43,000.00
TASK 16: CONSTRUCTION INSPECTION SERVICES[2]	$360,000.00
DESIGN CONTINGENCY[3]	$50,000.00
DIRECT EXPENSES[4]: (as needed and authorized by City)	$10,000.00
Project Total	**$1,499,730.00**

Client agrees to pay monthly invoices or their undisputed portions within 30 days of receipt. Payment later than 30 days shall include interest at 1 ½ percent per month or lesser maximum enforceable interest rate, from the date the Client received the invoice until the date the Engineer receives payment. Such interest is due and payable when the overdue payment is made. Tasks are lump sum unless otherwise noted.

Direct expenses, subcontracted services, and direct costs will be billed at actual cost plus a service charge of 10 percent.

Mileage for team members traveling from outside of Tyler will be charged at the current IRS mileage rate.

[1] Based upon conversations with City of Tyler staff, this item accounts for bi-weekly project team meetings for the duration of project design and an initial project kickoff meeting.

[2] Based upon conversations with City of Tyler staff, this item accounts for construction site inspections to take place for the duration of construction (anticipated 18 months) for five (5) days per week, four (4) hours per day. Also included in this task is extensive project record keeping, which will be vital to the effective documentation of the project's progress and for reference purposes. All records will be submitted to the City of Tyler. **This task will be billed on an hourly, not-to-exceed basis.**

[3] Design contingency will not be used without agreement and written authorization from the City of Tyler.

[4] Direct expenses will be billed on a time and materials basis.

CONSULTANT RATES

Position	Hourly Rate	
	Min	Max
Architect I	$ 106.00	$ 121.00
Architect II	$ 123.00	$ 127.00
Architect III	$ 161.00	$ 191.00
Architect IV	$ 217.00	$ 224.00
Architect V	$ 315.00	$ 328.00
Engineer I	$ 116.00	$ 155.00
Engineer II	$ 136.00	$ 177.00
Engineer III	$ 174.00	$ 224.00
Engineer IV	$ 228.00	$ 397.00
Engineer V	$ 287.00	$ 518.00
Scientist I	$ 86.00	$ 101.00
Scientist II	$ 123.00	$ 143.00
Scientist III	$ 151.00	$ 187.00
Scientist IV	$ 212.00	$ 245.00
Scientist V	$ 265.00	$ 381.00
LA/Planner I	$ 91.00	$ 109.00
LA/Planner II	$ 108.00	$ 139.00
LA/Planner III	$ 154.00	$ 173.00
LA/Planner IV	$ 196.00	$ 232.00
LA/Planner V	$ 245.00	$ 352.00
Surveyor I	$ 100.00	$ 140.00
Surveyor II	$ 108.00	$ 151.00
Surveyor III	$ 121.00	$ 159.00
Surveyor IV	$ 174.00	$ 199.00
Surveyor V	$ 227.00	$ 345.00
Field Tech I	$ 66.00	$ 97.00
Field Tech II	$ 86.00	$ 113.00
Field Tech III	$ 102.00	$ 126.00
Field Tech IV	$ 136.00	$ 154.00
Field Tech V	$ 182.00	$ 219.00

OTHER DIRECT EXPENSES:
Other direct expenses are reimbursed at actual cost times a multipler of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the office. For other expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multipler of 1.10.

Position	Hourly Rate	
	Min	Max
Office Tech I	$ 66.00	$ 90.00
Office Tech II	$ 86.00	$ 113.00
Office Tech III	$ 107.00	$ 158.00
Office Tech IV	$ 133.00	$ 166.00
Office Tech V	$ 176.00	$ 275.00
Administrative I	$ 69.00	$ 76.00
Administrative II	$ 85.00	$ 100.00
Administrative III	$ 105.00	$ 125.00
Administrative IV	$ 138.00	$ 153.00
Administrative V	$ 207.00	$ 348.00
Specialist I	$ 85.00	$ 109.00
Specialist II	$ 116.00	$ 148.00
Specialist III	$ 152.00	$ 199.00
Specialist IV	$ 201.00	$ 249.00
Specialist V	$ 274.00	$ 378.00
CEI Srv I	$ 71.00	$ 102.00
CEI Srv II	$ 93.00	$ 118.00
CEI Srv III	$ 104.00	$ 124.00
CEI Srv IV	$ 131.00	$ 209.00
CEI Srv V	$ 178.00	$ 290.00
Intern	$ 79.00	$ 116.00

Crew Rates	UM	Bill Rate
1-Man Survey Crew	hour	$ 125.00
1-Man Terrestrial HDS Crew	hour	$ 245.00
2-Man Survey Crew	hour	$ 190.00
2-Man Terrestrial HDS Crew	hour	$ 325.00
3-Man Survey Crew	hour	$ 245.00
Designating (QL-B) (1-Man)	hour	$ 110.00
Designating (QL-B) (2-Man)	hour	$ 220.00
FAA 107 UAS Pilot	hour	$ 250.00
Potholing (QL-A) (1-Man)	hour	$ 165.00

Equipment Rates	UM	Bill Rate
MX7 Mobile LIDAR (ES21-I)	day	$ 1,500.00
UAS LIDAR (ES11-I)	day	$ 2,200.00
Office Vehicle Mileage (VA01-M)	mile	IRS Rate
MX9 Mobile LIDAR (ES20-I)	day	$ 3,000.00

These ranges and/or rates will be adjusted annually in July. Last updated 2023.

EXHIBIT A.3
PROJECT MANAGEMENT PLAN

CITY OF TYLER
Downtown Tyler Improvements Phase 1 – Construction Documents (Infrastructure Improvements)
December 22, 2023

Halff Project Management Introduction

Halff is pleased to submit this Project Management Plan as a part of the scope of work draft documents to outline and highlight our firm's management approach and philosophy as it applies to this project, especially given its complex nature.

Halff is focused on the City of Tyler's ultimate objectives and desired outcome for this project and will strive to ensure a high-quality product which meets the City's purposes and fulfills each individual objective set forth in the project's scope. This is a very high-profile project and we are dedicated to assisting the City in successfully progressing through the stages of design and construction smoothly. We believe that a carefully developed project management plan and approach are critical in successfully managing a project of this magnitude and importance and have set forth the general outline of this plan in the paragraphs below.

General Project Overview (Project Management Approach & Philosophy)

Halff's approach to the management of our projects accounts for the tasks described in the project's scope of work based upon specific task descriptions, task durations, milestones, project team personnel and resources, and expenses. These items are integral parts of an overarching schedule of activities, which will be the guiding document utilized for the management of this project. This schedule will be maintained and updated during monthly project progress meetings to gauge actual project progress versus the projections found in the schedule.

- **Progress Reports**
  Project progress reports will be compiled and issued to Fitzpatrick Architects and the City of Tyler's project manager each month in conjunction with the regular project meetings, which will allow the City of Tyler to easily assess the project's status. These progress reports will provide descriptions of the tasks currently in progress and the work associated with those tasks that was completed during that period. Also included will be action items to be completed by each entity involved with the project, as well as projected upcoming tasks for the coming month. Halff would also like to offer to provide updates to the Tyler City Council on a quarterly basis (at the discretion of the City of Tyler), due to the special nature of this project.

- **Bi-Weekly Design Team/City of Tyler Meetings**
  During this project, Halff believes that it will be crucial to conduct bi-weekly progress meetings (as mentioned in **Exhibit A's** scope of work) to ensure that the project is satisfying the City of Tyler's objectives, as well as to better track project progress and efficiency. Numerous City of Tyler departments, Fitzpatrick Architects, and other stakeholders are involved in this project, making regular meetings and correspondence crucial throughout the design process. These meetings may take place in person (if warranted) or via Microsoft Teams. If it is not necessary to conduct a meeting (based upon the work in progress), a project status memorandum will be prepared and distributed to the project team in lieu of an in-person/virtual meeting. Conversely, project conditions may make it necessary to meet more frequently than once per month at certain stages of the project. Halff will remain flexible and communicative to ensure that project team meetings take place at appropriate intervals. Meeting frequency will be at the discretion of the City of Tyler staff members involved in the project.

- **Monthly Invoices**
  Invoices will be drafted and sent to the City of Tyler each month and will be categorized into phases and tasks, as outlined in the project's scope of work (Exhibit "A" in the design contract documents).

- **Project Team Organization**
  Fitzpatrick Architects will serve as the General Project Coordinator on the design team and will provide administrative and project document management services for the project. Their scope of work and contract for this role will be separate from these project documents and will be covered under their (Fitzpatrick's) direct contract with the City of Tyler. Halff's project team will primarily consist of personnel employed in the firm's Tyler office, with technical support provided by staff members of the Austin office (Senior Project Advisor, Landscape Architecture). Project management and the preparation of construction design plans, specifications, and estimates (PS&E) will be the responsibility of Halff's Tyler office. Landscape and irrigation design and portions of project QA/QC will be led by personnel from the Austin office. Environmental, Structural Engineering, and Subsurface Utility Engineering (SUE) support will be provided by the Richardson office.

  The table below contains list key project personnel, each person's role, and their contact information.

City of Tyler			
Stephanie Franklin	Deputy City Manager	sfranklin@tylertexas.com	903-531-1130
Amber Varona	Main Street Director	avarona@tylertexas.com	903-343-0339
Kate Dietz	Director of Water Utilities	kdietz@tylertexas.com	903-531-1234
Darin Jennings	City Engineer	djennings@tylertexas.com	903-531-1239
Cameron Williams	Traffic Engineer	cawilliams@tylertexas.com	903-531-1204

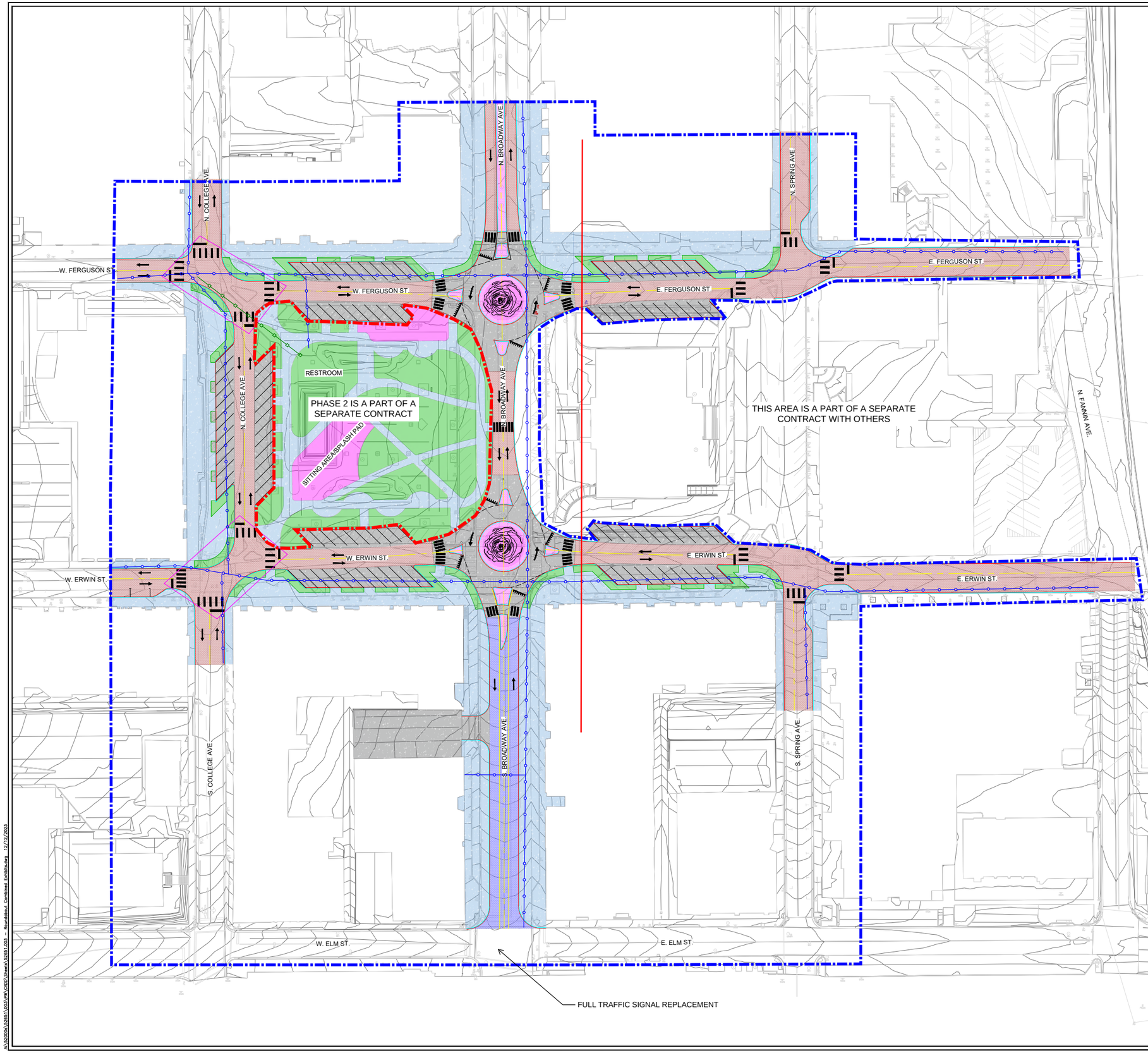
Fitzpatrick Architects			
Chad Humphries	Principal-in-Charge	ch@fitzpatrickarchitects.com	903-592-0728
Hector Escalante	Project Manager	he@fitzpatrickarchitects.com	903-592-0728
Halff			
Michael Medford	Principal-in-Charge	mmedford@halff.com	903-617-5361
Sarah Caudle	Project Manager	scaudle@halff.com	903-617-5381
Mark Priestner	Planning/PR/Project Advisor	mpriestner@halff.com	903-617-5372
Aaron Cooper	Landscape Arch. Team Leader	acooper@halff.com	512-777-4566
Eric Ratzman	Sr. Project Advisor	eratzman@halff.com	512-777-4620
Jeffery Harmon	Construction Advisor	jharmon@halff.com	903-617-5375

- **Quality Assurance/Quality Control**
  Halff's QA/QC program is designed to achieve accurate, high-quality deliverables that meet the client's expectations, as well as our own professional standards. A QA/QC review will take place prior to each submittal to the City of Tyler. Milestones for submittals are described in greater detail in the scope of work that has been developed for this project.

EXHIBIT A.4
PROJECT LIMITS

CITY OF TYLER
Downtown Tyler Improvements Phase 1 – Construction Documents (Infrastructure Improvements)
December 22, 2023

The attached aerial exhibit delineates the project and phase limits, as discussed during a design team and City of Tyler staff meeting held on October 24, 2023.



50 0 50 100

ORIGINAL SCALE: 1" = 50

LEGEND

- PROP 8" WATER LINE
- PROP SS LINE
- CENTERLINE
- SIGHT DISTANCES
- PROPOSED EXISTING BRICK
- PROPOSED BRICK W/ TRACTION CONTROL
- PROPOSED CONCRETE PAVEMENT
- PROPOSED STAMPED STAINED CONCRETE
- TRAFFIC ARROW
- PROPOSED LANDSCAPING/HARDSCAPE
- PROPOSED SIDEWALK

NOTES:

1. THE ROUNDABOUT DESIGN VEHICLE IS A SU-30. ANY OTHER VEHICLE WOULD HAVE TO BE REEVALUATED.
2. ROUNDABOUT EXHIBITS SHOWING FASTEST PATH, SIGHT DISTANCE TRIANGLES, AND TRUCK TURNS WILL BE PROVIDED DURING THE DESIGN PHASE. THE ROUNDABOUTS SHOWN HAVE BEEN LAID OUT USING NCHRP 1043.

CONSTRUCTION PHASE SCHEDULE

- PHASE 1 (HALFF)
- PHASE 2 (NOT THIS CONTRACT)

DOWNTOWN TYLER IMPROVEMENTS

CITY OF TYLER
TYLER, TEXAS 75701

CITY OF TYLER
A Natural Beauty

halff
1121 ESE Loop 323
Suite 117
Tyler, Texas 75701
(903) 617-5360
TBPELS FIRM #F-312

Revision No.	Date	Description

PRELIMINARY

FOR INTERIM REVIEW ONLY

THESE DOCUMENTS ARE FOR INTERIM REVIEW AND NOT INTENDED FOR REGULATORY APPROVAL, PERMIT, BIDDING OR CONSTRUCTION PURPOSES. THEY WERE PREPARED BY OR UNDER THE SUPERVISION OF:

SARAH E. CAUDLE — NAME
134095 — P.E. LICENSE NO.
10/26/2023 — DATE
TBPELS ENGINEERING FIRM #312 — FIRM / BUSINESS NO.
TX — STATE

Project No.:	52651.003
Issued:	12/12/2023
Drawn By:	JB
Checked By:	SC
Scale:	AS NOTED

Sheet Title

EXHIBIT **G**

1

Sheet Number

A:\52000\s52651\003\dwg\02d\Sheets\52651.003 - Roundabout Combined Exhibits.dwg 12/12/2023

EXHIBIT A.5
EXCLUSIONS

CITY OF TYLER
Downtown Tyler Improvements Phase 1 – Construction Documents (Infrastructure Improvements)
December 22, 2023

The following services are not included in the scope of work for this phase of the project:

- Construction staking
- Quality control and materials testing services
- TDLR permitting and coordination within the “park” project limits
- Architectural design
- Preparation and filing of plats
- Additional illumination design other than the proposed approximate 2,400 linear feet of street.
- Design for additional power connections of circuiting to other devices/equipment (other than proposed downtown street luminaires).
- Section 404 permitting or USACE coordination
- Request for a Conditional Letter of Map Revision (CLOMR) based on the conceptual hydraulic mitigation concept
- FEMA permitting (i.e., Letter of Map Revision (LOMR), etc.)
- Right of way acquisition services
- Right of way and/or easement documents
- Traffic Impact Analysis or any related traffic study
- Storm water detention design and plans
- Design of franchise utility relocations
- Special investigations involving detailed consideration of operations, maintenance, and overhead expenses; preparation of rate schedules, earning, and expense statements; special feasibility studies; appraisals, valuations; and material audits or inventories required for certification of force account construction performed by the Owner is excluded.
- Addressing client or agency comments beyond those identified in this scope.
- Assisting the City of Tyler in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- Performing detailed investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by CITY.
- Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- Detailed Traffic Control Plans
- Any submittals beyond what is in **Exhibit A**
- Bidding the project more than one (1) time.
- Separating the project into more than one (1) bid set.
- Any major changes after 60% design deliverable

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: M-2

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute an engineering services contract, in the amount of $247,320.00 with Shermco Industries Inc for the Golden Road Water Treatment Plant Electrical Assessment.

Page: Page 1 of

Item Reference:

Golden Road Water Treatment Plant (WTP) was constructed in the 1950's as the first surface water treatment plant in the City of Tyler. The WTP has served as a reliable source of safe and high-quality drinking water for the citizens of Tyler for decades and has seen numerous additions and rehabilitation projects over the years. Although primary clarifier rehabilitation, filter replacement, and pumping upgrades have all been done, the core of the WTP and the electrical components are still the original from the 1950's. This has limited our ability to update the filter control panel of the plant and provides challenges in the operation of the antiquated filter system.

Due to the age and unknown condition of the plant wiring, it was recommended that TWU invest in an Electrical Assessment to determine what wires need to be replaced and have updated information on wiring feeds and routing.

Shermco has recommended a 5-day plant shutdown in order to perform insulation resistance testing and develop single line schematics, investigate and incorporate all 480 Volt panels in the single line drawing, and investigate 480 Volt main switchgear, high service pump panel, and filter control panel. During the shutdown Lake Palestine WTP will provide water to the entire City of Tyler. Shermco has agreed to work safely with TWU to restore power to the Golden Road WTP in the event of an emergency.

RECOMMENDATION:

Request that the City Council consider authorizing the City Manager to execute an engineering services contract, in the amount of $247,320.00 with Shermco Industries Inc for the Golden Road Water Treatment Plant Electrical Assessment.

ATTACHMENTS:

11.30.2023 - Shermco MSA

Drafted/Recommended By:
Department Leader

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

Edited/Submitted By:
City Manager

Dallas Service Center
2425 E. Pioneer Dr., Irving, TX 75061
Office (972) 793-5523
www.shermco.com

Proposal prepared for:

Jacob Yanker
of
City of Tyler
for
City of Tyler Electrical Improvements

Approved by:
Chris Trendel

Shermco Quote Number:
SIQ-00016712-23

November 6, 2023

INDEX OF EXHIBITS

Exhibit A - E/A's Scope of Service

Exhibit B - E/A's Project Schedule

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

Exhibit D - Certificates of Insurance and Endorsements

Exhibit E - Certificate of Interested Parties (Form 1295) (If Required)

Exhibit F – Procedure for Correcting Construction Defects
(Applicable only to construction contracts affecting City-owned buildings and other public works)

Exhibit A - E/A's Scope of Service

Exhibit A

Engineering Scope of Service:

The Project scope of work is based on the report Shermco Industries previously provided to the City of Tyler. The scope consists of one phase including a shutdown. The scope only includes electrical equipment part of the original 1960s installation as discussed during the initial site walkthrough.

Tasks by Priority:

1. Insulation resistance testing of all 480V cables.
    a. Cable results will be recorded and made into a report of recommendations.
    b. A one-line drawing will identify the cables needing replacement.
    c. Critical cable replacement will happen during a later shutdown not included in this scope.
2. Investigate all 480V panels and determine which need to be replaced.
    a. A one-line drawing will identify the equipment needing replacement.
    b. Replacement of critical panels will happen during a later shutdown not included in this scope.
    c. It has already been determined that (2) panels will need to be replaced.
    d. Provide additional engineering.
3. Investigate 480V Main Switchgear located in the shop to determine if replacement is necessary.
    a. Provide engineering design for new Main Switchgear.
4. Investigate (1) High Service Pumps Panel
    a. Provide engineering for (1) new High Service Pump Panel.
5. Investigate (4) Filter Control Panels.
    a. Provide engineering for (4) new Filter Control Panels.
6. Shermco will create labels as necessary to match breakers with 480V panels and loads.
7. Shermco will create an up-to-date single line diagram down to the 480V loads.

In the event of an emergency and the plant needs to be brought back online ASAP, both parties will work together to safely restore power and processes to the Water Treatment Plant.

Billing:

- On commencement of investigation, Shermco will invoice for 30% of the total cost.
- Upon the completion of the cable testing and investigation, Shermco will invoice for an additional 30% of the total cost.
- Upon the completion of the engineering of the switchgear, filter control panels, and high service pumps panel, Shermco will invoice for the final 40% of the total cost.

Exhibit B - E/A's Project Schedule

Exhibit B

Project Schedule:

- 5 days. The initial shutdown is anticipated to take place in March of 2024. This will be confirmed by the OWNER 1 month prior to the shutdown date.
    1. Insulation resistance testing will be completed during this shutdown.
    2. Investigation of all 480V panels fed from the Main Switchgear will take place during this shutdown.
    3. Investigation of (1) Main Switchgear will take place during this shutdown.
    4. Investigation of (1) High Service Pump Panel will take place during the shutdown.
    5. Investigations of (4) Filter Control Panels will take place during this shutdown.
- 1 day. Label placement may take place in a single day during the shutdown or after the shutdown is completed. Labels will be placed on sources and loads indicating load and source name.
- After shutdown engineering to commence for (4) new Filter Control Panels, (1) High Service Pump Panel, and (1) Main Switchgear.
- 3 weeks from the end of the shutdown. An up-to-date single line diagram will be provided to the OWNER.
- 3 weeks from the end of the shutdown. A cable report will be provided to the OWNER.
- 3 weeks from the end of the shutdown. A panel report will be provided to the OWNER.
    - OWNER to approve of additional panel replacements.

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

Exhibit C

Fee Summary:

Engineering	$ 100,570.00
Labor	$ 139,350.00
Material	$ 7,400.00
Total	**$ 247,320.00**

Exhibit D - Certificates of Insurance and Endorsements

(See following pages for a summary and checklist of Insurance and Endorsement requirements)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/28/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Arthur J. Gallagher Risk Management Services, LLC
11311 McCormick Road
Suite 450
Hunt Valley MD 21031

License#: BR-724491

CONTACT NAME: Certificate Administrator
PHONE (A/C, No, Ext): 443-798-7393 **FAX (A/C, No):** 443-798-7290
E-MAIL ADDRESS: BW2.BSD.CERTS@AJG.COM

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Crum & Forster Specialty Insurance Co	44520
INSURER B : Twin City Fire Insurance Company	29459
INSURER C : Hartford Fire Insurance Company	19682
INSURER D : Allied World Assurance Co (U.S.) Inc.	19489
INSURER E :	
INSURER F :	

INSURED SHERINT-01
Shermco Industries, Inc.; Shermco Buyer, Inc.;
Shermco Intermediate Holdings, Inc.
Shermco Systems Integration, LLC, Sigma Six Solutions, Inc, 2425 E Pioneer Drive
Irving TX 75061

COVERAGES **CERTIFICATE NUMBER:** 762464412 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:	Y	Y	EPK143657	5/1/2023	5/1/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 500,000 $ 25,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
C	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY	Y	Y	30CSEQU3811	5/1/2023	5/1/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $ $
A D	X **UMBRELLA LIAB** X OCCUR X **EXCESS LIAB** CLAIMS-MADE DED X RETENTION $ 0	N	N	EFX122760 03113141	5/1/2023 5/1/2023	5/1/2024 5/1/2024	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $ 10,000,000 $
B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	Y	30WEQU3810	5/1/2023	5/1/2024	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000
A A	Contractors Pollution Professional Liability Third Party Poll/Onsite Cleanup			EPK143657 EPK143657	5/1/2023 5/1/2023	5/1/2024 5/1/2024	Each Pollution Cond. Each Wrongful Act Each Pollution Cond.	$1,000,000 $1,000,000 $1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Professional Liability is claims made coverage
Installation Floater - XL Specialty Insurance Company - Policy # UM00139754MA23A - 5/1/2023-5/1/2024 - $1,000,000 Limit

Contractor's Equipment - XL Specialty Insurance Company - Policy # UM00139754MA23A - 5/1/2023-5/1/2024 - Borrowed, Leased, or Rented Equipment from Others - $1,000,000 / $500,000 Per Item

CERTIFICATE HOLDER IS ADDITIONAL INSURED, ON A PRIMARY, NON-CONTRIBUTORY BASIS, AS REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION IN FAVOR OF THE CERTIFICATE HOLDER, AS REQUIRED BY WRITTEN CONTRACT AND WHERE ALLOWED BY LAW.
See Attached...

CERTIFICATE HOLDER

EVIDENCE OF INSURANCE ONLY

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Michael P. Hood

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AGENCY CUSTOMER ID: SHERINT-01

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY Arthur J. Gallagher Risk Management Services, LLC	NAMED INSURED Shermco Industries, Inc.; Shermco Buyer, Inc.; Shermco Intermediate Holdings, Inc. Shermco Systems Integration, LLC, Sigma Six Solutions, Inc, 2425 E Pioneer Drive Irving TX 75061
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

COVERAGE IS SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY. EXCESS LABILITY IS FOLLOW FORM. 30 DAY WRITTEN NOTICE OF CANCELLATION WILL BE SENT BY THE NAMED INSURED IF THE POLICIES ARE CANCELLED OR MATERIALLY ALTERED.

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EPK143657
5/1/23-5/1/24

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDED WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART
ERRORS AND OMISSIONS LIABILITY COVERAGE PART
THIRD PARTY POLLUTION LIABILITY COVERAGE PART
ONSITE CLEANUP COVERAGE PART

SCHEDULE

Name of Person(s) or Organization(s)
Blanket when specifically required in a written contract with the named insured.

SECTION VI – COMMON CONDITIONS, item 17. Transfer Of Rights of Recovery Against Others To Us within the Common Provisions is amended by the addition of the following:

Solely as respects the person(s) or organization(s) indicated in the Schedule shown above, we waive any right of recovery we may have against the person(s) or organization(s) indicated in the Schedule shown above because of payments we make for "damages" arising out of your ongoing operations or "your work" performed under a written contract with that person(s) or organization(s) and included in the "products-completed operations hazard".

However, this waiver shall not apply to "damages" resulting from the sole negligence of the person(s) or organization(s) indicated in the Schedule shown above.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

EPK143657
5/1/23-5/1/24

CRUM & FORSTER
A FAIRFAX COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
CONTRACTORS POLLUTION LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) or Organization(s)
Blanket when specifically required in a written contract with the named insured.

SECTION III – WHO IS AN INSURED within the Common Provisions is amended to include as an additional insured the person(s) or organization(s) indicated in the Schedule shown above, but only with respect to liability caused, in whole or in part, by "your work" for that insured which is performed by you or by those acting on your behalf.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

(1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.

(2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:

(a) That is a partnership or joint venture,

(b) That is an "insured" under any other policy,

(c) That has exhausted its Limit of Insurance under any other policy, or

(d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:

(1) The agreement requires you to provide direct primary insurance for the lessor and

(2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

D. Additional Insured if Required by Contract

(1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

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The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

(1) During the policy period, and

(2) Subsequent to the execution of such written contract, and

(3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

(a) The limits of insurance specified in the written contract or written agreement; or

(b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM , SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

E. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(3)** and **(4)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

2. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:

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If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

(1) $100,000;

(2) The actual cash value of the damaged or stolen property at the time of the "loss"; or

(3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of $1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of $50 per day and a maximum limit of $1,000.

6. LOAN/LEASE GAP COVERAGE

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

7. AIRBAG COVERAGE

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions **4.c.** and **4.d.** do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

(1) Permanently installed in or upon the covered "auto";

(2) Removable from a housing unit which is permanently installed in or upon the covered "auto";

(3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

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(4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

(1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;

(2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or

(3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or $250, whichever deductible is less.

9. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

(1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;

(2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT,CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) A member, if you are a limited liability company; or

(4) An executive officer or insurance manager, if you are a corporation.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

14. HIRED AUTO - COVERAGE TERRITORY

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

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We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

16. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

17. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of $2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,

b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is $10,000.

For the purposes of the coverage provision,

a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

19. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to $1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is $5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

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Shermco Terms and Conditions

A proposal or quotation issued by the Shermco company named in the proposal ("Shermco") provided to you (the "Proposal") is an offer to sell services to you and/or procure equipment, parts, components, and software ("Procured Items") for you as specified in the Proposal ("Services") pursuant to these terms (the "Terms"). By accepting the Proposal, instructing Shermco to begin work or by executing the Proposal, you are agreeing to be bound by these Terms. The Proposal and Terms together form the entire agreement between you and Shermco (the "Agreement") and shall remain in effect for a term of two (2) years. Shermco reserves the right to increase fees via Change Order should the terms or conditions of the service or the costs associated with the procurement of equipment, parts, components, and software increase during the term of the engagement.

Your Obligations and Changes

You agree to pay Shermco's fees, charges, and reimbursable expenses for the Services and applicable taxes thereon (the "Charges") within 30 days after receipt of the invoice by you unless otherwise specified in the Proposal unless there is a good faith dispute regarding payment. The dispute of an invoice must be identified to Shermco in writing within ten (10) business days of receipt of the invoice. Invoices are deemed received by you within 24 hours of being sent by Shermco. If the invoice is not paid by the due date, such charges may accrue late interest up to 1.5% of the outstanding balance per month, or the maximum permitted by law, whichever is lower, from the date such payment is due until the date paid. A surcharge of 2.5% of the invoice amount will apply for all invoices paid by credit card. You will be billed weekly for Services performed during the prior week for Services provided on a time and materials basis, as well as fixed price jobs without milestones;otherwise, you will be billed upon the completion of applicable milestones as set out in the Proposal. In addition, Shermco may suspend performance of the Services without liability to you until payment of all overdue amounts is made in full, including applicable interest -unless there is a good faith dispute regarding payment. All expenses incurred by Shermco relating to collection of past due amounts shall be charged to your account unless there is a good faith dispute regarding payment.

You will provide Shermco with access to the job site and all information about hazards including Material Safety Data Sheets as well as timely decisions upon request and all documentation and information reasonably required by Shermco for its provision of the Services. Shermco is entitled to rely upon the accuracy of that documentation and information and you assume the risk of any inaccuracy unless validation of that documentation and information is specifically part of the Services. You may not require Shermco or its employees, as a condition to site access or otherwise, to further agree or to enter into any agreement which waives, releases, indemnifies or otherwise limits or expands any right or obligations whatsoever hereunder. You and Shermco shall take all such reasonable steps to protect the confidentiality of information provided by one to the other and neither party shall disclose same or use it for purposes other than for the project under which the Services are rendered.

If, during the term of this Agreement, circumstances or conditions that were not originally known to Shermco become known, to the extent that they affect the Services, Prices, Charges, schedule, allocation of risks or other material terms of this Agreement, Shermco reserves the right to renegotiate appropriate portions of this Agreement. Shermco shall notify you in writing of the changed conditions necessitating renegotiation, and you and Shermco shall promptly and in good faith enter into renegotiation of this Agreement to address them and it is specifically agreed that the re-negotiation may result in a change in the scope of the Services, the Charges, the schedule, or other material terms of this Agreement and that a change order premium may be applied by Shermco.The parties hereto recognize that the City of Tyler is a governmental entity subject to the requirements of the Texas Public Information Act, Texas Government Code Chapter 552. Accordingly, some information maintained by the City may be subject to disclosure under law. In the event that the City of Tyler received a valid Public Information Request concerning information governed by this Agreement, City will work in good faith with Shermco to protect any information deemed to be confidential by seeking an Attorney General Opinion as allowed by the Act.

Standard of Care and Warranty

Indemnification; Liability; To the extent permitted by law, Shermco shall indemnify, hold harmless the City, City's officers, employees, departments, representatives ad agents, against any and all lawsuits, claims, demands, damages, liabilities, injuries (including death), losses, and expenses, including attorneys fees and administrative expenses that may arise, or be alleged to have arisen, out of or in connection with Shermco's performance of, or failure to perform, the Work hereunder or any portion thereof, whether or not due to or claimed to be due in whole or in part to the active, passive or concurrent negligence or fault of City, City's employees, agents, contractors, or subcontractors, except to the extent caused by the sole negligence or intentional acts of the City, City's employees, agents, contractors or subcontractors, or their employees. To the extent permitted by law, City shall indemnify, hold harmless Shermco, Shermco's officers, employees, departments, representatives and agents, against any and all lawsuits, claims, demands, damages, liabilities, injuries (including death), losses, and expenses including attorney's fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with Shermco's performance of, or failure to perform, the Work hereunder or any portion thereof, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of City, City's employees, agents, contractors, or subcontractors, except to the extent caused by the sold negligence or intention acts of Shermco, Shermco employees, agents, contractors or subcontractors, or their employees.

All Procured Items carry only the specific manufacturer's warranty related to it or extended to Shermco by its supplier and Shermco provides no separate warranty including but not limited to any warranties relating to title and non-infringement of third-party intellectual property rights. Shermco will assign or flow through to you all warranties provided by third parties with respect to the Services. You will be responsible for all Shermco's costs associated with your cancellation of any order of Procured Items including shipping and cancellation or re-stocking charges. Shermco bears no liability for any delays in shipping or delivery of Procured Items. Risk of loss of Procured Items passes to you at the same time as Shermco's supplier's terms transfer that risk to Shermco. Except for the Standard of Care, Shermco disclaims all warranty, guarantee or condition, statutory or otherwise, express, or implied, written, or oral, including but not limited to warranties of merchantability and fitness for a particular purpose. Nothing in the Agreement creates a fiduciary duty owed by one party to the other. The Limitation of Liability provision below limits Shermco's liability to you.

Limitation of Liability

In recognition of the relative risks and rewards for you and Shermco in connection with the project under which Shermco provides the Services, you and Shermco agree that notwithstanding any other provision in the Agreement, the common law, applicable statutes, or any other legal theory, and to the fullest extent permitted by law, **THE TOTAL AGGREGATE LIABILITY OF SHERMCO AND, TO THE EXTENT LEGALLY LIABLE IN ANY MANNER, THE LIABILITY OF ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, SHAREHOLDERS, OWNERS AND SUBCONSULTANTS, FOR ANY AND ALL CLAIMS, LOSSES,**

COSTS, DAMAGES OF ANY NATURE WHATSOEVER OR CLAIMS OR EXPENSES FROM ANY CAUSE OR CAUSES RESULTING FROM OR IN ANY WAY RELATED TO THE PROJECT, THE SERVICES OR THE AGREEMENT, INCLUDING LEGAL FEES AND COSTS AND EXPERT-WITNESS FEES AND COSTS, IS LIMITED to, at Shermco's option, either the re-performance by Shermco of the Services not meeting the Standard of Care to remedy the deficiency or the payment by Shermco to you for actual damages incurred by you directly up to an amount equal to the Charges paid by you for the Services not meeting the Standard of Care.

This limitation limits any and all of Shermco's liability or cause of action however alleged or arising including any indemnity obligations, and regardless of the success or effectiveness of other remedies, relating in any fashion to any work and any Services, whether originally performed or re-performed, any revisions to the work or the services rendered hereunder and any misrepresentations made during the course of rendering those services whether by Shermco's employees, sub-contractors, consultants, or agents, and includes without limitation, those caused by Shermco's negligence or gross negligence, a fundamental breach of contract or breach of a fundamental term or any other breach of duty whatsoever unless otherwise prohibited by law.

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither party shall ever be liable to the other for any special, indirect, incidental, punitive, or consequential damages arising out of the project, the provision of the Services or the Agreement regardless of whether such losses were foreseeable at the time of the making of the Agreement. This mutual waiver of damages includes, but is not limited to loss of use, business interruption or loss of revenue, savings, reputation, data, computer functionality, use of equipment, earnings, income or profits, that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of warranty of any kind even if such party has been advised of the possibility of such potential loss or damage in advance. Shermco shall not be responsible for the acts or omissions of you, your employees, contractors, subcontractors, agents, or their employees, nor liable for any loss, injury, or damage to persons or property caused by their negligence or fault. Shermco shall not be responsible for the actions or omissions of City, City's employees, contractors, agents or their employees, nor liability for any loss, injury (including death), or damages, caused by the negligence or willful acts of City, City employees, contractors, subcontractors, agents, or their employees. City of Tyler shall not be responsible for the actions or omissions of Shermco, Shermco's employees, contractors, agents or their employees, nor liability for any loss, injury (including death), or damages, caused by the negligence or willful acts of Shermco, Shermco's employees, contractors, subcontractors, agents, or their employees.

Ownership and Use of Documents, Patents and Trademarks

All documents, including drawings, plans, models, designs, specifications, reports, photographs, computer software, surveys, calculations, computer print-outs, electronic files, and other data used in connection with the Services and which were prepared by, or on behalf of, Shermco (the "Documents") and all patents, trademarks, copyrights, industrial or other intellectual property rights resulting from the Services or from concepts, products, or processes that are developed or first reduced to practice by Shermco, or others on behalf of Shermco, in performing the Services (the "Intellectual Property") are Shermco's property whether the work is executed or not and together, are Shermco's "Instruments of Service". Shermco retains all common law, statutory and other reserved rights thereto.

You may only use the Instruments of Service as permitted under these Terms if you have paid the Charges. Thereafter, you are granted a non-exclusive license to use the Intellectual Property inherent in the Instruments of Service for the life of, and only for, the project under which Shermco provided the Services and retain and use a copy of the Documents all solely for purposes of its maintenance and repair. The terms of use and license of any of Shermco's intellectual property licensed to you under a separate license agreement are not governed by this Agreement.

You will not, directly, or indirectly, disclose to third parties, use, misuse or modify the Instruments of Service except as specifically authorized in this Agreement or explicitly agreed to in writing by Shermco. You will, to the fullest extent permitted by law, indemnify and hold harmless Shermco from any and all claims by any party (including claims of infringement of third-party intellectual property rights), damages, liabilities or costs, including reasonable legal fees and expenses on a solicitor and own client basis, arising, directly or indirectly in any manner whatsoever, out of any such unauthorized disclosure, use, misuse or modification of the Instruments of Service. You agree that Shermco is not responsible or liable to you or anyone else for the consequences, financial, legal or otherwise, of your disclosure, use, misuse or modification of the Instruments of Service.

Remedies on Breach

Nothing in the Agreement shall operate to limit a party's legal remedies for breach of the other party's obligations hereunder which shall, at all times, be cumulative. You agree that any material breach of this Agreement will cause irreparable harm to Shermco, that such harm will be difficult if not impossible to ascertain, and that Shermco shall be entitled to equitable relief, including injunction, against any actual or threatened breach hereof, without bond and without liability should such relief be denied, modified, or vacated. Neither the right to obtain such relief nor the obtaining of such relief shall be exclusive of or preclude Shermco from any other remedy.

Force Majeure

Shermco shall not be responsible or liable for any loss, damage, detention or delay arising directly or indirectly from any cause or event beyond Shermco's reasonable control including war, invasion, insurrection, riot, the order of any civil or military authority, or by fire, flood, weather or other acts of the elements or acts of God or other emergencies, pandemics or other public health emergencies, breakdown, lockouts, strikes or labor disputes; the lack of availability of equipment, supplies or products (but not to the extent that any such lack of availability of any of the foregoing results from Shermco's failure to have exercised reasonable diligence); failure of any Government agency to act in a timely manner, or, failure of performance by you or your contractors or consultants; or without limiting the foregoing, any other cause beyond Shermco's reasonable control.

General

Nothing in the Agreement shall create a contractual relationship with, or a cause of action in favor of, any third party. The Services are being performed solely for your benefit and no other party shall have any claim against Shermco because of the Agreement or the performance or non-performance of the Services. Shermco may provide Services through resources of its subsidiaries or affiliates and may subcontract performance of the Services without your consent but remains liable, therefore.

Neither party shall, during the term of the Agreement and for a period of two (2) years thereafter, without the prior written consent of the other party, offer employment to or actively solicit any employees or personnel of the other party who have been engaged in or associated with the Services.

This Agreement shall be governed by the laws of the State of Texas. Venue for any action to enforce this Agreement shall lie in the State Courts of Smith County, Texas for State law issue, and in the United States District Courts of the Eastern Division of Texas for federal law issues.

This Agreement supersedes all prior negotiations, discussions, agreements, or representations whether written or oral related to the subject matter hereof. No other terms, conditions, warranties, or understandings whether express or implied, form a part of this

Agreement. No amendment or waiver of the Agreement is binding unless agreed to in writing by both parties, a waiver of one provision does not operate to waive any other provision and no waivers of a provision of the Agreement shall act as a subsequent waiver of the same provision. If any provision of the Agreement is invalid or unenforceable, the remaining provisions are valid and binding. Shermco may, at any time, at its sole option, assign this Agreement wholly or in part.

Termination and Survival

Either party may terminate this Agreement upon material breach of this Agreement by the other party upon five (5) days' written notice to the breaching party or for convenience upon giving the other party not less than fifteen (15) calendar days' written notice and, in the event of termination of this Agreement by either party, you shall, within fifteen (15) calendar days of receipt of Shermco's final invoice, pay Shermco for all Charges up to and including the date of termination. If a party is purporting to terminate for material breach, the breaching party shall have seven (7) days to resolve the breach in which case, the Agreement shall not be terminated. Obligations related to confidentiality, payment for Services and indemnification survive the termination of this Agreement.

Client: _____

By: _____

Printed Name/Title: _____

Date: _____

Dallas Service Center
2425 E. Pioneer Dr., Irving, TX 75061
Office (972) 793-5523
www.shermco.com

Report prepared for:

Jacob Yanker
of
City of Tyler Water Utilities
for
Water Treatment Plant Assessment

Prepared by:
Casey Simonson

Shermco Number:
84004627

August 11, 2023

The following was determined during the site visit to the water treatment facility. This is based on the conversations at the plant as well as the visual inspection of the electrical system.

Cables:
Key points were made during the site visit that all 480V cables from the original installation from the 1960s will need to be tested to determine what condition they are in. All cables determined to be in critical condition will need to be replaced. This will take two separate outages. The first to test the 480V cables, the second to replace all critical cables. A cable failure could cause an unplanned outage.

Labels for Feeds:
Many of the feeds from the main service are not labeled. This can make the system difficult to troubleshoot. Since technicians will need to find the locations of either end of the feeder during the shutdown and testing of the cables. This is an easy and helpful addition.

Outdated Breakers and Panels:
One of the conversations had at the site was that some breakers are getting harder to replace. These breakers are usually no longer manufactured so finding replacements gets harder every year. There are two 480V panels (Panel 4 and Panel 5) that suffer from this. These panels should be replaced with new panels to help with reliability.

During the original shutdown Shermco may find additional panels that may need to be replaced and will inform the City of Tyler of these.

Drawings:
During the site visit it was noted that there are no current drawings of the electrical system. After the final shutdown a single line drawing of the electrical system can be created for the original 480V service.

Filter Control Panel and High Service Pumps Control Panel:
During the site visit it was determined that the (4) filter control panels and (1) high service pump control panel need to be replaced. Preliminary engineering will need to be completed to determine the timeline for this.

Main Switchgear:
The main switchgear is from the 1960s. This will be approaching 70 years in service soon. There have been no modifications to this gear since the original installation. A retrofit of the gear can be as labor and engineering intensive as a complete overhaul of the gear. This was not determined to be a critical item during the initial site visit, but this could be depending on the condition of the guts.

On the next page is what a schedule of the above-mentioned items could look like.

Regards,
Shermco

- Initial Shutdown (6 techs, 5 days)
    - Take a shutdown to test existing 480V cables to determine which wires are hazardous and need to be replaced.
    - During shutdown determine the feeds for each of the 480V loads and label them.
    - Replace the (2) 480V panels during shutdown.
        - Engineering TBD.
    - Determine other critical panels to be replaced during shutdown.
    - Create SLD drawings of 480V system from shutdown.
- Second Shutdown (x techs, x days)
    - Replace other panels determined from first shutdown.
    - Replace 480V wires that were deemed to be hazardous.
    - Replace 4 filter control panels.
        - Engineering tbd
    - Replace control panel for high service pumps.
        - Engineering tbd
- Third Shutdown (4 techs, 5 days)
    - Replace main switchgear if determined to be in critical need.
        - Engineering TBD.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-1

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a Personal Services Contract with Mr. Robin Smart for construction inspection services for City of Tyler streets and capital improvement projects in the amount of $50,000.

Page: Page 1 of

Item Reference: C-A-1, November 9, 2022

On November 9, 2022, the City Council approved a Personal Services Contract with Mr. Robin Smart for construction inspection services for City of Tyler streets and capital improvement projects in the amount of $50,000. These types of services are needed to assist the Engineering Department with onsite coordination and to ensure that public roads and utilities are constructed to meet State and Local standards. Mr. Smart's services are billed on a time and expenses basis for these contracts.

Mr. Smart has billed against the November 2022 agreement for services in the amount of $41,100.00 leaving a total remaining in this contract of $8,900. It is expected that this balance will be expended by the middle of January 2024. The scope of services is the same as previous agreements and services will continue to be provided and billed on an as needed basis. The fee for these services will be $45.00 per hour up to a total not to exceed amount of $50,000.00. Mr. Smart will provide his vehicle and will be reimbursed for mileage at the City's standard rate. A contract and detailed scope of services is attached. The term of the contract is twelve months.

FUNDING:

- Seventy-five percent provided by Fund 231 -Half Cent Sales Tax Fund: $37,500.00
- Twenty-five percent provided by Fund 103 –Streets Improvement Fund: $12,500.00

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a Personal Services Contract with Mr. Robin Smart for temporary construction inspection services for City of Tyler capital improvement projects in the amount of $50,000.00.

ATTACHMENTS:

Drafted/Recommended By:
Department Leader

Darin Jennings, P.E., City Engineer

Edited/Submitted By:
City Manager

THE STATE OF TEXAS §
§
COUNTY OF SMITH §

PERSONAL SERVICES CONTRACT
(TEMPORARY)

This Agreement entered into by and between the CITY OF TYLER, TEXAS, a municipal corporation, hereinafter called "CITY", and Robin Smart, hereinafter called "CONTRACTOR".

WITNESSETH:

1. CONTRACTOR shall provide to CITY at the request of the engineering services department, inspection of City of Tyler capital improvement projects and other projects as assigned. A Description of Services to be performed is attached as Exhibit A and is incorporated herein for all purposes.

2. CONTRACTOR shall perform these services under the supervision and direction of the City Engineer, or designee.

3. The fee of the CONTRACTOR for these services to be performed as described herein shall be $45.00 per hour up to a total estimated amount of $50,000.00. Funds for this expense are budgeted in account numbers 231-0711-434.49-78 and 103-0705-432.26-30.

4. CONTRACTOR acknowledges and agrees that they shall have the status of an independent contractor at all time with respect to the rendition of the services described above. In this connection, CONTRACTOR further agrees that they shall not be entitled to medical and other benefits provided in the ordinary course to full-time City Employees.

5. This Agreement shall be effective on the date executed below and extend for a period of up to twelve (12) months. This Agreement may be cancelled at any time by either party hereto by delivering five (5) days written notice to the other party stating such intention to cancel this Agreement.

EXECUTED AND ENTERED INTO this _____ day of _____, A.D., 20_____.

APPROVED:

CITY OF TYLER

_____
CITY MANAGER

_____
CITY ATTORNEY

CONTRACTOR

_____
Robin Smart

10677 Oakhill Dr., Tyler, Texas 75707
ADDRESS

(903) 520-3657_____
PHONE

Exhibit A
Description of Services

The following inspection services will be performed for various maintenance and capital projects, as needed:

- Ensure proper installation of public roads, curb and gutter, sidewalks, water mains, sewer mains, storm sewer systems, and any other public infrastructure in accordance with Texas Department of Transportation, Texas Commission on Environmental Quality and City of Tyler standards.
- Inspection and testing of new water and sewer system construction, including but not limited to sewer main pressure test, ball test and mandrel test, manhole vacuum test, water main pressure test and bacteriological sampling, and density tests of ditch lines.
- Inspection and testing of new asphalt and concrete road construction, including but not limited to proof roll, compaction and density tests for sub grade, compaction and density tests for flex base, core tests for asphalt surface, and slump and cylinder tests for concrete surface.
- Inspection and testing of new storm sewer system construction, including but not limited to slump and cylinder tests for concrete structures.
- Inspection and testing of new sidewalk construction, including but not limited to slump and cylinder tests.
- Inspections for all City of Tyler maintenance projects.
- Attend pre-bid meetings and assist with answering questions during the bidding process.
- Attend preconstruction conferences.
- Coordinate construction of projects with other City departments.
- Review and approve quantities completed for monthly pay applications from contractors
- Perform other tasks as needed.
- Mileage shall be included on each invoice and will be paid at the City's standard rate.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-2

Date: January 10, 2024

Subject: Request that the City Council ratify the expenditure of $ 90,743.10, for the mandated public water system fee to the Texas Commission on Environmental Quality.

Page: Page 1 of

Item Reference: Title 30, Texas Administrative Code, Section 290.51; Texas Water Cide, Section 5.103: Texas Health and Safety Code, Section 341.041

The Texas Commission on Environmental Quality (TCEQ) requires all municipalities pay an annual public water system fee to cover expenses related to the annual water system inspection. This fee is based on a $2.45 charge per connection. The City of Tyler FY2024 waster system fee is based on a connection count of 37,038.

RECOMMENDATION:

It is recommended that the City Council ratify the expenditure of $90,743.10 for the mandated public water system fee to the Texas Commission on Environmental Quality.

ATTACHMENTS:

TCEQ PWS FEE FY24

Drafted/Recommended By:
Department Leader

Shane Wheeler, Manager, Water Utilities Systems

Edited/Submitted By:
City Manager

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

INVOICE

COMPANY: CITY OF TYLER
ACCOUNT: 92120004

DETACH BOTTOM PORTION AND RETURN ORIGINAL COUPON WITH PAYMENT

ACCOUNT NO.	INCLUDES PAYMENTS THROUGH:	COLL COST RECOVERY	LATE FEES	BALANCE DUE
92120004	NOV13,23	0.00	0.00	90,743.10

INVOICE DATE	INVOICE NO.	DESCRIPTION	AMOUNT	BALANCE
NOV30,23	PHS0219354	REG_NUMBER 2120004 FY24 WATER SYSTEM FEE	90,743.10	90,743.10

This fee is based on data reported from the last inspection. Please call 512-239-4691 for assistance with the calculation of your fee.

90,743.10

See REVERSE SIDE for Explanation of Charges and TCEQ Contact Telephone Numbers.

PLEASE PAY THIS AMOUNT
INCLUDE ACCOUNT NUMBER ON CHECK

TCEQ VIPP Form AR41A 02-17-2011

NOV13,23

DETACH THIS PORTION AND RETURN WITH CHECK OR MONEY ORDER PAYABLE TO:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

ACCOUNT NO.	BALANCE DUE
92120004	90,743.10

☐ CHECK HERE IF YOUR ADDRESS HAS CHANGED.
PLEASE INDICATE ADDRESS CHANGE ON BACK

INVOICES NOT PAID WITHIN 30 DAYS OF INVOICE DATE WILL ACCRUE PENALTIES

CITY OF TYLER

PO BOX 2039
TYLER TX 75710-2039

0092120004 1533367 00090743101231235

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-3

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute an additional services agreement with Halff Associates, Inc. in the amount of $23,000 for the Shiloh Road Improvements and Widening preliminary engineering report.

Page: Page 1 of Page 1 of 2

Item Reference: M-4 on July 28, 2021, M-5, on May 11, 2022

In July 2021, the Half Cent Sales Tax Board recommended to the City Council the approval of the annual work program list which includes the preliminary engineering report for Shiloh Road widening project. A request for qualifications was mailed and advertised on December 17, 2021, for civil engineering qualifications. Six firms submitted statements of qualifications. From this process Halff Associates was selected. A contract was approved for execution with Halff Associates by the City Council on May 11, 2022. Significant work and coordination have been completed for design options, guidance, and cost feasibility for the improvements and widening of Shiloh Road form Highway 110 west to Old Omen Road.

Before moving forward with finalizing plans and further public coordination/comment it was identified that a more detailed traffic study is needed to confirm the ultimate cross section for Shiloh Road and whether alternate routes would be more beneficial and less impactful for future growth and development in the City of Tyler and Smith County.

Additional Services are recommended by staff that will look at various scenarios and alternatives to provide direction on how to proceed with the Shiloh Road corridor. These additional services (traffic study) are to be completed on an hourly basis for an amount not to exceed $23,000.

The funds for the additional services were approved by the Half-Cent Sales Tax Board on January 9, 2024.

FUNDING: HALF CENT SALES TAX

RECOMMENDATION:

It is requested that the City Council authorize the City Manager to execute an additional services

agreement with Halff Associates, Inc. in the amount of $23,000 for the Shiloh Road Improvements and Widening preliminary engineering report.

ATTACHMENTS:

2023-12-18 Additional Services Agreement

Drafted/Recommended By:
Department Leader

Cameron L. Williams, PE, PTOE, PTP - Traffic Engineer

Edited/Submitted By:
City Manager

1121 E.S.E. Loop 323, Suite 117
Tyler, Texas 75701
(903) 617-5369

ADDITIONAL SERVICES CONFIRMATION

Shiloh Road Traffic Study

TO: City of Tyler
Attn: Cameron L. Williams, PE, PTOE, PTP
Traffic Engineer
Email: cawilliams@tylertexas.com

DATE: 12/18/23

AVO: 46582.002

FROM: Josh Barton, P.E.
Email: jbarton@halff.com

PROJECT: Shiloh Road Traffic Study

VIA: Email

As discussed previously with the City of Tyler, Halff is submitting this request for additional services to prepare a Traffic Study report for the proposed Shiloh Road Improvements project from State Highway 110 (SH 110) to Old Omen Road in Tyler, Texas. Portions of the established budgets for tasks outlined in the original contract were used to process, compile, and implement the above-mentioned data.

The scope of work for the Shiloh Road Traffic Study is detailed in "ATTACHMENT A: SCOPE OF WORK" dated December 18, 2023. The original Shiloh Road Improvements and Widening contract (signed May 31, 2022) will remain unchanged. The hourly rate schedule included in the original contract will be effective for these additional services. "ATTACHMENT B: PROJECT SCHEDULE" includes the projected duration of each task provided that there are no significant changes to the scope of work.

The approved total fee listed in the above-mentioned proposal is **$ 23,000.00**.
Refer to "ATTACHMENT C: FEE SUMMARY" for additional information.

We request your signature below to confirm the scope, schedule, and fee. If the scope, schedule, and/or fee is not acceptable, please notify us immediately.

By: _____
(Print name)

Title: _____

Signature: _____

Date: _____

☒ Attachments:

ATTACHMENT A: SCOPE OF WORK
ATTACHMENT B: PROJECT SCHEDULE
ATTACHMENT C: FEE SUMMARY

SIGNED:

ATTACHMENT A
SCOPE OF WORK
SHILOH ROAD TRAFFIC STUDY

PROJECT PARAMETERS

Based on correspondence with the project team, input from the City of Tyler, and a review of the available information pertaining to the project, Halff will prepare a Traffic Study report for the proposed Shiloh Road improvement project from State Highway 110 (SH 110), known locally as Troup Highway, to Old Omen Road in Tyler, Texas.

The Traffic Study report will focus on three main items:

- Operational intersection Level of Service (LOS) analysis at the intersections of Shiloh Road at SH 110, Old Bascom Road / CR 262 at Old Omen Road, and Shiloh Road at Kent Drive under four configuration scenarios involving two cross section configurations for Shiloh Road and the inclusion or exclusion of the future Grande Boulevard / Old Omen Road roadway extensions.
- Operational roadway link LOS analysis comparisons along the proposed Shiloh Road improvement alignment at two locations under four configuration scenarios involving two cross section configurations for Shiloh Road and the inclusion or exclusion of the future Grande Boulevard / Old Omen Road roadway extensions.
- Operational LOS analysis at the Kent Drive / Old Bascom Road intersection under the existing horizontal roadway configuration with an upgraded cross section of Kent Drive and an installation of an actuated traffic control signal at the intersection to determine timeframe for Shiloh Road improvements to be implemented.

TASK 1.0 REVIEW OF EXISTING PROJECT AND TRAFFIC INFORMATION

1.1 Review previously collected turning movement traffic counts (TMCs) conducted in October 2022 at the following intersections:

1.1.1 Shiloh Road at SH 110

1.1.2 Old Bascom Road / CR 262 at Old Omen Road

1.2 Review previously collected 24-hour volume and classification counts conducted in October 2022 at the following locations:

1.2.1 Shiloh Road just east of Hays Avenue

1.2.2 Kent Drive just south of Old Bascom Road

1.2.3 Old Bascom Road just west of Old Omen Road

1.3 Review forecasted development growth information projected within the study area.

1.4 Review historical traffic count data and future traffic projections within the TxDOT Traffic Count Database System (TCDS)

TASK 2.0 DATA COLLECTION

2.1 Collect 24-hour TMCs at the following intersections:

2.1.1 Kent Drive at Old Bascom Road

2.2 Collect recent trip and travel pattern information

TASK 3.0 TRAFFIC ROADWAY MODELING

3.1 Develop traffic roadway analysis models for Shiloh Road from SH 110 to Old Omen Road using the Synchro 11 traffic analysis software for the following configuration scenarios:

3.1.1 Shiloh Road with a three-lane undivided cross section and the exclusion of the future Grande Boulevard / Old Omen Road roadway extensions

3.1.2 Shiloh Road with a five-lane undivided cross section and the exclusion of the future Grande Boulevard / Old Omen Road roadway extensions

3.1.3 Shiloh Road with a three-lane undivided cross section and the inclusion of the future Grande Boulevard / Old Omen Road roadway extensions

3.1.4 Shiloh Road with a five-lane undivided cross section and with the inclusion of the future Grande Boulevard / Old Omen Road roadway extensions

3.2 Develop a traffic roadway analysis model of the existing horizontal roadway configuration of the Kent Drive / Old Bascom Road intersection with a three-lane undivided cross section along Kent Drive and a signalized operation configuration at the intersection.

TASK 4.0 ANALYSIS / EVALUATION

4.1 Identify the existing weekday AM and PM peak hour volumes at the study intersections listed in Tasks 1.1 and 2.1 (intersection volumes) and at the roadway locations listed in Task 1,2 (roadway link volumes).

4.2 Determine an annual growth rate for background growth of the existing traffic volumes within the study area.

4.3 Develop projected weekday AM and PM peak hour background volumes at the study intersections and roadway locations listed in Tasks 1.1, 1.2, and 2.1 for the 10-year, 20-year, and 30-year horizon (after build / opening year)

4.4 Develop weekday AM and PM peak hour development trips for the forecasted development growth within the study area for the 10-year, 20-year, and 30-year horizon (after build / opening year)

4.5 Distribute the weekday AM and PM peak hour development trips at the study intersections and roadway locations listed in Tasks 1.1, 1.2, and 2.1 for the 10-year, 20-year, and 30-year horizon (after build / opening year)

4.6 Develop projected weekday AM and PM peak hour total (background plus development trips) volumes at the study intersections and roadway locations listed in Tasks 1.1, 1.2, and 2.1 for the 10-year, 20-year, and 30-year horizon (after build / opening year)

4.7 Conduct weekday AM and PM peak hour intersection LOS analyses at the study intersections and roadway locations listed in Tasks 1.1, 1.2, and 2.1 with the assumed layouts modeled in Task 3.1 using the traffic volumes listed in Tasks 4.1, 4.3, and 4.6:

4.7.1 Shiloh Road with a three-lane undivided cross section and the exclusion of the future Grande Boulevard / Old Omen Road roadway extensions

4.7.2 Shiloh Road with a five-lane undivided cross section and the exclusion of the future Grande Boulevard / Old Omen Road roadway extensions

4.7.3 Shiloh Road with a three-lane undivided cross section and the inclusion of the future Grande Boulevard / Old Omen Road roadway extensions

4.7.4 Shiloh Road with a five-lane undivided cross section and with the inclusion of the future Grande Boulevard / Old Omen Road roadway extensions

4.8 Conduct weekday AM and PM peak hour intersection LOS analyses for the Kent Drive / Old Bascom Road intersection with the assumed layout modeled in Task 3.2 using traffic volumes listed in Tasks 4.1, 4.3, and 4.6.

4.9 Determine timeframe for Shiloh Road improvements to be implemented based on the intersection LOS analyses results obtained in Task 4.8 and upon forecasted traffic volumes.

4.10 Determine if a traffic signal is warranted at the proposed Shiloh Road at Kent Drive intersection based upon forecasted traffic volumes.

TASK 5.0 REPORT PREPARATION

5.1 Prepare a preliminary draft Traffic Study report that addresses the findings in Task 4 above for submittal to the City of Tyler for formal review and comments.

5.2 Address one round of review comments from the City of Tyler.

5.3 Prepare a final version of the Traffic Study report for submittal to the City of Tyler.

TASK 6.0 CONFERENCE CALLS

6.1 Attend up to three (3) conference calls with the project team and / or City of Tyler staff to discuss the project and Traffic Study report.

SERVICES NOT COVERED

The services stipulated below are specifically excluded from the scope of this contract. In the event additional services are required, an addendum to this contract will be required before work can proceed. Additional services include but are not limited to the following:

1. Conduct any additional traffic counts for the project, other than those specifically identified in Task 2.
2. Conduct any operational / LOS analyses of site driveways, street intersections or other roadways in the study area, other than those specifically identified in Task 4.
3. Provide any services related to permits or detailed engineering plans for recommendations.
4. Conduct any revisions to the Traffic Study report caused by changes to the overall project such as alignment, project limits, or changes form the City's thoroughfare plan.
5. Attend any more than the three conference calls for the project or Traffic Study report identified in Task 6.
6. Attend any City of Tyler meetings, including Committee, Planning and Zoning Commission and City Council meetings.
7. Evaluate any configuration scenarios other than those identified in Task 3.1, and 4.7.
8. Respond to more than one round of City of Tyler review comments.

ATTACHMENT B
PROJECT SCHEDULE

SHILOH ROAD TRAFFIC STUDY
CITY OF TYLER
December 18, 2023

Halff Associates will work closely with the City of Tyler to deliver this project in a timely fashion. It is anticipated that the Traffic Study will be completed in accordance with the scope of work, as described in ATTACHMENT A, within eight (8) weeks from the official notice to proceed and receipt of all requisite project-related data from the City of Tyer, provided that there are no significant changes to the scope of work.

TASK	2024		2024		2024	
	Jan		Feb		Mar	
1						
2						
3						
4						
5						
6						

OFFICIAL NOTICE TO PROCEED by January 15, 2024

TASK 1.0: REVIEW OF EXISTING PROJECT AND TRAFFIC INFO

TASK 2.0: DATA COLLECTION

TASK 3.0: TRAFFIC ROADWAY MODELING

TASK 4.0: ANALYSIS / EVALUATION

TASK 5.0: REPORT PREPARATION

TASK 6.0: CONFERENCE CALLS

NOTE: Halff will coordinate with the City of Tyler to ensure traffic counts (Task 2) are not collected before January 16, 2024. Starting the project close to or during the Tyler ISD holidays will require adjustments to the project schedule and could result in the schedule being extended.

ATTACHMENT C
FEE SUMMARY

SHILOH ROAD TRAFFIC STUDY
CITY OF TYLER
December 18, 2023

Fee Breakdown

TASK 1.0: REVIEW OF EXISTING PROJECT AND TRAFFIC INFO	$1,400.00
TASK 2.0: DATA COLLECTION	$2,300.00
TASK 3.0: TRAFFIC ROADWAY MODELING	$3,600.00
TASK 4.0: ANALYSIS / EVALUATION	$4,800.00
TASK 5.0: REPORT PREPARATION	$8,600.00
TASK 6.0: CONFERENCE CALLS	$1,400.00
PROJECT ADMINISTRATION	$900.00
Project Total	**$23,000.00**

Client agrees to pay monthly invoices or their undisputed portions within 30 days of receipt. Payment later than 30 days shall include interest at 1 ½ percent per month or lesser maximum enforceable interest rate, from the date the Client received the invoice until the date the Engineer receives payment. Such interest is due and payable when the overdue payment is made. Tasks are **Hourly Not to Exceed** unless otherwise noted.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-4

Date: January 10, 2024

Subject: Request that the City Council consider amending and adopting a Resolution authorizing the application for and acceptance of Federal Transit Administration (FTA) Grant Funds passed through the Texas Department of Transportation (TxDOT) under the Section FY21-5339 Bus and Bus facilities Grant in the amount of $201,174 along with the acceptance of $40,235 in Transportation Development Credits (TDC).

Page: Page 1 of

Item Reference: C-A-13 4/26/2023

Since 1991, the City of Tyler has operated the Tyler Transit System with the assistance of grant funding from the Texas Department of Transportation (TxDOT) and the Federal Transit Administration (FTA). The award of Grant 5310 required Transit to amend and repurpose the original FY21 5339 Grant application and resolution.

The terms for this grant number (TX-5339-00) include the purchase of a vehicle. Anticipated grant funding is as follows:

Purchase an ADA-accessible vehicle and related hardware and equipment.

The $40,235 in TDC funds for this project will be utilized to meet the required local match for the items listed above.

RECOMMENDATION:

It is recommended that the City Council consider the amendment and adoption of a Resolution to authorize the application for and acceptance of Federal Transit Administration Section 5339 FY21 Bus and Bus Facilities Grant in the amount of $201,174 along with the acceptance of $40,235 in Transportation Development Credits (TDC).

ATTACHMENTS:

RESOLUTION FY21 5339 12-19-23 (002)_LEGALEDITS_AB_12.20.23

Drafted/Recommended By:
Department Leader

Russ Jackson/Transit Manager

Edited/Submitted By:
City Manager

RESOLUTION NO. R-2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AUTHORIZING THE APPLICATION FOR FEDERAL TRANSIT ADMINISTRATION GRANT FUNDS FOR PUBLIC TRANSPORTATION ASSISTANCE FOR TYLER TRANSIT; AUTHORIZING ACCEPTANCE OF FEDERAL TRANSIT ADMINISTRATION (FTA) GRANT TX-5339 FOR VEHICLE PURCHASES TOTALING $201,174 ALONG WITH ANY GRANT AMENDMENTS TO INCREASE THE GRANT FUNDING LEVELS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 5, 2021, the City of Tyler was notified by the Federal Transit Administration (FTA) to make an application requesting $201,174 for public transportation assistance for vehicle purchases for Tyler Transit; and

WHEREAS, the FTA has stated that a grant offer totaling $201,174 should be made; and

WHEREAS, the City Council must authorize submission of the application for FTA funds, as well as acceptance of FTA Grant TX-5339 and any grant amendments to increase the grant funding levels along with; and

WHEREAS, this grant supplies reimbursement for a portion of Transit Department operating costs. The remaining funds come from the adopted budget, departmental revenue, and State grant funds. If the City of Tyler did not receive this grant, the City would be responsible for all operating expenses; and

WHEREAS, it is considered to be in the public interest to obtain and use grant funds for the above public purposes;

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

PART 1: That the FTA Grant Application for Federal Assistance for Grant TX-5339 requesting $201,174 for Tyler Transit vehicle purchases including all understandings and assurances contained therein is hereby authorized and approved.

PART 2: That the City Manager's filing of the grant application, and all actions taken in connection therewith, are hereby affirmed.

PART 3: That the City Council hereby resolves and affirms to the FTA that the City of Tyler has the legal authority to apply for the grant and to finance and carry out the proposed project.

PART 4: That the City Council hereby resolves and affirms to the FTA the City of Tyler's intent to comply with all of the assurances outlined in the grant agreement and all laws, regulations, and circulars incorporated by reference in the grant agreement.

PART 5: That the City Manager is hereby authorized and directed to accept the FTA Grant TX-5339 for Tyler Transit vehicle purchases and any grant amendments to increase the funding levels.

PART 6: That the City Manager is hereby authorized and directed to take all actions necessary to accept and use the grant to fulfill the purposes described above.

PART 7: That the City Manager is hereby authorized and directed to provide such additional information as may be required by the FTA.

PART 8: That this Resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED on this the 10th day of January 2024.

DONALD P. WARREN, MAYOR OF

THE CITY OF TYLER, TEXAS

ATTEST:

CASSANDRA BRAGER, CITY CLERK

APPROVED:

DEBORAH G. PULLUM, CITY ATTORNEY

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-5

Date: January 10, 2024

Subject: Request that the City Council consider amending and adopting a Resolution authorizing the application for and acceptance of Federal Transit Administration (FTA) Grant Funds passed through the Texas Department of Transportation (TxDOT) under the Section FY21-5339 Bus and Bus facilities Grant in the amount of $186,507 along with the acceptance of $37,302 in Transportation Development Credits (TDC).

Page: Page 1 of

Item Reference: C-A-14 4/26/2023

Since 1991, the City of Tyler has operated the Tyler Transit System with the assistance of grant funding from the Texas Department of Transportation (TxDOT) and the Federal Transit Administration (FTA). The award of Grant 5310 required Transit to amend and repurpose the original FY21 5339 Grant application and resolution.

The terms for this grant number (TX-2339-00) include the purchase of a vehicle. Anticipated grant funding is as follows:

Purchase an ADA-accessible vehicle and related hardware and equipment.

The $37,302 in TDC funds for this project will be utilized to meet the required local match for the items listed above.

RECOMMENDATION:

It is recommended that the City Council consider the amendment and adoption of a Resolution to authorize the application for and acceptance of Federal Transit Administration Section 5339 FY22 Bus and Bus Facilities Grant in the amount of $186,507 along with the acceptance of $37,302 in Transportation Development Credits (TDC).

ATTACHMENTS:

RESOLUTION FY21 5339 12-19-23 (002)_LEGALEDITS_AB_12.20.23

Drafted/Recommended By:
Department Leader

Russ Jackson/Transit Manager

Edited/Submitted By:
City Manager

RESOLUTION NO. R-2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AUTHORIZING THE APPLICATION FOR FEDERAL TRANSIT ADMINISTRATION GRANT FUNDS FOR PUBLIC TRANSPORTATION ASSISTANCE FOR TYLER TRANSIT; AUTHORIZING ACCEPTANCE OF FEDERAL TRANSIT ADMINISTRATION (FTA) GRANT TX-5339 FOR VEHICLE PURCHASES TOTALING $201,174 ALONG WITH ANY GRANT AMENDMENTS TO INCREASE THE GRANT FUNDING LEVELS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 5, 2021, the City of Tyler was notified by the Federal Transit Administration (FTA) to make an application requesting $201,174 for public transportation assistance for vehicle purchases for Tyler Transit; and

WHEREAS, the FTA has stated that a grant offer totaling $201,174 should be made; and

WHEREAS, the City Council must authorize submission of the application for FTA funds, as well as acceptance of FTA Grant TX-5339 and any grant amendments to increase the grant funding levels along with; and

WHEREAS, this grant supplies reimbursement for a portion of Transit Department operating costs. The remaining funds come from the adopted budget, departmental revenue, and State grant funds. If the City of Tyler did not receive this grant, the City would be responsible for all operating expenses; and

WHEREAS, it is considered to be in the public interest to obtain and use grant funds for the above public purposes;

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

PART 1: That the FTA Grant Application for Federal Assistance for Grant TX-5339 requesting $201,174 for Tyler Transit vehicle purchases including all understandings and assurances contained therein is hereby authorized and approved.

PART 2: That the City Manager's filing of the grant application, and all actions taken in connection therewith, are hereby affirmed.

PART 3: That the City Council hereby resolves and affirms to the FTA that the City of Tyler has the legal authority to apply for the grant and to finance and carry out the proposed project.

PART 4: That the City Council hereby resolves and affirms to the FTA the City of Tyler's intent to comply with all of the assurances outlined in the grant agreement and all laws, regulations, and circulars incorporated by reference in the grant agreement.

PART 5: That the City Manager is hereby authorized and directed to accept the FTA Grant TX-5339 for Tyler Transit vehicle purchases and any grant amendments to increase the funding levels.

PART 6: That the City Manager is hereby authorized and directed to take all actions necessary to accept and use the grant to fulfill the purposes described above.

PART 7: That the City Manager is hereby authorized and directed to provide such additional information as may be required by the FTA.

PART 8: That this Resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED on this the 10th day of January 2024.

_____

DONALD P. WARREN, MAYOR OF

THE CITY OF TYLER, TEXAS

ATTEST:

_____

CASSANDRA BRAGER, CITY CLERK

APPROVED:

_____

DEBORAH G. PULLUM, CITY ATTORNEY

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-6

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to add Addendum 1 to Downtown Janitorial contract with Office Pride Janitorial to provide janitorial services to six City of Tyler downtown facilities in the amount of $447,216.00 over the next five (5) years. Addenda 1 would add Transit Building at $65,265.00 over the next four (4) years remaining of the contract for a total of $512,481.00

Page: Page 1 of

Item Reference: Bid Number 22-044

On Sunday, August 14, 2022, and Sunday, August 25, 2022, ads were placed in the Tyler Morning Telegraph by Staff Requesting Proposals for Janitorial Services for Downtown Campus Buildings, City Hall, City University, Finance, Neighborhood Services, Tyler Development Services, and Water Administration. Proposals were opened in public at 2pm Tuesday, September 13, 2022, at the City of Tyler City Hall Council Chambers. Proposal costs for 5 year totals were as follows:

Office Pride Janitorial $447,216.00
TMT Janitorial $481,967.00

Proposals were reviewed by a committee of 8 in the facilities served by this contract and Office Pride Janitorial was selected.

The contract will be a one-year contract with four (4) one-year renewals and would be in effect from November 1, 2022, until October 31, 2027, if both parties agree to all renewals.

Request was made by staff at transit to add this addendum to the current contract for the remainder of its term.

RECOMMENDATION:

Suggest that the City Council consider authorizing the City Manager to add Addendum 1 to Downtown Janitorial contract with Office Pride Janitorial to provide janitorial services to six City of Tyler downtown facilities in the amount of $447,216.00 over the next five (5) years. Addenda 1 would add Transit Building at $65,265.00 over the next four (4) years remaining of the contract for a total of $512,481.00

ATTACHMENTS:

Signed Contract
Addendum 1

Drafted/Recommended By:
Department Leader

Gary L. Smith - Facilities Services Coordinator

Edited/Submitted By:
City Manager

STATE OF TEXAS	§	**CONTRACT FOR JANITORIAL**
	§	**SERVICES FOR SIX**
	§	
COUNTY OF SMITH	§	**DOWNTOWN PROPERTIES**

ORIGINAL

City of Tyler Bid/Quote Number **22-044**
Project Name **Janitorial Services for Six Downtown Properties**

THIS AGREEMENT, made and entered into this 30 day of OCTOBER, 2022, by and between the City of Tyler, Texas, of the County of Smith and State of Texas, hereinafter termed "**CITY**", and **Stein Enterprises, LLC dba Office Pride of East Texas**, of the City of TYLER, County of SMITH, State of Texas, hereinafter termed "**CONTRACTOR**.

WITNESSETH:

THAT FOR AND IN CONSIDERATION of the payments and mutual covenants set forth in this ***Agreement*** and under the conditions expressed in the contract documents, **CONTRACTOR** hereby agrees with **CITY** as follows:

I. PURPOSE OF CONTRACT.

The sole purpose of this contract is to establish frequency of janitorial cleaning and cleaning standards that will maintain various City buildings as clean, sanitary, well-kept, attractive, professional buildings. CONTRACTOR shall coordinate all cleaning services activities with each Designated Facility Representative, as set out below. The professional cleaning and other related janitorial services are for the following City of Tyler locations:

	Facility & Location	Address	Facility Contact	Phone Number
1.	City Hall	212 North Bonner	Gary Smith	903-520-3166
2.	Administrative Service	304 North Border	Karen Reasoner	903-531-1137
3.	Tyler Water Utilities	511 West Locust	Pam Lee	903-531-1238
4.	Tyler Development Center	423 West Ferguson	Maria Carreno	903-531-1241
5.	City University	214 North Border	Lara Tabri	903-533-2000
6.	Neighborhood Services	900 West Gentry Pkwy.	Cinthia Gauna	903-531-1303
	Facilities Services Supervisor		Gary Smith	903-520-3166

II. TERMS OF AGREEMENT.

The initial one (1) year term of the agreement shall begin on November 1, 2022 and will end October 31, 2023. After the initial first year the contract shall remain in effect for four (4) one-year extensions unless cancelled in writing by the City of Tyler. If all extensions are agreed to the contract shall end on October 31, 2027.

A. CONTRACT RENEWAL/PRICE ADJUSTMENTS.

The CITY has an option to renew this contract for up to four (4) one year options, by notifying the CONTRACTOR in writing, no later than (30) days before the current term's expiration, that it has exercised the option. Contract renewals are at the discretion of and to be initiated solely by the CITY. Contract renewals are subject to written acceptance by all parties to the contract. Contract prices, as bid, are to remain firm through the contract period. Thereafter, contract prices may only be adjusted at the time of contract renewal. The adjusted annual contract price shall be found in **Exhibit C Fees** section (see next pages).

B. MONTH – TO – MONTH STATUS.

Unless otherwise stated, the CITY and the CONTRACTOR agree:

1. That any holding over the contract beyond the original term or beyond exercised renewal options, will be considered as "month-to-month". All terms and conditions as set forth in this contract shall remain in full force and effect during any month-to-month terms.

2. Either party may cancel the "month-to-month" extension by providing written notice to the other party at least 30 days prior to the desired date of cancellation.

C. PAYMENT.

1. Payment for the undisputed purchase of services provided by the CONTRACTOR shall be made within 30 days of the receipt of an approved invoice. If there is a dispute or discrepancy in the invoice, the invoice will be returned to the CONTRACTOR for amendment without payment. Previously disputed invoices that are re-submitted for payment will be reviewed and if approved shall be paid within 30 days of the date the invoice was re-submitted. The CITY will make payment only after verifying that the services have been provided in accordance with the contract requirements.

2. Invoices must be provided in a format acceptable to the CITY. The Facility Services Supervisor or the Facility Representative reserves the right to request back-up documentation in support of invoices in question. Failure to provide the requested back-up may result in partial payment or rejection of the billing. Requested back-up may include, but is not limited to, employee time sheets and pay records, record of subcontractor payments, bills of sale for equipment and supplies, and evidence of timely tax or employee compensation payments.

3. The CONTRACTOR shall submit, to the designated Facility Representative, monthly invoices on the first day of the month for the prior month's cleaning services. There shall be no payments made before services are rendered. Any invoices submitted as pre-payment shall be returned to the CONTRACTOR without payment.

4. CONTRACTOR shall submit an itemized monthly invoice for each facility, for work completed in accordance with the contractor's quote at the time of proposal. Each itemized monthly invoice shall be submitted to the attention of the Facility Representative listed in Section I., unless the CITY notifies the CONTRACTOR of a change.

5. Services for hard floor care will be on an AS NEEDED basis, upon the request of the Facility Services Supervisor. Services rendered for hard floor care are to be invoiced separately per occurrence and submitted to the attention of the Facility Representative listed in Section I.

6. The CITY reserves the right to withhold any payment or partial payment otherwise due to the CONTRACTOR for any unsatisfactory performance or damage by the CONTRACTOR as determined at the sole discretion of the CITY. This amount shall be withheld until such performance or damage is corrected.

D. EMERGENCY/ON-CALL SERVICES.

The CITY may request the CONTRACTOR provide emergency or on call services that are not included in the scope of work provided for in this contract. Pricing shall be negotiable and per occurrence.

1. The CONTRACTOR shall submit invoices separately for on call or emergency services. Such invoices shall be submitted on the first day of the month for the prior month's emergency and/or on call services.
2. The CITY reserves the right to seek such services from another party if the CITY and CONTRACTOR cannot reach a mutually agreeable price.

III. AREAS AND FREQUENCY FOR CLEANING.

All cleaning shall be performed *after* the normal operating hours of each building, as stated below:

Facility & Location	Address	Approx. Sq. Footage	Frequency & Time of Service
1. City Hall	212 N. Bonner	17,700	Five (5) days per week, **Monday – Friday**, between hours of 6:30 p.m. and 7:00 a.m.
2. Administrative Services	304 N. Border	5,000	Five (5) days per week, **Monday – Friday**, between hours of 5:30 p.m. and 7:00 a.m.
3. Tyler Water Utilities	511 W. Locus	7,600	Five (5) days per week, **Monday – Friday**, between hours of 6:00 p.m. and 7:00a.m.
4. Tyler Development Center	423 W. Ferguson	10,000	Five (5) days per week, **Monday – Friday**, between hours of 6:00 p.m. and 7:00a.m.
5. Neighborhood Services	900 W. Gentry Pkwy.	6,850	Five (5) days per week, **Monday – Friday**, between hours of 5:30 p.m. and 7:00 a.m.
6. City University	212 N. Border	4,000	Five (5) days per week, **Monday** between 7:00 am and 7:00 pm, **Tuesday – Friday** between 5:30 pm and 7:00 am

IV. LEVEL OF CLEANING SERVICE REQUIRED, CLEANING STANDARDS, AND SCHEDULES.

The CONTRACTOR shall provide janitorial services in accordance with the following cleaning service standards, and special services for specific buildings as set out in Section III above.

A. Equipment and Supplies Provided by Contractor. Contractor is to provide all equipment needed such as mop, broom, buffer, vacuum, etc. and shall not use City equipment. Contractor shall supply all cleaning supplies and equipment, including glass cleaner, trash bags to fit appropriate City-furnished trashcans, all necessary disinfectants and cleansers with proper non-diluted cleaning solutions, rags, dusting cloths, dusting cleaner, and all wax and floor stripping materials.

B. Supplies Provided by City. City shall supply the following supplies: paper towels to fit each facility's dispensers, toilet paper; urinal blocks; and hand soaps, both bar and liquid, where necessary. The CONTRACTOR'S supervisor must notify the Facility Services Supervisor or designated CITY staff when city provided supplies runs low, so that restock can be ordered. Restock should be requested well enough in advance that the facility does not run out of these supplies. Each facility designee may establish its own preferred method and timing for restock requests from the CONTRACTOR'S supervisor. For inventory control & cost purposes, supplies provided by the CITY are not to be removed from any of the facilities, or be shared between facilities, without the approval of the Facility representative.

C. Daily Services:

1. General Cleaning
    a. Clean entrance and exit glass doors;
    b. Spot clean interior glass;
    c. Clean and polish all water fountains;
    d. Gather trash from all trashcans and wastebaskets. Place trash in dumpsters for disposal;
    e. Dust or wipe out all trashcans and wastebaskets;
    f. Sweep and mop all hard surface floors; and
    g. Vacuum all carpeted areas.

2. Offices, Meeting Rooms, Conference Rooms, and Breakrooms
    a. Spot clean all walls, light switches, and doors as needed;
    b. Sweep and/or dust mop all resilient floors and damp mop using a neutral cleaner;
    c. Sweep vestibules, landings, and stairs removing gum and loose trash;
    d. Carpet mats shall be vacuumed with a commercial vacuum before spot cleaning;
    e. Entrance mats made of rubber or polyester shall be swept, shaken, vacuumed or washed;
    f. Vacuum clean all carpeted areas; spot clan minor stains;
    g. Empty trash and replace the liner each time;
    h. Turn off all lights, leaving only designated lights on; and
    i. Secure designated doors upon completion of work.

3. Restrooms
    a. Wet mop all floors with germicidal solution (brooms, wet mops, rags, etc. used in the restroom shall not be used in any areas outside of the restroom);
    b. Empty, clean and disinfect all waste and sanitary napkin receptacles;
    c. Clean and remove all smudges, fingerprints, and water spots from all mirrors;
    d. Clean and sanitize all urinals, commodes, and washbasins to include all chrome fittings and bright work;
    e. Refill all toilet tissue, paper towels, and soap dispensers. Do not overfill gravity dispensers. Soap dispensers nozzles are to be free of clogs, allowing the soap to be dispensed easily and freely;
    f. Privacy partitions and partition doors are to be wiped free of dust, dirt, finger prints, and any other materials, substance, or markings; and
    g. Storerooms housing janitorial supplies and equipment to be kept neat, clean and orderly allowing sufficient walk-in room.

4. Trash
    a. All trash is to be emptied, and a replaced with a new liner each time;
    b. Leave extra trash liners in the bottom of the trash can;
    c. Clean/wipe all trash can lid;
    d. Take the trash to the dumpster;
    e. Recycling cans/bins are not included and are to be left alone; and
    f. A rolling utility trashcan must be used in the collection of all other trash to prevent discarded food, drinks, or any other substances from spilling/leaking out onto the floors.

5. Stairways
    a. Sweep and mop stairways and landings; and
    b. Vacuum stairways and landings that are carpet or have rugs.

6. Elevators
    a. Clean and wipe elevator walls;
    b. Clean elevator doorway tracks; and
    c. Polish stainless steel surface areas.

7. End of the Night
    a. Clean and straighten the janitorial closet;
    b. Turn off the lights; leaving only designated lights on; and
    c. Set the alarm per instructions.

D. Weekly Services:
    a. Dust high partition ledges, picture frames and window ledges and moldings;
    b. Dust low ledges, chair rungs, and table legs;
    c. Polish or clean doors, door kick plates, glass doors, and thresholds;
    d. Dust or vacuum air grills;
    e. Dust desks, chairs, tables and other office furniture, not including individual desks where papers, folders, etc. should not be disturbed. All surfaces should be dry and free of moisture or residue prior to replacing contents;
    f. Damp wipe vinyl or plastic chairs;
    g. Remove dust and soil from baseboards;
    h. Spray polish/buff non-carpeted floors to attain proper shine; and
    i. Burnish all tile floors once a week using an ultra-high speed machine of at least 2000 rpm or better. The use of polish not formulated for burnishing is not permitted.

NOTE: Dusting shall be performed with a cloth, using Pledge-type cleaners, except on live plants. Do not use feather type dusters.

E. Monthly Cleaning
    a. To remove cob webs, dust the areas where walls meet the ceiling and in corners;
    b. Dust or vacuum air condition grills;
    c. Remove dust and soil from baseboards; and
    d. Spray, polish, and buff non-carpeted floors to attain the proper shine.

V. QUALITY CONTROL.

Unsatisfactory cleaning will be subject to call back for re-cleaning. The CITY shall inform the CONTRACTOR by telephone or email or other reasonable written communication, noting all areas of dissatisfaction, and the CONTRACTOR shall correct the deficiencies the evening of the day notified. Failure to correct deficiencies the first evening will result in the CONTRACTOR having to send personnel to the site to correct the deficiency by noon the following business day.

The Facilities Services Supervisor may periodically request back up documents such as inspection reports and/or cleaning checklists for verifying the CONTRACTOR is maintaining a quality level of service by careful planning, use of proper equipment, continued inspection, and corrective action by the CONTRACTOR'S supervisor and employees. Requested back-up may also include, but is not limited to, employee time sheets and pay records, record of subcontractor payments, bills of sale for equipment and supplies, and evidence of timely tax or employee compensation payments.

The CITY representative may desire to meet with the Contractor or Contractor's Supervisors periodically to discuss performance and any cleaning issues that may arise.

VI. DAMAGE TO PROPERTY.

The CONTRACTOR shall promptly pay claims for damages to property owned by the CITY, or CITY'S employees, caused by employees of the CONTRACTOR on the premises covered by this contract. The CITY shall submit claims for damages in writing to the CONTRACTOR and/or the CONTRACTOR'S designee.

VII. INDEMNITY.

CONTRACTOR AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND OTHER CONSULTANTS FROM AND AGAINST ALL LIABILITY FOR ANY AND ALL CLAIMS, LIENS, DEMANDS, AND DAMAGES OF EVERY KIND FOR INJURIES TO PERSONS INCLUDING DEATH, PROPERTY DAMAGE INCLUDING LOSS OF USE, AND EXPENSES INCLUDING ATTORNEY'S FEES ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT AND CAUSED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, BY THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF CONTRACTOR, ANY SUBCONTRACTOR, OR ANYONE FOR WHOSE ACTS THE CONTRACTOR OR SUBCONTRACTOR MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIMS OR DAMAGES OCCURRED ON PROPERTY BELONGING TO THE CITY. THE CONTRACTOR'S INDEMNIFICATION OBLIGATION PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

IT IS AGREED FOR ALL PURPOSES HEREUNDER, CONTRACTOR 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, AND CONTRACTOR SHALL IN NO MANNER INCUR ANY EXPENSES OR LIABILITY ON BEHALF OF CITY.

IT IS FURTHER AGREED WITH RESPECT TO THE ABOVE INDEMNITY, THAT CITY AND CONTRACTOR 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 CONTRACTOR OR CITY, AND CITY SHALL HAVE THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS. PROVIDED, HOWEVER, NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS OBLIGATING CONTRACTOR TO INDEMNIFY THE CITY FOR THE NEGLIGENCE OR ACTIONS OF THE CITY, ITS AGENTS, SERVANTS, OR EMPLOYEES, OR THIRD PARTIES OVER WHOM CONTRACTOR HAS NO RIGHT OF CONTROL.

VIII. INSURANCE REQUIREMENTS.

CONTRACTOR agrees, at its sole expense, to maintain on a primary basis during the term(s) of this Contract and the performance of Work hereunder, insurance coverage, limits, and endorsements unless otherwise noted herein. Insurance required by this contract for the CITY as additional insured shall be primary and not contributing with any other insurance available to CITY. The City of Tyler, as the Certificate Holder, shall be named as Additional Insured as respects to General Liability and Auto and shall have a Waiver of Subrogation as respects to General Liability, Auto and Workers' Compensation all as required by written contract subject to policy terms, conditions and exclusions. Coverage is primary, non-contributory as respects to General Liability and Auto as required by written contract.

CONTRACTOR agrees to provide evidence of the required coverage at execution of contract.

Contractor shall not materially change or cancel any coverage without providing thirty (30) days prior written notice to City.

INSURANCE COVERAGE REQUIRED	
TYPE	**AMOUNT**
1) COMMERCIAL GENERAL LIABILITY * Policy shall include (but not limited to) the following: a) Products - Completed Operations b) Independent Contractors c) Broad Form Property Damage d) Contractual Liability or Cross Liability And where exposure exists, coverage required for: e) X-C-U Coverage X = Explosion Hazard C = Collapse Hazard U = Underground Damage	Not Less than: **$1,000,000** (one million) Each Occurrence **$1,000,000** (one million) General Aggregate **Per Project** Any Self-Insured-Retention or Deductible shall not exceed $25,000.
2) BUSINESS AUTOMOBILE LIABILITY Policy shall include (but not limited to) bodily injury and property damage liability for the following: a) Any Auto; OR b) All Owned Autos, and c) Hired Autos, and d) Non-Owned Autos.	Not Less than: **$500,000** (five hundred thousand) Each Occurrence
3) WORKERS' COMPENSATION (Where required by state law)	**Statutory Limits for Workers' Compensation** TEX. LAB. CODE ANN. Title 5, Subtitle A, Chapter 401 TEX. ADMIN. CODE, Title 28, Part 2

Checklist for Standard Contract Certificates of Insurance

1.	All pages of the *Certificate of Liability Insurance* shall be attached. *See* lower right corner of certificate for *ex toto* pagination. E.g. Page 1 of 2
2.	Policy Effective and Expiration Dates (for each type of coverage) Policy **effective date** is ON or BEFORE Contract date, and Policy **expiration date** should extend at least 3 months into the future OR for the estimated project length, whichever is greater.
3.	General Liability ☒ **Occurrence** Box is Checked ☒ **Per Project** Box is Checked for General Aggregate Limit.
4.	Automobile Liability At a minimum each of the following boxes should be checked: ☒ Any Auto OR ☒ All Owned Autos, and ☒ Hired Autos, and ☒ Non-Owned Autos.

5.	Workers Compensation ☒ WC Statutory Limits Box is Checked
6.	Look at the "Description of Operations . . . Special Provisions" Box. Clearly indicate the **CITY** has been endorsed by using this language: "The City of Tyler (i.e. Certificate Holder) shall be named as Additional Insured as respects to General Liability and Auto and shall have a Waiver of Subrogation as respects to General Liability, Auto and Workers' Compensation all as required by written contract subject to policy terms, conditions and exclusions. Coverage is primary, non-contributory as respects to General Liability and Auto as required by written contract."
7.	Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
8.	Certificate Holder: City of Tyler P.O. Box 2039 Tyler, TX 75710

*** ENDORSEMENT(S) REQUIRED**

Name of Additional Insured Person(s) or Organization(s):	Location(s) of Covered Operations:
City of Tyler P.O. Box 2039 Tyler, TX 75710	Project [*insert project name*], TWU Contract Number [*insert contract number*], Dated [*insert month and year of contract*].

Contractor shall choose one of the three Endorsement Option stated below. All Endorsements shall be in the form required. All pages of the Endorsement(s) shall be attached.

COMMERCIAL GENERAL LIABILITY

CONTRACTOR agrees to endorse the **CITY** as an "Additional Insured" on the Commercial General Liability with: [*Select Option 1 or Option 2 below*] [*See* Section 16.8.3 and 16.8.9]

Option 1	**FORM: CG 20 10 10 01** Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization **AND** **FORM: CG 20 37 07 04** Additional Insured – Owners, Lessees, or Contractors – Completed Operations

OR

Option 2	**FORM: CG 20 10 07 04** Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization **AND** **FORM: CG 20 37 07 04** Additional Insured – Owners, Lessees, or Contractors – Completed Operations

	OR
Option 3	**FORM: GA 4113 11 99** Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization - Your Work **AND** **FORM: GA 233 02 07** Contractors' Commercial General Liability Broadened – With Coverage for Completed Operations in conformance to specific written contract

The preceding amounts notwithstanding, the City Council reserves the right to increase the minimum required insurance to be effective thirty (30) days after notices sent to the address provided herein. If CITY exercises the right to increase minimum insurance amounts, CONTRACTOR may choose to either comply with the increase or cancel this contract in whole or in part with no penalty.

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

CONTRACTOR 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 CITY, the CONTRACTOR agrees, when requested by CITY, to maintain a Commercial Surety Bond in an amount equal to said deductible amount.

Prior to the contract effective date, CONTRACTOR shall furnish to City a valid Certificate of Insurance, plainly and clearly evidencing required insurance, and thereafter new certificates ***prior to the expiration date of any prior certificate.*** CONTRACTOR understands that it is its sole responsibility to provide this necessary information and that failure to timely comply with the requirements of this article shall be a cause for termination of this contract, under the provisions of the termination clause. The City reserves the right to request copies of any required insurance policy.

In the event the CITY is notified that a required insurance coverage will cancel or expire during the period of this agreement, the CONTRACTOR agrees to furnish CITY prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by CITY, the CONTRACTOR agrees to not continue Work pursuant to this agreement, unless all required insurance remains in effect.

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

CONTRACTOR agrees the CITY 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.

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 either the City Attorney's Office or Risk Management in the CITY'S Human Resources Department for their adequacy as to form, content, form of protection, and providing company. Additionally, the CITY 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 to its poor financial condition or failure to operate legally in the State of Texas. In such events, CITY shall provide CONTRACTOR written notice of such revisions or rejections.

IX. BONDS

The CONTRACTOR is required, pursuant to TEX. GOV'T CODE ANN. § 2253.021, and/or this Agreement to execute all bonds before commencing the work. The contract shall not be in effect until CONTRACTOR executes the AGREEMENT and files with the CITY a good and sufficient Statutory Performance and Maintenance Bond and Payment Bond or Payment Bond, when applicable, on standard forms and in the amount equal to one hundred percent (100%) of the total amount of the contract. Such bonds are furnished by the CONTRACTOR and are subject to approval by the CITY.

A Performance and Maintenance Bond and Payment Bond shall be required for contract amounts in excess of $100,000. A Payment Bond shall be required for all projects, regardless of value.

Within fifteen (15) calendar days after written notification of the award of the contract, the CONTRACTOR shall submit Statutory Performance and Maintenance Bond, when applicable, and/or Payment Bond to CITY on standard forms as required by this AGREEMENT.

X. OTHER CONDITIONS, RULES AND GUIDELINES.

The following conditions, rules and guidelines govern work by the CONTRACTOR:

A. Safety and Security:
   1. Deposit all trash bags in dumpsters;
   2. Do not string electrical cords across lobby during hours of public use;
   3. No visitors or family members of CONTRACTOR or CONTRACTOR'S employees, agents, or independent contractors, including children, will be admitted into any identified buildings herein;
   4. All employees of CONTRACTOR must be sixteen (16) years of age or older;
   5. Telephones in offices are not to be used for any reason, unless absolute Emergency;
   6. CONTRACTOR'S employees should never open doors to admit anyone into premises or into private offices regardless of the circumstances;
   7. No food or beverage consumption allowed by cleaning service personnel in office area;
   8. CONTRACTOR'S employees shall not use, move or tamper with computers and associated equipment; and
   9. CONTRACTOR will be issued a set of keys and/or keycards for all buildings and rooms to be cleaned. Regarding such keys and/or keycards:
      a. CONTRACTOR shall keep the keys and/or keycards under its custody, and not surrender possession of them to anyone except the facility representative set out below.
      b. CONTRACTOR shall not duplicate keys or key cards, nor permit anyone else to make duplicates.

c. CONTRACTOR shall surrender all keys or key cards to the Facility Services Supervisor on the day this contract terminates.
d. In the event any keys are lost, misplaced, or stolen from CONTRACTOR, the CONTRACTOR shall immediately notify the Facility Services Representative or other CITY designee.
e. The CITY will replace any locks for which keys have been lost by CONTRACTOR and will deduct from the CONTRACTOR'S payment the cost of changing locks. CONTRACTOR is solely responsible for the cost of changing locks whenever a key is lost by CONTRACTOR or stolen, regardless of the presence or absence of fault on the part of CONTRACTOR.

10. The CONTRACTOR'S Supervisor shall notify the Facilities Services Supervisor or designee when they or their employees, during the course of their work, observe the following:
    a. Suspicious persons on the premises;
    b. Unsafe conditions in a building;
    c. Roof leaks, Water leaks or notice/observe any unusual smells or fumes; or
    d. Broken or damaged equipment or fixtures and items that should be considered for replacement by the CITY because of poor condition such as: trash cans, receptacles, dispensers, rugs, flooring, window glass, mirrors, and improperly functioning doors, and/or improperly working locks on doors and windows that will not secure.

11. The CONTRACTOR shall establish procedures to ensure that the building is secured as required by the CITY. Janitorial personnel shall be required to secure the premises upon completion of assigned job duties. All doors shall be locked, and the security systems shall be activated prior to leaving the premises. Any malfunction shall be reported to the Facilities Services Supervisor prior to leaving the building. Failure to comply with this provision may result in termination of the contract.

B. Contractor Employee Information.

1. CONTRACTOR will supply to the CITY information (name, date of birth, race, sex, and driver's license number) that will allow for background investigation of any employee who may be working in a Tyler Police Department building.

2. CITY reserves the right to bar any employee of the CONTRACTOR, who commits criminal offenses during this contract period.

3. CONTRACTOR must agree to replace any of the CONTRACTOR employees working in the City's buildings at the request of the CITY without the CITY furnishing the CONTRACTOR with specifics for the request.

4. The CONTRACTOR shall employ only such superintendents, supervisors, and workers who are qualified, trained, careful, competent, reliable, and informed to perform the duties or tasks assigned to them, and shall secure the summary dismissal of any person or persons employed by the CONTRACTOR who misconducts him/herself or be otherwise objectionable or neglectful in the proper performance of his or her duties or whom neglects or refuses to comply with or carry out the directions of the CONTRACTOR. The CITY shall have the right to request the immediate removal from its premises of any employee of the CONTRACTOR. At the request of the CITY, the CONTRACTOR shall replace any incompetent, unfaithful, abusive, or disorderly person in its employ.

5. All work is to be performed by employees of the CONTRACTOR. A subcontractor will only be allowed for unusual situations, and only with the prior written approval from the CITY's representative.

6. The CONTRACTOR or an authorized competent supervisor acceptable to the CITY's representative shall be present on each work site, at all times when the work for this contract is being performed. The CONTRACTOR'S supervisor is to be available at all times during the CONTRACTOR's designated working hours. The supervisor is required to read, write, and speak English.

7. A fully qualified force shall be on board at the beginning of the contract performance and shall be maintained throughout the period of this contract. All personnel shall receive close and continuing first-line supervision by the CONTRACTOR.

8. When on duty, all CONTRACTOR'S employees shall have on their person identification showing the employee's photo, name, and personal data. In addition, CONTRACTOR'S employees shall be neat in appearance.

9. All employees of the CONTRACTOR must comply with the City of Tyler's Smoking Ordinance, which prohibits smoking within a distance of twenty (20) feet or less outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited in any Public Place or Place of Employment/Workplace.

10. No tobacco or vaping products are to be disposed of inside city buildings or be littered on the ground or parking lots of CITY premises by any employees of the CONTRACTOR.

C. Other Rules and Guidelines.

1. Conditions requiring advisement or immediate notification. CONTRACTOR shall advise the Facility Services Representative of conditions such as:
    a. Diminished supplies (provided by the City);
    b. Broken equipment or fixtures;
    c. Lost keys; and/or
    d. Changes in personnel which might affect security.

D. Notices.

All notices shall occur in writing. For purposes of such notice, the contact information of the parties, until changed by written notice, shall be:

CITY'S CONTACT:		CONTRACTOR'S CONTACT:	
Name	Gary L. Smith	Name	OFFICE PRIDE OF EAST TEXAS
Address	City of Tyler P.O. Box 2039 Tyler, TX 75710	Address	10281 ROBINSON DR, TYLER, TX 75703
Phone	(903) 520-3166	Phone	903-534-0425
FAX	N/A	FAX	
E-mail	gsmith@tylertexas.com	E-mail	davidstein@officepride.com

XI. TERMINATION.

If the CITY is dissatisfied with the quality of the CONTRACTOR'S performance, or if the CONTRACTOR fails to comply with the terms of the proposal and subsequent contract, the CITY shall so inform the CONTRACTOR by telephone, email, or other reasonable written communication, noting all areas of dissatisfaction. Upon receipt of such notice, the CONTRACTOR shall correct the deficiencies the on the same day. Failure to correct deficiencies by the first evening will result in the CONTRACTOR having to send personnel to the site to correct the deficiency by noon the following business day. If the CONTRACTOR fails to correct the deficiencies within the said period, the CITY may elect to perform the services itself, or obtain others to perform the services, in which case the CITY shall recover those costs by deducting "out of pocket expenses" from the CONTRACTOR'S monthly invoice; and/or, terminate the contract immediately by giving written notice to the CONTRACTOR. Termination by the CITY under this section shall be in addition to all other remedies that the CITY may have against the CONTRACTOR.

A. Termination for Cause: The contract may be terminated by the CITY for cause by giving five (5) days' notice to the CONTRACTOR. Reasons for termination under this Section include, but are not limited to:
   1. Failure of CONTRACTOR'S employees to appear at work during any period.
   2. Breach of security provisions by CONTRACTOR'S employees; and/or
   3. Repeated unsatisfactory cleaning.

B. Termination Without Cause: Either party to this contract may terminate this contract by giving Sixty (60) days written notice to the other party.

XII. VENUE.

The agreement shall be construed in accordance with the laws of the State of Texas and the 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.

CITY and CONTRACTOR hereby bind themselves, their heirs, successors and assigns and representatives for the faithful and full performance of the terms and provisions of this contract, jointly and severally.

IN WITNESS WHEREOF, the parties to these presents have executed this *Agreement* in the year and day first above written.

FOR THE CITY OF TYLER, TEXAS:

By:
City Manager

EGR
Edward Broussard → Stephanie Franklin
Printed Name

ATTEST:

By: Cassandra Brager
City Clerk

Cassandra Brager
Printed Name

APPROVED:

By:
City Attorney's Office

April Easley
Printed Name

CITY OF TYLER SEAL TEXAS

RECOMMENDED:

By:
Department Leader

Gary L. Smith-Facilities Services
Printed Name

City of Tyler Bid Number Enter COT bid number here
Project Name Janitorial Services for Six Downtown Properties

AGENDA ITEM NUMBER: C-A-3
DATE CITY COUNCIL APPROVED: 10-12-2022

FOR THE CONTRACTOR:

By: _____

DAVID STEIN-AREA DEVELOPER
Title

DAVID STEIN
Printed Name

THE STATE OF TEXAS §
§ **CONTRACTOR'S ACKNOWLEDGEMENT**
COUNTY OF SMITH §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared David Stein, who is known to me, or who was proved to me through Drivers license 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 25th day of October, 2022.

JESSICA J. DONABO DE FORD
Notary Public, State of Texas
Comm. Expires 11-05-2025
Notary ID 133433257

_____
Notary Public In and For The State of Texas

Jessica Donabo de Ford
Notary's Printed Name

My Commission Expires: 11-05-2026

Exhibit "C" Fees Follow

22-044 Janitorial Services Five (5) Year Pricing

2022-23

	Monthly	Yearly	
City Hall	$2,625	$31,500	
City University	$530	$6,360	
Finance	$798	$9,576	
Neighborhood Services	$655	$7,860	
Tyler Development Services	$1,430	$17,160	**Total**
Water Administration	$1,055	$12,660	$85,116

2023-24

	Monthly	Yearly		
City Hall	$2,690	$32,280		
City University	$530	$6,360		
Finance	$820	$9,840		
Neighborhood Services	$670	$8,040		
Tyler Development Services	$1,465	$17,580	**Total**	**% Increase**
Water Administration	$1,080	$12,960	$87,060	2.5%

2024-25

	Monthly	Yearly		
City Hall	$2,760	$33,120		
City University	$560	$6,720		
Finance	$840	$10,080		
Neighborhood Services	$690	$8,280		
Tyler Development Services	$1,505	$18,060	**Total**	**% Increase**
Water Administration	$1,105	$13,260	$89,520	2.5%

2025-26

	Monthly	Yearly		
City Hall	$2,825	$33,900		
City University	$570	$6,840		
Finanace	$860	$10,320		
Neighborhood Services	$705	$8,460		
Tyler Development Services	$1,540	$18,480	**Total**	**% Increase**
Water Administration	$1,135	$13,620	$91,620	2.5%

2026-27

	Monthly	Yearly		
City Hall	$2,890	$34,680		
City University	$585	$7,020		
Finanace	$880	$10,560		
Neighborhood Services	$725	$8,700		
Tyler Development Services	$1,580	$18,960	**Total**	**% Increase**
Water Administration	$1,165	$13,980	$93,900	2.5%

As Needed Services-Floor Waxing

Five (5) Year Pricing

	2022-23
	Per Service
Administrative Services	$1,090
City Hall (Buff Only)	$200
City University	$200
Neighborhood Services	$200
Tyler Development Services	$2,050
Water Administration	$1,115
	2023-24
	Per Service
Administrative Services	$1,115
City Hall (Buff Only)	$215
City University	$215
Neighborhood Services	$225
Tyler Development Services	$2,075
Water Administration	$1,140
	2024-25
	Per Service
Administrative Services	$1,140
City Hall (Buff Only)	$230
City University	$230
Neighborhood Services	$250
Tyler Development Services	$2,100
Water Administration	$1,165
	2025-26
	Per Service
Administrative Services	$1,165
City Hall (Buff Only)	$245
City University	$245
Neighborhood Services	$275
Tyler Development Services	$2,125
Water Administration	$1,190
	2026-27
	Per Service
Administrative Services	$1,190
City Hall (Buff Only)	$260
City University	$260
Neighborhood Services	$300
Tyler Development Services	$2,150

Water Administration	$1,215

Emergencey On Call Service Five (5) Year Pricing

Cost is Hourly or Per Occurance

	Hourly	Charge Per
2022-23	**Charge**	**Occurance**
Administrative Services	$45	$100
City Hall	$45	$100
City University	$45	$100
Neighborhood Services	$45	$100
Tyler Development Services	$45	$100
Water Administration	$45	$100
2023-24		
Administrative Services	$45	$100
City Hall	$45	$100
City University	$45	$100
Neighborhood Services	$45	$100
Tyler Development Services	$45	$100
Water Administration	$45	$100
2024-25	$50	$115
Administrative Services	$50	$115
City Hall	$50	$115
City University	$50	$115
Neighborhood Services	$50	$115
Tyler Development Services	$50	$115
Water Administration		
2025-26	$50	$115
Administrative Services	$50	$115
City Hall	$50	$115
City University	$50	$115
Neighborhood Services	$50	$115
Tyler Development Services	$50	$115
Water Administration		
2026-27	$50	$115
Administrative Services	$50	$115
City Hall	$50	$115
City University	$50	$115
Neighborhood Services	$50	$115
Tyler Development Services	$50	$115
Water Administration		

Insurance Follows

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/18/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Ark Assurance Group PO Box 7280 Tyler TX 75711-7280	CONTACT NAME: Claudia Harris PHONE (A/C, No, Ext): (903)509-2292 FAX (A/C, No): (903)509-2299 E-MAIL ADDRESS: charris@msn.com	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A : Mercury Ins. Company	
INSURED	HALBROOK ENTERPRISES LLC OFFICE PRIDE OF TYLER 10281 Robinson Drive Tyler TX 75703-	INSURER B :	
		INSURER C :	
		INSURER D :	
		INSURER E :	
		INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	[ ] CLAIMS-MADE [X] OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	[X]						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	[ ] POLICY [ ] PRO-JECT [ ] LOC-						PRODUCTS - COMP/OP AGG	$
	[ ] OTHER:							$
A	AUTOMOBILE LIABILITY		X	BA420000014427	08/23/2022	08/23/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	[ ] ANY AUTO						BODILY INJURY (Per person)	$
	[X] OWNED AUTOS ONLY [X] SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	[X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
	[X] Primary & Non Contrl							$
	UMBRELLA LIAB [ ] OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$
	DED [ ] RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						[ ] PER STATUTE [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] N/A	N/A					E.L. EACH ACCIDENT	$
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

"CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED IN REGARD TO THE BUSINESS AUTO POLICY. A WAIVER OF SUBROGATION APPLIES IN FAVOR OF THE CERTIFICATE HOLDER IN REGARD TO THE BUSINESS AUTO POLICY."

AI 025619

CERTIFICATE HOLDER

CITY OF TYLER
P O BOX 2039
TYLER TX 75710-

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Client#: 41997 HALBRENTE

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 10/31/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

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INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Ohio Security Insurance Co.	24082
INSURER B : Ohio Casualty Insurance Co	24074
INSURER C : Hartford Fire Insurance Co	19682
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Halbrook Enterprises LLC dba OfficePride
10281 Robinson Dr
Tyler, TX 75703

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	X	X	BKS60181678	08/20/2022	08/20/2023	EACH OCCURRENCE	$1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$1,000,000
							MED EXP (Any one person)	$15,000
							PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$2,000,000
	X POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$2,000,000
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
B	UMBRELLA LIAB OCCUR			USO60181678	08/20/2022	08/20/2023	EACH OCCURRENCE	$2,000,000
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$2,000,000
	DED X RETENTION $10000							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N / A						E.L. EACH ACCIDENT	$
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$
C	Crime			45BDDHO4221	02/01/2022	02/01/2023	10,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Tyler is an Additional Insured in regards to General Liability. Coverage is Primary and Non-Contributory and Waiver of Subrogation applies in favor of the certificate holder.

CERTIFICATE HOLDER

City of Tyler
PO Box 2039
Tyler, TX 75710

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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LSNYD

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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B. Limits of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

1. Employee Benefit Liability Coverage

Each Employee Limit:	$ 1,000,000
Aggregate Limit:	$ 3,000,000
Deductible:	$ 1,000

3. Damage to Premises Rented to You

The lesser of:

a. The Each Occurrence Limit shown in the Declarations; or

b. $500,000 unless otherwise stated $ _____

4. Supplementary Payments

a.	Bail bonds:	$ 1,000
b.	Loss of earnings:	$ 350

5. Medical Payments

Medical Expense Limit: $ 10,000

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6. **Voluntary Property Damage** (Coverage **a.**) **and Care, Custody or Control Liability Coverage** (Coverage **b.**)

Limits of Insurance (Each Occurrence)
Coverage **a.** $1,000
Coverage **b.** $5,000 unless otherwise stated $ _____

Deductibles (Each Occurrence)
Coverage **a.** $250
Coverage **b.** $250 unless otherwise stated $ _____

COVERAGE	PREMIUM BASIS **(a)** Area **(b)** Payroll **(c)** Gross Sales **(d)** Units **(e)** Other	RATE (For Limits in Excess of $5,000)	ADVANCE PREMIUM (For Limits in Excess of $5,000)
b. Care, Custody or Control			**$**
		TOTAL ANNUAL PREMIUM	**$**

11. Property Damage to Borrowed Equipment

Each Occurrence Limit: $ 10,000
Deductible: $ 250

C. Coverages:

1. Employee Benefit Liability Coverage

a. The following is added to **SECTION I - COVERAGES: Employee Benefit Liability Coverage.**

(1) Insuring Agreement

(a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and

2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

(b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and

1) Occurs during the policy period; or

2) Occurred prior to the effective date of this endorsement provided:

a) You did not have knowledge of a claim or "suit" on or before the effective date of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

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i) Reports all, or any part, of the act, error or omission to us or any other insurer;

ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and

b) There is no other applicable insurance.

(2) Exclusions

This insurance does not apply to:

(a) Bodily Injury, Property Damage or Personal and Advertising Injury

"Bodily injury", "property damage" or "personal and advertising injury".

(b) Dishonest, Fraudulent, Criminal or Malicious Act

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

(c) Failure to Perform a Contract

Damages arising out of failure of performance of contract by any insurer.

(d) Insufficiency of Funds

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

(e) Inadequacy of Performance of Investment / Advice Given With Respect to Participation

Any claim based upon:

1) Failure of any investment to perform;

2) Errors in providing information on past performance of investment vehicles; or

3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

(f) Workers' Compensation and Similar Laws

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

(g) ERISA

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

(h) Available Benefits

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

(i) Taxes, Fines or Penalties

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

(j) Employment-Related Practices

Any liability arising out of any:

(1) Refusal to employ;

(2) Termination of employment;

(3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employ-

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ment-related practices, acts or omissions; or

(4) Consequential liability as a result of **(1)**, **(2)** or **(3)** above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

(3) Supplementary Payments

SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B also apply to this Coverage.

b. Who is an Insured

As respects Employee Benefit Liability Coverage, **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced by the following:

(1) If you are designated in the Declarations as:

(a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

(b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.

(c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

(d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

(e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

(2) Each of the following is also an insured:

(a) Each of your "employees" who is or was authorized to administer your "employee benefit program".

(b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.

(c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

(3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:

(a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

(b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

c. Limits of Insurance

As respects Employee Benefit Liability Coverage, **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced by the following:

(1) The Limits of Insurance shown in Section **B. Limits of Insurance**, **1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:

(a) Insureds;

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(b) Claims made or "suits" brought;

(c) Persons or organizations making claims or bringing "suits";

(d) Acts, errors or omissions; or

(e) Benefits included in your "employee benefit program".

(2) The Aggregate Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

(3) Subject to the limit described in **(2)** above, the Each Employee Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

(a) An act, error or omission; or

(b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions,

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

(4) Deductible Amount

(a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

(b) The deductible amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

(c) The terms of this insurance, including those with respect to:

1) Our right and duty to defend the insured against any "suits" seeking those damages; and

2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,

apply irrespective of the application of the deductible amount.

(d) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

d. Additional Conditions

As respects **Employee Benefit Liability Coverage, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

(1) Item **2. Duties in the Event of Occurrence, Offense, Claim or Suit** is deleted in its entirety and replaced by the following:

2. Duties in the Event of an Act, Error or Omission, or Claim or Suit

a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

(1) What the act, error or omission was and when it occurred; and

(2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

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b. If a claim is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

(2) Item **5. Other Insurance** is deleted in its entirety and replaced by the following:

5. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **c.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **b.** below.

b. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

c. No Coverage

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

e. **Additional Definitions**

As **respects Employee Benefit Liability Coverage, SECTION V - DEFINITIONS** is amended as follows:

(1) The following definitions are added:

1. "Administration" means:

a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";

b. Interpreting the "employee benefit programs";

c. Handling records in connection with the "employee benefit programs"; or

d. Effecting, continuing or terminating any "employee's" participation

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in any benefit included in the "employee benefit program".

However, "administration" does not include:

a. Handling payroll deductions; or

b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.

2. "Cafeteria plans" means plan authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.

3. "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:

a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;

b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;

c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and

d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

(2) The following definitions are deleted in their entirety and replaced by the following:

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or

c. An appeal of a civil proceeding.

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

2. **Unintentional Failure to Disclose Hazards**

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 7. Representations is hereby amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

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3. Damage to Premises Rented to You

a. The last Subparagraph of Paragraph **2. SECTION I - COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE, 2. LIABILITY Exclusions** is hereby deleted and replaced by the following:

Exclusions **c.** through **q.** do not apply to damage by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner.

b. The insurance provided under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** applies to "property damage" arising out of water damage to premises that are both rented to and occupied by you.

(1) As respects Water Damage Legal Liability, as provided in Paragraph **3.b.** above:

The exclusions under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**, other than **i. War** and the **Nuclear Energy Liability Exclusion**, are deleted and the following are added:

This insurance does not apply to:

(a) "Property damage":

1) Assumed in any contract; or

2) Loss caused by or resulting from any of the following:

a) Wear and tear;

b) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

c) Smog;

d) Mechanical breakdown including rupture or bursting caused by centrifugal force;

e) Settling, cracking, shrinking or expansion; or

f) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(b) Loss caused directly or indirectly by any of the following:

1) Earthquake, volcanic eruption, landslide or any other earth movement;

2) Water that backs up or overflows from a sewer, drain or sump;

3) Water under the ground surface pressing on, or flowing or seeping through:

a) Foundations, walls, floors or paved surfaces;

b) Basements, whether paved or not; or

c) Doors, windows or other openings.

(c) Loss caused by or resulting from water that leaks or flows from plumbing, heating, air conditioning, or fire protection systems caused by or resulting from freezing, unless:

1) You did your best to maintain heat in the building or structure; or

2) You drained the equipment and shut off the water supply if the heat was not maintained.

(d) Loss to or damage to:

1) Plumbing, heating, air conditioning, fire protection systems, or other equipment or appliances; or

2) The interior of any building or structure, or to personal property in the building or structure

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caused by or resulting from rain, snow, sleet or ice, whether driven by wind or not.

c. Limit of Insurance

The Damage to Premises Rented to You Limit as shown in the Declarations is amended as follows:

(2) Paragraph **6.** of **SECTION III - LIMITS OF INSURANCE** is hereby deleted and replaced by the following:

6. Subject to **5.** above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "occurrence" to which this insurance applies.

(3) The amount we will pay is limited as described in Section **B. Limits of Insurance, 3. Damage to Premises Rented to You** of this endorsement.

4. Supplementary Payments

Under **SECTION I - COVERAGE, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B:**

a. Paragraph **2.** is replaced by the following:

Up to the limit shown in Section **B. Limits of Insurance, 4.a.** Bail Bonds of this endorsement for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

b. Paragraph **4.** is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in Section **B. Limits of Insurance, 4.b.** Loss of Earnings of this endorsement per day because of time off from work.

5. Medical Payments

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section **B. Limits of Insurance, 5. Medical Payments** of this endorsement.

6. Voluntary Property Damage and Care, Custody or Control Liability Coverage

a. Voluntary Property Damage Coverage

We will pay for "property damage" to property of others arising out of operations incidental to the insured's business when:

(1) Damage is caused by the insured; or

(2) Damage occurs while in the insured's possession.

With your consent, we will make these payments regardless of fault.

b. Care, Custody or Control Liability Coverage

SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, j. Damage to Property, Subparagraphs **(3), (4)** and **(5)** do not apply to "property damage" to the property of others described therein.

With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

a. The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section **B. Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section **B. Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

(1) Insureds;

(2) Claims made or "suits" brought; or

(3) Persons or organizations making claims or bringing "suits".

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b. **Deductible Clause**

(1) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the deductible amount stated in Section **B. Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.

(2) Condition **2. Duties in the Event of Occurrence, Offense, Claim or Suit,** applies to each claim or "suit" irrespective of the amount.

(3) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

7. **180 Day Coverage for Newly Formed or Acquired Organizations**

SECTION II - WHO IS AN INSURED is amended as follows:

Subparagraph **a.** of Paragraph **4.** is hereby deleted and replaced by the following:

a. Insurance under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

8. **Waiver of Subrogation**

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 9. Transfer of Rights of Recovery Against Others to Us is hereby amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

9. **Automatic Additional Insured - Specified Relationships**

a. The following is hereby added to **SECTION II - WHO IS AN INSURED**:

(1) Any person or organization described in Paragraph **9.a.(2)** below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of:

(a) A written contract or agreement; or

(b) An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued,

is an insured, provided:

(a) The written or oral contract or agreement is:

1) Currently in effect or becomes effective during the policy period; and

2) Executed prior to an "occurrence" or offense to which this insurance would apply; and

(b) They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

(2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to such additional insureds is limited as provided herein:

(a) The manager or lessor of a premises leased to you with whom you have agreed per Paragraph **9.a.(1)** above to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

1) Any "occurrence" which takes place after

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you cease to be a tenant in that premises.

2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(b) Any person or organization from which you lease equipment with whom you have agreed per Paragraph **9.a.(1)** above to provide insurance. Such person(s) or organization(s) are insureds solely with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person(s) or organizations(s). However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

(c) Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph **9.a.(1)** above to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1) The insurance afforded the vendor does not apply to:

a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

b) Any express warranty unauthorized by you;

c) Any physical or chemical change in the product made intentionally by the vendor;

d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

2) This insurance does not apply to any insured person or organization:

a) From whom you have acquired such products, or any ingredient, part or container, entering into, ac-

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companying or containing such products; or

b) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.

(d) Any state or political subdivision with which you have agreed per Paragraph **9.a.(1)** above to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent or control and to which this insurance applies:

1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or

2) The construction, erection, or removal of elevators; or

3) The ownership, maintenance, or use of any elevators covered by this insurance.

(e) Any state or political subdivision with which you have agreed per Paragraph **9.a.(1)** above to provide insurance, subject to the following provisions:

1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

2) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or political subdivision.

(f) Any person or organization with which you have agreed per Paragraph **9.a.(1)** above to provide insurance, but only with respect to liability arising out of "your work" performed for that additional insured by you or on your behalf. A person or organization's status as an insured under this provision of this endorsement continues for only the period of time required by the written contract or agreement, but in no event beyond the expiration date of this Coverage Part. If there is no written contract or agreement, or if no period of time is required by the written contract or agreement, a person or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

(3) Any insurance provided to an additional insured designated under Paragraph **9.a.(2)**:

(a) Subparagraphs **(e)** and **(f)** does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard";

(b) Subparagraphs **(a)**, **(b)**, **(d)**, **(e)** and **(f)** does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or their agents, "employees" or any other representative of the additional insured; or

(c) Subparagraph **(f)** does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

1) Defects in design furnished by or on behalf

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of the additional insured; or

2) The rendering of, or failure to render, any professional architectural, engineering or surveying services, including:

a) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

b) Supervisory, inspection, architectural or engineering activities.

3) "Your work" for which a consolidated (wrap-up) insurance program has been provided by the primecontractor-project manager or owner of the construction project in which you are involved.

b. Only with regard to insurance provided to an additional insured designated under Paragraph **9.a.(2)** Subparagraph **(f)** above, **SECTION III - LIMITS OF INSURANCE** is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever are less. If no limits are specified in the written contract or agreement, or if there is no written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

c. **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is hereby amended as follows:

(1) Condition **5. Other Insurance** is amended to include:

(a) Where required by a written contract or agreement, this insurance is primary and / or noncontributory as respects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and / or noncontributing, whichever applies, with this insurance.

(b) Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:

1) As otherwise provided in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance**; or

2) For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

(2) Condition **11. Conformance to Specific Written Contract or Agreement** is hereby added:

11. Conformance to Specific Written Contract or Agreement

With respect to additional insureds described in Paragraph **9.a.(2)(f)** above only:

If a written contract or agreement between you and the additional insured specifies that coverage for the additional insured:

a. Be provided by the Insurance Services Office additional insured form number **CG 20 10** or **CG 20 37** (where edition specified); or

b. Include coverage for completed operations; or

c. Include coverage for "your work";

and where the limits or coverage provided to the addi-

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tional insured is more restrictive than was specifically required in that written contract or agreement, the terms of Paragraphs **9.a.(3)(a)**, **9.a.(3)(b)** or **9.b.** above, or any combination thereof, shall be interpreted as providing the limits or coverage required by the terms of the written contract or agreement, but only to the extent that such limits or coverage is included within the terms of the Coverage Part to which this endorsement is attached. If, however, the written contract or agreement specifies the Insurance Services Office additional insured form number **CG 20 10** but does not specify which edition, or specifies an edition that does not exist, Paragraphs **9.a.(3)(a)** and **9.a.(3)(b)** of this endorsement shall not apply and Paragraph **9.b.** of this endorsement shall apply.

10. Broadened Contractual Liability - Work Within 50' of Railroad Property

It is hereby agreed that Paragraph **f.(1)** of Definition **12.** "Insured contract" (**SECTION V - DEFINITIONS**) is deleted.

11. Property Damage to Borrowed Equipment

a. The following is hereby added to Exclusion **j. Damage to Property** of Paragraph **2., Exclusions** of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Paragraphs **(3)** and **(4)** of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

(1) The Limits of insurance shown in the Declarations are replaced by the limits designated in Section **B. Limits of Insurance, 11.** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section **B. Limits of Insurance, 11.** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

(a) Insureds;

(b) Claims made or "suits" brought; or

(c) Persons or organizations making claims or bring "suits".

(2) Deductible Clause

(a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible amount stated in Section **B. Limits of Insurance, 11.** of this endorsement. The limits of insurance will not be reduced by the application of such Deductible amount.

(b) Condition **2. Duties in the Event of Occurrence, Offense, Claim or Suit**, applies to each claim or "suit" irrespective of the amount.

(c) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

12. Employees as Insureds - Specified Health Care Services

It is hereby agreed that Paragraph **2.a.(1)(d)** of **SECTION II - WHO IS AN INSURED**, does not apply to your "employees" who provide professional health care services on your behalf as duly licensed:

a. Nurses;

b. Emergency Medical Technicians; or

c. Paramedics,

in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place.

13. Broadened Notice of Occurrence

Paragraph **a.** of Condition **2. Duties in the Event of Occurrence, Offense, Claim or Suit** (**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDI-**

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TIONS) is hereby deleted and replaced by the following:

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

(1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".

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Form 1295 Follows

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2022-932607

Date Filed:
09/12/2022

Date Acknowledged:
10/26/2022

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Stein Enterprises, LLC dba Office Pride of East Texas
Tyler, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Tyler

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

22-044
Contract for Janitorial Services for Six Downtown Properties

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. [X]

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20_____.
(month) (year)

_____
Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2022-932607

Date Filed:
09/12/2022

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Stein Enterprises, LLC dba Office Pride of East Texas
Tyler, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Tyler

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

22-044
Contract for Janitorial Services for Six Downtown Properties

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. [X]

6 UNSWORN DECLARATION

My name is David Stein, and my date of birth is 6/25/1957.

My address is 5807 Regents Row (street), Tyler (city), TX (state), 75703 (zip code), USA (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Smith County, State of Texas, on the 24th day of Oct. (month), 22 (year).

Signature of authorized agent of contracting business entity
(Declarant)

Addendum 1

CITY OF TYLER
SERVICES AGREEMENT
Office Pride Commercial Cleaning
(Commercial Cleaning Services-Various City Facilities)
Original Agreement Dated: October 30, 2022-September 30, 2027

Between City of Tyler and Office Pride Commercial Cleaning
Beginning: **December 1, 2023**
City of Tyler Facilities Services Administrator Requests the addition of following Facility:
Cotton Belt Depot/Transit Authority
210 N. Spring
Tyler, TX. 75702
And that from this date forward the charges added for service at this location be as follows:
Janitorial Servies Five (5) Year Pricing

	2023-24 Monthly	Yearly	Total	Increase
Tyler Transit	$1,300	$15,600	$15,600	

	2024-25			
Tyler Transit	$1,339	$16,068	$16,068	3%

	2025-26			
Tyler Transit	$1,379	$16,550	$16,550	3%

	2026-27			
Tyler Transit	$1,421	$17,047	$17,047	3%

These charges to be billed and paid by Transit as requested.

All other provisions of the original City of Tyler service agreement dated October 30, 2022 with Office Pride Commercial Cleaning; Contract for Janitorial Services at Various Locations shall remain in full force and effect.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement this the 14th day of December, 2023.

CITY OF TYLER, TEXAS

BY: Edward Broussard

Edward Broussard, City Manager

CONTRACTOR:

BY:

Approved:

By: Steven M. Kean

APPROVED:

BY: Steven M. Kean

City Attorney's Office

§

THE STATE OF TEXAS

§ **CONTRACTOR'S ACKNOWLEDGEMENT**

COUNTY OF SMITH §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared David Stein, who is known to me, or who was proved to me through _____ [*description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person*]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 11 day of December, 2023.

GARY HOPKINS
ID #6673058
My Commission Expires
January 18, 2026

Notary Public In and For The State of Texas

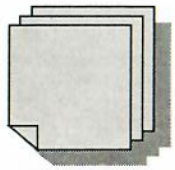
Gary Hopkins
Notary's Printed Name

My Commission Expires: January 18, 2026

This Form shall be filled-out and attached to all Electronic Work Item submissions made to LegalDesk@tylertexas.com or Hard-Copy mail deliveries.

ELECTRONIC & HARD-COPY DOCUMENT ROUTING FORM (REQUEST FOR LEGAL REVIEW)





☐ **URGENT – HIGH PRIORITY** [Check this box *only if* this item needs same-day review]

DOCUMENT Name of Work Item - Description or Type of Documents Attached	**Date Item is Due**	**Number of Copies (Hard-Copy)**	**LegalDesk Ticket ID [Office Use - to be assigned]**
Addenda 1-2027 Downtown Janitorial Contract	**ASAP**	**1**	6535

*** The person listed in this box will be the "Owner/Contact Person" listed on the Ticket. That person may view the Ticket by using the Client Web Page located at: Double Click the Ticket Tracker Icon on Desktop, or Go to: http://support.cityoftyler.net**

*** FROM: Name / Title**	**Originating Department**	**Date Submitted to Legal**	**Comments**
Gary L. Smith	**Facilities Services**	**12-14-2023**	**None**

ROUTE
Don't forget that Department Leader and Key Leader Approval must be obtained before the Legal Department will accept your Work Item.

	Name / Title	Department	Action Needed	Date Completed	Initials	Comments	Office Use
1	Stephanie Franklin / GARY SMITH /	Executive Director FACILITIES	Approval for Legal Review				
2	Steve Kean	Legal	Legal Review	12/15/23	SMK.		
3	Edward Broussard CM	CMO	Signature	12/18/23	EB		
4	Gary L. Smith	Facilities Services	Manage Contract/Project			Due to the fact that	
5						the Original Contract	

was $441,216.00, and this is adding to it, I would recommend that this be Ratified by the City Council. SMK

This Form shall be filled-out and attached to all Electronic Work Item submissions made to LegalDesk@tylertexas.com or Hard-Copy mail deliveries.

EXPLANATION OF WORK ITEM			
1.0	**ITEM REFERENCES** Has a similar work item previously been approved by the City Attorney's Office? [*e.g. a contract with the same vendor from a previous year*] **See Document**: **[CityClerkDesk #ZOP-223947]: Contract- 2018 HVAC Maintenance (City Wide)**	YES Go next to Line 1.1	[X] NO Skip to Line 1.2
1.1	Attach a copy of the similar **executed (signed) document** previously approved by Legal and an **electronic Word version** if applicable. If the previous/similar document was also approved by City Council attach the Council Communication (entire packet with attachments).		
1.2	Has this work item already been approved by the City Council? **No Council Approval Needed -Addenda to Current Contract**	[ ] YES Go next to Line 1.3	[X] NO Skip to Line 2
1.3	Agenda Item: [ ] Date of Approval: [ ]		
	Action Needed: Attach a copy of the current approved Council Communication (entire packet with attachments).		
2	**EXPLANATION** Give a complete explanation of the item you are sending including the background regarding the project:		
	ADDENDA 1-2027 CONTRACT WITH OFFICE PRIDE COMMERCIAL CLEANING FOR JANITORIAL SERVICES AT VARIOUS CITY OF TYLER LOCATIONS		
3	**EXPLAIN HOW THE CITY ATTORNEY'S OFFICE CAN ASSIST YOU** For Example: Are you requesting a document be created? Are you requesting a document be reviewed? Do you need specific questions answered? Do you need general advice?, etc.		
	LEGAL REVIEW FOR CITY MANAGERS SIGNITURE		
4	**DATES AND TIMES** Please list ALL deadline dates and times associated with this item	Need ASAP.	
	Deadline Date & Time for Public Notice: (e.g. 72 Hours in advance of Meeting)	Board or City Council Meeting Date:	Other Special Notes:
	N/A		
5	**PRIORITY** If your Work Item is a **high priority** item the following **Action is Needed**: (1) Check the box on Page 1 of this Form, and (2) Please call a member of the Legal Support Staff at 903.531.1161 to alert the City Attorney's Office that your ticket needs immediate or special attention.		
6	**ADD THE FOLLOWING ATTACHMENTS TO THE E-MAIL AND/OR INTEROFFICE MAIL:**		
	[X] This Routing Form [ ] City Council Communications [X] Contract Addenda [X] Current Contract (Copy) [ ] "Known" Governing Authority, Regulations & Laws including City Code [ ] Agenda [ ] Gathering Notice [ ] Other		

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-7

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional services with MHS Planning & Design, LLC.

Page: Page 1 of

Item Reference: April 26, 2023 M-2

A Request for Qualifications (RFQ) was published in January 2023 and open to engineering firms, asking for qualification submittals for civil engineering services. A selection committee consisting of City Staff and City Council reviewed and scored the submitted RFQs. The committee reviewed each engineering firms' proposals based on the criteria as stated in the RFQ. Multiple engineering firms were selected in each of the identified categories.

MHS Planning & Design, LLC, was selected to provide services for Pedestrian/Sidewalk Improvements.

A Master Services Agreement (MSA) for professional services with MHS Planning & Design, LLC, has been prepared to address general provisions from planning through construction management for a variety of future capital improvement projects. Having an approved MSA will streamline the acquisition of engineering services throughout the term of the agreement. However, the City of Tyler may choose, at its sole discretion, to solicit separate qualifications and designate another consultant for any of the individual projects undertaken at the City within the term of this agreement.

This MSA will be associated with projects assigned to engineering firms during the term of the 2023 RFQ. Each phase of work is to commence upon authorization by the City Council of a "Work Order". Each Work Order defines Scope of Services, Schedule of Work, and Fees.

RECOMMENDATION:

Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional services with MHS Planning & Design, LLC.

ATTACHMENTS:

2023-09-15 Engineering-Architect MSA Contract - MHS

Drafted/Recommended By:
Department Leader

Darin Jennings, PE, City Engineer

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 _____ _____, _____ [*insert date of last party's signature*], by and between the **CITY OF TYLER**, in Smith County, Texas (OWNER), acting therein by and through its duly authorized City Manager, and **MHS Planning & Design, LLC.** (ENGINEER or ARCHITECT), hereinafter referred to as "E/A," for the purpose of acquiring all professional engineering and/or architectural services required for each project(s) (hereinafter called the PROJECT). Each PROJECT will be documented by a Work Order detailing the Scope and Scope Fee, Schedule, Firm Fee Schedule, Form 1295, and be attached in Exhibits A, B, C, and E, respectively. Exhibit F shall be included as applicable based on the Work Order. This agreement sets forth the general terms and conditions which shall apply to all Work Orders executed under this agreement.

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, wastewater 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”,

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 Work Order,*
- *Exhibit B - Certificate of Insurance and Endorsements,*
- *Exhibit C - Certificate of Interested Parties (Form 1295) (if required),*
- *Exhibit D - Procedure for Correcting Construction Defects (Applicable only to construction contracts affecting City-owned buildings and other public works)*

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:
MHS Planning & Design, LLC
Attn: William H. Spencer, P.E.
212 W. 9th Street
Tyler, Texas 75701
903.597.6606

OWNER:
City of Tyler
Attn: **Identified in Work Order Scope**
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: Item No.
DATE APPROVED: Enter approval date

FOR THE E/A:

By: _____ 12/15/23
President Date

William H. Spencer, P.E.
Printed Name:

Phone: 903.597.6606
Email: whs@mhsplanning.com

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared William H. Spencer, who is known to me, or who was proved to me through Texas Driver's License 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 15th day of December, 2023.

ASHLEY CUNNINGHAM
Notary Public, State of Texas
Comm. Expires 04-23-2025
Notary ID 129736696

_____
Notary Public In and For The State of Texas

My Commission Expires: 4/23/25

Ashley Cunningham
Notary's Printed Name

INDEX OF EXHIBITS

Exhibit A - E/A's Work Order / Scope of Services

Exhibit B – E/A's PROJECT Schedule

Exhibit C – E/A's Fee Schedule and Hourly Fees

Exhibit D - Certificates of Insurance and Endorsements

Exhibit E - Certificate of Interested Parties (Form 1295) (If Required)

Exhibit F – Procedure for Correcting Construction Defects
(Applicable only to construction contracts affecting City-owned buildings and other public works)

Exhibit A - E/A's Work Order / Scope of Services

WORK ORDER FOR PROFESSIONAL SERVICES

PROJECT: Title of Project
WORK ORDER NUMBER: E.G. 01

This Work Order constitutes authorization by the City of Tyler, Texas (OWNER) for **Consultant or Firm** (ENGINEER) to provide engineering services for the above titled project (hereinafter called the PROJECT). The PROJECT includes the following 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 **Month Day, Year**. The scope of services for this part of the work is generally as follows:

1) SECTION 1.2 – During the Preliminary Report Phase the ENGINEER shall: Provide the services described in SECTION 1.2 of the CONTRACT.

2) SECTION 1.3 – During the Preliminary Design Phase the ENGINEER shall: Provide the services described in SECTION 1.3 of the CONTRACT.

3) SECTION 1.4 – During the Final Design Phase the ENGINEER shall: Provide the services described in SECTION 1.4 of the CONTRACT.

4) SECTION 1.5 – During the Bidding and Negotiation Phase the ENGINEER shall: Provide the services described in SECTION 1.5 of the CONTRACT.

5) SECTION 1.6 – During the Construction Phase the Engineer shall: Provide the services described relating to bidding in SECTION 1.6 of the CONTRACT.

6) Project Specific Scope and Fees: PROJECT scope details are attached to this Work Order and fees for said scope are included.

7) PROJECT Schedule: The ENGINEER shall perform services for the PROJECT in accordance with the schedule in Exhibit B.

8) OWNER's Responsibilities: The OWNER's responsibilities shall be as described in SECTION 3 of the AGREEMENT.

9) Method of payment for various project components: OWNER shall pay the ENGINEER for services rendered as provided for in SECTION 5 of the said AGREEMENT unless modified herein and agreed to in writing by both parties to said contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. __ to the CONTRACT dated _____ on this the _____ _____ day of _____ , 202_.

OWNER:	ENGINEER:
CITY OF TYLER, TEXAS	_____
BY:_____	BY:_____
ATTEST:_____	ATTEST:_____
DATE:_____	DATE:_____

Half Cent Sales Tax Board Approval Date: Enter approval date

City Council Approval Date: Enter approval date, Agenda Item Number: Item No.

Exhibit B - E/A's PROJECT Schedule

Exhibit C - E/A's Rate Schedule and Hourly Fees

Exhibit D - Certificates of Insurance and Endorsements

(See following pages for a summary and checklist of Insurance and Endorsement requirements)

MHSPLAN-01 WHATFIELD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/15/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
INSURICA 2420 Springer Dr, Suite 105 Norman, OK 73069	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS: service@INSURICAexpress.com	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
MHS Planning & Design, LLC 212 West Ninth Street Tyler, TX 75701	INSURER A : Burlington Insurance Company	23620
	INSURER B : American Casualty Co. of Reading, PA	20427
	INSURER C : Atlantic Casualty Insurance Company	42846
	INSURER D : Underwriters at Lloyd's London	15792
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	[ ] CLAIMS-MADE [X] OCCUR			536BG08312-01	10/19/2023	10/19/2024	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	X POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	[ ] OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	[ ] ANY AUTO						BODILY INJURY (Per person)	$
	[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	[ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	$ 5,000,000
	[ ] EXCESS LIAB [ ] CLAIMS-MADE			536BE06867-01	10/19/2023	10/19/2024	AGGREGATE	$
	[ ] DED [ ] RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						[ ] PER STATUTE [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] (Mandatory in NH)	N / A		6021700170	11/1/2023	11/1/2024	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
C	Property			P264000348	3/20/2023	3/20/2024	Per Claim	1,000,000
D	Professional Liabili			ANE2020834.23	8/13/2023	8/13/2024	Aggregate	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Master Services Agreement - ADA Repairs

CERTIFICATE HOLDER

City of Tyler
PO Box 2039,
Tyler, TX 75710

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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TEXAS FARM BUREAU INSURANCE
AUTO / HOME / LIFE

TEXAS FARM BUREAU MUTUAL INSURANCE COMPANY
TEXAS FARM BUREAU UNDERWRITERS
TEXAS FARM BUREAU CASUALTY INSURANCE COMPANY
FARM BUREAU COUNTY MUTUAL INSURANCE COMPANY OF TEXAS
SOUTHERN FARM BUREAU LIFE INSURANCE COMPANY

POLICY NUMBER
21972657

IMPORTANT NOTICE

CERTIFICATE OF INSURANCE
FOR INFORMATION PURPOSES ONLY

Date 09/12/2022

CERTIFICATE HOLDER NAME AND MAILING ADDRESS

CITY OF TYLER
PO BOX 2039
TYLER, TX 75710

POLICY PERIOD FROM 09/12/2022
TO UNTIL CANCELLED

This is to certify that the policy (including endorsements) of insurance, as described below, has been issued by the undersigned, to the Insured named below, and is in force at this time. If cancelled at the request of either party, or changed in any manner for any reason during the period of coverage, as stated herein, so as to affect this Certificate, **10** days prior written notice will be given by this Insurance Company to the Certificate Holder named above.

The Farm Bureau County Mutual Insurance Company of Texas hereby certifies that the following described policy has been issued and is in force and effect.

INSURED NAME AND MAILING ADDRESS
MHS PLANNING & DESIGN LLC
212 W 9TH ST
TYLER, TX 75701-4100

DESCRIPTION OF RISK
2020 GMC TRUCK 3GTU9DED6LG224710
2020 TYTA UTILITY JTMEWRFV0LJ044865

COVERAGE	LIMITS OF LIABILITY	
PUBLIC LIABILITY	**BODILY INJURY/PROPERTY DAMAGE**	
☐ Commercial General Liability	$	EACH OCCURRENCE
☐ Premises and Operations	$	AGGREGATE
☐ Contractors Protective		
☐ Products – Completed Operations		
☐ Contractual – Designated Contracts Only		
☐ Excludes Explosion, Collapse and Underground Property Damage Hazard		
AUTOMOBILE LIABILITY	**BODILY INJURY/PROPERTY DAMAGE**	
☐ Fleet	$1,000,000	EACH PERSON
☒ Specific Automobiles Only	$1,000,000	EACH ACCIDENT
☒ Non-Ownership and Hired Automobiles	$1,000,000	EACH ACCIDENT
FARM LIABILITY	$	EACH OCCURRENCE
	$	AGGREGATE
PERSONAL LIABILITY		
☐ Homeowners	$	EACH OCCURRENCE
☐ Farm and Ranch Owners	$	EACH OCCURRENCE
UMBRELLA LIABILITY	$	EACH OCCURRENCE
	$	AGGREGATE

This Certificate of Insurance neither affirmatively nor negatively amends, extends, or alters the coverage or any provision afforded by the policy. This Certificate is executed and issued in duplicate by the aforesaid Company.

COI-Leg

S 08-17-2011 (FDCCOI-PDCCOI)

Exhibit E- Certificate of Interested Parties (Form 1295)

(If Required)

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.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2023-1104654

Date Filed:
12/14/2023

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

MHS Planning & Design
Tyler, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Tyler

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

23-000
MSA - ADA Repairs

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. [X]

6 UNSWORN DECLARATION

My name is William Spencer, and my date of birth is October 18, 1982.

My address is 212 W. 9th Street (street), Tyler (city), TX (state), 75701 (zip code), USA (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Smith County, State of Texas, on the 14th day of December (month), 23 (year).

Signature of authorized agent of contracting business entity
(Declarant)

Exhibit F - Procedure for Correcting Construction Defects

Check Here if this Section IS Applicable to This Work Order ☐

PROJECT: Title of Project
WORK ORDER NUMBER: E.G. 01

****ONLY APPLICABLE FOR CONSTRUCTION ACTIVITIES AFFECTING CITY-OWNED BUILDINGS AND OTHER PUBLIC WORKS PROJECTS AS DEFINED IN TEX. GOV. CODE ANN., SEC. 2269.001 (6)****

EXHIBIT F is not applicable to "civil works" projects as defined in Tex. Gov. Code Ann., Sec. 2269.351

I. DEFINITIONS

A. **"Public Works"** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.001 (6), are those related to constructing, altering, or repairing a public building or carrying out any public work.

B. **"Civil works"** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.351 are those related to roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage, flood control projects and transit projects.

II. NOTIFICATION OF DEFECT

A. **ENGINEER/ARCHITECT SHALL NOTIFY OWNER IN WRITING OF ANY CONSTRUCTION DEFECT** of which the ENGINEER/ARCHITECT is aware, and which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning or supervision of the construction that is a result of:

i. The use of defective materials, products, or components in the construction;
ii. A violation of a building code applicable by law to the construction;
iii. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or
iv. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

B. The E/A's writing shall identify the specific construction defect, describe the present physical condition of the affected structure; and describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

III. PROCEDURE TO CORRECT CONSTRUCTION DEFECTS

A. Before bringing an action asserting a claim for a construction defect under this Agreement, the OWNER must provide a written report to each party with whom the OWNER has a contract for the design, construction or construction oversight of an affected structure by certified mail, return receipt requested.

i. The report shall clearly identify the specific construction defect(s) on which the claim is based, which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning, or supervision of the construction that is a result of:
   a. The use of defective materials, products, or components in the construction;
   b. A violation of a building code applicable by law to the construction;

c. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or

d. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

iii. The report shall clearly:

a. Identify the specific construction defect on which the claim is based;

b. Describe the present physical condition of the affected structure; and

c. Describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

B. OWNER shall allow each party with whom the OWNER has a contract for the design or construction of an affected structure and who is subject to the claim, and any known subcontractor or supplier who is subject to the claim a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after receiving the report.

C. OWNER shall allow at least 120 days after the inspection to:

i. Correct any construction defect or related condition identified in the report; or

ii. Enter into a separate agreement with the governmental entity to correct any construction defect or related condition identified in the report.

D. OWNER is not required to allow a party to make a correction or repair under Subsection II.A. if:

i. the party:

a. Is a contractor and cannot provide payment and performance bonds to cover the corrective work;

b. Cannot provide liability insurance or workers' compensation insurance;

c. Has been previously terminated for cause by OWNER; or

d. Has been convicted of a felony; or

ii. OWNER previously complied with the process required by Subsection II.A. regarding a construction defect or related condition identified in the report and:

a. The defect or condition was not corrected as required by Subsection II.C.i. or by an agreement under Subsection II.C.ii.; or

b. The attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.

E. Recovery of Report Costs. If the report described in Subsection II.A. identifies a construction defect that is corrected or for which the OWNER recovers damages, the party responsible for that construction defect shall pay the reasonable amounts incurred by OWNER to obtain the report with respect to identification of that construction defect.

F. These provisions do not prohibit or limit the OWNER from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public or a building occupant.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-8

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional services with H.W. Lochner, Inc.

Page: Page 1 of

Item Reference:

A Request for Qualifications (RFQ) was published in January 2023 and open to engineering firms, asking for qualification submittals for civil engineering services. A selection committee consisting of City Staff and City Council reviewed and scored the submitted RFQs. The committee reviewed each engineering firms' proposals based on the criteria as stated in the RFQ. Multiple engineering firms were selected in each of the identified categories.

H.W. Lochner, Inc., was selected to provide services for Streets / Roadways projects.

A Master Services Agreement (MSA) for professional services with H.W. Lochner, Inc., has been prepared to address general provisions from planning through construction management for a variety of future capital improvement projects. Having an approved MSA will streamline the acquisition of engineering services throughout the term of the agreement. However, the City of Tyler may choose, at its sole discretion, to solicit separate qualifications and designate another consultant for any of the individual projects undertaken at the City within the term of this agreement.

This MSA will be associated with projects assigned to engineering firms during the term of the 2023 RFQ. Each phase of work will commence upon authorization of a "Work Order" by the City Council. Each Work Order defines Scope of Services, Schedule of Work, and Fees.

RECOMMENDATION:

Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional services with H.W. Lochner, Inc.

ATTACHMENTS:

MSA Contract - HW Lochner

Drafted/Recommended By:
Department Leader

Darin Jennings, PE, City Engineer

Edited/Submitted By:
City Manager

STATE OF TEXAS §

COUNTY OF SMITH §

STANDARD FORM OF AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This AGREEMENT is entered into, with an Effective Date of _____ _____, _____ [*insert date of last party's signature*], by and between the **CITY OF TYLER**, in Smith County, Texas (OWNER), acting therein by and through its duly authorized City Manager, and H.W. Lochner (ENGINEER or ARCHITECT), hereinafter referred to as "E/A," for the purpose of acquiring all professional engineering and/or architectural services required for each project(s) (hereinafter called the PROJECT). Each PROJECT will be documented by a Work Order detailing the Scope and Scope Fee, Schedule, Firm Fee Schedule, Form 1295, and be attached in Exhibits A, B, C, and E, respectively. Exhibit F shall be included as applicable based on the Work Order. This agreement sets forth the general terms and conditions which shall apply to all Work Orders executed under this agreement.

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, wastewater 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”,

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 Work Order,*
- *Exhibit B - Certificate of Insurance and Endorsements,*
- *Exhibit C - Certificate of Interested Parties (Form 1295) (if required),*
- *Exhibit D - Procedure for Correcting Construction Defects (Applicable only to construction contracts affecting City-owned buildings and other public works)*

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:
H.W. Lochner, Inc.
Attn: Corey Hogue
5767 Eagles Nest Blvd.
Tyler, Texas 75703

OWNER:
City of Tyler
Attn: **Identified in Work Order Scope**
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: Item No.
DATE APPROVED: Enter approval date

FOR THE E/A:

By: _____

Enter title of signer Date

Enter printed name

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 Work Order / Scope of Services

Exhibit B – E/A's PROJECT Schedule

Exhibit C – E/A's Fee Schedule and Hourly Fees

Exhibit D - Certificates of Insurance and Endorsements

Exhibit E - Certificate of Interested Parties (Form 1295) (If Required)

Exhibit F – Procedure for Correcting Construction Defects
(Applicable only to construction contracts affecting City-owned buildings and other public works)

Exhibit A - E/A's Work Order / Scope of Services

WORK ORDER FOR PROFESSIONAL SERVICES

PROJECT: Title of Project
WORK ORDER NUMBER: E.G. 01

This Work Order constitutes authorization by the City of Tyler, Texas (OWNER) for **Consultant or Firm** (ENGINEER) to provide engineering services for the above titled project (hereinafter called the PROJECT). The PROJECT includes the following 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 **Month Day, Year**. The scope of services for this part of the work is generally as follows:

1) SECTION 1.2 – During the Preliminary Report Phase the ENGINEER shall: Provide the services described in SECTION 1.2 of the CONTRACT.

2) SECTION 1.3 – During the Preliminary Design Phase the ENGINEER shall: Provide the services described in SECTION 1.3 of the CONTRACT.

3) SECTION 1.4 – During the Final Design Phase the ENGINEER shall: Provide the services described in SECTION 1.4 of the CONTRACT.

4) SECTION 1.5 – During the Bidding and Negotiation Phase the ENGINEER shall: Provide the services described in SECTION 1.5 of the CONTRACT.

5) SECTION 1.6 – During the Construction Phase the Engineer shall: Provide the services described relating to bidding in SECTION 1.6 of the CONTRACT.

6) Project Specific Scope and Fees: PROJECT scope details are attached to this Work Order and fees for said scope are included.

7) PROJECT Schedule: The ENGINEER shall perform services for the PROJECT in accordance with the schedule in Exhibit B.

8) OWNER's Responsibilities: The OWNER's responsibilities shall be as described in SECTION 3 of the AGREEMENT.

9) Method of payment for various project components: OWNER shall pay the ENGINEER for services rendered as provided for in SECTION 5 of the said AGREEMENT unless modified herein and agreed to in writing by both parties to said contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. _ to the CONTRACT dated _____ on this the _____ _____ day of _____ , 202_.

OWNER:	ENGINEER:
CITY OF TYLER, TEXAS	_____
BY:_____	BY:_____
ATTEST:_____	ATTEST:_____
DATE:_____	DATE:_____

Half Cent Sales Tax Board Approval Date: Enter approval date

City Council Approval Date: Enter approval date, Agenda Item Number: Item No.

Exhibit B - E/A's PROJECT Schedule

Exhibit C - E/A's Rate Schedule and Hourly Fees

Exhibit D - Certificates of Insurance and Endorsements

(See following pages for a summary and checklist of Insurance and Endorsement requirements)

CERTIFICATE(S) OF INSURANCE

[Certificate of Liability Insurance Shall Be Inserted Here]

INSURANCE COVERAGE REQUIRED * Endorsement Required	
TYPE	**AMOUNT**
1) COMMERCIAL GENERAL LIABILITY * Policy shall include (but not limited to) the following: a) Products - Completed Operations b) Independent Contractors c) Broad Form Property Damage d) X-C-U Coverage X = Explosion Hazard C = Collapse Hazard U = Underground Damage e) Contractual Liability or Cross Liability	Not Less than: **$1,000,000** (1 million) Each Occurrence **$2,000,000** (2 million) General Aggregate **Per PROJECT** Any Self-Insured-Retention or Deductible shall not exceed $25,000.
2) BUSINESS AUTOMOBILE LIABILITY Policy shall include (but not limited to) bodily injury and property damage liability for the following: a) Any Auto; OR b) All Owned Autos, and c) Hired Autos, and d) Non-Owned Autos.	Not Less than: **$1,000,000** (1 million) Each Occurrence
3) PROFESSIONAL ERRORS & OMISSIONS LIABILITY Policy shall include (but not limited to) the following: a) A minimum three (3) year Discovery (tail) Reporting period, and b) A Retroactive Date that equals or precedes the effective date of the Contract, or the performance of services hereunder.	Not Less than: **$1,000,000** (1 million) Each Claim **$2,000,000** (2 million) Annual Aggregate Any Self-Insured-Retention or Deductible shall not exceed $25,000.
4) ♦ POLLUTION LIABILITY INSURANCE *	♦ ☐ Check Here If Coverage is Required by a City Operational Department Not Less than: **$1,000,000** (1 million) Each Claim **$2,000,000** (2 million) Annual Aggregate
5) COMMERCIAL UMBRELLA / EXCESS LIABILITY *	Not Less than: **$5,000,000** (5 million) Each Occurrence **$5,000,000** (5 million) General Aggregate Any Self-Insured-Retention or Deductible shall not exceed $25,000.
6) WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	**Statutory Limits for Workers' Compensation** TEX. LAB. CODE ANN. Title 5, Subtitle A, Chapter 401 TEX. ADMIN. CODE, Title 28, Part 2 **Employer's Liability Limits** **$1,000,000 (1 million)** Bodily Injury by Accident **$1,000,000 (1 million)** Bodily Injury by Disease Each Occurrence **$1,000,000 (1 million)** Bodily Injury by Disease Aggregate Limit

Checklist: Certificate(s) of Insurance

*** Provided only as a courtesy ***

[See generally Section 7.3 Insurance for contract insurance requirements]

1.	All pages of the *Certificate of Liability Insurance* shall be attached. *See* lower right corner of certificate for *ex toto* pagination. E.g., Page 1 of 2
2.	Policy Effective and Expiration Dates (for each type of coverage) Policy **effective date** is ON or BEFORE Contract date, and Policy **expiration date** should extend at least 6 months into the future OR for the estimated project length, whichever is greater.
3.	Commercial General Liability [*See* Section 7.3.2] ☒ **Occurrence** Box is Checked ☒ **Per PROJECT** Box is Checked for General Aggregate Limit.
4.	Business Automobile Liability [*See* Section 7.3.2] At a minimum each of the following boxes should be checked: ☒ Any Auto OR ☒ All Owned Autos, and ☒ Hired Autos, and ☒ Non-Owned Autos.
5.	Professional Errors and Omissions Liability [*See* Section 7.3.2]
6.	Commercial Umbrella / Excess Liability [*See* Section 7.3.2] ☒ Occurrence Box is Checked
7.	Workers Compensation and Employers Liability [*See* Section 7.3.2] ☒ WC Statutory Limits Box is Checked
	Look at the "Description of Operations . . . Special Provisions" Box. [*See* Section 7.4] [*See also* Section 7.6] Clearly indicate the **CITY** has been endorsed by using this language: "The City of Tyler (i.e. Certificate Holder) shall be named as Additional Insured as respects to Commercial General Liability, Commercial Umbrella / Excess Liability and Pollution Liability Insurance, if required, and shall have a Waiver of Subrogation as respects to Commercial General Liability, Business Automobile Liability, Professional Errors and Omissions Liability, Commercial Umbrella / Excess Liability and Workers' Compensation all as required by written contract subject to policy terms, conditions and exclusions. Coverage is primary, non-contributory as respects to General Liability and Auto as required by written contract."
8.	Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
9.	Certificate Holder: [*See generally* Section 7.4] City of Tyler P.O. Box 2039 Tyler, TX 75710

ENDORSEMENTS

[Endorsements Shall Be Inserted Here]

<table>
<tr><td colspan="3">* ENDORSEMENT(S) REQUIRED</td></tr>
<tr><td colspan="2">Name of Additional Insured Person(s)
or Organization(s):
City of Tyler
P.O. Box 2039
Tyler, TX 75710</td><td>Location(s) of Covered Operations:

PROJECT [insert project name],
Dated [insert month and year of contract].</td></tr>
<tr><td colspan="3">E/A shall choose one of the three Endorsement Option stated below. All Endorsements shall be in the form required. All pages of the Endorsement(s) shall be attached.</td></tr>
<tr><td colspan="3">COMMERCIAL GENERAL LIABILITY

E/A agrees to endorse the CITY as an “Additional Insured” on the Commercial General Liability with: [Select Option 1, Option 2 or option 3 below] [See Section 7.3.2 and 7.4]</td></tr>
<tr><td>Option
1</td><td colspan="2">FORM: CG 20 10 10 01
Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization

AND
FORM: CG 20 37 07 04
Additional Insured – Owners, Lessees, or Contractors – Completed Operations</td></tr>
<tr><td colspan="3">OR</td></tr>
<tr><td>Option
2</td><td colspan="2">FORM: CG 20 10 07 04
Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization

AND
FORM: CG 20 37 07 04
Additional Insured – Owners, Lessees, or Contractors – Completed Operations</td></tr>
<tr><td colspan="3">OR</td></tr>
<tr><td>Option
3</td><td colspan="2">FORM: GA 4113 11 99
Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization – Your Work
AND
FORM: GA 233 02 07
Contractors’ Commercial General Liability Broadened – with coverage for Completed Operations in conformance to specific written contract</td></tr>
<tr><td colspan="3">COMMERCIAL UMBRELLA / EXCESS LIABILITY

E/A agrees to endorse the CITY as an “Additional Insured” under the Commercial Umbrella / Excess Liability as also provided herein. [See Section 7.3.2 and 7.4]</td></tr>
<tr><td colspan="3">POLLUTION LIABILITY INSURANCE

♦ If applicable E/A agrees to endorse the CITY as an “Additional Insured” under the Pollution Liability Insurance as also provided herein. [See Section 7.3.2 and 7.4]</td></tr>
</table>

Exhibit E- Certificate of Interested Parties (Form 1295)

(If Required)

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.

Exhibit F - Procedure for Correcting Construction Defects

Check Here if this Section IS Applicable to This Work Order ☐

PROJECT: Title of Project
WORK ORDER NUMBER: E.G. 01

****ONLY APPLICABLE FOR CONSTRUCTION ACTIVITIES AFFECTING CITY-OWNED BUILDINGS AND OTHER PUBLIC WORKS PROJECTS AS DEFINED IN TEX. GOV. CODE ANN., SEC. 2269.001 (6)****

EXHIBIT F is not applicable to "civil works" projects as defined in Tex. Gov. Code Ann., Sec. 2269.351

I. DEFINITIONS

A. **"Public Works"** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.001 (6), are those related to constructing, altering, or repairing a public building or carrying out any public work.

B. **"Civil works"** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.351 are those related to roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage, flood control projects and transit projects.

II. NOTIFICATION OF DEFECT

A. **ENGINEER/ARCHITECT SHALL NOTIFY OWNER IN WRITING OF ANY CONSTRUCTION DEFECT** of which the ENGINEER/ARCHITECT is aware, and which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning or supervision of the construction that is a result of:

i. The use of defective materials, products, or components in the construction;
ii. A violation of a building code applicable by law to the construction;
iii. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or
iv. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

B. The E/A's writing shall identify the specific construction defect, describe the present physical condition of the affected structure; and describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

III. PROCEDURE TO CORRECT CONSTRUCTION DEFECTS

A. Before bringing an action asserting a claim for a construction defect under this Agreement, the OWNER must provide a written report to each party with whom the OWNER has a contract for the design, construction or construction oversight of an affected structure by certified mail, return receipt requested.

i. The report shall clearly identify the specific construction defect(s) on which the claim is based, which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning, or supervision of the construction that is a result of:
   a. The use of defective materials, products, or components in the construction;
   b. A violation of a building code applicable by law to the construction;

c. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or

d. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

iii. The report shall clearly:

a. Identify the specific construction defect on which the claim is based;

b. Describe the present physical condition of the affected structure; and

c. Describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

B. OWNER shall allow each party with whom the OWNER has a contract for the design or construction of an affected structure and who is subject to the claim, and any known subcontractor or supplier who is subject to the claim a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after receiving the report.

C. OWNER shall allow at least 120 days after the inspection to:

i. Correct any construction defect or related condition identified in the report; or

ii. Enter into a separate agreement with the governmental entity to correct any construction defect or related condition identified in the report.

D. OWNER is not required to allow a party to make a correction or repair under Subsection II.A. if:

i. the party:

a. Is a contractor and cannot provide payment and performance bonds to cover the corrective work;

b. Cannot provide liability insurance or workers' compensation insurance;

c. Has been previously terminated for cause by OWNER; or

d. Has been convicted of a felony; or

ii. OWNER previously complied with the process required by Subsection II.A. regarding a construction defect or related condition identified in the report and:

a. The defect or condition was not corrected as required by Subsection II.C.i. or by an agreement under Subsection II.C.ii.; or

b. The attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.

E. Recovery of Report Costs. If the report described in Subsection II.A. identifies a construction defect that is corrected or for which the OWNER recovers damages, the party responsible for that construction defect shall pay the reasonable amounts incurred by OWNER to obtain the report with respect to identification of that construction defect.

F. These provisions do not prohibit or limit the OWNER from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public or a building occupant.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-9

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional services with HDR Engineering, Inc.

Page: Page 1 of

Item Reference:

A Request for Qualifications (RFQ) was published in January 2023 and open to engineering firms, asking for qualification submittals for civil engineering services. A selection committee consisting of City Staff and City Council reviewed and scored the submitted RFQs. The committee reviewed each engineering firms' proposals based on the criteria as stated in the RFQ. Multiple engineering firms were selected in each of the identified categories.

HDR Engineering, Inc., was selected to provide services in the following categories:

- Streets / Roadways
- Traffic Systems
- Drainage Improvements
- Railroad Crossings
- Pedestrian / Sidewalk Improvements

A Master Services Agreement (MSA) for professional services with HDR Engineering, Inc., has been prepared to address general provisions from planning through construction management for a variety of future capital improvement projects. Having an approved MSA will streamline the acquisition of engineering services throughout the term of the agreement. However, the City of Tyler may choose, at its sole discretion, to solicit separate qualifications and designate another consultant for any of the individual projects undertaken at the City within the term of this agreement.

This MSA will be associated with projects assigned to engineering firms during the term of the 2023 RFQ. Each phase of work will commence upon authorization of a "Work Order" by the City Council. Each Work Order defines Scope of Services, Schedule of Work, and Fees.

RECOMMENDATION:

Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional services with HDR Engineering, Inc.

ATTACHMENTS:
MSA Contract - HDR

Drafted/Recommended By:
Department Leader

Darin Jennings, PE, City Engineer

Edited/Submitted By:
City Manager

STATE OF TEXAS §

COUNTY OF SMITH §

STANDARD FORM OF AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This AGREEMENT is entered into, with an Effective Date of _____ _____, _____ [*insert date of last party's signature*], by and between the **CITY OF TYLER**, in Smith County, Texas (OWNER), acting therein by and through its duly authorized City Manager, and **HDR Engineering, Inc** (ENGINEER or ARCHITECT), hereinafter referred to as "E/A," for the purpose of acquiring all professional engineering and/or architectural services required for each project(s) (hereinafter called the PROJECT). Each PROJECT will be documented by a Work Order detailing the Scope and Scope Fee, Schedule, Firm Fee Schedule, Form 1295, and be attached in Exhibits A, B, C, and E, respectively. Exhibit F shall be included as applicable based on the Work Order. This agreement sets forth the general terms and conditions which shall apply to all Work Orders executed under this agreement.

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, wastewater 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”,

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 Work Order,*
- *Exhibit B - Certificate of Insurance and Endorsements,*
- *Exhibit C - Certificate of Interested Parties (Form 1295) (if required),*
- *Exhibit D - Procedure for Correcting Construction Defects (Applicable only to construction contracts affecting City-owned buildings and other public works)*

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:
HDR Engineering. Inc.
Attn: Jacob Walker, PE
710 Hesters Crossing Rd, Ste. 150
Round Rock, TX 78681

OWNER:
City of Tyler
Attn: **Identified in Work Order Scope**
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

Deborah Pullum
Printed Name

RECOMMENDED:

By: _____
Department Leader Date

Darin Jennings, P.E. – City Engineer
Printed Name

CITY COUNCIL APPROVAL:

AGENDA ITEM NUMBER: Item No.
DATE APPROVED: Enter approval date

FOR THE E/A:

By: _____

Enter title of signer Date

Enter printed name

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 Work Order / Scope of Services

Exhibit B – E/A's PROJECT Schedule

Exhibit C – E/A's Fee Schedule and Hourly Fees

Exhibit D - Certificates of Insurance and Endorsements

Exhibit E - Certificate of Interested Parties (Form 1295) (If Required)

Exhibit F – Procedure for Correcting Construction Defects
(Applicable only to construction contracts affecting City-owned buildings and other public works)

Exhibit A - E/A's Work Order / Scope of Services

WORK ORDER FOR PROFESSIONAL SERVICES

PROJECT: Title of Project
WORK ORDER NUMBER: E.G. 01

This Work Order constitutes authorization by the City of Tyler, Texas (OWNER) for **HDR Engineering, Inc.** (ENGINEER) to provide engineering services for the above titled project (hereinafter called the PROJECT). The PROJECT includes the following 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 **Month Day, Year**. The scope of services for this part of the work is generally as follows:

1) SECTION 1.2 – During the Preliminary Report Phase the ENGINEER shall: Provide the services described in SECTION 1.2 of the CONTRACT.

2) SECTION 1.3 – During the Preliminary Design Phase the ENGINEER shall: Provide the services described in SECTION 1.3 of the CONTRACT.

3) SECTION 1.4 – During the Final Design Phase the ENGINEER shall: Provide the services described in SECTION 1.4 of the CONTRACT.

4) SECTION 1.5 – During the Bidding and Negotiation Phase the ENGINEER shall: Provide the services described in SECTION 1.5 of the CONTRACT.

5) SECTION 1.6 – During the Construction Phase the Engineer shall: Provide the services described relating to bidding in SECTION 1.6 of the CONTRACT.

6) Project Specific Scope and Fees: PROJECT scope details are attached to this Work Order and fees for said scope are included.

7) PROJECT Schedule: The ENGINEER shall perform services for the PROJECT in accordance with the schedule in Exhibit B.

8) OWNER's Responsibilities: The OWNER's responsibilities shall be as described in SECTION 3 of the AGREEMENT.

9) Method of payment for various project components: OWNER shall pay the ENGINEER for services rendered as provided for in SECTION 5 of the said AGREEMENT unless modified herein and agreed to in writing by both parties to said contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. _ to the CONTRACT dated _____ on this the _____ _____ day of _____ , 202_.

OWNER:	ENGINEER:
CITY OF TYLER, TEXAS	_____
BY:_____	BY:_____
ATTEST:_____	ATTEST:_____
DATE:_____	DATE:_____

Half Cent Sales Tax Board Approval Date: Enter approval date

City Council Approval Date: Enter approval date, Agenda Item Number: Item No.

Exhibit B - E/A's PROJECT Schedule

Exhibit C - E/A's Rate Schedule and Hourly Fees

Exhibit D - Certificates of Insurance and Endorsements

(See following pages for a summary and checklist of Insurance and Endorsement requirements)

CERTIFICATE(S) OF INSURANCE

[Certificate of Liability Insurance Shall Be Inserted Here]

INSURANCE COVERAGE REQUIRED * Endorsement Required	
TYPE	**AMOUNT**
1) COMMERCIAL GENERAL LIABILITY * Policy shall include (but not limited to) the following: a) Products - Completed Operations b) Independent Contractors c) Broad Form Property Damage d) X-C-U Coverage X = Explosion Hazard C = Collapse Hazard U = Underground Damage e) Contractual Liability or Cross Liability	Not Less than: **$1,000,000** (1 million) Each Occurrence **$2,000,000** (2 million) General Aggregate **Per PROJECT** Any Self-Insured-Retention or Deductible shall not exceed $25,000.
2) BUSINESS AUTOMOBILE LIABILITY Policy shall include (but not limited to) bodily injury and property damage liability for the following: a) Any Auto; OR b) All Owned Autos, and c) Hired Autos, and d) Non-Owned Autos.	Not Less than: **$1,000,000** (1 million) Each Occurrence
3) PROFESSIONAL ERRORS & OMISSIONS LIABILITY Policy shall include (but not limited to) the following: a) A minimum three (3) year Discovery (tail) Reporting period, and b) A Retroactive Date that equals or precedes the effective date of the Contract, or the performance of services hereunder.	Not Less than: **$1,000,000** (1 million) Each Claim **$2,000,000** (2 million) Annual Aggregate Any Self-Insured-Retention or Deductible shall not exceed $25,000.
4) ♦ POLLUTION LIABILITY INSURANCE *	♦ ☐ Check Here If Coverage is Required by a City Operational Department Not Less than: **$1,000,000** (1 million) Each Claim **$2,000,000** (2 million) Annual Aggregate
5) COMMERCIAL UMBRELLA / EXCESS LIABILITY *	Not Less than: **$5,000,000** (5 million) Each Occurrence **$5,000,000** (5 million) General Aggregate Any Self-Insured-Retention or Deductible shall not exceed $25,000.
6) WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	**Statutory Limits for Workers' Compensation** TEX. LAB. CODE ANN. Title 5, Subtitle A, Chapter 401 TEX. ADMIN. CODE, Title 28, Part 2 **Employer's Liability Limits** **$1,000,000 (1 million)** Bodily Injury by Accident **$1,000,000 (1 million)** Bodily Injury by Disease Each Occurrence **$1,000,000 (1 million)** Bodily Injury by Disease Aggregate Limit

Checklist: Certificate(s) of Insurance

*** Provided only as a courtesy ***

[See generally Section 7.3 Insurance for contract insurance requirements]

1.	All pages of the *Certificate of Liability Insurance* shall be attached. *See* lower right corner of certificate for *ex toto* pagination. E.g., Page 1 of 2
2.	Policy Effective and Expiration Dates (for each type of coverage) Policy **effective date** is ON or BEFORE Contract date, and Policy **expiration date** should extend at least 6 months into the future OR for the estimated project length, whichever is greater.
3.	Commercial General Liability [*See* Section 7.3.2] ☒ **Occurrence** Box is Checked ☒ **Per PROJECT** Box is Checked for General Aggregate Limit.
4.	Business Automobile Liability [*See* Section 7.3.2] At a minimum each of the following boxes should be checked: ☒ Any Auto OR ☒ All Owned Autos, and ☒ Hired Autos, and ☒ Non-Owned Autos.
5.	Professional Errors and Omissions Liability [*See* Section 7.3.2]
6.	Commercial Umbrella / Excess Liability [*See* Section 7.3.2] ☒ Occurrence Box is Checked
7.	Workers Compensation and Employers Liability [*See* Section 7.3.2] ☒ WC Statutory Limits Box is Checked
	Look at the "Description of Operations . . . Special Provisions" Box. [*See* Section 7.4] [*See also* Section 7.6] Clearly indicate the **CITY** has been endorsed by using this language: "The City of Tyler (i.e. Certificate Holder) shall be named as Additional Insured as respects to Commercial General Liability, Commercial Umbrella / Excess Liability and Pollution Liability Insurance, if required, and shall have a Waiver of Subrogation as respects to Commercial General Liability, Business Automobile Liability, Professional Errors and Omissions Liability, Commercial Umbrella / Excess Liability and Workers' Compensation all as required by written contract subject to policy terms, conditions and exclusions. Coverage is primary, non-contributory as respects to General Liability and Auto as required by written contract."
8.	Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
9.	Certificate Holder: [*See generally* Section 7.4] City of Tyler P.O. Box 2039 Tyler, TX 75710

ENDORSEMENTS

[Endorsements Shall Be Inserted Here]

<table>
<tr><td colspan="3">* ENDORSEMENT(S) REQUIRED</td></tr>
<tr><td colspan="2">Name of Additional Insured Person(s)
or Organization(s):
City of Tyler
P.O. Box 2039
Tyler, TX 75710</td><td>Location(s) of Covered Operations:

PROJECT [insert project name],
Dated [insert month and year of contract].</td></tr>
<tr><td colspan="3">E/A shall choose one of the three Endorsement Option stated below. All Endorsements shall be in the form required. All pages of the Endorsement(s) shall be attached.</td></tr>
<tr><td colspan="3">COMMERCIAL GENERAL LIABILITY

E/A agrees to endorse the CITY as an “Additional Insured” on the Commercial General Liability with: [Select Option 1, Option 2 or option 3 below] [See Section 7.3.2 and 7.4]</td></tr>
<tr><td>Option
1</td><td colspan="2">FORM: CG 20 10 10 01
Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization

AND
FORM: CG 20 37 07 04
Additional Insured – Owners, Lessees, or Contractors – Completed Operations</td></tr>
<tr><td colspan="3">OR</td></tr>
<tr><td>Option
2</td><td colspan="2">FORM: CG 20 10 07 04
Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization

AND
FORM: CG 20 37 07 04
Additional Insured – Owners, Lessees, or Contractors – Completed Operations</td></tr>
<tr><td colspan="3">OR</td></tr>
<tr><td>Option
3</td><td colspan="2">FORM: GA 4113 11 99
Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization – Your Work
AND
FORM: GA 233 02 07
Contractors’ Commercial General Liability Broadened – with coverage for Completed Operations in conformance to specific written contract</td></tr>
<tr><td colspan="3">COMMERCIAL UMBRELLA / EXCESS LIABILITY

E/A agrees to endorse the CITY as an “Additional Insured” under the Commercial Umbrella / Excess Liability as also provided herein. [See Section 7.3.2 and 7.4]</td></tr>
<tr><td colspan="3">POLLUTION LIABILITY INSURANCE

♦ If applicable E/A agrees to endorse the CITY as an “Additional Insured” under the Pollution Liability Insurance as also provided herein. [See Section 7.3.2 and 7.4]</td></tr>
</table>

Exhibit E- Certificate of Interested Parties (Form 1295)

(If Required)

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.

Exhibit F - Procedure for Correcting Construction Defects

Check Here if this Section IS Applicable to This Work Order ☐

PROJECT: Title of Project
WORK ORDER NUMBER: E.G. 01

****ONLY APPLICABLE FOR CONSTRUCTION ACTIVITIES AFFECTING CITY-OWNED BUILDINGS AND OTHER PUBLIC WORKS PROJECTS AS DEFINED IN TEX. GOV. CODE ANN., SEC. 2269.001 (6)****

EXHIBIT F is not applicable to "civil works" projects as defined in Tex. Gov. Code Ann., Sec. 2269.351

I. DEFINITIONS

A. **"Public Works"** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.001 (6), are those related to constructing, altering, or repairing a public building or carrying out any public work.

B. **"Civil works"** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.351 are those related to roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage, flood control projects and transit projects.

II. NOTIFICATION OF DEFECT

A. **ENGINEER/ARCHITECT SHALL NOTIFY OWNER IN WRITING OF ANY CONSTRUCTION DEFECT** of which the ENGINEER/ARCHITECT is aware, and which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning or supervision of the construction that is a result of:

i. The use of defective materials, products, or components in the construction;
ii. A violation of a building code applicable by law to the construction;
iii. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or
iv. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

B. The E/A's writing shall identify the specific construction defect, describe the present physical condition of the affected structure; and describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

III. PROCEDURE TO CORRECT CONSTRUCTION DEFECTS

A. Before bringing an action asserting a claim for a construction defect under this Agreement, the OWNER must provide a written report to each party with whom the OWNER has a contract for the design, construction or construction oversight of an affected structure by certified mail, return receipt requested.

i. The report shall clearly identify the specific construction defect(s) on which the claim is based, which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning, or supervision of the construction that is a result of:
   a. The use of defective materials, products, or components in the construction;
   b. A violation of a building code applicable by law to the construction;

c. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or

d. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

iii. The report shall clearly:

a. Identify the specific construction defect on which the claim is based;

b. Describe the present physical condition of the affected structure; and

c. Describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

B. OWNER shall allow each party with whom the OWNER has a contract for the design or construction of an affected structure and who is subject to the claim, and any known subcontractor or supplier who is subject to the claim a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after receiving the report.

C. OWNER shall allow at least 120 days after the inspection to:

i. Correct any construction defect or related condition identified in the report; or

ii. Enter into a separate agreement with the governmental entity to correct any construction defect or related condition identified in the report.

D. OWNER is not required to allow a party to make a correction or repair under Subsection II.A. if:

i. the party:

a. Is a contractor and cannot provide payment and performance bonds to cover the corrective work;

b. Cannot provide liability insurance or workers' compensation insurance;

c. Has been previously terminated for cause by OWNER; or

d. Has been convicted of a felony; or

ii. OWNER previously complied with the process required by Subsection II.A. regarding a construction defect or related condition identified in the report and:

a. The defect or condition was not corrected as required by Subsection II.C.i. or by an agreement under Subsection II.C.ii.; or

b. The attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.

E. Recovery of Report Costs. If the report described in Subsection II.A. identifies a construction defect that is corrected or for which the OWNER recovers damages, the party responsible for that construction defect shall pay the reasonable amounts incurred by OWNER to obtain the report with respect to identification of that construction defect.

F. These provisions do not prohibit or limit the OWNER from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public or a building occupant.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-10

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by $63,159.52 and the release of final retainage payment in the amount of $244,955.54 to A.E. Shull and Company for Consent Decree Capacity Work Group 1 Implementation Standard Bid, 22-033.

Page: Page 1 of

Item Reference: Item M-2 Council Meeting 8/10/22; EPA Consent Decree Eff. April 2017

In 2017, the City of Tyler entered into a Consent Decree with the Environmental Protection Agency (EPA) to address the City's aging wastewater collection system and resulting discharges. The Consent Decree became effective on April 10, 2017.

On August 10, 2022, the City Council authorized the award of the Consent Decree Capacity Work Group 1 Implementation Standard Bid, 22-033 project. The original award amount was $4,086,123.25. The rehabilitation work has been successfully completed at a total cost of $4,022,963.73, resulting in the project being $63,159.52 under the original contract amount.

Original Project Cost: $4,086,123.25
Final Project Cost: $4,022,963.73 (1.5% decrease)

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by $63,159.52 and the release of final retainage payment in the amount of $244,955.54 to A.E. Shull and Company for Consent Decree Capacity Work Group 1 Implementation Standard Bid, 22-033.

ATTACHMENTS:

2023-12-19 TCurrie Final Acceptance Close Out Documents
Final RCO

Drafted/Recommended By:
Department Leader

Tiffany Currie, PE / Kate Dietz, PE, Director of Utilities

Edited/Submitted By:
City Manager

A. E. Shull & Company

P. O. Box 130365
Tyler, Texas 75713
903-561-5061
Fax 903-534-8946

December 7, 2023

Mr. Jeremy Orr, P.E.
KSA Engineers
6781 Oak Hill Boulevard
Tyler, Texas 75703

Re: City of Tyler
Capital Improvements Project
Consent Decree Capacity Work Group 1 Implementation-Sewer Sites 2e1 and 10a1 Improvements
City of Tyler Bid Number 22-033

Mr. Orr:

This letter is to inform you that A.E. Shull & Company has completed the above mentioned project according to the plans and specifications.

Thank you for the opportunity to serve you on this project.

Sincerely,

Bob Gallaher
A.E. Shull & Company

A. E. Shull & Company

P. O. Box 130365
Tyler, Texas 75713
903-561-5061
Fax 903-534-8946

December 7, 2023

Mr. Jeremy Orr, P.E.
KSA Engineers
6781 Oak Hill Boulevard
Tyler, Texas 75703

Re: City of Tyler
Capital Improvements Project
Consent Decree Capacity Work Group 1 Implementation-Sewer Sites 2e1 and 10a1 Improvements
City of Tyler Bid Number 22-033

Mr. Orr:

This letter is to inform you that all work on the above referenced project has been satisfactorily completed; and that all bills for materials, supplies, apparatus, fixtures, machinery and labor used in connection with the construction of this project have been fully paid.

Thank you for the opportunity to serve you on this project.

Sincerely,

Bob Gallaher
A.E. Shull & Company

Sworn to me this 7TH day of DECEMBER, 2023.

Notary Public

JENNIFER WALSH
Notary Public, State of Texas
My Commission Expires
May 05, 2027
NOTARY ID 1160640-7

Smith
County, Texas

Section 12 CONTRACTOR'S AFFIDAVIT OF BILLS PAID

THE STATE OF TEXAS	§	**CONTRACTOR'S AFFIDAVIT OF BILLS PAID**
	§	**CAPITAL IMPROVEMENT PROJECT (CIP) CONTRACTS**
	§	
COUNTY OF SMITH	§	**Tex. Prop. Code Ann. § 53.085(a)**

THIS AFFIDAVIT is made for the purpose of obtaining balance due from City of Tyler, "**CITY**", on the construction work described herein provided the **CONTRACTOR** has fully performed his contractual obligations under the terms of the AGREEMENT.

I, BOB GALLAHER *[Name of Affiant]*, do solemnly swear or affirm that I am the legal representative of A.E. SHILL & CO. *[Contractor's Company / Corporation Name]*, the City of TYLER, the County of SMITH, the State of TEXAS, and that the work for the construction of the project designated below has been satisfactorily completed:

City of Tyler Bid Number	22-033
Project Name	Consent Decree Capacity Work Group 1 Implementation Sewer Sites 2e1 and 10a1 Improvements

Additionally, I do solemnly swear or affirm:

☑ All bills for materials, supplies, apparatus, fixtures, machinery, labor, subcontractors, laborers and materialmen used in connection with the construction of this project have been fully paid.

OR

☐ The following bills have **not** been fully paid (☐ attach additional pages if necessary):

Name	Amount Owed	Telephone	Address
	$		
	$		
	$		

BOB GALLAHER
Signature of Contractor

Sworn to and subscribed before me by *Affiant* on the 7TH day of DECEMBER, 2023.

Jennifer Walsh
Notary Public In and For The State of Texas

JENNIFER WALSH
Notary Public, State of Texas
My Commission Expires
May 05, 2027
NOTARY ID 1160640-7

My Commission Expires: 5/5/27 Jennifer Wolfe
Notary's Printed Name

Section 13 RESERVED

THE STATE OF TEXAS	§	**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**
	§	
	§	**PURSUANT TO**
	§	
	§	**AGREEMENT**
	§	**AND/OR**
COUNTY OF SMITH	§	**PURSUANT TO TEX. PROPERTY CODE § 53.284 FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM**

NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

City of Tyler Bid Number	22-033
Project Name	Consent Decree Capacity Work Group 1 Implementation Sewer Sites 2e1 and 10a1 Improvements

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to ED BROUSSARD *[Person with Whom Signer Contracted]* on the property of CITY OF TYLER *[Owner]* located at CITY OF TYLER SEWER SYSTEM *[Location]* to the following extent: 22-033 CONSENT DECREE CAPACITY WORK GROUP 1 *[Job Description]*. The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date 12/7/23

A.E. SHILL & CO (Company name)

By [signature] (Signature)

PROJECT MANAGER (Title)

RECONCILIATION CONTRACT CHANGE ORDER
CHANGE ORDER NO. #01

PROJECT NAME: Group 1 Capacity Sewer Sites 10a1, 2e1 DATE: 12/19/2023

CONTRACTOR: A.E. Shull & Company BID NUMBER: 22-033
ADDRESS: 5750 Reed Rd., Tyler, TX 75707

Item No.	Work Items	Qty	Units	Unit Price	SOV	Qty Complete to Date	Amount Complete to Date	Difference in Bid Qty	Difference in Bid Amount
1.01	Mobilization, Insurance, and Bonds	1	LS	$ 124,584.00	$ 124,584.00	1.00	$ 124,584.00	0.00	$ -
	FWO3: Increase for Wolford Sewer	1	LS	$ 3,852.00	$ 3,852.00	1.00	$ 3,852.00	0.00	$ -
1.02	Barricades, Signs, and Traffic Handling	1	LS	$ 45,000.00	$ 45,000.00	1.00	$ 45,000.00	0.00	$ -
	FWO3: Increase for Wolford Sewer	1	LS	$ 1,444.50	$ 1,444.50	1.00	$ 1,444.50	0.00	$ -
1.03	Stormwater Pollution Prevention Plan	1	LS	$ 15,573.00	$ 15,573.00	1.00	$ 15,573.00	0.00	$ -
	FWO3: Increase for Wolford Sewer	1	LS	$ 481.50	$ 481.50	1.00	$ 481.50	0.00	$ -
1.04	Care of Water During Construction	1	LS	$ 10,382.00	$ 10,382.00	1.00	$ 10,382.00	0.00	$ -
	FWO3: Increase for Wolford Sewer	1	LS	$ 321.00	$ 321.00	1.00	$ 321.00	0.00	$ -
1.05	Temporary Plugs and Bypass Pumping	1	LS	$ 77,865.00	$ 77,865.00	1.00	$ 77,865.00	0.00	$ -
	FWO3: Increase for Wolford Sewer	1	LS	$ 2,407.50	$ 2,407.50	1.00	$ 2,407.50	0.00	$ -
1.06	Gravity Sewer Line and Manhole Testing	1	LS	$ 15,573.00	$ 15,573.00	1.00	$ 15,573.00	0.00	$ -
	FWO3: Increase for Wolford Sewer	1	LS	$ 481.50	$ 481.50	1.00	$ 481.50	0.00	$ -
1.07	14-in Steel Encasement with Pipe Supports by Open Cut	160	LF	$ 259.00	$ 41,440.00	100.00	$ 25,900.00	(60.00)	$ (15,540.00)
1.08	18-in Steel Encasement with Pipe Supports by Open Cut	120	LF	$ 255.00	$ 30,600.00	60.00	$ 15,300.00	(60.00)	$ (15,300.00)
1.09	20-in Steel Encasement with Pipe Supports by Open Cut	140	LF	$ 270.00	$ 37,800.00	240.00	$ 64,800.00	100.00	$ 27,000.00
1.1	24-in Steel Encasement with Pipe Supports by Open Cut	260	LF	$ 334.00	$ 86,840.00	220.00	$ 73,480.00	(40.00)	$ (13,360.00)
1.11	21-in Steel Encasement by Dry Bore	120.00	LF	$ 618.00	$ 74,160.00	120.00	$ 74,160.00	0.00	$ -
1.12	6-in SDR 26 PVC Gravity Sewer Line	448	LF	$ 85.00	$ 38,080.00	357.00	$ 30,345.00	(91.00)	$ (7,735.00)
1.13	8-in SDR 26 PVC Gravity Sewer Line	1,989	LF	$ 88.00	$ 175,032.00	1,455.50	$ 128,084.00	(533.50)	$ (46,948.00)
1.14	10-in SDR 26 PVC Gravity Sewer Line	1,744	LF	$ 91.00	$ 158,704.00	1,539.00	$ 140,049.00	(205.00)	$ (18,655.00)
1.15	10-in SDR 26 PVC Gravity Sewer Line by Wet Bore	60	LF	$ 163.00	$ 9,780.00	300.00	$ 48,900.00	240.00	$ 39,120.00
1.16	12-in SDR 26 PVC Gravity Sewer Line	4,371	LF	$ 99.25	$ 433,821.75	4,819.00	$ 478,285.75	448.00	$ 44,464.00
1.17	15-in SDR 26 PVC Gravity Sewer Line	4,758	LF	$ 114.00	$ 542,412.00	4,756.00	$ 542,184.00	(2.00)	$ (228.00)
1.18	20-in Class 250 DI Gravity Sewer Line	0	LF	$ 270.00	$ -	0.00	$ -	0.00	$ -
1.19	48-in Diameter Manhole	45	EA	$ 6,350.00	$ 285,750.00	51.00	$ 323,850.00	6.00	$ 38,100.00
1.2	48-in Diameter Drop Manhole	13	EA	$ 9,950.00	$ 129,350.00	14.00	$ 139,300.00	1.00	$ 9,950.00
1.21	Remove and Replace 48-in Diameter Manhole	9	EA	$ 8,510.00	$ 76,590.00	8.00	$ 68,080.00	(1.00)	$ (8,510.00)
1.22	Remove and Replace 48-in Diameter Drop Manhole	4	EA	$ 13,600.00	$ 54,400.00	1.00	$ 13,600.00	(3.00)	$ (40,800.00)
1.23	60-in Diameter Manhole	1	EA	$ 14,600.00	$ 14,600.00	2.00	$ 29,200.00	1.00	$ 14,600.00
1.24	60-in Diameter Drop Manhole	1	EA	$ 21,800.00	$ 21,800.00	1.00	$ 21,800.00	0.00	$ -
1.25	Remove and Replace 60-in Diameter Manhole	1	EA	$ 15,550.00	$ 15,550.00	0.00	$ -	(1.00)	$ (15,550.00)
1.26	96-in Diameter Doghouse Manhole	1	EA	$ 26,100.00	$ 26,100.00	1.00	$ 26,100.00	0.00	$ -
1.27	Abandon Existing Manhole	26	EA	$ 1,250.00	$ 32,500.00	28.00	$ 35,000.00	2.00	$ 2,500.00
1.28	Remove Existing Manhole	7	EA	$ 1,810.00	$ 12,670.00	10.00	$ 18,100.00	3.00	$ 5,430.00
1.29	Connect to Existing Sanitary Sewer	40	EA	$ 692.00	$ 27,680.00	50.00	$ 34,600.00	10.00	$ 6,920.00
1.3	Cut and Plug Existing Sewer Line	41	EA	$ 726.00	$ 29,766.00	62.00	$ 45,012.00	21.00	$ 15,246.00
1.31	Fill Existing 9-in Sewer Line with Flowable Fill	75	LF	$ 42.00	$ 3,150.00	75.00	$ 3,150.00	0.00	$ -
1.32	Reconnect 4-in SDR 26 PVC Sewer Service	70	EA	$ 1,425.00	$ 99,750.00	72.00	$ 102,600.00	2.00	$ 2,850.00
1.33	Remove and Replace Wood Privacy Fence	47	LF	$ 109.00	$ 5,123.00	0.00	$ -	(47.00)	$ (5,123.00)
1.34	Remove and Replace 4-ft Tall Chainlink Fence	546	LF	$ 64.00	$ 34,944.00	342.00	$ 21,888.00	(204.00)	$ (13,056.00)
1.35	Remove and Replace 6-ft Tall Chainlink Fence with Privacy Slats	317	LF	$ 72.00	$ 22,824.00	635.50	$ 45,756.00	318.50	$ 22,932.00
1.36	Remove and Replace Intruder Resistant Chainlink Fence	231	LF	$ 80.00	$ 18,480.00	114.00	$ 9,120.00	(117.00)	$ (9,360.00)
1.37	Remove and Replace Barbed Wire Fence	50	LF	$ 75.00	$ 3,750.00	0.00	$ -	(50.00)	$ (3,750.00)
1.38	Sawcut and Repair Concrete Drainage Channel	52	SY	$ 244.50	$ 12,714.00	61.00	$ 14,914.50	9.00	$ 2,200.50
1.39	Sawcut and Repair Concrete Pavement	475	SY	$ 184.00	$ 87,400.00	412.50	$ 75,900.00	(62.50)	$ (11,500.00)
1.4	Sawcut and Repair Asphalt Pavement	5,015	SY	$ 91.00	$ 456,365.00	4,724.33	$ 429,914.03	(290.67)	$ (26,450.97)
1.41	Sawcut and Repair Concrete Sidewalk	46	SY	$ 195.00	$ 8,970.00	60.22	$ 11,742.90	14.22	$ 2,772.90
1.42	Sawcut and Repair Curb and Gutter	1,073	LF	$ 62.75	$ 67,330.75	548.00	$ 34,387.00	(525.00)	$ (32,943.75)
1.43	Sawcut and Repair Sidewalk Ramp	1	EA	$ 3,800.00	$ 3,800.00	0.00	$ -	(1.00)	$ (3,800.00)
1.44	4-in Wide White Pavement Striping	2,834	LF	$ 5.00	$ 14,170.00	6,269.00	$ 31,345.00	3435.00	$ 17,175.00
1.45	Type R Modified Rock Rip-Rap	585	CY	$ 250.00	$ 146,250.00	659.00	$ 164,750.00	74.00	$ 18,500.00
1.46	Clearing and Grubbing	6.27	AC	$ 35,100.00	$ 220,077.00	6.27	$ 220,077.00	0.00	$ -
1.47	St. Augustine Sod	522	SY	$ 7.50	$ 3,915.00	3,650.00	$ 27,375.00	3128.00	$ 23,460.00
1.48	Hydromulch	0.5	AC	$ 3,350.00	$ 1,675.00	2.50	$ 8,375.00	2.00	$ 6,700.00
1.49	Erosion Control Matting	2,740	SY	$ 1.50	$ 4,110.00	0.00	$ -	(2740.00)	$ (4,110.00)
1.5	Filter Fabric Fence	8,350	LF	$ 4.50	$ 37,575.00	1,990.00	$ 8,955.00	(6360.00)	$ (28,620.00)
1.51	Foundation Material for Trench	549	CY	$ 114.00	$ 62,586.00	321.00	$ 36,594.00	(228.00)	$ (25,992.00)
1.52	Trench Safety	13,224	LF	$ 3.00	$ 39,672.00	13,106.50	$ 39,319.50	(117.50)	$ (352.50)
1.53	Excavation Safety	1	LS	$ 10,000.00	$ 10,000.00	1.00	$ 10,000.00	0.00	$ -
	FWO3: Increase for Wolford Sewer	1	LS	$ 321.00	$ 321.00	1.00	$ 321.00	0.00	$ -
1.54	Miscellaneous Allowance	1	AL	$ 17,288.70	$ 17,288.70	0.00	$ -	(1.00)	$ (17,288.70)
1.55	Remove and Replace Unsuitable Subgrade	896	CY	$ 32.75	$ 29,344.00	908.00	$ 29,737.00	12.00	$ 393.00
1.56	Additional Gate at the Zoo	1	LS	$ 4,950.00	$ 4,950.00	1.00	$ 4,950.00	0.00	$ -
1.57	Broadcast Seed and Fertilizer	4	AC	$ 1,555.00	$ 6,764.25	4.35	$ 6,764.25	0.00	$ -
1.58	Sprinkler Repair at First Tee	1	LS	$ 2,570.00	$ 2,570.00	1.00	$ 2,570.00	0.00	$ -
1.59	24-in DI Pipe	4	LF	$ 590.95	$ 2,363.80	4.00	$ 2,363.80	0.00	$ -
1.6	Reconnect 4-in SDR 26 PVC Sewer Service	1	EA	$ 4,500.00	$ 4,500.00	1.00	$ 4,500.00	0.00	$ -
1.61	Install End of Road Barricades	0	EA	$ 750.00	$ -	2.00	$ 1,500.00	2.00	$ 1,500.00
					$ 4,086,123.25		**$ 4,022,963.73**		**$ (63,159.52)**

Original contract price:	4,086,123.25	
Change in contract price from previous change orders:	-	
Change in contract price due to this change order:	(63,159.52)	
Adjusted contract price to date:	**4,022,963.73**	**-1.5%**
Original contract end date / days:		
Change in contract days from previous change orders:		
Change in contract days due to this change order:		
Adjusted contract days to date:		

RECOMMENDED FOR APPROVAL: Kate Dietz
Director of Utilities
Date

ACCEPTED: A.E. Shull & Company
Contractor
Date

REVIEWED:
City Attorney's Office
Date

APPROVED: Edward Broussard
City Manager
Date

AGENDA ITEM NUMBER: _____

DATE APPROVED BY COUNCIL: 1/10/2024

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-11

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by $69,380.40 and the release of final retainage payment in the amount of $145,824.48 to Southern Trenchless Solutions for Consent Decree Group 5 Manhole Rehabilitation, Bid 23-007.

Page: Page 1 of

Item Reference: Item M-4 Council Meeting 12/14/22; EPA Consent Decree Eff. April 2017

In 2017, the City of Tyler entered into a Consent Decree with the Environmental Protection Agency (EPA) to address the City's aging wastewater collection system and resulting discharges. The Consent Decree became effective on April 10, 2017.

On December 14, 2022, the City Council authorized the award of the Consent Decree Group 5 Manhole Rehabilitation, Bid 23-007 project. The original award amount was $1,492,750.20. The rehabilitation work has been successfully completed at a total cost of $1,423,369.80, resulting in the project being $69,380.40 under the original contract amount.

Original Project Cost: $1,492,750.20.
Final Project Cost: $1,423,369.80 (5% decrease)

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by $69,380.40 and the release of final retainage payment in the amount of $145,824.48 to Southern Trenchless Solutions for Consent Decree Group 5 Manhole Rehabilitation, Bid 23-007

ATTACHMENTS:

Final RCO
Group 5 Manholes Close Out Documents

Drafted/Recommended By:
Department Leader

Tiffany Currie, PE / Kate Dietz, PE, Director of Utilities

Edited/Submitted By:
City Manager

RECONCILIATION CONTRACT CHANGE ORDER
CHANGE ORDER NO. #01

PROJECT NAME: Group 5 Manholes — DATE: 12/21/2023

CONTRACTOR: Southern Trenchless — BID NUMBER: 23-007
ADDRESS: 1200 W. Expressway 83
La Feria, TX 78559
PHONE NO.:

Item No.	Work Items	Qty	Units	Unit Price	SOV	Qty Complete to Date	Amount Complete to Date	Difference in Bid Qty	Difference in Bid Amount
1.01	Mobilization, Insurance, and Bonds	1	LS	$ 50,000.00	$ 50,000.00	1.00	$ 50,000.00	0.00	$ -
1.02	Barricades, Signs, and Traffic Handling	1	LS	$ 30,000.00	$ 30,000.00	1.00	$ 30,000.00	0.00	$ -
1.03	Right-of-Way Preparation and Access	1	LS	$ 5,000.00	$ 5,000.00	1.00	$ 5,000.00	0.00	$ -
1.04	Storm Water Pollution Prevention Plan	1	LS	$ 8,500.00	$ 8,500.00	0.00	$ -	1.00	$ 8,500.00
1.05	Care of Water During Construction	1	LS	$ 20,000.00	$ 20,000.00	1.00	$ 20,000.00	0.00	$ -
1.06	Temporary Plugs and Bypass Pumping	1	LS	$ 29,200.00	$ 29,200.00	1.00	$ 29,200.00	0.00	$ -
1.07	Clean, Remove Roots, and Repair as Needed, Coat 48-inch and Less Diameter Mar	1412	VF	$ 245.00	$ 345,940.00	1,430.87	$ 350,563.15	(18.87)	$ (4,623.15)
1.08	Clean, Remove Roots, and Repair as Needed, Coat 60-inch Diameter Manhole	16	VF	$ 329.70	$ 5,275.20	27.06	$ 8,921.68	(11.06)	$ (3,646.48)
1.09	Replace Frame & Cover, Unpaved	10	EA	$ 1,500.00	$ 15,000.00	32.00	$ 48,000.00	(22.00)	$ (33,000.00)
1.10	Replace Frame & Cover, Paved	2	EA	$ 3,500.00	$ 7,000.00	5.00	$ 17,500.00	(3.00)	$ (10,500.00)
1.11	Realign & Seal Frame & Cover, Unpaved	81	EA	$ 550.00	$ 44,550.00	81.00	$ 44,550.00	0.00	$ -
1.12	Realign & Seal Frame & Cover, Paved	4	EA	$ 1,500.00	$ 6,000.00	4.00	$ 6,000.00	0.00	$ -
1.13	Replace Manhole Cover	8	EA	$ 1,000.00	$ 8,000.00	10.00	$ 10,000.00	(2.00)	$ (2,000.00)
1.14	Install Manhole Insert, Polyethylene	45	EA	$ 125.00	$ 5,625.00	49.00	$ 6,125.00	(4.00)	$ (500.00)
1.15	Install Manhole Insert, Stainless-Steel	22	EA	$ 350.00	$ 7,700.00	33.00	$ 11,550.00	(11.00)	$ (3,850.00)
1.16	Raise Manhole, Unpaved	8	EA	$ 1,500.00	$ 12,000.00	10.00	$ 15,000.00	(2.00)	$ (3,000.00)
1.17	Reconstruct Manhole Benches and/or Inverts	1	EA	$ 1,250.00	$ 1,250.00	5.00	$ 6,250.00	(4.00)	$ (5,000.00)
1.18	Repair and Seal Manhole Chimney	42	EA	$ 1,200.00	$ 50,400.00	39.00	$ 46,800.00	3.00	$ 3,600.00
1.19	Seal Manhole Pipe Connection	17	EA	$ 550.00	$ 9,350.00	15.00	$ 8,250.00	2.00	$ 1,100.00
1.20	Remove and Replace 48-in Diameter Manhole	1	EA	$ 15,500.00	$ 15,500.00	1.00	$ 15,500.00	0.00	$ -
1.21	Remove Existing Cleanout and Construct Wastewater Access Chamber Assembly, (	5	EA	$ 4,500.00	$ 22,500.00	3.00	$ 13,500.00	2.00	$ 9,000.00
1.22	Remove Existing Cleanout and Construct Wastewater Access Chamber Assembly, I	9	EA	$ 7,500.00	$ 67,500.00	9.00	$ 67,500.00	0.00	$ -
1.23	Remove Existing Cleanout and Install 48-in Diameter Manhole, Unpaved	11	EA	$ 15,500.00	$ 170,500.00	11.00	$ 170,500.00	0.00	$ -
1.24	Remove Existing Cleanout and Install 48-in Diameter Manhole, Paved	13	EA	$ 12,500.00	$ 162,500.00	14.00	$ 175,000.00	(1.00)	$ (12,500.00)
1.25	Locate and Raise Manhole to Grade, Paved	4	EA	$ 4,500.00	$ 18,000.00	2.00	$ 9,000.00	2.00	$ 9,000.00
1.26	Locate and Raise Manhole to Grade, Unpaved	7	EA	$ 1,500.00	$ 10,500.00	5.00	$ 7,500.00	2.00	$ 3,000.00
1.27	Install or Replace Cleanout Cap/Lid or Watertight Cleanout Cover	133	EA	$ 350.00	$ 46,550.00	127.00	$ 44,450.00	6.00	$ 2,100.00
1.28	Chemical Injection Grouting to Prevent Inflow and Infiltration	296	GAL	$ 175.00	$ 51,800.00	5.00	$ 875.00	291.00	$ 50,925.00
1.29	Manhole Testing	1	LS	$ 73,000.00	$ 73,000.00	1.00	$ 73,000.00	0.00	$ -
1.30	Sawcut and Repair Asphalt Pavement	170	SY	$ 265.00	$ 45,050.00	69.00	$ 18,285.00	101.00	$ 26,765.00
1.31	Sawcut and Repair Concrete Sidewalk	7	SY	$ 240.00	$ 1,680.00	0.00	$ -	7.00	$ 1,680.00
1.32	Sawcut and Repair Curb and Gutter	10	LF	$ 350.00	$ 3,500.00	0.00	$ -	10.00	$ 3,500.00
1.33	Sawcut and Repair Concrete Drainage Channel	7	SY	$ 350.00	$ 2,450.00	9.00	$ 3,150.00	(2.00)	$ (700.00)
1.34	Unpaved Groundcover Repair	831	SY	$ 30.00	$ 24,930.00	720.00	$ 21,600.00	111.00	$ 3,330.00
1.35	Excavation Safety	1	LS	$ 16,000.00	$ 16,000.00	1.00	$ 16,000.00	0.00	$ -
1.36	Allowance for Miscellaneous Extra Work	1	LS	$ 100,000.00	$ 100,000.00	0.00	$ -	1.00	$ 100,000.00
1.38	Remove and Replace Cleanout Casting and Cover (Paved)	0	EA	$ 2,250.00	$ -	5.00	$ 11,250.00	(5.00)	$ (11,250.00)
1.39	Abandon Manhole and Install Cleanout	0	EA	$ 15,500.00	$ -	1.00	$ 15,500.00	(1.00)	$ (15,500.00)
1.40	Remove and Reinstall Cleanout Cast Boot (Unpaved)	0	EA	$ 1,250.00	$ -	6.00	$ 7,500.00	(6.00)	$ (7,500.00)
1.41	Remove and Reinstall Cleanout Cast Boot (Paved)	0	EA	$ 1,550.00	$ -	24.00	$ 37,200.00	(24.00)	$ (37,200.00)
1.42	Remove Existing Epoxy Coating	0	LS	$ 2,349.97	$ -	1.00	$ 2,349.97	(1.00)	$ (2,349.97)
					$ 1,492,750.20		**$ 1,423,369.80**		**$ (69,380.40)**

Original contract price:	1,492,750.20	
Change in contract price from previous change orders:		
Change in contract price due to this change order:	(69,380.40)	
Adjusted contract price to date:	**1,423,369.80**	**-4.6%**
Original contract end date / days:	11/30/2023	
Change in contract days from previous change orders:		
Change in contract days due to this change order:	0	
Adjusted contract days to date:	11/30/2023	

RECOMMENDED FOR APPROVAL: Kate Dietz, P.E.
Director of Utilities
Date

ACCEPTED: Southern Trenchless
Contractor
Date

REVIEWED:
City Attorney's Office
Date

APPROVED: Edward Broussard
City Manager
Date

AGENDA ITEM NUMBER: _____

DATE APPROVED BY COUNCIL: 1/10/2024

Section 12 CONTRACTOR'S AFFIDAVIT OF BILLS PAID

THE STATE OF TEXAS	§	**CONTRACTOR'S AFFIDAVIT OF BILLS PAID CAPITAL IMPROVEMENT PROJECT (CIP) CONTRACTS**
	§	
	§	
	§	
COUNTY OF SMITH	§	**Tex. Prop. Code Ann. § 53.085(a)**

THIS AFFIDAVIT is made for the purpose of obtaining balance due from City of Tyler, "**CITY**", on the construction work described herein provided the **CONTRACTOR** has fully performed his contractual obligations under the terms of the AGREEMENT.

I, Ramon Closner *[Name of Affiant]*, do solemnly swear or affirm that I am the legal representative of Southern Trenchless Solutions LLC. *[Contractor's Company / Corporation Name]*, the City of La Feria, the County of Cameron, the State of Texas, and that the work for the construction of the project designated below has been satisfactorily completed:

City of Tyler Bid Number	23-007
Project Name	Consent Decree Group 5 – Manhole Rehabilitation

Additionally, I do solemnly swear or affirm:

☑ All bills for materials, supplies, apparatus, fixtures, machinery, labor, subcontractors, laborers and materialmen used in connection with the construction of this project have been fully paid.

OR

☐ The following bills have **not** been fully paid (☐ attach additional pages if necessary):

Name	Amount Owed	Telephone	Address
	$		
	$		
	$		

Signature of Contractor

Sworn to and subscribed before me by *Affiant* on the 20th day of December, 2023.

Notary Public In and For The State of Texas

Patricia Ann De La Cruz

Notary's Printed Name

My Commission Expires: September 20, 2023

PATRICIA ANN DE LA CRUZ
Notary ID #131288122
My Commission Expires
September 20, 2025

Section 14 WAIVER AND RELEASE

THE STATE OF TEXAS	§	**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**
	§	
	§	**PURSUANT TO**
	§	
	§	**AGREEMENT**
	§	**AND/OR**
COUNTY OF SMITH	§	**PURSUANT TO TEX. PROPERTY CODE § 53.284 FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM**

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

City of Tyler Bid Number	23-007
Project Name	Consent Decree Group 5 – Manhole Rehabilitation

On receipt by the signer of this document of a check from City of Tyler *[Maker of Check]* in the sum of $ 123,369.80 payable to Southern Trenchless Solutions LLC. *[Payee(s) of Check]* and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of City of Tyler *[Owner]* located at City of Tyler *[Location]* to the following extent: Consent Decree Group 5 - Manhole Rehabilitation *[Job Description]*.

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ *[Person with Whom Signer Contracted]*.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date December 20, 2023

Southern Trenchless Solutions, LLC. (Company name)

By Ramon Closner (Signature)

Owner (Title)

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-12

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by $490,672.14 and the release of final retainage payment in the amount of $101,908.84 to T Gray Utility AIMS, LLC for Consent Decree Group 4 Manhole Specialty Bid 22-016.

Page: Page 1 of

Item Reference: Item M-2 Council Meeting 4/27/22; EPA Consent Decree Eff. April 2017

In 2017, the City of Tyler entered into a Consent Decree with the Environmental Protection Agency (EPA) to address the City's aging wastewater collection system and resulting discharges. The Consent Decree became effective on April 10, 2017.

The fourth assessment (Group 4) included recommended remediation for 35,821 linear feet of gravity main and 1,364 manholes across the City of Tyler.

In August of 2021, the City contracted with Langan Engineers, Inc. for the engineering design and construction phase services for the Consent Decree Group 4 including five (5) construction projects.

The Group 4 Manhole Specialty project was the first of the five (5) Group 4 remedial projects. The scope of work included remediation of 978 sanitary sewer manholes by cleaning, repairing, sealing, and coating as required to stop inflow and infiltration. This includes repairing pipe seals, seal coating manholes, installing chimney seals, and all incidental items associated with these tasks such as bypass pumping, traffic control, pavement/sidewalk repair, and restoration work.

On April 27, 2022, the City Council authorized the award of the Consent Decree Group 4 Manhole Specialty Bid 22-016 project. The original award amount was $2,528,849.00. The rehabilitation work has been successfully completed at a total cost of $2,038,176.86, resulting in the project being $490,672.14 under the original contract amount.

Original Project Cost: $2,528,849.00
Final Project Cost: $2,038,176.86 (19% decrease)

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by $490,672.14 and the release of final retainage payment in the amount of $101,908.84 to T Gray Utility AIMS, LLC for Consent Decree Group 4 Manhole Specialty Bid 22-016.

ATTACHMENTS:

Group 4 Manhole Specialty Close Out Documents
Final RCO

Drafted/Recommended By:
Department Leader

Tiffany Currie, PE / Kate Dietz, PE, Director of Utilities

Edited/Submitted By:
City Manager

Section 12 CONTRACTOR'S AFFIDAVIT OF BILLS PAID

THE STATE OF TEXAS	§	**CONTRACTOR'S AFFIDAVIT OF BILLS PAID CAPITAL IMPROVEMENT PROJECT (CIP) CONTRACTS**
	§	
	§	
	§	
COUNTY OF SMITH	§	**Tex. Prop. Code Ann. § 53.085(a)**

THIS AFFIDAVIT is made for the purpose of obtaining balance due from City of Tyler, "**CITY**", on the construction work described herein provided the **CONTRACTOR** has fully performed his contractual obligations under the terms of the AGREEMENT.

I, Chase Harmon *[Name of Affiant]*, do solemnly swear or affirm that I am the legal representative of T. Gray Utility/AIMS LLC *[Contractor's Company / Corporation Name]*, the City of Houston, the County of Harris, the State of Texas, and that the work for the construction of the project designated below has been satisfactorily completed:

City of Tyler Bid Number	22-016
Project Name	Group 4 SS Manhole Specialty

Additionally, I do solemnly swear or affirm:

☒ All bills for materials, supplies, apparatus, fixtures, machinery, labor, subcontractors, laborers and materialmen used in connection with the construction of this project have been fully paid.

OR

☐ The following bills have **not** been fully paid (☐ attach additional pages if necessary):

Name	Amount Owed	Telephone	Address
	$		
	$		
	$		

Signature of Contractor

Sworn to and subscribed before me by *Affiant* on the 18th day of December, 2023.

Flor Elizalde
My Commission Expires
1/18/2027
Notary ID134149955

Flor Elizalde
Notary Public In and For The State of Texas

My Commission Expires: 1/18/2027

Flor Elizalde
Notary's Printed Name

Section 14 WAIVER AND RELEASE

THE STATE OF TEXAS	§	**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**
	§	
	§	**PURSUANT TO**
	§	
	§	**AGREEMENT**
	§	**AND/OR**
COUNTY OF SMITH	§	**PURSUANT TO TEX. PROPERTY CODE § 53.284 FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM**

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

City of Tyler Bid Number	22-016
Project Name	Group 4 SS Manhole Specialty

On receipt by the signer of this document of a check from City of Tyler *[Maker of Check]* in the sum of $ #101,908.84 payable to T. Gray Utility/AIMS LLC *[Payee(s) of Check]* and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of City of Tyler *[Owner]* located at Tyler. TX *[Location]* to the following extent: City of Tyler. Group 4 MH Specialty *[Job Description]*.

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to City of Tyler *[Person with Whom Signer Contracted]*.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date 12/18/2023

T Gray Utility (Company name)

By [signature] (Signature)

Project Manager (Title)

RECONCILIATION CONTRACT CHANGE ORDER
CHANGE ORDER NO. #01

PROJECT NAME: Group 4 Manhole Specialty

DATE: 12/21/2023

CONTRACTOR: T Gray Utility
ADDRESS: 5039 Steffani Ln.

BID NUMBER: 22-016

PHONE NO.:

Item No.	Work Items	Qty	Units	Unit Price	SOV	Qty Complete to Date	Amount Complete to Date	Difference in Bid Qty	Difference in Bid Amount
1	MOBILIZATION	978	EA	$ 150.00	$ 146,700.00	976.00	$ 146,400.00	(2.00)	$ (300.00)
2	TRAFFIC CONTROL	1	LS	$ 50,000.00	$ 50,000.00	1.00	$ 50,000.00	0.00	$ -
3	ASPHALT CEMENT STREET REPAIR	64	SY	$ 250.00	$ 16,000.00	64.00	$ 16,000.00	0.00	$ -
4	CONCRETE CEMENT STREET REPAIR	12	SY	$ 1,000.00	$ 12,000.00	19.56	$ 19,560.00	7.56	$ 7,560.00
5	UNPAVED GROUND REPAIR	326	SY	$ 100.00	$ 32,600.00	325.83	$ 32,583.00	(0.17)	$ (17.00)
6	REMOVE STEPS AND REPAIR AS NEEDED	1	EA	$ 3,000.00	$ 3,000.00	1.00	$ 3,000.00	0.00	$ -
7	CHEMICAL INJECTION GROUTING (STOP INFLOW/INFILTRATION)	1000	GAL	$ 125.00	$ 125,000.00	0.00	$ -	(1000.00)	$ (125,000.00)
8	RECONSTRUCT 4 FT DIAMETER MANHOLE BENCH & INVERT	72	EA	$ 650.00	$ 46,800.00	74.00	$ 48,100.00	2.00	$ 1,300.00
9	SEAL CHIMNEY (AVERAGE CHIMNEY HEIGHT 12")	201	EA	$ 850.00	$ 170,850.00	200.00	$ 110,000.00	(1.00)	$ (550.00)
10	CLEAN MANHOLE, REMOVE ANY ROOTS, REPAIR WALL AND BENCH AS NEEDED A	75,383	SF	$ 18.00	$ 1,356,894.00	67,565.77	$ 1,216,183.86	(7817.23)	$ (140,710.14)
11	CLEAN MANHOLE, REMOVE ANY ROOTS, REPAIR WALL AND BENCH AS NEEDED A	428	SF	$ 25.00	$ 10,700.00	363.76	$ 9,094.00	(64.24)	$ (1,606.00)
12	LOCATE AND RAISE MANHOLE TO GRADE - UNPAVED	17	EA	$ 1,000.00	$ 17,000.00	17.00	$ 17,000.00	0.00	$ -
13	LOCATE AND RAISE MANHOLE TO GRADE - PAVED	2	EA	$ 2,500.00	$ 5,000.00	2.00	$ 5,000.00	0.00	$ -
14	INSTALL HDPE INFLOW PROTECTOR INSERT - UNPAVED	171	EA	$ 85.00	$ 14,535.00	132.00	$ 11,220.00	(39.00)	$ (3,315.00)
15	INSTALL STAINLESS STEEL INFLOW PROTECTOR INSERT - PAVED	481	EA	$ 315.00	$ 151,515.00	481.00	$ 151,515.00	0.00	$ -
16	REALIGN AND SEAL MANHOLE RING & COVER - UNPAVED	75	EA	$ 1,000.00	$ 75,000.00	75.00	$ 75,000.00	0.00	$ -
17	REALIGN AND SEAL MANHOLE RING & COVER - PAVED	9	EA	$ 2,500.00	$ 22,500.00	10.00	$ 25,000.00	1.00	$ 2,500.00
18	REPLACE MANHOLE RING & COVER - UNPAVED	19	EA	$ 1,000.00	$ 19,000.00	19.00	$ 19,000.00	0.00	$ -
19	REPLACE MANHOLE RING & COVER - PAVED	15	EA	$ 2,950.00	$ 44,250.00	15.00	$ 44,250.00	0.00	$ -
20	REPLACE BOLT DOWN MANHOLE RING & COVER - UNPAVED	4	EA	$ 1,500.00	$ 6,000.00	4.00	$ 6,000.00	0.00	$ -
21	REPLACE BOLT DOWN MANHOLE RING & COVER - PAVED	1	EA	$ 2,950.00	$ 2,950.00	1.00	$ 2,950.00	0.00	$ -
22	REPAIR/PLUG MANHOLE LIFT HOLES	1	EA	$ 250.00	$ 250.00	1.00	$ 250.00	0.00	$ -
23	SEAL MANHOLE PIPE CONNECTION	3	EA	$ 400.00	$ 1,200.00	3.00	$ 1,200.00	0.00	$ -
24	RECONSTRUCT CHIMNEY/CONE	1	EA	$ 2,500.00	$ 2,500.00	1.00	$ 2,500.00	0.00	$ -
25	REPLACE/NEW MANHOLE (≤6 FEET DEEP) - UNPAVED	1	EA	$ 7,005.00	$ 7,005.00	1.00	$ 7,005.00	0.00	$ -
26	REPLACE/NEW MANHOLE (>6 FEET DEEP) - ADDITIONAL VERTICAL DEPTH	8	VF	$ 1,200.00	$ 9,600.00	8.00	$ 9,600.00	0.00	$ -
27	TRENCH SAFETY - MANHOLE	1	EA	$ 2,000.00	$ 2,000.00	1.00	$ 2,000.00	0.00	$ -
28	CONTINGENCY	1	LS	$ 178,000.00	$ 178,000.00	0.02	$ 7,766.00	(0.98)	$ (230,534.00)
					$ 2,528,849.00		**$ 2,028,410.86**		**$ (490,672.14)**

Original contract price:	2,528,849.00	
Change in contract price from previous change orders:		
Change in contract price due to this change order:	(490,672.14)	
Adjusted contract price to date:	**2,038,176.86**	**-19.4%**
Original contract end date / days:	11/30/2023	
Change in contract days from previous change orders:		
Change in contract days due to this change order:	0	
Adjusted contract days to date:	11/30/2023	

RECOMMENDED FOR APPROVAL: Kate Dietz, P.E.
Director of Utilities

Date

ACCEPTED: T Gray Utility
Contractor

Date

REVIEWED:
City Attorney's Office

Date

APPROVED: Edward Broussard
City Manager

Date

AGENDA ITEM NUMBER: _____

DATE APPROVED BY COUNCIL: 1/10/2024

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: C-A-13

Date: January 10, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a contract amendment with Elledge Engineering in the amount of $61,000 for additional services related to the FM 756 Utility Relocate Project.

Page: Page 1 of

Item Reference: M-2 May 24, 2023

On May 24th, 2023 the City entered into an engineering agreement with Elledge Engineering for the design and construction oversight services for the FM 756 Utility Relocate project. This project is required by TxDOT to relocate the Citys water and sewer infrastructure that is in conflict with the widening of FM 756/Paluxy. During the preliminary design of this project, it was determined that now is the ideal opportunity to relocate the existing 12" line from Jeff Davis to Roy Road into the parkway that is currently under the TxDOT road. It was also determined and identified in the Water Master Plan to add a new section of 8" water line from Cumberland to the north and tie into the existing dead-end main on FM 756. This section of the line does currently not exist and when added to the distribution system, will provide benefits to those already served in the area and to future customers and growth that will follow the TxDOT widening project in the years to come. Lastly, acquiring a sewer main easement from Cornerstone Church will be added to the contract through this amendment.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a contract amendment with Elledge Engineering in the amount of $61,000 for additional services related to the FM 756 Utility Relocate Project.

ATTACHMENTS:

AMENDMENT NO. 1 - Exhibit A - Scope of Services
AMENDMENT NO. 1 - Exhibit B - Project Schedule
AMENDMENT NO. 1 - Exhibit C - Engineering Fee Estimate & Hourly Rate Schedule
Amendment No. 1 - Amended Scope of Work Letter for FM 756 Utility Relocates
06.14.2023 - 756 Utility Relocate Engineering Agreement (Executed)

Drafted/Recommended By:
Department Leader

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

Edited/Submitted By:
City Manager

City of Tyler

Utility Relocation along Paluxy Drive from Jeff Davis Drive to Loop 49

AMENDMENT NO. 1

12/8/2023

Scope of Work	
Study Phase*	
>	Consult with Owner to determine requirements of the Project.
>	Obtain 60% TxDOT plans
>	Prepare sketches of proposed improvements to determine estimated quantities
>	Prepare preliminary Opinion of Probable Cost
>	Review preliminary sketches and OPC with Owner
>	Make adjustments to project requested by Owner
>	Update the preliminary Opinion of Probable Cost
>	Submit updated OPC to Owner for review
Preliminary Design Phase*	
>	Meet with TxDOT and other Utility providers as required.
>	Obtain Autocad drawings from TxDOT's design engineering firm.
>	Coordinate the topographic survey.
>	Prepare preliminary plans for the relocation of the water and sewer lines.
>	Prepare the estimated quantities based on the preliminary design.
>	Prepare an updated Preliminary Opinion of Probable Cost
>	Review the preliminary plans and updated OPC with Owner.
Final Design Phase*	
>	Make adjusments to the preliminary plans requested by the Owner.
>	Meet with TxDOT and other Utility providers as required.
>	Prepare the final design plans for project construction
>	Prepare an Opinion of Probable Cost based upon the final quantities.
>	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

City of Tyler

Utility Relocation along Paluxy Drive from Jeff Davis Drive to Loop 49

AMENDMENT NO. 1

12/8/2023

Scope of Work	
Bid and 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***
>	**Preparation of Construction Phase Surveys***
>	**Preparation of Easement Surveys and Documents***
>	**Preparation of Easement Negotiations***
>	Construction Observation (Part Time)

*** Denotes an increase in cost due to the change in scope or additional tasks associated with the change in scope.**

City of Tyler

Exhibit B
Project Schedule

Utility Relocation along Paluxy Drive
from Jeff Davis Drive to Loop 49

Engineering Fee Estimate & Hourly Rate Schedule
AMENDMENT NO. 1

12/8/2023

TASK	EST. COMPLETION DATE*	AMENDMENT NO. 1
Surveying, Design	6/15/2023	6/15/2023
Study Phase	6/15/2023	6/15/2023
Preliminary Phase	11/15/2023	11/15/2023
Final Design Phase	12/15/2023	**1/15/2024**
Bid Phase	2/28/2024	2/28/2024
Construction Start	4/30/2024	4/30/2024
Surveying, Construction	5/30/2024	5/30/2024
Construction Phase	4/30/2025	4/30/2025
Construction Observation	4/30/2025	4/30/2025
* Estimated completion dates are based on receiving the Notice to Proceed on or before May 31, 2023.		

City of Tyler

Utility Relocation along Paluxy Drive
from Jeff Davis Drive to Loop 49

Engineering Fee Estimate & Hourly Rate Schedule
AMENDMENT NO. 1

12/8/2023

ENGINEERING FEE ESTIMATE

Basic Services	Contract Amount	Amendment No. 1
Study Phase	$ 11,250.00	$ 13,250.00
Preliminary Design Phase	$ 112,500.00	$ 132,500.00
Final Design Phase	$ 33,750.00	$ 39,750.00
Bid Phase	$ 11,250.00	$ 13,250.00
Construction Phase	$ 56,250.00	$ 66,250.00
Additional Services		
Surveying, Design	$ 25,000.00	$ 35,000.00
Surveying, Construction	$ 15,000.00	$ 20,000.00
Surveying, Easement Preparation	$ -	$ 3,000.00
Easement Negotiations	$ -	$ 3,000.00
Construction Observation (20 hours/week)*	$ 100,000.00	$ 100,000.00

* 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.

2023 Rate Schedule

Staff Classification		Rate / hr.
Principal/President		$200
Project Manager		$175
Sr. Design Engineer		$150
Design Draftsman, Engineering Technician		$100
Project Inspector		$90
Secretary		$75

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

(903) 780-3251

December 8, 2023

Mr. Jacob Yanker, E.I.T., Project Engineer
Tyler Water Utilities
P.O. Box 2039
Tyler, Texas 75710-2039

RE: City of Tyler
FM 756 Utility Relocates
Amended Scope of Work

Dear Mr. Yanker:

As you know, during the project review it was determined to increase the scope of the project as follows:

1. The addition of a 12" water main from Jeff Davis Dr. to Roy Road
2. The extension of proposed Water Main No. 2 south to Cumberland Road
3. The acquisition of a sewer main easement from Cornerstone Church

As a result, we have prepared updated versions of "Exhibit A – Scope of Services", "Exhibit B – Project Schedule" and "Exhibit C – Engineering Fee Estimate and Hourly Rate Schedule". The change in scope has resulted in an increase of $61,000 to our original fee for this project.

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

Sincerely,

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

ACCEPTED:

_____
Edward Broussard, City Manager
City of Tyler

Enclosures

STATE OF TEXAS §

COUNTY OF SMITH §

STANDARD FORM OF AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This AGREEMENT is entered into, with an Effective Date of 6/14/23 [*insert date of last party's signature*], by and between the **CITY OF TYLER**, in Smith County, Texas (OWNER), acting therein by and through its duly authorized City Manager, and **Elledge Engineering Corp** (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 **"FM 756 Utility Relocates"** (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 Exhibit "B". 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 Exhibit "A", and as further set out in these 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, Not-to-Exceed = $265,000
- Hourly/Reimbursable Expenses = $100,000
- **Total Contract Price** = **$365,000**

For additional services authorized by OWNER in accordance with Section 2 of this Agreement, OWNER shall pay in accordance with the schedule of hourly rates set forth in attached Exhibit "C".

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 Service,*
- *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) (if required),*
- *Exhibit F - Procedure for Correcting Construction Defects (Applicable only to construction contracts affecting City-owned buildings and other public works)*

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:
Elledge Engineering Corp
Attn:Phil Elledge, P.E.
P.O. Box 7110
Tyler, Texas, 75711

OWNER:
City of Tyler
Attn:Kate Dietz, P.E.
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: Edward Broussard 06/13/23 **By:** Cassandra Brager

City Manager — Date — City Clerk

Edward Broussard — Cassandra Brager

Printed Name — Printed Name

CITY OF TYLER SEAL TEXAS

APPROVED:

By: Deborah Pullum 6/13/23

City Attorney's Office — Date

Deborah Pullum

Printed Name

RECOMMENDED:

By: Kathl. Dz 5/21/23

Department Leader — Date

Kate Dietz, P.E.

Printed Name

CITY COUNCIL APPROVAL:

AGENDA ITEM NUMBER: M-2

DATE APPROVED: 5-24-2023

FOR THE E/A:

By: Phil Elledge

Enter title of signer **President** Date **05-03-2023**

Enter printed name **Phil Elledge**

Printed Name

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Phil Elledge, who is known to me, or who was proved to me through personal ID 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 4th day of May, 2023.

HEIDI MAE MATHIS
Notary Public
STATE OF TEXAS
ID# 13369881-8
My Comm. Exp. Sep. 19, 2026

Heidi Mathis

Notary Public In and For The State of Texas

My Commission Expires: Sept. 19, 2026

Heidi Mathis

Notary's Printed Name

INDEX OF EXHIBITS

Exhibit A - E/A's Scope of Service

Exhibit B - E/A's Project Schedule

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

Exhibit D - Certificates of Insurance and Endorsements

Exhibit E - Certificate of Interested Parties (Form 1295) (If Required)

Exhibit F – Procedure for Correcting Construction Defects
(Applicable only to construction contracts affecting City-owned buildings and other public works)

Exhibit A - E/A's Scope of Service

City of Tyler

Exhibit A
Scope of Services

Utility Relocation along Paluxy Drive from Jeff Davis Drive to Loop 49

4/30/2023

Scope of Work	
Study Phase	
>	Consult with Owner to determine requirements of the Project.
>	Obtain 60% TxDOT plans
>	Prepare sketches of proposed improvements to determine estimated quantities
>	Prepare preliminary Opinion of Probable Cost
>	Review preliminary sketches and OPC with Owner
>	Make adjustments to project requested by Owner
>	Update the preliminary Opinion of Probable Cost
>	Submit updated OPC to Owner for review
Preliminary Design Phase	
>	Meet with TxDOT and other Utility providers as required.
>	Obtain Autocad drawings from TxDOT's design engineering firm.
>	Coordinate the topographic survey.
>	Prepare preliminary plans for the relocation of the water and sewer lines.
>	Prepare the estimated quantities based on the preliminary design.
>	Prepare an updated Preliminary Opinion of Probable Cost
>	Review the preliminary plans and updated OPC with Owner.
Final Design Phase	
>	Make adjusments to the preliminary plans requested by the Owner.
>	Meet with TxDOT and other Utility providers as required.
>	Prepare the final design plans for project construction
>	Prepare an Opinion of Probable Cost based upon the final quantities.
>	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

City of Tyler

Utility Relocation along Paluxy Drive from Jeff Davis Drive to Loop 49

4/30/2023

Scope of Work	
Bid and 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
>	Preparation of Construction Phase Surveys
>	Construction Observation (Part Time)

Exhibit B - E/A's Project Schedule

City of Tyler

Exhibit B
Project Schedule

Utility Relocation along Paluxy Drive from Jeff Davis Drive to Loop 49

4/30/2023

TASK	EST. COMPLETION DATE*
Surveying, Design	6/15/2023
Study Phase	6/15/2023
Preliminary Phase	11/15/2023
Final Design Phase	12/15/2023
Bid Phase	2/28/2024
Construction Start	4/30/2024
Surveying, Construction	5/30/2024
Construction Phase	4/30/2025
Construction Observation	4/30/2025
* Estimated completion dates are based on receiving the Notice to Proceed on or before May 31, 2023.	

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

City of Tyler

Exhibit C

Utility Relocation along Paluxy Drive
from Jeff Davis Drive to Loop 49

Engineering Fee Estimate & Hourly Rate Schedule

4/30/2023

ENGINEERING FEE ESTIMATE	
Basic Services	**Fee Estimate**
Study Phase	$ 11,250.00
Preliminary Design Phase	$ 112,500.00
Final Design Phase	$ 33,750.00
Bid Phase	$ 11,250.00
Construction Phase	$ 56,250.00
Additional Services	
Surveying, Design	$ 25,000.00
Surveying, Construction	$ 15,000.00
Construction Observation (20 hours/week)*	$ 100,000.00
* 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.	

2023 Rate Schedule	
Staff Classification	**Rate / hr.**
Principal/President	$200
Project Manager	$175
Sr. Design Engineer	$150
Design Draftsman, Engineering Technician	$100
Project Inspector	$90
Secretary	$75

Exhibit D - Certificates of Insurance and Endorsements

(See following pages for a summary and checklist of Insurance and Endorsement requirements)

CERTIFICATE(S) OF INSURANCE

[Certificate of Liability Insurance Shall Be Inserted Here]

INSURANCE COVERAGE REQUIRED * Endorsement Required	
TYPE	**AMOUNT**
1) COMMERCIAL GENERAL LIABILITY * Policy shall include (but not limited to) the following: a) Products - Completed Operations b) Independent Contractors c) Broad Form Property Damage d) X-C-U Coverage X = Explosion Hazard C = Collapse Hazard U = Underground Damage e) Contractual Liability or Cross Liability	Not Less than: **$1,000,000** (1 million) Each Occurrence **$2,000,000** (2 million) General Aggregate **Per Project** Any Self-Insured-Retention or Deductible shall not exceed $25,000.
2) BUSINESS AUTOMOBILE LIABILITY Policy shall include (but not limited to) bodily injury and property damage liability for the following: a) Any Auto; OR b) All Owned Autos, and c) Hired Autos, and d) Non-Owned Autos.	Not Less than: **$1,000,000** (1 million) Each Occurrence
3) PROFESSIONAL ERRORS & OMISSIONS LIABILITY Policy shall include (but not limited to) the following: a) A minimum three (3) year Discovery (tail) Reporting period, and b) A Retroactive Date that equals or precedes the effective date of the Contract, or the performance of services hereunder.	Not Less than: **$1,000,000** (1 million) Each Claim **$2,000,000** (2 million) Annual Aggregate Any Self-Insured-Retention or Deductible shall not exceed $25,000.
4) ♦ POLLUTION LIABILITY INSURANCE *	♦ ☐ Check Here If Coverage is Required by a City Operational Department Not Less than: **$1,000,000** (1 million) Each Claim **$2,000,000** (2 million) Annual Aggregate
5) COMMERCIAL UMBRELLA / EXCESS LIABILITY *	Not Less than: **$5,000,000** (5 million) Each Occurrence **$5,000,000** (5 million) General Aggregate Any Self-Insured-Retention or Deductible shall not exceed $25,000.
6) WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	**Statutory Limits for Workers' Compensation** TEX. LAB. CODE ANN. Title 5, Subtitle A, Chapter 401 TEX. ADMIN. CODE, Title 28, Part 2 **Employer's Liability Limits** **$1,000,000 (1 million)** Bodily Injury by Accident **$1,000,000 (1 million)** Bodily Injury by Disease Each Occurrence **$1,000,000 (1 million)** Bodily Injury by Disease Aggregate Limit

Checklist: Certificate(s) of Insurance

*** Provided only as a courtesy ***

[See generally Section 7.3 Insurance for contract insurance requirements]

1.	All pages of the *Certificate of Liability Insurance* shall be attached. *See* lower right corner of certificate for *ex toto* pagination. E.g. Page 1 of 2
2.	Policy Effective and Expiration Dates (for each type of coverage) Policy **effective date** is ON or BEFORE Contract date, and Policy **expiration date** should extend at least 6 months into the future OR for the estimated project length, whichever is greater.
3.	Commercial General Liability [*See* Section 7.3.2] ☒ **Occurrence** Box is Checked ☒ **Per Project** Box is Checked for General Aggregate Limit.
4.	Business Automobile Liability [*See* Section 7.3.2] At a minimum each of the following boxes should be checked: ☒ Any Auto OR ☒ All Owned Autos, and ☒ Hired Autos, and ☒ Non-Owned Autos.
5.	Professional Errors and Omissions Liability [*See* Section 7.3.2]
6.	Commercial Umbrella / Excess Liability [*See* Section 7.3.2] ☒ Occurrence Box is Checked
7.	Workers Compensation and Employers Liability [*See* Section 7.3.2] ☒ WC Statutory Limits Box is Checked
	Look at the "Description of Operations . . . Special Provisions" Box. [*See* Section 7.4] [*See also* Section 7.6] Clearly indicate the **CITY** has been endorsed by using this language: "The City of Tyler (i.e. Certificate Holder) shall be named as Additional Insured as respects to Commercial General Liability, Commercial Umbrella / Excess Liability and Pollution Liability Insurance, if required, and shall have a Waiver of Subrogation as respects to Commercial General Liability, Business Automobile Liability, Professional Errors and Omissions Liability, Commercial Umbrella / Excess Liability and Workers' Compensation all as required by written contract subject to policy terms, conditions and exclusions. Coverage is primary, non-contributory as respects to General Liability and Auto as required by written contract."
8.	Clearly identify each policy's limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
9.	Certificate Holder: [*See generally* Section 7.4] City of Tyler P.O. Box 2039 Tyler, TX 75710

ENDORSEMENTS

[Endorsements Shall Be Inserted Here]

*** ENDORSEMENT(S) REQUIRED**	
Name of Additional Insured Person(s) or Organization(s): City of Tyler P.O. Box 2039 Tyler, TX 75710	Location(s) of Covered Operations: Project [*insert project name*], Dated [*insert month and year of contract*].

E/A shall choose one of the three Endorsement Option stated below. All Endorsements shall be in the form required. All pages of the Endorsement(s) shall be attached.

COMMERCIAL GENERAL LIABILITY

E/A agrees to endorse the **CITY** as an "Additional Insured" on the Commercial General Liability with: [*Select Option 1, Option 2 or option 3 below*] [*See* Section 7.3.2 and 7.4]

Option 1	**FORM: CG 20 10 10 01** Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization **AND** **FORM: CG 20 37 07 04** Additional Insured – Owners, Lessees, or Contractors – Completed Operations
OR	
Option 2	**FORM: CG 20 10 07 04** Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization **AND** **FORM: CG 20 37 07 04** Additional Insured – Owners, Lessees, or Contractors – Completed Operations
OR	
Option 3	**FORM: GA 4113 11 99** Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization – Your Work **AND** **FORM: GA 233 02 07** Contractors' Commercial General Liability Broadened – with coverage for Completed Operations in conformance to specific written contract

COMMERCIAL UMBRELLA / EXCESS LIABILITY

E/A agrees to endorse the **CITY** as an "Additional Insured" under the Commercial Umbrella / Excess Liability as also provided herein. [*See* Section 7.3.2 and 7.4]

POLLUTION LIABILITY INSURANCE

♦ If applicable **E/A** agrees to endorse the **CITY** as an "Additional Insured" under the Pollution Liability Insurance as also provided herein. [See Section 7.3.2 and 7.4]

ELLEENG-01 BDANSB 372

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/31/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Becky Dansby, ACSR	
INSURICA TX Insurance Services, Inc. 4802 Kinsey Drive Tyler, TX 75703	PHONE (A/C, No, Ext): (903) 939-6412	FAX (A/C, No): (903) 509-8818
	E-MAIL ADDRESS: Becky.Dansby@INSURICA.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Sentinel Insurance Company, Ltd.	11000
INSURED	INSURER B : Hartford Accident and Indemnity Co.	22357
Elledge Engineering Corporation P.O. Box 7110 Tyler, TX 75711	INSURER C : Hartford Fire Insurance Company	19682
	INSURER D : Beazley America Insurance Company, Inc.	
	INSURER E :	
	INSURER F :	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR	X	X	46SBAUM5441	5/6/2023	5/6/2024	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER						EPLI	$ 10,000
B	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS	X	X	46UECKI4382	5/6/2023	5/6/2024	BODILY INJURY (Per accident)	$
	X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR						EACH OCCURRENCE	$ 5,000,000
	EXCESS LIAB CLAIMS-MADE	X	X	46SBAUM5441	5/6/2023	5/6/2024	AGGREGATE	$ 5,000,000
	DED X RETENTION $ 10,000							$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N	N/A	X	46WBCAP2207	5/6/2023	5/6/2024	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
D	Professional Liabili	X	X	C1875F230901	5/6/2023	5/6/2024	see below	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
PROFESSIONAL LIABILITY: LIMITS $1,000,000 EACH CLAIM/$2,000,000 AGGREGATE

CERTIFICATE HOLDER

CITY OF TYLER
P.O. BOX 2039
Tyler, TX 75710

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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COMMERCIAL AUTOMOBILE
COVERAGE PART - DECLARATIONS
BUSINESS AUTO COVERAGE FORM

THE HARTFORD

POLICY NUMBER: 46 UEC KI4382

This COMMERCIAL AUTOMOBILE COVERAGE PART consists of:

A. This Declarations Form;
B. Business Auto Coverage Form; and
C. Any Endorsements issued to be a part of this Coverage Form and listed below.

ITEM ONE - NAMED INSURED AND ADDRESS

The Named Insured is stated on the Common Policy Declarations.

ADVANCE PREMIUM: $

AUDIT PERIOD:

Except in this Declarations, when we use the word "Declarations" in this Coverage Part, we mean this "Declarations" or the "Common Policy Declarations".

Form Numbers of Coverage Forms, Endorsements and Schedules that are part of this Coverage Part:

HA00040302	HA00120615T	CA00011120	HA21020614	CA22641013
CA21091013	CA01211013	CA01961120	CA02431113	CA05051120
CA99951013	HA99080614	HA99161221		

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

1. BROAD FORM INSURED

Paragraph .1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add the following:

d. Subsidiaries and Newly Acquired or Formed Organizations

The Named Insured shown in the Declarations is amended to include:

(1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.

(2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:

(a) That is a partnership or joint venture,

(b) That is an "insured" under any other policy,

(c) That has exhausted its Limit of Insurance under any other policy, or

(d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

e. Employees as Insureds

(1). Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

f. Lessors as Insureds

(1). The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:

(a) The agreement requires you to provide direct primary insurance for the lessor and

(b) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

g. Additional Insured if Required by Contract

(1) When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

(a) During the policy period, and

(b) Subsequent to the execution of such written contract, and

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(c) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

(a) The limits of insurance specified in the written contract or written agreement; or

(b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM , SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

2. Primary and Non-Contributory if Required by Contract

Only with respect to insurance provided to an additional insured in A.1.g. - Additional Insured If Required by Contract, the following provisions apply:

(1) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(2) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(1)** and **(2)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in SECTION IV- Business Auto Conditions, B. General Conditions, Other Insurance 5.d.

3. AUTOS RENTED BY EMPLOYEES

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The SECTION IV- Business Auto Conditions, B. General Conditions, 5. OTHER INSURANCE Condition is amended by adding the following:

e. If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

4. **AMENDED FELLOW EMPLOYEE EXCLUSION**

   EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

   Coverage is excess over any other collectible insurance.

5. **HIRED AUTO PHYSICAL DAMAGE COVERAGE**

   If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

   The most we will pay for "loss" to any hired "auto" is:

   (1) $100,000;

   (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or

   (3) The cost of repairing or replacing the damaged or stolen property,

   whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

   We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of $1000 per "accident".

   This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

6. **PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**

   Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of $50 per day and a maximum limit of $1,000.

7. **LOAN/LEASE GAP COVERAGE**

   Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

   "Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

8. **AIRBAG COVERAGE**

   Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

   The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

9. **ELECTRONIC EQUIPMENT - BROADENED COVERAGE**

   a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

      Exclusions **4.c.** and **4.d.** do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

      (1) Permanently installed in or upon the covered "auto";

      (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";

      (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

      (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

   b. Section III, Physical Damage Coverage, Limit of Insurance, Paragraph C.2. is amended to add the following:

      $1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

(1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;

(2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or

(3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or $250, whichever deductible is less.

10. EXTRA EXPENSE - BROADENED COVERAGE

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

11. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

12. TWO OR MORE DEDUCTIBLES

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

(1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;

(2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

13. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) A member, if you are a limited liability company; or

(4) An executive officer or insurance manager, if you are a corporation.

14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

15. HIRED AUTO - COVERAGE TERRITORY

SECTION IV, BUSINESS AUTO CONDITIONS, PARAGRAPH B. GENERAL CONDITIONS, 7. - POLICY PERIOD, COVERAGE TERRITORY - is added to include the following:

(6) For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

16. WAIVER OF SUBROGATION

Paragraph 5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS A. Loss Conditions is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

17. RESULTANT MENTAL ANGUISH COVERAGE

The definition of "bodily injury" in SECTION V-DEFINITIONS, C. is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

18. EXTENDED CANCELLATION CONDITION

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

19. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of $2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,

b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is $10,000.

For the purposes of the coverage provision,

a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

20. VEHICLE WRAP COVERAGE

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to $1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is $5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

POLICYHOLDER NOTICE

TEXAS MOTOR VEHICLE CRIME PREVENTION AUTHORITY FEE

NOTICE: Your payment includes a $4.00 fee per motor vehicle year. This fee goes to help fund: (1) auto burglary, theft, and fraud prevention, (2) criminal justice efforts, and (3) trauma care and emergency medical services for victims of accidents due to traffic offenses. By law, we send this fee to the Motor Vehicle Crime Prevention Authority (MVCPA).

IMPORTANT NOTICE

Need Information, Have a complaint, or need help?

If you need information, have a problem with a claim, or your premium, contact your agent who is listed on the Declarations/Information Page of your policy, or on your binder or certificate of insurance first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal with your agent or The Hartford. If you don't, you may lose your right to appeal.

To get information or file a complaint with The Hartford:

Call: **1-877-853-2582**
Online: https://www.thehartford.com
Email: agency.services@thehartford.com
Mail: The Hartford
Business Service Center
3600 Wiseman Blvd.
San Antonio, TX 78251

The Texas Department of Insurance
To get help with an insurance question or file a complaint with the state:

Call with a question: **1-800-252-3439**
File a complaint: www.tdi.texas.gov
Email: ConsumerProtection@tdi.texas.gov
Mail: MC 111-1A
P.O. Box 149091
Austin, TX 78714-9091

ATTACH THIS NOTICE TO YOUR POLICY:
This notice is for information only and does not become a part or condition of the insurance policy

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AVISO IMPORTANTE

¿Necesita información, Tiene una queja o necesita ayuda?

Si necesita información, tiene un problema con un reclamo o su prima de seguro, llame primero a su agente quien esta en la lista en la Página de Declaraciones/Información de su póliza, o en su carpeta de seguro o certificado de seguro. Si no puede resolver el problema, el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés) puede ayudar.

Aun si usted presenta una queja ante el Departamento de Seguros de Texas, también debe presentar una queja o apelación ante su agente o The Hartford. Si no lo hace, podría perder su derecho para apelar.

Para obtener información o para presentar una queja ante The Hartford:

Llame a: **1-877-853-2582**
En línea: https://www.thehartford.com
Correo electrónico: agency.services@thehartford.com
Dirección postal: The Hartford
Business Service Center
3600 Wiseman Blvd.
San Antonio, TX 78251

El Departamento de Seguros de Texas
Para obtener ayuda con una pregunta relacionada con los seguros, conocer sus derechos o para presentar una queja ante el estado:

1-800-252-3439 (LLame con sus preguntas)
Presente una queja en: www.tdi.texas.gov
Correo electrónico: ConsumerProtection@tdi.texas.gov
Dirección postal: MC 111-1A
P.O. Box 149091
Austin, TX 78714-9091

ADJUNTE ESTE AVISO A SU PÓLIZA:
Este aviso es solo para información y no se convierte en parte o condición de la póliza de seguro.



PRODUCER COMPENSATION NOTICE

You can review and obtain information on The Hartford's producer compensation practices at www.TheHartford.com or at 1-800-592-5717.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

This endorsement forms a part of the Policy numbered below:

THE HARTFORD

POLICY NUMBER: 46 UEC KI4382 SC
CHANGE NUMBER: 001

Policy Change Effective Date: 06/01/23

Named Insured: **ELLEDGE ENGINEERING CORPORATION**

Producer's Name: **INSURICA TX INSURANCE SERVICES INC**

Pro Rata Factor: .932

Description of Change(s):

ANY CHANGES IN YOUR PREMIUM WILL BE REFLECTED IN YOUR NEXT BILLING STATEMENT. IF YOU ARE ENROLLED IN REPETITIVE EFT DRAWS FROM YOUR BANK ACCOUNT, CHANGES IN PREMIUM WILL CHANGE FUTURE DRAW AMOUNTS.
THIS IS NOT A BILL.

NO PREMIUM DUE AT POLICY CHANGE EFFECTIVE DATE.

FORM NUMBERS OF ENDORSEMENTS ADDED TO THIS POLICY AT ENDORSEMENT ISSUE: SEE ABOVE FOR COMPANY NAME

ENTIRE CONTRACT: IH03070611

Countersigned by (Where required by law) Susan L. Castaneda Authorized Representative

06/05/23 Date

Form HM 12 01 01 07T



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

This policy is subject to the following additional Conditions:

A. If this policy is cancelled by the Company, other than for nonpayment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

B. If this policy is cancelled by the Company for nonpayment of premium, or by the insured, notice of such cancellation will be provided within (10) days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.

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SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 46 SBA UM5441

LOSS PAYEE: FORM SS 12 17
SEE FORM IH 12 00

Form Numbers of Forms and Endorsements that apply:

SS 00 01 03 14	SS 00 05 10 08	SS 00 07 07 05	SS 00 08 04 05
SS 00 60 09 15	SS 00 61 07 19	SS 00 64 09 16	SS 84 32 09 07
SS 10 11 10 15	SS 42 06 03 17	SS 04 15 07 05	SS 04 19 04 09
SS 04 22 07 05	SS 04 30 07 05	SS 04 33 04 05	SS 04 39 07 05
SS 04 41 03 18	SS 04 42 03 17	SS 04 44 07 05	SS 04 45 07 05
SS 04 46 09 14	SS 04 47 04 09	SS 04 78 12 17	SS 04 80 03 00
SS 04 86 03 00	SS 40 05 09 07	SS 40 18 07 05	SS 40 26 03 17
SS 40 93 07 05	SS 41 12 06 22	SS 41 51 10 09	SS 41 63 06 11
SS 05 06 03 14	SS 05 47 09 15	SS 41 75 03 14	SS 50 04 06 04
SS 51 11 03 17	IH 12 06 02 21	SS 09 01 12 14	SS 09 67 09 14
SS 09 70 12 14	SS 09 71 12 14	SS 09 82 12 14	SS 12 17 08 94
IH 99 40 04 09	IH 99 41 04 09	SX 80 01 06 97	SS 83 76 12 20
SS 89 93 07 16			



BUSINESS LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the stock insurance company member of The Hartford providing this insurance.

The word "insured" means any person or organization qualifying as such under Section **C.** - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **G.** - Liability And Medical Expenses Definitions.

A. COVERAGES

1. BUSINESS LIABILITY COVERAGE (BODILY INJURY, PROPERTY DAMAGE, PERSONAL AND ADVERTISING INJURY)

Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance does not apply.

We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or medical expenses to which this insurance applies.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

b. This insurance applies:

(1) To "bodily injury" and "property damage" only if:

(a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(b) The "bodily injury" or "property damage" occurs during the policy period; and

(c) Prior to the policy period, no insured listed under Paragraph **1.** of Section **C.** – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

(2) To "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **C.** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

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(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

d. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

e. **Incidental Medical Malpractice**

(1) "Bodily injury" arising out of the rendering of or failure to render professional health care services as a physician, dentist, nurse, emergency medical technician or paramedic shall be deemed to be caused by an "occurrence", but only if:

(a) The physician, dentist, nurse, emergency medical technician or paramedic is employed by you to provide such services; and

(b) You are not engaged in the business or occupation of providing such services.

(2) For the purpose of determining the limits of insurance for incidental medical malpractice, any act or omission together with all related acts or omissions in the furnishing of these services to any one person will be considered one "occurrence".

2. **MEDICAL EXPENSES**

Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(1) The accident takes place in the "coverage territory" and during the policy period;

(2) The expenses are incurred and reported to us within three years of the date of the accident; and

(3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

3. **COVERAGE EXTENSION - SUPPLEMENTARY PAYMENTS**

a. We will pay, with respect to any claim or "suit" we investigate or settle, or any "suit" against an insured we defend:

(1) All expenses we incur.

(2) Up to $1,000 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.

(3) The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.

(5) All costs taxed against the insured in the "suit".

(6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

(7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

Any amounts paid under **(1)** through **(7)** above will not reduce the limits of insurance.

b. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

(1) The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

(2) This insurance applies to such liability assumed by the insured;

(3) The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

(4) The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;

(5) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

(6) The indemnitee:

(a) Agrees in writing to:

(i) Cooperate with us in the investigation, settlement or defense of the "suit";

(ii) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(iii) Notify any other insurer whose coverage is available to the indemnitee; and

(iv) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(b) Provides us with written authorization to:

(i) Obtain records and other information related to the "suit"; and

(ii) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Notwithstanding the provisions of Paragraph **1.b.(b)** of Section **B.** – Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the Limits of Insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

(1) We have used up the applicable limit of insurance in the payment of judgments or settlements; or

(2) The conditions set forth above, or the terms of the agreement described in Paragraph **(6)** above, are no longer met.

B. EXCLUSIONS

1. Applicable To Business Liability Coverage

This insurance does not apply to:

a. Expected Or Intended Injury

(1) "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property; or

(2) "Personal and advertising injury" arising out of an offense committed by, at the direction of or with the consent or acquiescence of the insured with the expectation of inflicting "personal and advertising injury".

b. Contractual Liability

(1) "Bodily injury" or "property damage"; or

(2) "Personal and advertising injury"

for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages because of:

(a) "Bodily injury", "property damage" or "personal and advertising injury" that the insured would have in the absence of the contract or agreement; or

(b) "Bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage" provided:

(i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract", and

(ii) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business, or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of **(1)** above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 51 feet long; and

(b) Not being used to carry persons for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;

(5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment"; or

(6) An aircraft that is not owned by any insured and is hired, chartered or loaned with a paid crew. However, this exception does not apply if the insured has any other insurance for such "bodily injury" or "property damage", whether the other insurance is primary, excess, contingent or on any other basis.

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. War

"Bodily injury", "property damage" or "personal and advertising injury", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Professional Services

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

(1) Legal, accounting or advertising services;

(2) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications;

(3) Supervisory, inspection, architectural or engineering activities;

(4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;

(5) Any health or therapeutic service treatment, advice or instruction;

(6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;

(7) Optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

(8) Optometry or optometric services including but not limited to examination of the eyes and the prescribing, preparation, fitting,demonstration or distribution of ophthalmic lenses and similar products;

(9) Any:

(a) Body piercing (not including ear piercing);

(b) Tattooing, including but not limited to the insertion of pigments into or under the skin; and

(c) Similar services;

(10) Services in the practice of pharmacy; and

(11) Computer consulting, design or programming services, including web site design.

Paragraphs **(4)** and **(5)** of this exclusion do not apply to the Incidental Medical Malpractice coverage afforded under Paragraph **1.e.** in Section **A.** - Coverages.

k. Damage To Property

"Property damage" to:

(1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in Section **D.** - Limits Of Insurance.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs **(3)** and **(4)** of this exclusion do not apply to the use of elevators.

Paragraphs **(3)**, **(4)**, **(5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs **(3)** and **(4)** of this exclusion do not apply to "property damage" to borrowed equipment while not being used to perform operations at a job site.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

l. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

m. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

n. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

o. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

p. Personal And Advertising Injury

"Personal and advertising injury":

(1) Arising out of oral, written or electronic publication of material, if done by or at the direction of the insured with knowledge of its falsity;

(2) Arising out of oral, written or electronic publication of material whose first publication took place before the beginning of the policy period;

(3) Arising out of a criminal act committed by or at the direction of the insured;

(4) Arising out of any breach of contract, except an implied contract to use another's "advertising idea" in your "advertisement";

(5) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";

(6) Arising out of the wrong description of the price of goods, products or services;

(7) Arising out of any violation of any intellectual property rights such as copyright, patent, trademark, trade name, trade secret, service mark or other designation of origin or authenticity.

However, this exclusion does not apply to infringement, in your "advertisement", of

(a) Copyright;

(b) Slogan, unless the slogan is also a trademark, trade name, service mark or other designation of origin or authenticity; or

(c) Title of any literary or artistic work;

(8) Arising out of an offense committed by an insured whose business is:

(a) Advertising, broadcasting, publishing or telecasting;

(b) Designing or determining content of web sites for others; or

(c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **a.**, **b.** and **c.** under the definition of "personal and advertising injury" in Section **G.** – Liability And Medical Expenses Definitions.

For the purposes of this exclusion, placing an "advertisement" for or linking to others on your web site, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting;

(9) Arising out of an electronic chat room or bulletin board the insured hosts, owns, or over which the insured exercises control;

(10) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers;

(11) Arising out of the violation of a person's right of privacy created by any state or federal act.

However, this exclusion does not apply to liability for damages that the insured would have in the absence of such state or federal act;

(12) Arising out of:

(a) An "advertisement" for others on your web site;

(b) Placing a link to a web site of others on your web site;

(c) Content from a web site of others displayed within a frame or border on your web site. Content includes information, code, sounds, text, graphics or images; or

(d) Computer code, software or programming used to enable:

(i) Your web site; or

(ii) The presentation or functionality of an "advertisement" or other content on your web site;

(13) Arising out of a violation of any anti-trust law;

(14) Arising out of the fluctuation in price or value of any stocks, bonds or other securities; or

(15) Arising out of discrimination or humiliation committed by or at the direction of any "executive officer", director, stockholder, partner or member of the insured.

q. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

r. Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to the person at whom any of the employment-related practices described in Paragraphs **(a)**, **(b)**, or **(c)** above is directed.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

s. Asbestos

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the "asbestos hazard".

(2) Any damages, judgments, settlements, loss, costs or expenses that:

(a) May be awarded or incurred by reason of any claim or suit alleging actual or threatened injury or damage of any nature or kind to persons or property which would not have occurred in whole or in part but for the "asbestos hazard";

(b) Arise out of any request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, encapsulate, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of an "asbestos hazard"; or

(c) Arise out of any claim or suit for damages because of testing for, monitoring, cleaning up, removing, encapsulating, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of an "asbestos hazard".

t. Violation Of Statutes That Govern E-Mails, Fax, Phone Calls Or Other Methods Of Sending Material Or Information

"Bodily injury", "property damage", or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

(1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

(2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or

(3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Damage To Premises Rented To You – Exception For Damage By Fire, Lightning or Explosion

Exclusions **c.** through **h.** and **k.** through **o.** do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section **D.** - Liability And Medical Expenses Limits Of Insurance.

2. **Applicable To Medical Expenses Coverage**

   We will not pay expenses for "bodily injury":

   a. **Any Insured**
   To any insured, except "volunteer workers".

   b. **Hired Person**

   To a person hired to do work for or on behalf of any insured or a tenant of any insured.

   c. **Injury On Normally Occupied Premises**

   To a person injured on that part of premises you own or rent that the person normally occupies.

   d. **Workers' Compensation And Similar Laws**

   To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

   e. **Athletics Activities**

   To a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests.

   f. **Products-Completed Operations Hazard**

   Included with the "products-completed operations hazard".

   g. **Business Liability Exclusions**

   Excluded under Business Liability Coverage.

C. WHO IS AN INSURED

1. If you are designated in the Declarations as:

   a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

   b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

   c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

   d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

   e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

   a. **Employees And Volunteer Workers**

   Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

   However, none of these "employees" or "volunteer workers" are insureds for:

   (1) "Bodily injury" or "personal and advertising injury":

   (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

   (b) To the spouse, child, parent, brother or sister of that co-"employee" or that "volunteer worker" as a consequence of Paragraph **(1)(a)** above;

   (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or

   (d) Arising out of his or her providing or failing to provide professional health care services.

   If you are not in the business of providing professional health care services, Paragraph **(d)** does not apply to any nurse, emergency medical technician or paramedic employed by you to provide such services.

   (2) "Property damage" to property:

   (a) Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage under this provision does not apply to:

(1) "Bodily injury" or "property damage" that occurred; or

(2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs **a.** through **f.** below are additional insureds when you have agreed, in a written

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section **F.** – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs **(d)** or **(f)**; or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

(1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

(1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or

(b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

(1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In connection with your premises; or

(b) In the performance of your ongoing operations performed by you or on your behalf.

(2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

(1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

(a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

(1) Any other person or organization who is not an insured under Paragraphs **a.** through **e.** above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations;

(b) In connection with your premises owned by or rented to you; or

(c) In connection with "your work" and included within the "products-completed operations hazard", but only if

(i) The written contract or written agreement requires you to provide such coverage to such additional insured; and

(ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section **D.** – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E.** – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.

b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to **2.a.** or **2.b** above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to **2.b.** above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or

b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph **3.** above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

(1) How, when and where the "occurrence" or offense took place;

(2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

(1) You or any additional insured that is an individual;

(2) Any partner, if you or an additional insured is a partnership;

(3) Any manager, if you or an additional insured is a limited liability company;

(4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;

(5) Any trustee, if you or an additional insured is a trust; or

(6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This Paragraph **f.** applies separately to you and any additional insured.

3. **Financial Responsibility Laws**

   a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.

   b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. **Legal Action Against Us**

   No person or organization has a right under this Coverage Form:

   a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

   b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

   A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. **Separation Of Insureds**

   Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

   a. As if each Named Insured were the only Named Insured; and

   b. Separately to each insured against whom a claim is made or "suit" is brought.

6. **Representations**

   a. When You Accept This Policy

   By accepting this policy, you agree:

   (1) The statements in the Declarations are accurate and complete;

   (2) Those statements are based upon representations you made to us; and

   (3) We have issued this policy in reliance upon your representations.

   b. Unintentional Failure To Disclose Hazards

   If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. **Other Insurance**

   If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

   a. Primary Insurance

   This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

   b. Excess Insurance

   This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

   (1) Your Work

   That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

   (2) Premises Rented To You

   That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

   (3) Tenant Liability

   That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

   (4) Aircraft, Auto Or Watercraft

   If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

   (5) Property Damage To Borrowed Equipment Or Use Of Elevators

   If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph **6.** (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section **C.**, Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. **Additional Insured - Designated Person Or Organization**

   WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

   a. In the performance of your ongoing operations; or

   b. In connection with your premises owned by or rented to you.

2. **Additional Insured - Managers Or Lessors Of Premises**

   a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

   b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

   This insurance does not apply to:

   (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or

   (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. **Additional Insured - Grantor Of Franchise**

   WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. **Additional Insured - Lessor Of Leased Equipment**

   a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

   b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. **Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased**

   a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

   b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

   This insurance does not apply to:

   (1) Any "occurrence" that takes place after you cease to lease that land; or

   (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. **Additional Insured - State Or Political Subdivision – Permits**

   a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. The insurance afforded to the vendor is subject to the following additional exclusions:

(1) This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs **(d)** or **(f)**; or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

a. Their financial control of you; or

b. Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. **Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization**

   a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

      (1) In the performance of your ongoing operations for the additional insured(s); or

      (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

   b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

      (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

      (2) Supervisory, inspection, architectural or engineering activities.

10. **Additional Insured – Co-Owner Of Insured Premises**

    WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section **D.** – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E.** – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

   a. **(1)** Radio;
      (2) Television;
      (3) Billboard;
      (4) Magazine;
      (5) Newspaper;

   b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

   c. Any other publication that is given widespread public distribution.

   However, "advertisement" does not include:

   a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

   b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

   a. Injury;

   b. Sickness; or

   c. Disease

   sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above;

c. All other parts of the world if the injury or damage arises out of:

(1) Goods or products made or sold by you in the territory described in **a.** above;

(2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or

(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

7. "Electronic data" means information, facts or programs:

a. Stored as or on;

b. Created or used on; or

c. Transmitted to or from

computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D.** – Liability and Medical Expenses Limits of Insurance.

b. A sidetrack agreement;

c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;

d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement; or

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, on which are permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment, of at least 1,000 pounds gross vehicle weight, designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that the person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral, written or electronic publication of material that violates a person's right of privacy;

f. Copying, in your "advertisement", a person's or organization's "advertising idea" or style of "advertisement";

g. Infringement of copyright, slogan, or title of any literary or artistic work, in your "advertisement"; or

h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

18. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

19. "Products-completed operations hazard";

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed to be completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

20. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of "occurrence" that caused it.

As used in this definition, "electronic data" is not tangible property.

21. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

23. "Volunteer worker" means a person who:

a. Is not your "employee";

b. Donates his or her work;

c. Acts at the direction of and within the scope of duties determined by you; and

d. Is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

25. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

This policy is subject to the following additional Conditions:

A. If this policy is cancelled by the Company, other than for non-payment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

B. If this policy is cancelled by the company for non-payment of premium, or by the insured, notice of such cancellation will be provided within ten (10) days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGE

This endorsement changes the policy effective on the Inception Date of the policy unless another date is indicated below.

Policy Number: 46 SBA UM5441 SC

Named Insured and Mailing Address; ELLEDGE ENGINEERING
CORPORATION
PO BOX 7110
TYLER TX 75711

Policy Change Effective Date: 06/01/23 **Effective hour is the same as stated in the Declarations Page of the Policy.**

Policy Change Number: 001

Agent Name: INSURICA TX INSURANCE SERVICES INC
Code: 504804

POLICY CHANGES:

SENTINEL INSURANCE COMPANY, LIMITED

ANY CHANGES IN YOUR PREMIUM WILL BE REFLECTED IN YOUR NEXT BILLING STATEMENT.IF YOU ARE ENROLLED IN REPETITIVE EFT DRAWS FROM YOUR BANK ACCOUNT, CHANGES IN PREMIUM WILL CHANGE FUTURE DRAW AMOUNTS.
THIS IS NOT A BILL.

NO PREMIUM DUE AS OF POLICY CHANGE EFFECTIVE DATE

PROPERTY OPTIONAL COVERAGES APPLICABLE TO ALL LOCATIONS ARE ADDED

COMPUTERS AND MEDIA COVERAGE
FORM SS 04 41
DEDUCTIBLE: $ 1,000

FORM NUMBERS OF ENDORSEMENTS ADDED AT ENDORSEMENT ISSUE:
SS 12 24 06 11

PRO RATA FACTOR: 0.932

THIS ENDORSEMENT DOES NOT CHANGE THE POLICY EXCEPT AS SHOWN.

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AFB A&E MEDIA TECH® INSURANCE POLICY

ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY, ARCHITECTS, ENGINEERS AND CONTRACTORS POLLUTION LIABILITY, TECHNOLOGY BASED SERVICES, TECHNOLOGY PRODUCTS, COMPUTER NETWORK SECURITY, AND MULTIMEDIA AND ADVERTISING AND PRIVACY LIABILITY

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AFB A&E MEDIA TECH® INSURANCE POLICY

ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY, ARCHITECTS, ENGINEERS AND CONTRACTORS POLLUTION LIABILITY, TECHNOLOGY BASED SERVICES, TECHNOLOGY PRODUCTS, COMPUTER NETWORK SECURITY, AND MULTIMEDIA AND ADVERTISING AND PRIVACY LIABILITY

NOTICE: Coverage under Insuring Clause I.A. of this Policy is provided on a Claims Made and Reported Basis and applies only to **Claims** first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriters pursuant to the terms of this Insurance Policy. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**.

Insuring Clause I.B. of this Policy provides first party coverage on an incident discovered and reported basis and applies only to incidents first discovered by the **Insured** and reported to the Underwriters during the **Policy Period**.

Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

In consideration of the payment of the premium and reliance upon the statements in the **Application** and subject to the Limit of Liability, deductible, exclusions, conditions and other terms of this Insurance (hereinafter referred to as the "Policy" or "Insurance", the Underwriters agree with the **Named Insured**:

I. INSURING CLAUSES

A. To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the **Deductible**, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported in writing to the Underwriters during the **Policy Period** or as otherwise provided in Clause XI. of this Policy, arising out of one or more of the following acts or events committed or taking place on or after the Retroactive Date and before the end of the **Policy Period**:

1. **Architects and Engineers Professional Liability**

   any unintentional act, error or omission in the performance of **Professional Services** by the **Insured** or by any person, including an independent contractor, for whom the **Named Insured** is legally responsible; or

2. **Architects, Engineers and Contractors Pollution Liability**

   a **Pollution Condition** arising out of the performance of **Professional Services** or **Contracting Services** by the **Insured** or by any person, including an independent contractor, for whose **Pollution Condition** the **Named Insured** is legally responsible.

Insuring Clauses A.3., A.4., A.5., A.6. and B. only apply if Item 8. of the Declarations indicates that these Coverages have been purchased.

3. **Technology Based Services**

   any negligent act, error or omission, or any unintentional breach of contract, in rendering or failing to render **Technology Based Services** by the **Insured** or by any person, including an independent contractor, for whose negligent act, error or omission or unintentional breach of contract the **Named Insured** is legally responsible;

4. **Technology Products**

   any negligent act, error or omission, or any unintentional breach of contract, by the **Insured** that results in the failure of **Technology Products** to perform the function or serve the purpose intended;

5. **Computer Network Security and Privacy Liability**

   a. the failure to prevent **Unauthorized Access** to **Computer Systems** that results in:

      (1) the destruction, deletion or corruption of electronic data on **Computer Systems**;

      (2) denial of service attacks against Internet sites or computers;

      (3) the failure to prevent transmission of malicious code from **Computer Systems** to third party computers and systems; or

      (4) the inability of a third party, who is authorized to do so, to gain access to **Computer Systems** or your **Technology Based Services**;

   b. theft, loss or **Unauthorized Disclosure** of **Personally Identifiable Information** or **Third Party Information** that is in the care, custody or control of the **Named Insured**, or an independent contractor that is holding or processing such information on behalf of the **Named Insured**;

   c. the **Named Insured's** failure to timely disclose an incident described in I.A.5.A. or I.A.5.B. in violation of any **Breach Notice Law**;

   d. failure by the **Insured** to comply with that part of a **Privacy Policy** that specifically:

      (1) prevents or prohibits improper or intrusive collection of **Personally Identifiable Information** from a person;

(2) requires notice to a person of the **Named Insured's** collection or use of, or the nature of the collection or use of his or her **Personally Identifiable Information**;

(3) provides a person with the ability to assent to or withhold assent for (e.g. opt-in or opt-out) the **Named Insured's** collection or use his or her **Personally Identifiable Information**;

(4) prohibits or restricts the **Named Insured's** disclosure, sharing or selling of a person's **Personally Identifiable Information**;

(5) requires the **Named Insured** to provide access to **Personally Identifiable Information** or to correct incomplete or inaccurate **Personally Identifiable Information** after a request is made by a person; or

(6) mandates procedures and requirements to prevent the loss of **Personally Identifiable Information**;

provided the **Named Insured** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that directly addresses those subsections above that are relevant to such **Claim**.

6. **Multimedia and Advertising**

liability imposed by law or **Assumed Under Contract** arising out of:

a. defamation, libel, slander, product disparagement, trade libel, prima facie tort, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;

b. invasion of or interference with the right to privacy or of publicity;

c. misappropriation of any name or likeness for commercial advantage;

d. false arrest, detention or imprisonment or malicious prosecution;

e. invasion of or interference with any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping;

f. plagiarism, piracy or misappropriation of ideas under implied contract;

g. infringement of copyright;

h. infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark;

i. negligence regarding the content of any **Media Communication**, including harm caused through any reliance or failure to rely upon such content; or

j. misappropriation of trade secret

in the course of the **Named Insured's** performance of **Professional Services**, **Media Activities** or **Technology Based Services**;

B. **Privacy Breach Response Services**

To provide **Privacy Breach Response Services** to the **Named Insured** in excess of the **Deductible** because of an incident (or reasonably suspected incident) described in Insuring Clause A.5.A. and A.5.B. that first takes place on or after the Retroactive Date and before the end of the **Policy Period** and is discovered by the **Insured** and is reported to the Underwriters during the **Policy Period**.

Privacy Breach Response Services means the following:

1. Costs for a computer security expert to determine the existence and cause of an actual or suspected electronic data breach which may require the **Named Insured** to comply with a **Breach Notice Law** and to determine the extent to which such information was accessed by an unauthorized person or persons; and

2. fees charged by an attorney to determine the applicability of and action necessary by the **Named Insured** to comply with a **Breach Notice Law** due to an actual or reasonably suspected theft or misuse of **Personally Identifiable Information**.

3. **Notification Services** to provide notification to:

   (a) individuals who are required to be notified by the **Named Insured** under the applicable **Breach Notice Law**; and

   (b) in the Underwriters' discretion, to individuals affected by an incident in which their **Personally Identifiable Information** has been subject to theft or misuse in a manner which compromises the security or privacy of such individual by posing a significant risk of financial, reputational or other harm to the individual;

4. **Call Center Services**;

5. **Breach Resolution and Mitigation Services**, provided all such costs payable under this subsection 6. must be for the purpose of

mitigating potential **Damages** resulting from the theft or misuse of **Personally Identifiable Information**.

Privacy Breach Response Services will be subject to the terms and conditions of this Policy and the conditions applicable thereto are set forth more fully in the Information Packet (which may be updated by the Underwriters from time to time) provided with this Policy, and will be subject to the applicable **Deductibles** and limits set forth in the Declarations, and shall not include any internal salary or overhead expenses of the **Named Insured**.

II. SUPPLEMENTARY PAYMENTS

All payments made under this Clause are not subject to the Each Claim Deductible.

1. Pre-Claims Assistance

   If the **Insured** reports a **Circumstance** during the **Policy Period**, in accordance with Clause XI.B., until such time a **Claim** is made, any costs or expenses the Underwriters incur as a result of investigating or monitoring such **Circumstance**, will be paid for by the Underwriters. The decision to incur any costs or expenses to monitor or investigate such **Circumstance** shall be at the sole discretion of the Underwriters.

2. Defendants Reimbursement

   Upon the Underwriters request, the **Insured** shall attend mediation meetings, arbitration proceedings, hearings, depositions and trials relative to the defense of a **Claim**. After the first three (3) days' attendance required for each **Claim**, the Underwriters shall reimburse the **Insured**, upon written request, for actual loss of earnings and reasonable expenses due to such attendance up to $500 for each day in the aggregate for all **Insureds** subject to a maximum amount of $15,000 for each **Claim**.

3. Disciplinary / Regulatory / Administrative Actions Reimbursement

   The Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses up to $30,000 in the aggregate for the **Policy Period**, incurred by the **Insured** with the prior written consent of the Underwriters, in responding to a disciplinary, regulatory or administrative action brought directly against the **Insured** during the **Policy Period** by a government agency provided that the disciplinary, regulatory or administrative action:

   a. arises out of **Professional Services**; and

   b. is reported pursuant to Section XI.A of this Policy.

4. Reputation Management Reimbursement

The Underwriters will reimburse the **Named Insured** fifty percent (50%) of the first $30,000 in Reputational Management Expenses incurred by the **Named Insured** for reputational management consulting services which are incurred in connection with a **Claim**, circumstance or incident covered under this Policy that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

Reputational Management Expenses means reasonable fees, costs, and expenses incurred by the Named Insured for reputational management consulting services provided by a public relations firm to the **Named Insured**.

III. DEFINITIONS

Wherever used in this Policy in bold face type, the following definitions shall apply.

A. "**Advertising**" means material which promotes the product, service or business of the **Named Insured** or others.

B. "**Application**" means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other policy issued by the Underwriters, of which this Policy is a renewal, replacement or which it succeeds in time.

C. "**Assumed Under Contract**" means liability assumed by the **Named Insured** under a written hold harmless or indemnity agreement regarding the content of **Media Material** used in a **Media Communication**, but only as respects acts for which insurance is afforded under Insuring Clause A.6.

D. "**Bodily Injury**" means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.

E. "**Breach Notice Law**" means any state, federal or foreign statute or regulation that requires notice to persons whose **Personally Identifiable Information** was accessed or may reasonably have been accessed by an unauthorized person.

F. "**Breach Resolution and Mitigation Services**" means a credit monitoring, identity monitoring or other solution selected from the products listed in the Information Packet and offered to **Notified Individuals**. The product offered to **Notified Individuals** will be selected by the Underwriters in consultation with the **Insured** and in accordance with the guidance provided in the Breach Resolution and Mitigation section of the Information Packet.

G. "**Call Center Services**" means the provision of a call center to answer calls during standard business hours for a period of ninety (90) days following notification (or longer if required by applicable law or regulation) of an incident for which notice is provided pursuant to Insuring Clause I.B.3. (Notification Services) Such notification shall include a toll free telephone number that connects to the call center during standard business hours. Call center employees will answer questions about the incident from **Notified Individuals** and will provide information required by applicable law or regulation.

Call Center Services will include up to 10,000 calls per day and will be provided in accordance with the terms and conditions set forth in the Information Packet. **Call Center Services** will be provided by a service provider selected by the Underwriters in consultation with the **Named Insured** from the list of service providers in the Information Packet.

H. "**Circumstance**" means any fact, event or situation that could reasonably be the basis for a **Claim**.

I. "**Claim**" means a demand received by any **Insured** for money or services including the service of suit or institution of arbitration proceedings. "**Claim**" shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, omissions or **Pollution Conditions** or from any continuing acts, errors, omissions or **Pollution Conditions** shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Insureds** involved in the **Claim**. For all purposes, all such **Claims** shall be deemed to have been made at the time of the first such **Claim**, regardless of whether or not coverage was afforded by Underwriters when the first such **Claim** was made.

J. "**Claims Expenses**" means:

1. reasonable and necessary fees charged by an attorney designated or consented to by the Underwriters;

2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, if incurred by the Underwriters, or by the **Insured** with the prior written consent of the Underwriters; and

3. premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required for a **Claim** against any **Insured** for a covered act, error or omission, provided, however, that the Underwriters shall have no obligation to appeal or to obtain such bonds.

Claims Expenses do not include any salary, overhead or other charges of or by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** notified under this Insurance, or costs to remediate an act, error or omission without the prior written consent of the Underwriters.

K. "**Cleanup Costs**" means reasonable and necessary costs, charges and expenses incurred with the prior written consent of the Underwriters in the investigation, removal or neutralization of a **Pollution Condition**, provided that such costs, charges and expenses are caused by a **Pollution Condition** arising out of the rendering of or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** by or on behalf of the **Named Insured**.

L. "**Computer Systems**" means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:

1. operated by and either owned by or leased to the **Named Insured**; or

2. operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Named Insured** or for processing, maintaining, hosting or storing the **Named Insured's** electronic data, pursuant to written contract with the **Named Insured** for such services.

M. "**Contracting Services**" means the performance of construction, drilling or remediation activities by or on behalf of the **Named Insured**.

N. "**Damages**" means a monetary judgment, award or settlement of compensatory damages, including any pre-judgment and/or post-judgment interest thereon.

The term **Damages** shall not include or mean:

1. future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**, or the costs of an **Insured** to comply with orders granting injunctive or equitable relief;

2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;

3. costs incurred by the **Insured** to correct, re-perform or complete any **Media Activities** or **Technology Based Services**;

4. any damages which are a multiple of compensatory damages;

5. fines, taxes or loss of tax benefits, sanctions or penalties assessed against the **Insured**;

6. punitive or exemplary damages, unless insurable by law under the law under which this Policy is construed;

7. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients;

8. liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement;

9. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or

10. matters deemed uninsurable under the law pursuant to which this Policy shall be construed.

O. "**Insured**" shall mean:

1. the **Named Insured**;

2. a director or officer of the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;

3. an employee or **Temporary Employee** of the **Named Insured**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Named Insured's** business;

4. a principal if the **Named Insured** is a sole proprietorship, or a partner if the **Named Insured** is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;

5. any person who previously qualified as an **Insured** under 2, 3 or 4 above prior to the termination of the required relationship with the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;

6. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Insurance;

7. the lawful spouse or Domestic Partners of any of the person set forth in 2., 3., 4., 5., or 6. above, but only for **Claims** arising out of an act, error or omission actually or allegedly committed by such **Insured** and only to the extent that such Insured would otherwise be provided coverage under this Insurance. The Company has no obligation to make any payment for **Damages** or **Claims**

Expenses in connection with any **Claim** made against a spouse or Domestic Partner of an **Insured** for any actual or alleged acts, errors or omissions committed by such spouse or Domestic Partner;

For the purposes of this provision, the terms "Domestic Partner" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable Federal, State, or local law; or the provisions of any formal program established by the **Named Insured**;

8. the **Named Insured** with regard to its participation in a joint venture, but solely for the **Named Insured's** liability that arises out of an unintentional act, error or omission in the performance of **Professional Services** by the **Named Insured** or for a **Pollution Condition** that arises out of the performance of **Professional Services** or **Contracting Services** by the **Named Insured**; and

9. solely with respect to Insuring Clause I.A.2., the client for whom the **Named Insured** renders or rendered **Professional Services** or performs or performed **Contracting Services**, provided that a written contract or agreement is in effect between the **Named Insured** and the client requiring the client to be an additional insured under the **Named Insured's** architects, engineers and contractors pollution liability policy. However, such clients are covered under Insuring Clause I.A.2. of this Policy solely with respect to **Damages** and **Claims Expenses** arising from **Professional Services** rendered or **Contracting Services** performed by or on behalf of the **Named Insured** and are not covered for any **Damages** and **Claims Expenses** arising from the client's own acts, errors or omissions. Clients of the **Named Insured** are covered under Insuring Clause I.A.2. of this Policy, subject to Clause VIII., or the Limits of Liability required by the written contract or agreement, whichever is less.

P. "**Media Communication**" means the display, broadcast, dissemination, distribution or release of **Media Material** to the public by the **Named Insured.**

Q. "**Media Material**" means information in the form of words, sounds, numbers, images, or graphics in electronic, print or broadcast form, including **Advertising**, but does not mean computer software.

R. "**Media Activities**" means **Media Communication** and/or the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication** in the ordinary course of the **Named Insured's** business.

S. "**Mediation**" means a non-binding process by which a qualified professional mediator mutually agreed upon by the parties intercedes between the parties with the intention to reconcile them to resolve a

Claim. The term **Mediation** shall not include or mean other dispute resolution by litigation or arbitration.

T. "**Named Insured**" means only those persons, partnerships, corporations or entities specified in Item 1. of the Declarations.

The term **Named Insured** shall include any corporate entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured** if such entity becomes so owned after the inception date of the Policy, subject to the terms and conditions of Clause XVII.A.

U. **Notification Services** means notification by first class mail or e-mail. E-mail notification will be provided in lieu of first class mail to the extent reasonable, practicable and where permitted under the applicable **Breach Notice Law**. **Notification Services** will be provided by a service provider selected by the Underwriters in consultation with the **Named Insured** from the list of service providers in the Information Packet and will be provided in accordance with the terms and conditions set forth in the Information Packet.

V. **Notified Individual**" means an individual person to whom notice is given or attempted to be given under Insuring Clause I.B.3. pursuant to a **Breach Notice Law**.

W. "**Optional Extension Period**" means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Clause XII. of this Policy.

X. **"Personally Identifiable Information**" means:

1. information concerning the individual that constitutes "non-public personal information" as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;

2. medical or heath care information concerning the individual, including "protected health information" as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act;

3. information concerning the individual that is defined as private personal information under a **Breach Notice Law**; or

4. the individual's social security number, driver's license or state identification number, unpublished telephone number, and credit, debit or other financial account numbers and associated security codes, access codes, passwords or pins; if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medical record information.

Y. "**Policy Period**" means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.

Z. "**Pollution Condition**" means the actual or alleged discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in **Bodily Injury**, **Property Damage** or **Cleanup Costs**.

AA. "**Privacy Policy**" means the **Named Insured's** public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to, **Personally Identifiable Information**.

BB. "**Professional Services**" means those services performed for others by or on behalf of the **Named Insured** in the capacity as an architect;, engineer; land surveyor; landscape architect; interior designer; construction manager; project manager; forensic consultant; environmental consultant; sustainability consultant; or design, construction or project consultant or planner.

CC. "**Property Damage**" means:

1. physical injury to or destruction of any tangible property, including the loss of use thereof; or

2. loss of use of tangible property that has not been physically injured or destroyed.

DD. "**Technology Based Services**" means computer and electronic technology services, including data processing, Internet services, data and application hosting, computer systems analysis, technology consulting and training, custom software programming for a specific client of the **Named Insured**, computer and software systems installation and integration, computer and software support, and network management services performed by the **Insured**, or by others acting under the **Named Insured's** trade name, for others for a fee, but shall not mean **Technology Products**.

EE. "**Technology Products**" means a computer or telecommunications hardware or software product, or related electronic product that is created, manufactured or developed by the **Named Insured** for others, or distributed, licensed, leased or sold by the **Named Insured** to others, for

compensation, including software updates, service packs and other maintenance releases provided for such products.

FF. "**Temporary Employee**" means a person furnished or leased to the **Named Insured** to meet short term or project specific workloads and for whom the **Named Insured** has the right to direct and control the means of performance.

GG. "**Third Party Information**" means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not insured under this Policy which is not available to the general public and is provided to the **Insured** subject to a mutually executed written confidentiality agreement or which the **Named Insured** is legally required to maintain in confidence; however, **Third Party Information** shall not include **Personally Identifiable Information**.

HH. "**Unauthorized Access**" means:

1. the gaining of access to or use of **Computer Systems** by an unauthorized person or persons; or

2. the use of **Computer Systems** in an unauthorized manner.

II. "**Unauthorized Disclosure**" means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the **Named Insured** and is without knowledge of, consent, or acquiescence of any director, officer, principal, partner, or any member of the risk management or legal department of the **Named Insured**.

IV. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.

B. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions, and other terms and conditions of this Policy, any **Claim** in the form of a civil suit against the **Insured** that seeks injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) for one or more of the acts listed in Insuring Clause I.A.6.

C. When the Underwriters defend a **Claim**, it will pay **Claims Expenses** incurred with its prior written consent. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Each **Claim** Deductible.

D. The Underwriters shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.

However, notwithstanding the above, the **Insured's** rights under this Policy shall not be prejudiced by any refusal to disclose the identity of any confidential source of information, or to produce any documentation or information obtained in the course of **Media Activities** in respect of which the **Insured** has asserted a claim of reporter's privilege or any other privilege regarding the protection of news-gathering activities.

E. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the **Claim**, the Underwriters liability for any **Damages** and **Claims Expenses** shall not exceed:

1. the amount for which the **Claim** could have been settled, less the remaining Each **Claim** Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, and

2. fifty percent (50%) of any **Claims Expenses** incurred after the date such settlement or compromise was recommended to the **Insured** with the remaining fifty percent (50%) of such **Claims Expenses** to be borne by the **Insured** at their own risk and uninsured;

or the applicable Limit of Liability, whichever is less. The portion of any proposed settlement or compromise that requires the **Insured** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** shall not be considered in determining the amount for which a **Claim** could have been settled.

F. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

G. To the extent that Underwriters pay any Damages, Claims Expenses or other sums that are not covered under this Policy, Underwriters are entitled to reimbursement from the named Insured and any Insured (or other party) on whose behalf such Damages, Claims Expenses, or sums are paid.

V. TERRITORY

This Policy applies to **Claims** made and acts, errors or omissions or **Pollution Conditions** committed or arising, or **Privacy Breach Response Services** occurring anywhere in the world.

VI. EXCLUSIONS APPLICABLE TO ALL COVERAGES UNDER THIS INSURANCE

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**, or to any **Privacy Breach Response Services**:

A. **Criminal, Dishonest, Intentional, Fraudulent, Malicious, Willful or Knowing Acts**

arising out of or resulting from any criminal, dishonest, intentional, fraudulent, malicious, willful or knowing act, error or omission committed by any **Insured**; however, this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or admission by the **Insured**, establishing such criminal, dishonest, intentional, fraudulent, malicious willful or knowing conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time the **Named Insured** shall reimburse the Underwriters for all **Claims Expenses** incurred defending the **Claim** and the Underwriters shall have no further liability for **Claims Expenses**.

B. **Prior Knowledge, Prior Notice and Prior Acts**

1. arising out of or resulting from any actual or alleged act, error, omission, incident, or **Pollution Condition** committed or arising prior to the inception date of this Insurance:

   a. if on or before the Knowledge Date set forth in Item 7 of the Declarations any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** knew or could have reasonably foreseen that such act, error or omission or **Pollution Condition** might be expected to be the basis of a **Claim**; or

   b. in respect of which any **Insured** has given notice of a **Circumstance** to the insurer of any other policy in force prior to the inception date of this Policy.

2. arising out of or resulting from related or continuing acts, errors or omissions or **Pollution Conditions** where the first such act, error

or omission or **Pollution Condition** was committed or arose prior to the Retroactive Date set forth in Item 6. of the Declarations.

C. **Insured versus Insured**

For, arising out of, or resulting from a **Claim** by or on behalf of any **Insured;** provided, that this exclusion shall not apply to:

1. a **Claim** by or on behalf of any client of the **Named Insured** who is an **Insured** by virtue of Clause III.O.9; or

2. an otherwise covered Claim under Insuring Clause I.A.5.A., I.A.5.B. or I.A.5.C. made by an employee of the **Named Insured**.

D. **Ownership Interest and Outside Positions**

1. arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Named Insured**; or

2. made by any entity, arising out of **Professional Services**, **Contracting Services**, **Media Activities** or **Technology Based Services** performed for such entity, or **Technology Products** provided to such entity which:

   a. is operated, managed or controlled by an **Insured** or in which any **Insured** has an ownership interest which cumulatively exceeds twenty-five percent (25%), or in which any **Insured** is an officer or director; or

   b. operates, controls or manages the **Named Insured**, or has an ownership interest of more than fifteen percent (15%) in the **Named Insured**.

E. **Discrimination, Humiliation, Harassment and Misconduct**

for or arising out of or resulting from any actual or alleged discrimination, humiliation, harassment or misconduct because of age, color, race, sex, creed, national origin, marital status, sexual preference or orientation, religion, disability or pregnancy; provided, that this exclusion shall not apply to any **Claim** based upon the Americans with Disabilities Act of 1990 (ADA), as amended, or the Fair Housing Act (FHA), or any state or local versions of those acts, and arising out of the **Insured's** rendering or failure to render **Professional Services**.

F. **Contractual Assumption of Liability**

arising out of or resulting from liability assumed by the **Insured** under any contract or agreement either oral or written, including any hold harmless or indemnity agreements, except:

1. to the extent the **Insured** would have been liable in the absence of such contract or agreement; or

2. to the extent the **Insured** has contractually assumed an obligation to reimburse any person or entity for the reasonable costs of defense of an **Insured's** client pursuant to any hold harmless or indemnity agreement as long as such obligation is limited to the proportionate share of the **Insured's** liability for rendering **Professional Services**, and only upon a final adjudication in a legal proceeding of proportionate fault against the Insured. This exception shall not apply to any immediate duty to defend assumed by the **Insured**, and Underwriters shall have no obligation to defend the client or to pay any costs incurred by client on an ongoing or interim basis. Underwriters will, however, have the right, to be exercised in their sole discretion, to appoint counsel to defend both the **Insured** and the client should applicable ethical rules permit such representation. If the client elects to not accept a joint defense from Underwriters, then this exception shall not apply.

G. **Express Warranties, Representations, Guarantees and Promises**

arising out of or resulting from:

1. breach of any express warranty or representation except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards; or

2. a demand for satisfaction of or breach of guarantee or any promises including, without limitation, cost savings, cost of construction, maximum construction price, financing, profits, or return on investment.

H. **Faulty Workmanship**

under Insuring Clause I.A.1 arising out of the cost to repair or replace any faulty workmanship performed in whole or in part by any **Insured** on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including any materials, parts, labor or equipment furnished in connection with such repair or replacement.

I. **Employers Liability and Workers Compensation**

for or arising out of or resulting from:

1. **Bodily Injury** to any employee of the **Named Insured** arising out of and in the course of employment by the **Named Insured**;

2. the **Named Insured's** employment obligations, decisions, practices or policies as an employer; or

3. any obligation which the **Insured** or any carrier as insurer may be liable under any workers compensation, unemployment compensation or disability benefits law or similar law.

J. **Property Liability**

arising out of or resulting from the **Insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation of any real or personal property including without limitation, automobiles, aircraft, watercraft and other kinds of conveyances.

K. **Products Liability**

arising out of or resulting from the design or manufacture of any goods or products for multiple sales or mass distribution which are sold or supplied by the **Insured** or by others under license from the **Insured**; provided, that this exclusion shall not apply to any **Claim** which is covered pursuant to Insuring Clause I.A.4 of this Policy.

L. **Transportation, Shipment or Delivery of Waste, Products or Materials**

under Insuring Clause I.A.2 arising out of or resulting from any waste or any products or materials transported, shipped or delivered via watercraft, aircraft, motor vehicle, mobile equipment or rolling stock to a location beyond the boundaries of a site at which **Professional Services** are being rendered or **Contracting Services** are being performed.

M. **Property Damage to Named Insured's Work and Products**

under Insuring Clause I.A.2 for any **Property Damage**:

1. to work performed by or on behalf of the **Named Insured** resulting from the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith; or

2. to any goods or products which are sold or supplied by the **Insured** or by others under license from the **Insured** resulting from such goods or products or any portion thereof.

VII. EXCLUSIONS APPLICABLE TO INSURING CLAUSES I.A.3., I.A.4., I.A.5., I.A.6. and I.B.

The coverage under Insuring Clauses I.A.3., I.A.4., I.A.5., I.A.6. and I.B. of this Policy does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim** or to any **Privacy Breach Response Services**:

A. **Contractual Liability**

For, arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written; provided, that this exclusion will not apply to:

1. an otherwise covered **Claim** under Insuring Clauses I.A.3 and I.A.4.;

2. only with respect to coverage provided under Insuring Clause I.A.5.B., to any obligation of the **Named Insured** to maintain the confidentiality or security of **Personally Identifiable Information** or of **Third Party Information;**

3. with respect to Insuring Clause I.A.6.:

   a. liability **Assumed Under Contract**; or

   b. misappropriation of ideas under an implied contract;

4. to computer expert services or legal services covered under Insuring Clause B.1. and B.2.; or

5. to the extent the Insured would have been liable in the absence of such contract or agreement.

B. **Business Risks**

for or arising out of or resulting from:

1. inaccurate, inadequate or incomplete description of the price of goods, products or services;

2. cost guarantees, cost representations, or contract price estimates of probable costs or cost estimates actually or allegedly being exceeded;

3. the failure of goods, products, or services to conform with any represented quality or performance contained in **Advertising**; or

4. any actual or alleged gambling, contest, lottery, promotional game or other game of chance.

C. **Licensing Fees and Royalty Payments**

arising out of or resulting from any actual or alleged obligation to make licensing fee or royalty payments, including but not limited to the amount or timeliness of such payments.

D. **Reprinting, Recall, Removal, Disposal, Withdrawal, Inspection, Repair, Replacement, Reproduction Costs and Expenses**

for or arising out of or resulting from any costs or expenses incurred or to be incurred by the **Insured** or others for:

1. the reprinting, recall, removal or disposal of any **Media Material**, including any media or products containing such **Media Material**; or

2. the withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of:

   a. **Technology Products**, including any products or other property of others that incorporate **Technology Products**;

   b. work product resulting from or incorporating the results of **Technology Based Services**; or

   c. any products or other property on which **Technology Based Services** are performed;

provided, that this exclusion shall not apply to **Claims** for the resulting loss of use of such **Media Material** or **Technology Products**, or loss of use of the work product resulting from such **Technology Based Services**.

E. **Electrical and Telecommunications Failure and Malfunction and Force Majeure**

arising out of, resulting from or alleging:

1. any failure or malfunction of electrical or telecommunications infrastructure or services, unless under the **Named Insured's** operational control; or

2. fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of God or other physical or force majeure event.

F. **Antitrust**

for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, violation of the Sherman Antitrust Act, the Clayton Act, the Robinson-Patman Act, as amended, or any similar law or

legislation of any state, province or other jurisdiction, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive or misleading advertising.

G. **Federal Trade Commission and Federal Communications Commission**

brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any similar governmental entity, in such entity's regulatory or official capacity.

H. **Intellectual Property**

for, arising out of or resulting from any actual or alleged:

1. infringement of copyright or misappropriation of trade secret arising out of or related to **Technology Products**; or

2. disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person prior to the date he or she became an employee, officer, director, principal or partner of the **Named Insured**.

I. Only with respect to Insuring Clauses I.A.5. and I.B., for, arising out of or resulting from:

1. the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Information** or other personal information by, on behalf of, or with the consent or cooperation of the **Named Insured**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **Personally Identifiable Information**.

VIII. LIMIT OF LIABILITY

A. The Limit of Liability stated in Item 3.(a) of the Declarations for each **Claim** is the aggregate limit of the Underwriters liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.

B. The sublimit stated in Item 3.(b) of the Declarations is the aggregate sublimit of liability payable under Insuring Clause I.B. of this Policy and is part of, and not in addition to, the Policy Aggregate Limit of Liability stated in Item 3.(c).

C. The Aggregate for the **Policy Period** stated in Item 3.(c) of the Declarations is the Underwriters combined total Limit of Liability for all **Damages**, **Claims Expenses** and **Privacy Breach Response Services** arising out of all **Claims** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one

Insured under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.

D. The Underwriters' maximum aggregate Limit of Liability with respect to all **Claims** brought by or on behalf of or in the name or right of or involving the same claimant on a single project or related projects shall not exceed the Each **Claim** Limit of Liability stated in Item 3.(a) of the Declarations.

E. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.

F. The Underwriters shall not be obligated to provide **Privacy Breach Response Services** after the sublimit stated Item 3.(b) of the Declarations has been exhausted by payment of **Privacy Breach Response Services**.

G. Unless otherwise specific in this Policy, **Privacy Breach Response Services** will be provided by the services providers listed in the Information Packet. In the event a service provider is unable or does not provide the services set forth, the Underwriters will procure similar services from other sources.

IX. DEDUCTIBLE

A. The Each **Claim** Deductible stated in Item 4.(a) of the Declarations applies separately to each **Claim**. The Each **Claim** Deductible shall be satisfied by uninsured monetary payments by the **Named Insured** of **Damages** and **Claims Expenses** resulting from **Claims** first made during the **Policy Period** and the **Optional Extension Period** (if applicable) and reported to the Underwriters pursuant to the terms of this Policy. .

B. For all **Privacy Breach Response Services** the Deductible amount stated in Item 4.(b) of the Declarations applies separately to each incident, event or related incidents or events, giving rise to an obligation to provide **Privacy Breach Response Services** and shall be satisfied by monetary payments by the **Named Insured** for such services.

C. If the **Insured** and the Underwriters agree to use **Mediation** and the **Claim** is fully and finally resolved through the use of **Mediation**, the Insured's Deductible obligation shall be reduced by fifty percent (50%) of the Each **Claim** Deductible, up to $25,000 for such **Claim**.

D. If the **Insured** and the Underwriters agree to fully and finally resolve a **Claim** within six (6) months of when the **Claim** is first made against the **Insured,** the **Insured's** Deductible obligation shall be reduced by fifty percent (50%) of the Each **Claim** Deductible, up to $25,000 for such **Claim**. The total credit applied to the **Insured's** Each **Claim** Deductible under Clause IX.C. and IX.D. for any **Claim** shall not exceed fifty percent (50%) or $25,000.

E. Satisfaction of the applicable Deductible is a condition precedent to the payment by the Underwriters of any amounts or providing any services hereunder, and the Underwriters shall be liable only for the amounts in excess of such Deductible subject to the Underwriters' total liability not exceeding the Limits of Liability stated in Item 3. of the Declarations. The **Named Insured** shall make direct payments within the Each **Claim** Deductible to appropriate other parties designated by the Underwriters.

Any payments by the **Named Insured** in satisfaction of its deductible obligations under any other valid and collectible insurance shall not satisfy the Each **Claim** Deductible under this Policy.

X. INNOCENT INSURED

A. Whenever coverage under this Insurance would be excluded, suspended or lost because of Exclusion VI.A relating to criminal, dishonest, intentional, fraudulent, malicious, willful or knowing acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof, then the Underwriters agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in Exclusion VI.A.

This provision is inapplicable to any **Claim** or **Circumstance** against the **Named Insured** arising from acts, errors or omissions known to any present or former principal, partner, director or officer of the **Named Insured**.

B. With respect to this provision, the Underwriters obligation to pay in such event shall only be in excess of the full extent of any recoverable assets of any **Insured** to whom Exclusion VI.A. applies and shall be subject to the terms, conditions and limitations of this Policy.

XI. NOTICE OF CLAIM OR CIRCUMSTANCE

A. If any **Claim** is made against an **Insured**, the **Insured** shall forward as soon as practicable to the Underwriters through the persons named in Item 10.(a) of the Declarations written notice of such **Claim** in the form of a facsimile, email or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative, but in no event later than sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period**, if purchased.

B. If after the Knowledge Date set forth in Item 7 of the Declarations any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first becomes aware of any **Circumstance** and gives written notice to the

Insurer in the form of a facsimile, email or express or certified mail through persons named in Item 10.(a) of the Declarations as soon as practicable during the **Policy Period** of:

1. the specific details of the act, error or omission or **Pollution Condition** in the provision of **Professional Services**, **Contracting Services**, **Media Activities** or **Technology Based Services** or relating to **Technology Products** that gave rise to the **Circumstance**;

2. the injury or damage which may result or has resulted from the **Circumstance**; and

3. the facts by which such director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first became aware of the act, error or omission or **Pollution Condition**

then any subsequent **Claim** made against the **Insured** arising directly out of such **Circumstance** which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the Underwriters.

C. A **Claim** shall be considered to be reported to the Underwriters when written notice is first received by the Underwriters in the form of a facsimile, email or express or certified mail through persons named in Item 10.(a) of the Declarations of the **Claim** or of a **Circumstance** if provided in compliance with Clause B. above.

D. With respect to Insuring Clause I.B., for a legal obligation to comply with a **Breach Notice Law** because of an incident (or reasonably suspected incident) described in Insuring Clauses I.A.5.B., such incident or reasonably suspected incident must be reported as soon as practicable during the **Policy Period** after discovery by the **Insured**.

XII. OPTIONAL EXTENSION PERIOD

A. If this Policy is cancelled or non-renewed by the Underwriters or by the **Named Insured**, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 9.(a) of the Declarations of the total premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the period of time set forth in Item 9.(b) of the Declarations after the end of the **Policy Period**, but only with respect to any act, error or omission or **Pollution Condition** committed or arising on or after the Retroactive Date and before the effective date of cancellation or non-renewal.

B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right

to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to the Underwriters within sixty (60) days after the effective date of cancellation or non-renewal. If such notice and premium payment is not so given to the Underwriters, there shall be no right to purchase the **Optional Extension Period**.

C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.

D. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.

E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause XIII.

XIII. REPRESENTATIONS

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Underwriters, and that this Policy is issued in reliance upon the truth thereof.

XIV. OTHER INSURANCE

This Insurance shall apply in excess of:

A. any other valid and collectible insurance available to any **Insured**, including, but not limited to, any project specific professional liability and/or contractors pollution liability insurance; and

B. any self insured retention or deductible portion thereof

unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

XV. ASSIGNMENT

The interest hereunder of any **Insured** is not assignable. If an **Insured** shall die or be adjudged incompetent, such insurance shall cover that **Insured's** legal representative as the **Insured** as would be permitted by this Policy.

XVI. CANCELLATION AND NONRENEWAL

A. The **Named Insured** may cancel this Policy by surrender thereof to the Underwriters, or by mailing to the Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in

the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.

B. The Underwriters may cancel this Policy by mailing or delivering to the **Named Insured** at the address shown in the Declarations written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Underwriters cancel this Policy because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by the Underwriters by mailing or delivering a written notice of cancellation to the **Named Insured** at the address shown in the Declarations stating when not less than ten (10) days thereafter such cancellation shall be effective. The notice of cancellation shall state the reason for cancellation. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Underwriters shall be equivalent to mailing

C. If this Policy is cancelled pursuant to A. hereinabove, the Underwriters shall retain the customary short rate portion of the premium hereon. If this Policy is cancelled pursuant to B. hereinabove, the Underwriters shall retain the pro rata portion of the premium hereon. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation.

D. If the Underwriters decide not to renew this Policy, the Underwriters shall mail or deliver written notice to the **Named Insured** at the address shown in the Declarations at least sixty (60) days before the end of the **Policy Period**. The notice of nonrenewal shall state the reason for nonrenewal.

XVII. MERGERS AND ACQUISITIONS

A. If during the **Policy Period**, the **Named Insured** acquires another entity for whom more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured**, then no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any act, error or omission or **Pollution Condition**, whether committed or arising either before or after such acquisition:

1. by the acquired entity or any person employed by the acquired entity; or

2. involving or relating to the assets, liabilities, or **Computer Systems** of the acquired entity.

The foregoing provision shall not apply if the **Named Insured** gives the Underwriters written notice within sixty (60) days after the effective date of the acquisition, obtains the written consent of the Underwriters to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by the Underwriters.

B. If during the **Policy Period** the **Named Insured** consolidates or merges with another entity such that the **Named Insured** is not the surviving entity, is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall not apply to acts, errors, omissions or other breach or **Pollution Conditions** committed or arising subsequent to such consolidation, merger or acquisition. The **Named Insured** shall provide written notice of such consolidation, merger or acquisition to the Underwriters as soon as practicable, together with such information as the Underwriters may require.

C. All notices and premium payments made under this section shall be directed to the Underwriters through the entity named in Item 9.(b) of the Declarations.

XVIII. ASSISTANCE AND COOPERATION OF THE INSURED

The **Insured** shall cooperate with the Underwriters in all investigations, including investigations regarding the **Application** for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters exposure under the Policy.

Upon the Underwriters request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of acts, errors or omissions or **Pollution Conditions** with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Underwriters.

Except as provided for in Clause II.B., expenses incurred by the **Insured** in assisting and cooperating with the Underwriters, as described above, do not constitute **Claims Expenses** and are not reimbursable under the Policy.

XIX. ACTION AGAINST THE UNDERWRITERS

No action shall lie against the Underwriters unless, as a condition precedent thereto, the **Insured** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Underwriters. Nothing contained herein shall give any person or organization any right to join the Underwriters as a party to any **Claim** against the **Insured** to determine their liability, nor shall the Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**.

XX. SUBROGATION

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. The Underwriters agrees to waive its rights of recovery against any client of the **Named Insured** for a **Claim** which is covered pursuant to Insuring Clause I.A.1. and/or I.A.2 of this Policy to the extent the **Named Insured** had, prior to such **Claim**, a written agreement to waive such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages**, **Claims Expenses** and **Privacy Breach Response Services** paid by the Underwriters, and third to the Each **Claim** Deductible or Each Incident Deductible (as applicable). Any additional amounts recovered shall be paid to the **Named Insured**.

XXI. ENTIRE AGREEMENT

By acceptance of this Policy, all **Insureds** agree that this Policy embodies all agreements existing between them and the Underwriters relating to this Insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Underwriters from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy, signed by the Underwriters.

XXII. VALUATION AND CURRENCY

All premiums, limits, deductibles, **Damages** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Damages** under this Policy is stated in a currency other than United States dollars or if **Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Damages** is due or the date such **Claims Expenses** are paid.

XXIII. BANKRUPTCY

Bankruptcy or insolvency of the **Insured** shall not relieve the Underwriters of their obligations nor deprive the Underwriters of its rights or defenses under this Policy.

beazley

XXIV. AUTHORIZATION

By acceptance of this Policy, the **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XXV. HEADINGS

The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

Effective date of this Endorsement: 06-May-2023
This Endorsement is attached to and forms a part of Policy Number: C1875F220901
Beazley America Insurance Company, Inc. referred to in this endorsement as either the "Insurer" or the "Underwriters"

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER

This endorsement modifies insurance provided under the following:

AFB A&E MEDIA TECH® POLICY

In consideration of the premium charged for the Policy, it is hereby understood and agreed that in addition to the provisions of Clause **XVI. CANCELLATION AND NONRENEWAL** B., if this Policy is cancelled by the Underwriters, the Underwriters will provide thirty (30) days written notice, but ten (10) days written notice in the event the **Insured** has failed to pay a premium when due, to the following persons and/or entity(ies):

City of Tyler
PO Box 2039
Tyler, TX 75710

All other terms and conditions of this Policy remain unchanged.

Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

Policy Number: 46 WBC AP2207 **Endorsement Number:**
Effective Date: 05/06/23 Effective hour is the same as stated on the Information Page of the policy.
Named Insured and Address: ELLEDGE ENGINEERING CORPORATION
PO BOX 7110
TYLER TX 75711

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ( ) Special Waiver
   Name of person or organization

   (X) Blanket Waiver
   Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:
   All Texas Operations

3. Premium:
   The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium:

THE HARTFORD
BUSINESS SERVICE CENTER
3600 WISEMAN BLVD
SAN ANTONIO TX 78251

June 6, 2023

INSURICA TX INSURANCE SERVICES INC / 46504804
4802 KINSEY DRIVE
TYLER TX 75703

Policy Information:

Policy Holder Details:	**ELLEDGE ENGINEERING CORPORATION** **PO BOX 7110** **TYLER TX 75711**
Policy Number:	**46 WBC AP2207**

You can find information about your client's policy enclosed. You can also find this info online at https://agency.thehartford.com.

If you have any questions or concerns about what you see, contact us at any of the options listed on this page.

Thanks for choosing us for your business insurance needs.

Sincerely,
The Hartford

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTOMATED POLICY CHANGE ENDORSEMENT - TEXAS

INSURER: Hartford Fire Insurance Company
NCCI Company Number: 13269
Policy Effective Date: 05/06/23
Policy Number: 46 WBC AP2207
Effective Date: 06/01/23
Named Insured and Address: ELLEDGE ENGINEERING CORPORATION
PO BOX 7110
TYLER TX 75711

Audit Period: ANNUAL
Policy Expiration Date: 05/06/24
Endorsement Number: 1
Effective hour is the same as stated on the Information Page of the policy.

FEIN Number: 01-1702464
Producer Name: INSURICA TX INSURANCE SERVICES INC **Producer Code:** 46504804
It is agreed that the policy is amended as follows:

This is NOT a bill. However, any changes in your premium will be reflected in your next billing statement. You will receive a separate bill from The Hartford. If you are enrolled in repetitive EFT draws from your bank account, changes in premium will change future draw amounts.

In consideration of no change in premium, it is agreed that:

Policy is amended to add the following condition(s):

Notice of Cancellation to Certificate Holders - Specific

Policy is amended to add the following Endorsement Forms reflecting the changes made to your policy.

WC420601
WC990661

TX

The endorsement will not be used to change the language of the policy forms (or rules) the Commissioner has prescribed to be used for Workers Compensation in Texas.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS NOTICE OF MATERIAL CHANGE ENDORSEMENT

Policy Number: 46 WBC AP2207 **Endorsement Number:** 1
Effective Date: 06/01/23 Effective hour is the same as stated on the Information Page of the policy.
Named Insured and Address: ELLEDGE ENGINEERING CORPORATION
PO BOX 7110
TYLER TX 75711

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

In the event of cancellation or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

1. Number of days advance notice: 30
2. Notice will be mailed to:

   CITY OF TYLER

   212 North Bonner Tyler, TX 75702

Countersigned by _____
Authorized Representative

Exhibit E - Certificate of Interested Parties (Form 1295)

(If Required)

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.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY
CERTIFICATION OF FILING

Certificate Number:
2023-1015868

Date Filed:
05/03/2023

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Elledge Engineering Corporation
Tyler, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Tyler

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

FM 756 Utility Relocates
Preliminary, Design, Bid and Construction Phase Engineering Services

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Elledge, Phil	Tyler, TX United States	X	

5 Check only if there is NO Interested Party. ☐

6 UNSWORN DECLARATION

My name is Phil Elledge, and my date of birth is 05-01-1959.

My address is 633 Whiteoak Lane (street), Tyler (city), Texas (state), 75703 (zip code), USA (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Smith County, State of Texas, on the 3 day of May (month), 20 23 (year).

Phil Elledge

Signature of authorized agent of contracting business entity
(Declarant)

Exhibit F - Procedure for Correcting Construction Defects

Check Here if this Section IS Applicable to This Contract ☐

****ONLY APPLICABLE FOR CONSTRUCTION ACTIVITIES AFFECTING CITY-OWNED BUILDINGS AND OTHER PUBLIC WORKS PROJECTS AS DEFINED IN TEX. GOV. CODE ANN., SEC. 2269.001 (6)****

EXHIBIT F is not applicable to "civil works" projects as defined in Tex. Gov. Code Ann., Sec. 2269.351

I. DEFINITIONS

A. **"Public Works"** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.001 (6), are those related to constructing, altering, or repairing a public building or carrying out any public work.

B. **"Civil works"** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.351 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.

II. NOTIFICATION OF DEFECT

A. **ENGINEER/ARCHITECT SHALL NOTIFY OWNER IN WRITING OF ANY CONSTRUCTION DEFECT** of which the ENGINEER/ARCHITECT is aware, and which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning or supervision of the construction that is a result of:

i. The use of defective materials, products, or components in the construction;
ii. A violation of a building code applicable by law to the construction;
iii. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or
iv. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

B. The E/A's writing shall identify the specific construction defect, describe the present physical condition of the affected structure; and describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

III. PROCEDURE TO CORRECT CONSTRUCTION DEFECTS

A. Before bringing an action asserting a claim for a construction defect under this Agreement, the OWNER must provide a written report to each party with whom the OWNER has a contract for the design, construction or construction oversight of an affected structure by certified mail, return receipt requested.

i. The report shall clearly identify the specific construction defect(s) on which the claim is based, which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning, or supervision of the construction that is a result of:
   a. The use of defective materials, products, or components in the construction;
   b. A violation of a building code applicable by law to the construction;

c. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or

d. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

iii. The report shall clearly:

a. Identify the specific construction defect on which the claim is based;

b. Describe the present physical condition of the affected structure; and

c. Describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

B. OWNER shall allow each party with whom the OWNER has a contract for the design or construction of an affected structure and who is subject to the claim, and any known subcontractor or supplier who is subject to the claim a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after receiving the report.

C. OWNER shall allow at least 120 days after the inspection to:

i. Correct any construction defect or related condition identified in the report; or

ii. Enter into a separate agreement with the governmental entity to correct any construction defect or related condition identified in the report.

D. OWNER is not required to allow a party to make a correction or repair under Subsection II.A. if:

i. the party:

a. Is a contractor and cannot provide payment and performance bonds to cover the corrective work;

b. Cannot provide liability insurance or workers' compensation insurance;

c. Has been previously terminated for cause by OWNER; or

d. Has been convicted of a felony; or

ii. OWNER previously complied with the process required by Subsection II.A. regarding a construction defect or related condition identified in the report and:

a. The defect or condition was not corrected as required by Subsection II.C.i. or by an agreement under Subsection II.C.ii.; or

b. The attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.

E. Recovery of Report Costs. If the report described in Subsection II.A. identifies a construction defect that is corrected or for which the OWNER recovers damages, the party responsible for that construction defect shall pay the reasonable amounts incurred by OWNER to obtain the report with respect to identification of that construction defect.

F. These provisions do not prohibit or limit the OWNER from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public or a building occupant.