CITY COUNCIL AGENDA

Wednesday, November 13, 2024
9:00 am

CITY OF TYLER
A Natural Beauty

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

CITY COUNCIL MEETING AGENDA

CITY COUNCIL CHAMBERS - CITY HALL

City Hall, City Council Chambers
212 N. Bonner Avenue, 2nd Floor
Tyler, Texas
Follow us on Facebook Live at:
https://www.facebook.com/CityofTylerTexas/
Wednesday, November 13, 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, please fill out the information on the IPAD located outside the Council Chambers. Speakers will be heard as the individual item(s) in which they have registered an interest come before the Council. Your remarks will be limited in duration depending on the number of people wanting to speak on a particular item. Comments to the City Council should only be made from the podium. This will ensure that the comments are picked up by the microphones and are made a part of the official record. Delay or interruption of the proceedings will not be tolerated.

INVOCATION

PLEDGE OF ALLEGIANCE

MINUTES

Request that the City Council consider approving the following sets of minutes of the City Council of the City of Tyler, Texas.

August 14, 2024 - City Council Boards & Commissions Training Session
August 28, 2024- City Council Regular Called City Council Meeting Minutes
August 28, 2024 - City Council Boards & Commissions Training Session

PRESENTATION

P-1 Request that the City Council consider receiving an annual presentation by Visit Tyler.

ZONING

Z-1 PD24-023 COPPER RIDGE II LLC (6951-6959 ARBOR RIDGE DRIVE AND 6865 OAK HILL BOULEVARD)
Request that the City Council consider adoption of an Ordinance approving a 'PMXD-1', Planned Mixed Use District-1 final site plan amendment.

Z-2 C24-008 THE GARDENS (TWO ALLEY RIGHTS-OF-WAY)
Request that the City Council consider adoption of an Ordinance approving the closure of two alley rights-of-way located between West Ferguson Street and West Erwin Street.

Z-3 PD24-024 THE GARDENS AT WEST OAK (710, 714, 718, 728, 730, 802, AND 812 WEST FERGUSON STREET AND 717, 725, 729, 823 AND 829 WEST ERWIN STREET)
Request that the City Council consider adoption of an Ordinance approving a zone change from 'DBAC', Downtown Business, Arts and Culture District and 'M-1', Light Industrial District to 'PMXD-2', Planned Mixed Use District-2 with a final site plan.

Z-4 Z24-033 GARRETT NEWMAN (2714 AND 2716 CALLOWAY ROAD)
Request that the City Council consider adoption of an Ordinance approving a zone change from 'R-1A', Single-Family Residential District to 'R-1B', Single-Family Residential District.

Z-5 Z24-034 GARRETT NEWMAN (2508 CALLOWAY ROAD)
Request that the City Council consider adoption of an Ordinance approving a zone change from 'R-1A', Single-Family Residential District to 'R-1B', Single-Family Residential District.

RESOLUTION

R-1 Request that the City Council consider adopting a Resolution authorizing the City

Manager, or the City Manager's Designee, as the designated representative of the City of Tyler, to execute Advanced Funding Agreements (AFA) with the Texas Department of Transportation (TxDOT) for multiple Highway Safety Improvement Program (HSIP) Projects.

ORDINANCE

O-1 Request that the City Council consider adoption of an Ordinance amending Tyler City Code Chapter 3, Civil Service Classification Plan by amending the Civil Service Classification Plan and the number of authorized Civil Service positions for Fiscal Year 2024-2025.

O-2 Request that the City Council consider conducting the annual investment policy review and consider adoption of an ordinance amending Tyler City Code Chapter 2 by adopting the investment policy.

MISCELLANEOUS

M-1 Request that the City Council consider reviewing and accepting the Revenue and Expenditure Report for the period ending September 30, 2024.

M-2 Request that the City Council consider authorizing the City Manager to execute a Capital Improvement Project (CIP) construction contract with Baker & Company Construction, LLC, for the West Mud Creek, Tributary A (Glenwood Church of Christ) Erosion Remediation project, Bid No. 24-036, for $3,388,043.00.

M-3 Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed $4,177,105, with KSA Engineers, Inc. for the Consent Decree Capacity Work Group 3 Design.

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 purchase two fire trucks and sign documents to enter into a five-year capital lease program for the acquisition of one (1) Pierce Pumper $935,838.63 and one (1) ariel $1,685,321.99, plus a $2000.00 HGAC fee for a total purchase cost of $2,623,160.62 from Siddons Martin HGAC Contract # FS12-23.

C-A-2 Request that the City Council consider approving the Reconciliation Order and retainage in the amount of $9,112.99 to Reynolds & Kay, LTD for the 2024 Seal Coat Project.

C-A-3 Request that the City Council consider authorizing the City Manager to declare certain designated vehicles as surplus and ready to be auctioned.

C-A-4 Request that the City Council consider authorizing the City Manager to approve Addendum #1 to existing contract with Token Transit over the life of the five (5) year contact for reoccurring fees at $20,900 per year, for a total of $104,500. Staff is also recommending the purchase of an additional thirteen (13) Token validators at a

cost of $47,600, for a total cost of $68,500 the first year of the amended contract. Any additional validators will cost $4,400 each the first year of the purchase and installation.

C-A-5 Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional engineering services with Yvonne Newman Engineering, Inc. to provide engineering services.

C-A-6 Request that the City Council consider authorizing the City Manager to execute a Work Order No. 2 with Kimley-Horn and Associates, Inc., for engineering services, related to the City of Tyler's Traffic Management Center, for a cost not to exceed $150,000.00.

C-A-7 Request that the City Council consider reviewing and accepting the Investment Report for the quarter ending September 30, 2024.

C-A-8 Request that the City Council consider authorizing the City Manager to purchase the City vehicles and equipment identified from the recommended bidders.

C-A-9 Request that the City Council consider approving the 2024 Certified Property Tax Roll.

C-A-10 Request that the City Council consider authorizing the City Manager to execute Work Order No. 1 with WSB LLC, for engineering services related to the Highway Safety Improvement Program 2023 Pedestrian Signal Improvement Project, with a cost not to exceed $119,000.00.

C-A-11 Request that the City Council consider authorizing the City Manager to execute a contract with Morton Enterprise for the construction of the 2025 Asphalt Crack Seal Project in the amount of $314,719.00.

C-A-12 Request that the City Council consider authorizing the City Manager to approve a Reconciliation change order in the amount of $143,660.20 and approve the release retainage in the amount of $86,966.51 to Fritcher Construction Services for the completion of the Stagecoach Drive Drainage Improvements Project.

C-A-13 Request that the City Council consider authorizing the City Manager to execute and add Work Order #02 to the Master Services Agreement with The C.T. Brannon Corporation for the design and construction phase services, as they relate to the 2025 Structure Flooding project for $210,100.00.

C-A-14 Request that the City Council consider authorizing the City Manager to ratify a reconciliation change order that will decrease the contract amount by $210,626.58 and the release of final retainage payment in the amount of $30,105.16 to A.E. Shull and Company for the construction of the John Soules Food Waterline Extension Project.

C-A-15 Request that the City Council consider authorizing the City Manager to execute a contract for the 2024 Pedestrian Access project, Tyler Bid Number: 24-038, totaling $272,220.00 to Cross Plus Construction, LLC.

C-A-16 Request that the City Council consider authorizing the City Manager to execute a contract amendment for the Greenbriar Sliplining engineering agreement with KSA Engineers, Inc. in the amount of $40,000 for additional Right-of-Way Agent services.

C-A-17 Request that the City Council consider authorizing the City Manager to purchase playground equipment for two of the parks through the Buy Board Purchasing Cooperative from Kraftsman Commercial Playgrounds & Water Parks in the amount of $110,400.

C-A-18 Request that the City Council consider authorizing the City Manager to approve Preferred On Site repair service as the primary vendor for welding services, Burns Welding and Fabrication as a secondary vendor for welding service, and award Platinum Auto Glass as the primary vendor for auto glass installation for sealed bid 25-001.

C-A-19 Request that the City Council consider authorizing the City Manager to award Crow Towing as the primary vendor for towing services for Vehicle Services per bid 25-002 Annual Price Agreement for Wrecker Services.

C-A-20 Request that the City Council consider authorizing the capital expenditure of $57,070.00 to Pump Solutions, Inc. New Caney, Texas, for replacement of one (1) 107 HP submersible pump at Shackleford Creek sanitary sewer lift station.

C-A-21 Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by $121,525.28 and the release of final retainage payment in the amount of $227,493.04 to King Solution Services, LLC for Consent Decree Group 5 Pipeburst Rehabilitation, Bid 23-016

C-A-22 Request that the City Council consider authorizing the City Manager to ratify an expenditure in the amount of $56,650.00 to Walker Process Equipment for the purchase of a new primary clarifier gear drive unit at the Westside Wastewater Treatment Plant.

C-A-23 Request that the City Council consider authorizing the City Manager to enter into an agreement with Northchase Development LLC to reimburse costs (not to exceed $1,000,000) associated with East Maple Estates Unit 1 infrastructure improvements in conjunction with the adopted TIRZ #3 Project and Financing Plan.

C-A-24 Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by $413,748.03 and the release of final retainage payment in the amount of $98,049.20 to Douglas Daily Construction, LLC for Consent Decree Group 4 Mainline Specialty Pipeburst, Bid 22-014.

C-A-25 Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed $371,300, with KSA Engineers, Inc. for the 2024 Sanitary Sewer Reroutes.

C-A-26 Request that the City Council consider ratifying staff action requesting the City Manager to sign a Pipeline Crossing Agreement with the Union Pacific Railroad

(UPRR) Company for constructing a sanitary sewer pipeline within Union Pacific Railroad right-of-way and payment of the License Fee in the amount of $21,460.

C-A-27 Request that the City Council consider authorizing the City Manager to sign a Union Pacific Rail Road permit associated with the 2024 Water Main Improvements (2-Inch Replacement) project and issue payment for $7,000 for the permit.

CITY MANAGER'S REPORT

ADJOURNMENT

MINUTES OF A TRAINING WORK SESSION FOR BOARDS AND COMMISSION TRAINING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
August 14, 2024

A called training/work session for boards and commission training of the City Council of the City of Tyler, Texas, was held Wednesday, August 14, 2024, at 9:00 a.m. or immediately following the regularly scheduled City Council meeting at City Hall in the City Manager's Conference Room, 2nd floor of City Hall, Tyler, Texas, with the following present:

Mayor:	Don Warren
Mayor Pro Tem:	Stuart Hene
Councilmembers:	Brad Curtis
	Shirley McKellar
	Petra Hawkins
	James Wynne
	Lloyd Nichols
City Manager:	Edward Broussard
Deputy City Manager:	Stephanie Franklin
Asst. City Manager:	Heather Nick
City Attorney:	Deborah G. Pullum
Senior Asst. City Attorney:	Alesha Buckner
Police Chief:	Jimmy Toler
Director of Parks & Recreation:	Leanne Robinette
Legal Assistant:	Chris Cambra
City Clerk:	Cassandra Brager
Citizen:	Alex De Ravel

1. Call Meeting to order – Mayor called the meeting to order at 10:06 am.
2. Conduct a Work and Training Session to provide the newly elected and current City of Tyler Council members with information regarding the process for appointing and/or reappointing members to the various City boards.

   Cassandra Brager, City Clerk- Explained the process for appointing, re-appointing, and recruiting members to the boards.

   Debra Pullum, City Attorney, and Stephanie Rollings, Deputy City Attorney – Gave an explanation for the specific technical expertise required to serve on some of the boards.

3. As part of the Work and Training Session, discuss and review the Board Applications for the various City boards. **The City Council will not take any official action on Board Applications during this meeting.**

   Cassandra Brager, City Clerk – Presented City Council with a list of names from applications received.

   Leanne Robinette, Director of Parks & Recreation- Gave a recommendation of Trey Poppell, Jamie Cooper and Alondra Rosales for the Keep Tyler Beautiful Board. Leanne also gave a recommendation for Christi Khalaf and Sherry Woods for the

Parks Board.

Heather Nick, Asst. City Manager- Recommended Roy Martinez for the Planning & Zoning Commission.

4. Adjourn – Mayor Warren adjourned the meeting at 10:47 am

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

A T T E S T:

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CASSANDRA BRAGER, CITY CLERK

MINUTES OF THE REGULAR CALLED MEETING OF
THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
August 28, 2024

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, August 28, 2024 at 9:00 a.m. in the City Council Chambers, 2nd floor of City Hall, Tyler, Texas, with the following present:

Mayor:	Don Warren
Mayor Pro Tem:	Stuart Hene
Councilmembers:	Brad Curtis (absent)
	Shirley McKellar (absent)
	Petra Hawkins
	James Wynne
	Lloyd Nichols
City Manager:	Edward Broussard
Deputy City Manager:	Stephanie Franklin
Asst. City Manager:	Heather Nick
City Attorney:	Deborah G. Pullum
Director of Organizational Development:	Regina Y. Moss
Main Street Director:	Amber Varona
Planning Director:	Kyle Kingma
Chief Financial Officer:	Keidric Trimble
City Fire Chief:	David Coble
Police Chief:	Jimmy Toler
City Engineer:	Darin Jennings
Director of Utilities:	Kate Dietz
Director of Parks & Recreation:	Leanne Robinette
Director of Solid Waste, Transit:	Leroy Sparrow
Senior Management Analyst:	Blake Cathey
Transit Manager:	Russ Jackson
City Clerk:	Cassandra Brager

INVOCATION

The Invocation was given by Councilmember Nichols.

MINUTES

Motion by Councilmember Wynne to approve the July 10, 2024 minutes; seconded by Mayor Pro Tem Hene; motion carried 5 - 0 & approved as presented.

AWARDS

Request that the City Council consider recognizing the following employees for their years of service and commitment to the City of Tyler.

They represent 135 years of service with the City of Tyler.

James Holt, Police Officer XIV, 30 years of service,
Lance Parks, Police Officer XIV, 30 years of service,
Ronny Tekell, Police Officer XIV, 30 years of service
Theofalus Ross, Streets, Crew Leader, 25 years of service,

Michael Schaub, Wastewater Treatment Superintendent, 20 years of service

ZONING

Z-1 **Z24-025 SPRING RJP OPERATIONS, LLC (501 AND 503 SOUTH SPRING 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. (O-2024-81)

Motion by Councilmember Hawkins; seconded by Councilmember Wynne; motion carried 5 - 0 & approved as presented.

Z-2 **Z24-026 CARLA OCAMPO (1511 WEST ERWIN STREET)**
Request that the City Council consider adoption of an Ordinance approving a zone change from 'M-1', Light Industrial District to 'PMXD-1', Planned Mixed-Use District-1 with written narrative. (Mayor Warren, Councilmember Hene and Wynne opposed)

Motion by Councilmember Nichols; seconded by Councilmember Hawkins; motion carried 3 - 2 & denied as presented.

Z-3 **S24-006 TOWNSQUARE MEDIA TYLER LLC (3810 BROOKSIDE DRIVE)**
Request that the City Council consider adoption of an Ordinance approving the Special Use Permit to allow for a radio tower up to 150 feet in height in the previous location of a radio tower or elsewhere on the property. **(O-2024-82)**

Motion by Mayor Pro Tem Hene but with the amendment of stating up to 80 feet, instead of the up to 150 feet.; seconded by Councilmember Wynne; motion carried 5 - 0 & approved as presented.

HEARING

H-1 **Request that the City Council consider conducting a public hearing on the proposed Fiscal Year 2024-2025 Annual Budget and on the proposed property tax rate of $0.240085 per $100 of taxable property value.**

City Manager, Edward Broussard – Gave a brief update on the proposed Fiscal year 2024-2025 Annual Budget and the proposed property tax rate of $o.240085 per $100 of taxable property value.

Mayor Warren opened the public hearing at 9:32 a.m.

Michael Cleghorn, 3302 Shady Cove Circle- Stated that he appreciates the presentation on the budget. As the Council is well aware, this is the most important

planning document that this body can make. Therefore, it's important that the discussion on the budget is robust and that it serves ultimately as a report card to the community with outcomes that must ensure that the fiduciary responsibility is both physically and responsibly spent in the most efficient manner possible.

Peyton Williams, 7504 Holly Oak Drive – Stated that he wanted to advocate for some zoning changes that would reduce the number of applications that people actually have to make and let people have more property freedoms to build in Tyler and keep those prices down. And so, those changes that I'm advocating for today are four simple ones. One is to allow accessory dwelling units by right, whether that's, hey, mom needs to move in with us, and she wants to keep her own space, or the kids want to move into a garage apartment when they go to UT Tyler. It gives everybody a little bit more independence and lets property owners increase that density. Allow by right duplexes, triplexes, quadplexes in any residential zoning area. That increases our general density. Whenever that house has been torn down on a corner lot, it lets somebody come in and put two back in. Maybe the same square footage even. But that increases the actual amount of density that we have without needing months of new zoning meetings and red tape to cut through. Decrease the minimum lot size by 2,400 square feet. That's one of the key factors that has kept Houston more affordable than the other major cities in Texas. Based on a study in 2023, it's $18,000 lower average house price in Houston than it would be otherwise. And then, legalized apartments and mixed-use buildings in all commercial zones. That lets people live near the amenities. It cuts down on traffic, which is Tyler's probably favorite complaint that I've seen.

Darryl Davis, 2719 Plaza Ave,- Stated that he was here on the 14th, and a $1.3 million police training facility was mentioned. He stated that he opposed that, but I want the people here to know that I don't oppose police, and I'm not defunding the police. But I do want police to have adequate training.

Bob Brewer, 1800 De Charles, Tyler, Texas – Stated his concern is about police training and the money spent on police. So, this is budget. "So, part of our budget and part of our training, I would like to, since Constitution Week's coming up, September 17th, we are just devoid of any understanding of our law as written, and we need to make training on our laws. We need to try to swing the entirety of the United States back into understanding the Constitution.

Mayor Warren closed the public hearing at 9:46:09 a.m.

PRESENTATION

P-1 **Request that the City Council receive a presentation on the Capital Improvements Program funded by the Half Cent Sales Tax Program.**

Darin Jennings, Engineer - Gave a brief update on the annual work plan process.

RESOLUTION

R-1 Request that the City Council consider adopting a Resolution authorizing submission of an application by the Tyler Fire Department for, and acceptance of, grant funding

in the amount of $450,000.00 through the Ben and Maytee Fisch Foundation, to be used to support the Tyler Fire Department Public Safety Bomb Team, aimed at maintaining and/or enhancing the City of Tyler's emergency preparedness and response capabilities. **(R-2024-37)**

Motion by Councilmember Nichols; seconded by Mayor Pro Tem Hene; motion carried 5 - 0 & approved as presented.

MISCELLANEOUS

M-1 Request that the City Council consider reviewing and accepting the Revenue and Expenditure Report for the period ending June 30, 2024.

Motion by Councilmember Nichols; seconded by Mayor Pro Tem Hene; motion carried 5 - 0 & approved as presented.

M-2 Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed $200,000, with Langan Engineering and Environmental Services, Inc. for the Private Lateral Program for Consent Decree Group 3 projects.

Motion by Councilmember Wynne; seconded by Councilmember Hawkins; motion carried 5 - 0 & approved as presented.

M-3 Request that the City Council consider authorizing the City Manager to approve Change Orders #1 and #2 with SAK Construction, LLC that will increase the contract amount by $2,156,969.09 for Black Fork Creek Outfall Sewer Cast in Place Pipe (CIPP), Bid 21-035.

Motion by Councilmember Nichols; seconded by Mayor Pro Tem Hene; motion carried 5 - 0 & approved as presented.

M-4 Request that the City Council consider accepting the donation of $1,164,141.44 to help complete the construction of the Miracle League of Tyler ballfield.

Motion by Mayor Pro Tem Hene; seconded by Councilmember Wynne; motion carried 5 - 0 & approved as presented.

M-5 Request that the City Council consider authorizing the City Manager to execute a contract with SCI Construction, Inc., for the construction of the Miracle League of Tyler ballfield at Faulkner Park in the amount of $1,680,358.00.

Motion by Councilmember Nichols; seconded by Mayor Pro Tem Hene; motion carried 5 - 0 & approved as presented.

M-6 Request that the City Council consider authorizing the City Manager to execute a Capital Improvements Project contract in the amount of $1,501,920.00 with TanksCo, Inc. for the West 2nd Street Elevated Storage Tank Rehabilitation (Tyler Bid No. 24-023) and adopt a Resolution reserving the right to reimburse

expenditures with proceeds of future debt. **(R-2024-38)**

Motion by Councilmember Hawkins; seconded by Councilmember Nichols; motion carried 5 - 0 & approved as presented.

M-7 Request that the City Council consider the designation of Reinvestment Zone Number Fourteen (Hiland Dairy), City of Tyler, Texas, for industrial tax abatement, and authorize the City Manager to finalize and enter into a tax abatement agreement with Hiland Dairy Foods and to sign all documents necessary to implement the tax abatement agreement. (pulled from the agenda)

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 reviewing and accepting the Investment Report for the quarter ending June 30, 2024.

C-A-2 Request that the City Council consider authorizing the City Manager to approve the reconciliation change order decreasing the approved contract amount by $9,563.12, from $362,975.35 to $353,412.23, and the release of retainage in the amount of $35,341.23 to Missouri Petroleum, LLC, for the 2024 ONYX Seal Project.

C-A-3 Request that the City Council consider authorizing the City Manager to purchase four commercial refuse trucks from East Texas Mack through TIPS Contract 230802 for a total purchase price of $580,478.

C-A-4 Request that the City Council consider authorizing the City Manager or designee to apply for and accept nineteenth-year funding under the Comprehensive Traffic Enforcement Grant Program administered by the Texas Department of Transportation.

C-A-5 Request that the City Council consider authorizing the City Manager to declare certain designated vehicles as surplus and ready to be auctioned.

C-A-6 Request that the City Council consider authorizing the City Manager to execute the Amendment No. 1 to the Work Order #1 to KSA Engineers, Inc., to add Construction Administration, and Closeout phase services for the construction of a new Airport Lighting Vault, for an increase from $138,844.00 to $283,165.00 ($144,321.00) at Tyler Pounds Regional Airport.

Motion by Councilmember Wynne to approve the entire consent agenda; seconded by Mayor Pro Tem Hene; motion carried 5 - 0 & approved as presented.

CITY MANAGER'S REPORT

1. Keep Tyler Beautiful Board is continuing to move forward with the Beauty in the Box program with seven new boxes soon to be wrapped. They're also working on promoting the Recycling Center and designing new information magnets for the self-service drop off. So,

they've helped take on the issues that we've had with recycling due to the Rivers Recycling Facility being out of commission, and we're very proud of our Keep Tyler Beautiful board for taking on that task.

2. A couple of different things related to other capital projects going on. For Legacy Trail construction, you may see on 155 some of the work that's happening over there where Stewart Park trail-head will be located. The majority of the work offered the trail construction is complete with the exception of the trail-head. There's still some striping and cleanup that needs to occur along the remainder of the trail. However, the trail is in place as well as signage. We're planning on having a big grand opening towards the end of this calendar year.
3. Also, over on Gentry corridor, you may have seen some improvements there, especially at Gentry corridor, Martin Luther King, and there on Glenwood. What this is, is our Gentry corridor improvements related to TXDot grants that we've received. So, curb ramps and sidewalk improvements were recently installed at those intersections. Also signal poles, conduit, wiring, electrical service, new signal cabinets, and some signal heads have been placed at Gentry Parkway and Glenwood Boulevard. That's one where it helps with traffic, especially at that intersection. And especially the pedestrian traffic that's trying to cross. Eventually, improvements will include the curb extensions to reduce pedestrian crossing distances and improve the intersection safety of this location. So, we're proud of that work that you may have seen as you drive through that area. And that's all I had, sir.

EXECUTIVE SESSION – City Council convened into executive session at 10:23 am

As allowed by the Texas Open Meetings Law, Chapter 551 of the Government Code, the City Council may go into executive session to consider the following:

Tex. Gov't Code Section 551.071, 'Litigation', to deliberate pending or contemplated litigation or settlement offer involving: Lofton W. Woods, Jr. v. City of Tyler lawsuit; Cause No. 23-2842-A;

Litigation is, by its nature, an ongoing process, and questions may arise as to trial tactics, or settlement offers which need to be explained to the City Council.

Upon occasion, the City Council may need information from the City Attorney as to the status of the pending or contemplated litigation subject listed above.

Any final action to be taken by the City Council will be taken in open session.

City council reconvened from executive session at 10:36 a.m. with Mayor Pro Tem Hene making the motion to approve the settlement agreement for the Lofton W Woods Junior University of Tyler lawsuit cause number 23-2842-A in the amount of $25,000, seconded by Councilmember Wynne, motion carried 5-0, motion approved.

ADJOURNMENT

Motion by Councilmember Wynne to adjourn the meeting; seconded by Councilmember Hawkins; motion carried 5 - 0 & meeting adjourned at 10:37 am.

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

A T T E S T:

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CASSANDRA BRAGER, CITY CLERK

MINUTES OF A TRAINING WORK SESSION FOR
BOARDS AND COMMISSION TRAINING OF
THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
August 28, 2024

A called training/work session for boards and commission training of the City Council of the City of Tyler, Texas, was held Wednesday, August 28, 2024, at 9:00 a.m. or immediately following the regularly scheduled City Council meeting at City Hall in the City Manager's Conference Room, 2nd floor of City Hall, Tyler, Texas, with the following present:

Mayor:	Don Warren
Mayor Pro Tem:	Stuart Hene
Councilmembers:	Petra Hawkins
	James Wynne
	Lloyd Nichols
City Manager:	Edward Broussard
Deputy City Manager:	Stephanie Franklin
Asst. City Manager:	Heather Nick
City Attorney:	Deborah G. Pullum
Senior Asst. City Attorney:	Alesha Buckner
Police Chief:	Jimmy Toler
Director of Parks & Recreation:	Leanne Robinette
Legal Assistant:	Chris Cambra
City Clerk:	Cassandra Brager

1. **Call Meeting to order** – Mayor Warren called the meeting to order at 10:43 a.m.
2. **Conduct a Work and Training Session to provide the newly elected and current City of Tyler Council members with information regarding the process for appointing and/or reappointing members to the various City boards.**

   Cassandra Brager, City Clerk- Explained the process for appointing, re-appointing, and recruiting members to the boards.

   Edward Broussard, City Manager – Gave an explanation for the Industrial Development Board and how it was created for bonding debts.

   During the training, Leanne Robinette, Director of Parks, suggested recommendations for the Parks Board and the Keep Tyler Beautiful Board.

   Councilmember Hawkins asked questions about the names on the list to better understand how people are chosen for the boards if they are listed on two different boards.
3. **Adjourn –** Mayor Warren adjourned the meeting at 11:16 a.m. with no action being taken by the City Council.

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

A T T E S T:

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CASSANDRA BRAGER, CITY CLERK

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. P-1

Date: November 13, 2024

Subject: Request that the City Council consider receiving an annual presentation by Visit Tyler.

Item Reference:

Annually, the City Tyler contracts and provides Visit Tyler a budget to perform destination marketing services.

Visit Tyler will present their annual report with a summary of the fiscal year's activities. Included is the makeup of Tyler's tourism industry, analytics from social media and the Visit Tyler website, and hotel statistics. In addition, the team will share the accomplishments of the organization including rebranding, bookings, earned media, events and collaborations, boards and alliances, tourism awards luncheon, destination excellence awards, and designations that Visit Tyler worked on in FY 2023-2024.

RECOMMENDATION:

Presentation

Attachments:
Visit Tyler Annual Report - 2023-2024

Drafted/Recommended By:
Department Leader Stephanie Franklin, Deputy City Manager

Edited/Submitted By:
City Manager

ANNUAL REPORT
2023-2024



Our Mission



NEWS BY THE NUMBERS



TOURISM PARTNERS IN TYLER

- 40 hotels
- 100+ short-term rental properties
- 400+ restaurants
- 300+ retail outlets
- Numerous RV parks
- Numerous attractions
- Numerous meeting venues
- Airport and other transportation businesses



ANALYTICS

Website
18% Increase
in Users

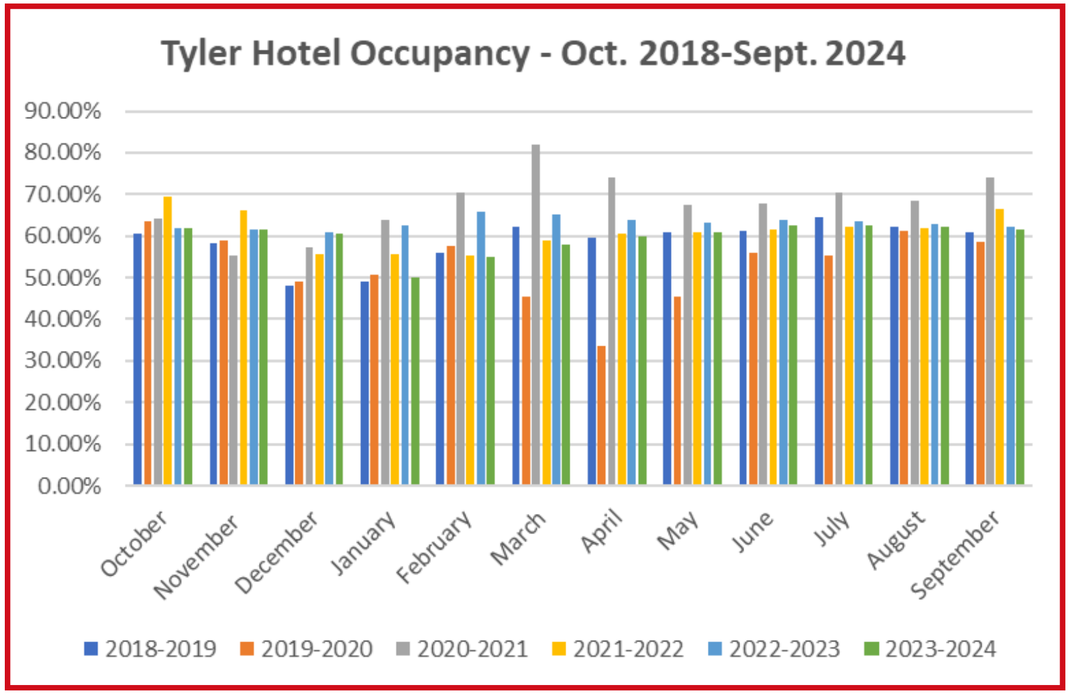
Instagram
24% Increase
in Followers

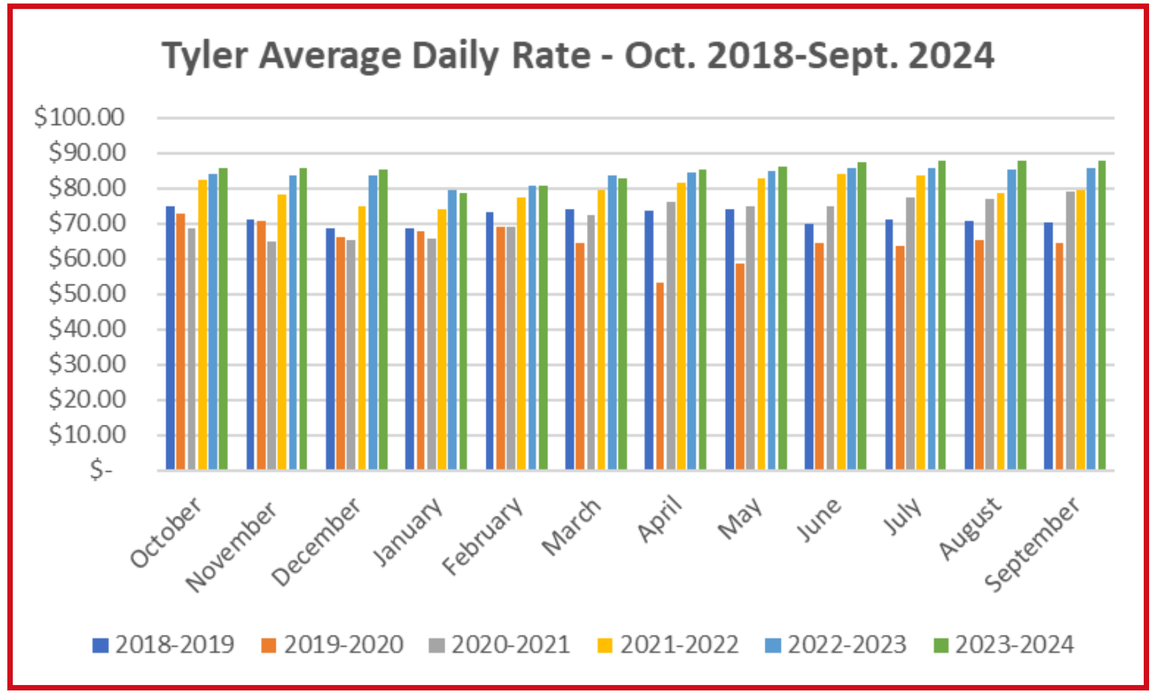
Facebook
17% Increase
in Followers

LinkedIn
47% Increase
in Followers

Visit Tyler Store Sales - 46% Increase

OCCUPANCY & AVERAGE DAILY RATE



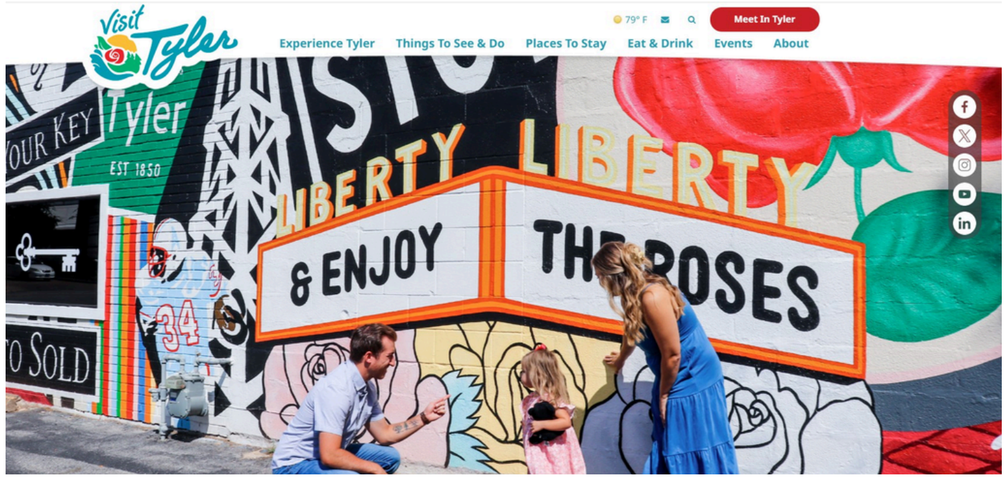


2024 ACCOMPLISHMENTS

Visit Tyler

VISIT TYLER REBRANDING







LEISURE , MEETINGS, & SPORTS

- **27 LEISURE GROUPS - 400 ROOM NIGHTS**
- **28 MEETINGS - 2,100 ROOM NIGHTS**
- **27 SPORTING EVENTS - 18,000 PARTICIPANTS**



Visit Tyler

2024 EARNED MEDIA

Southern Living

AAA

TEXAS HIGHWAYS

COURIER DFW

TEXAS LIFESTYLE & TRAVEL MAGAZINE

TRAVEL AWAITS

RED RIVER RADIO

texas meetings + events

LIVABILITY©

EVENTS & COLLABORATIONS



THE
EARL CAMPBELL
TYLER ROSE AWARD

Totality Tyler
SOLAR ECLIPSE
totalitytyler.com





BOARDS & ALLIANCES

- VISIT TYLER TOURISM COMMITTEE
- VISIT TYLER ALLIANCE
- MUSIC FRIENDLY ADVISORY BOARD
  - COMMUNITY ENGAGEMENT COMMITTEE
  - MAKE MUSIC DAY COMMITTEE
  - SONGWRITER FESTIVAL COMMITTEE
- SPORTYLER BOARD



VISIT TYLER

TOURISM AWARDS LUNCHEON



DESTINATION EXCELLENCE AWARDS



1st Place - Meetings and Event Promotion



1st Place - Leisure Tourism Marketing Campaign



1st Place - Website Design and Effectiveness

Visit Tyler

2024 DESIGNATIONS

MUSIC FRIENDLY TEXAS
TEXAS MUSIC OFFICE
TYLER, TEXAS

A CRAFT BEER DESTINATION
BREW CITY, TX
TYLER

TOURISM FRIENDLY TEXAS

TRAVEL & TOURISM BENEFITS YOU

Employees
3,300 Workers



Generates
$354.6 Million
in Economic Impact



Pays
$106.7 Million
in Wages



Pays
$28.9 Million
in local & state tax revenue



Travel and tourism saves each household $475 in annual taxes.

TAXES FROM TOURISM ALSO HELP PAY FOR

Arts & Culture



Schools



Public Safety



Infrastructure




Visit
Tyler


BBQ

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. Z-1

Date: November 13, 2024

Subject: PD24-023 COPPER RIDGE II LLC (6951-6959 ARBOR RIDGE DRIVE AND 6865 OAK HILL BOULEVARD) Request that the City Council consider adoption of an Ordinance approving a 'PMXD-1', Planned Mixed Use District-1 final site plan amendment.

Item Reference:

The applicant is requesting the zone change to change the layout of the site on Lots 11L and 11K of NCB 1660-A, two lots containing approximately 1.56 acres of land located at the intersection of Highlands Lane and Arbor Ridge Drive (6951-6959 Arbor Ridge Drive and 6865 Oak Hill Boulevard).

According to the Unified Development Code (UDC), the 'PMXD-1', Planned Mixed Use District is primarily intended to implement the Tyler 1st Comprehensive Plan by promoting a mix of residential, retail, and services, office, institutional, park and government uses. The PMXD-1 district is intended for areas near key intersections of major arterial roadways, and other areas with access to a full range of public facilities and infrastructure. All developments created in a PMXD-1 district must be designed and developed in accordance with an approved site development plan or a written narrative detailing the development parameters with sufficient detail that it can be evaluated and submitted for approval to the Planning Commission and City Council. Where narrative is submitted and approved by the City Council, future site plans may be approved by staff when they are consistent with the standards included in the narrative.

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 the 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, west and north are zoned 'C-1', Light Commercial District and are developed with commercial uses. The adjacent property to the south is zoned 'PMXD-1', Mixed-Use District and is developed with mixed uses.

The adopted Tyler 1st Future Land Use Guide (FLUG) identifies this property as Mixed-Use Center. This request would be consistent with the FLUG.

In 2022, the site plan was approved for a four story, 45 residential units with the density of 30 units per acre with required parking for the use is 90 parking spaces.

The amended plan proposes a three story, gated accessible community of 21 garage entry residential lofts with the density of 13.46 units per acre. The site plan provides 53 total parking spaces, two spaces per garage and the remaining 11 standard parking spaces will be met through shared parking agreement.

On October 1, 2024, the Planning and Zoning Commission held a public hearing for this request. There was no significant discussion.

On October 23, 2024, the City Council held a public hearing for this request. Mark Priestner spoke in favor of the request and explained the purpose for the change. Casey Hymer with Drake Real Estate spoke in opposition out of a concern that the site was not providing parking for other uses within the development. The applicant stated that they could add the requested parking to the site plan. The request was tabled by City Council until the next possible City Council meeting with the intent to allow more time for both parties to come to a resolution. Since the meeting, the applicant has spoken with neighbors and has revised the site plan to show additional parking spaces that will serve this and other uses. These parking spaces are in addition to the minimum that are required. The neighboring property owner is agreeable to this site plan and has retracted their opposition.

As of Friday, November 8, 2024, of the 15 notices mailed, two notices were returned in favor and one was returned in opposition to the request but has since been withdrawn.

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 vote recommends approval of a 'PMXD-1', Planned Mixed Use District-1 final site plan amendment.

Attachments:
Ordinance
Location Map
Future Land Use Guide 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 AMENDING THE "PMXD-1", PLANNED MIXED USE DISTRICT-1 FINAL SITE PLAN AMENDMENT ON LOTS 11L AND 11K OF NCB 1660-A, TWO LOTS CONTAINING APPROXIMATELY 1.56 ACRES OF LAND LOCATED AT THE INTERSECTION OF HIGHLANDS LANE AND ARBOR RIDGE DRIVE (6951-6959 ARBOR RIDGE DRIVE AND 6865 OAK HILL BOULEVARD); 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 PD24-023

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 "PMXD-1", Planned Mixed Use District-1, to wit:

> On Lots 11L and 11K of NCB 1660-A, two lots containing approximately 1.56 acres of land located at the intersection of Highlands Lane and Arbor Ridge Drive (6951-6959 Arbor Ridge Drive and 6865 Oak Hill Boulevard).

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 November 15th, 2024.

PASSED AND APPROVED this the 13th day of November A.D., 2024.

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

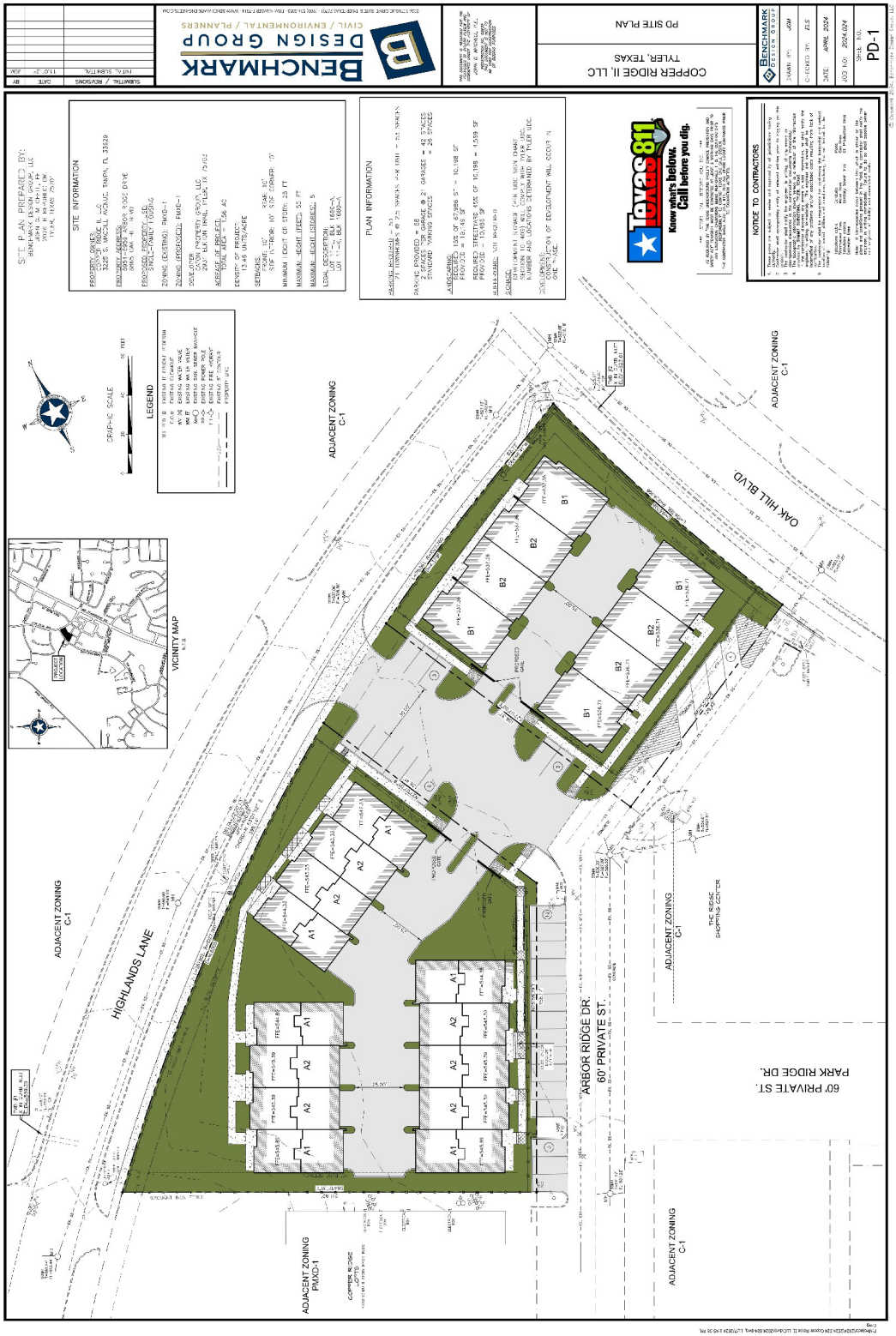
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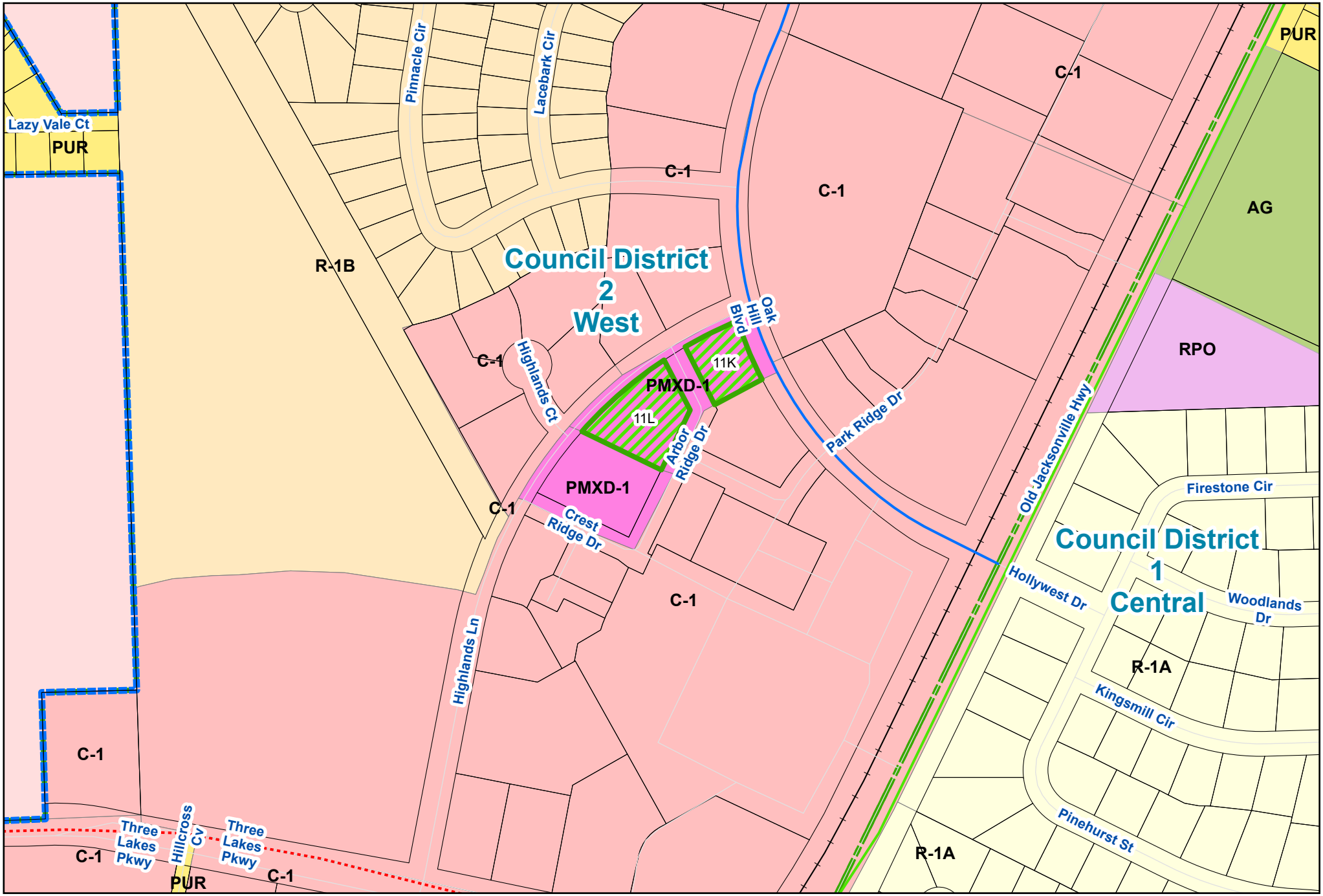
_____
CASSANDRA BRAGER, CITY CLERK

APPROVED:

_____
DEBORAH G. PULLUM,
CITY ATTORNEY

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





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.

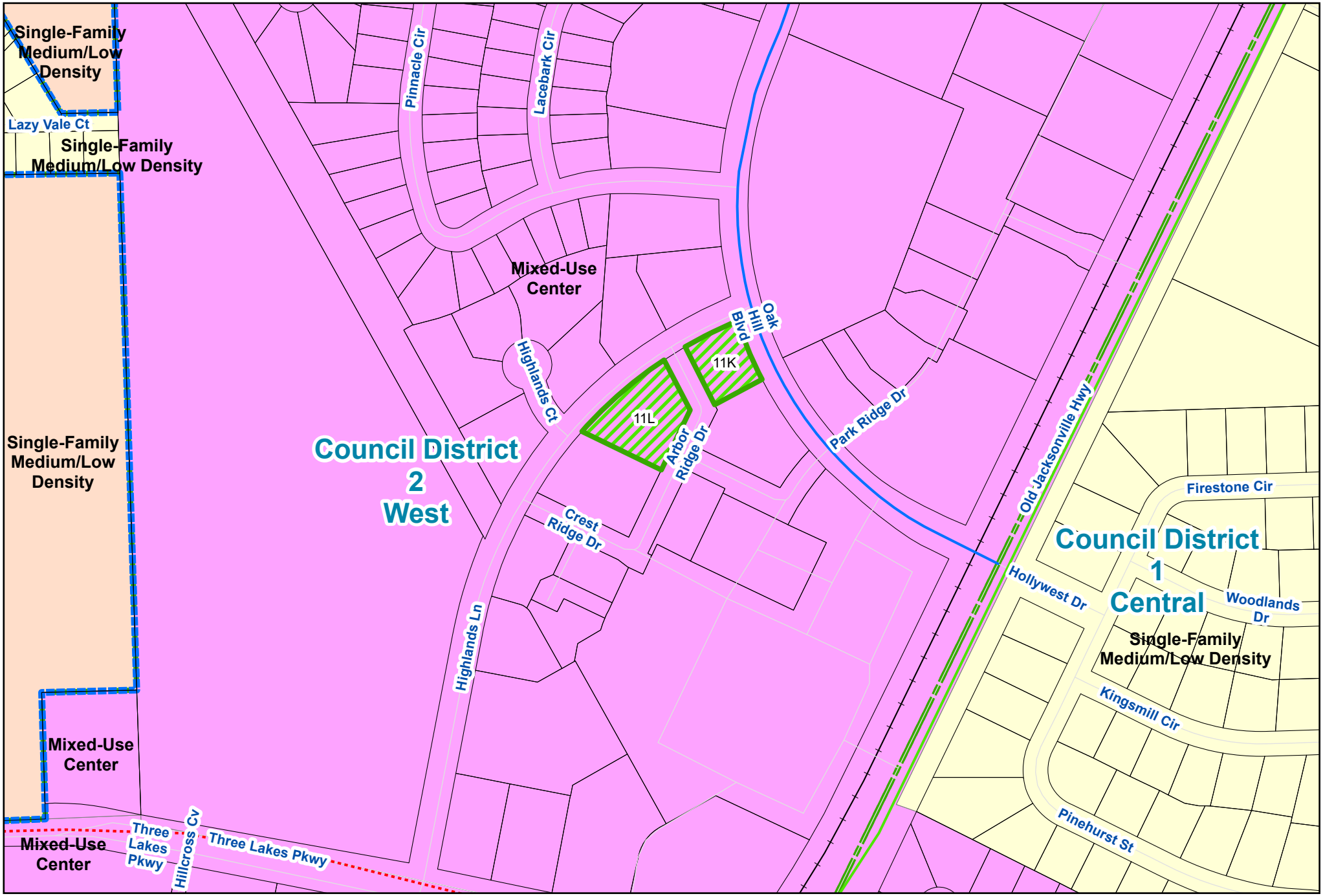
1 inch equals 300 feet

N

ZONING CASE

Zoning Case #: PD24-023
Current Zoning: PMXD-1
Proposed Zoning: SITE PLAN AMENDMENT
COPPER RIDGE II LLC

Subject Property
Council District Boundary
City Limits



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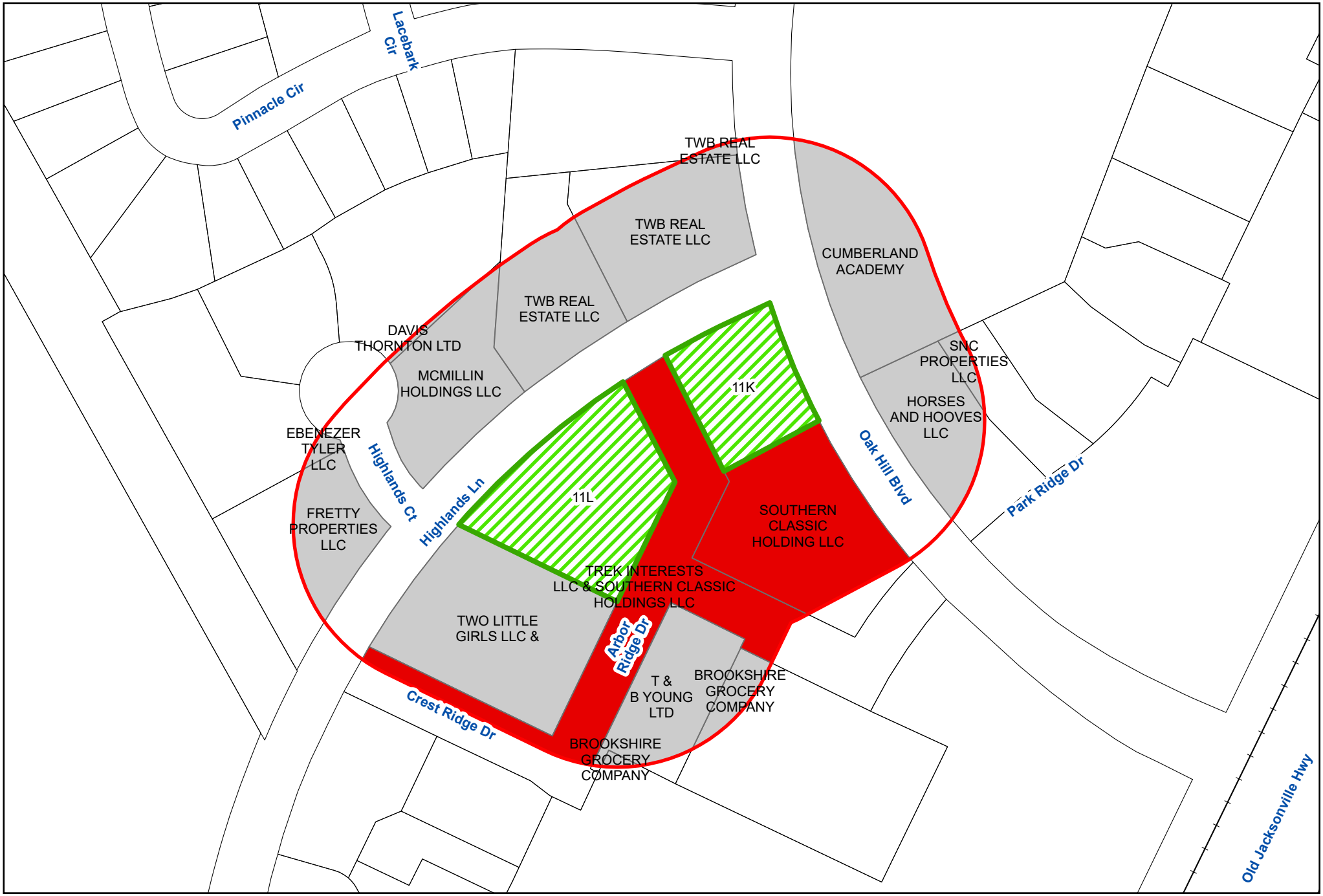
1 inch equals 300 feet

N

ZONING CASE

Zoning Case #: PD24-023
Current Zoning: PMXD-1
Proposed Zoning: SITE PLAN AMENDMENT
COPPER RIDGE II LLC

Subject Property
Council District Boundary
City Limits



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1 inch equals 150 feet

N

ZONING CASE

Zoning Case #: PD24-023
Current Zoning: PMXD-1
Proposed Zoning: SITE PLAN AMENDMENT
COPPER RIDGE II LLC

Subject Property
200' Mailed Notification Area
Protest Lots

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. Z-2

Date: November 13, 2024

Subject: C24-008 THE GARDENS (TWO ALLEY RIGHTS-OF-WAY) Request that the City Council consider adoption of an Ordinance approving the closure of two alley rights-of-way located between West Ferguson Street and West Erwin Street.

Item Reference:

The applicant is requesting the closure to replat the right-of-way into adjacent properties. The north side of the north-south right-of-way is adjacent to West Ferguson Street. The east side of the north-south right-of-way is adjacent to Lot 19C of NCB 91. The south side of the north-south right-of-way is adjacent to West Erwin Street. The west side of the north-south right-of-way is adjacent to Lots 11 and 12 of NCB 188 and the east-west right-of-way. The north side of the east-west right-of-way is adjacent to Lots 12, 13, 14A, and 16A of NCB 188. The east side of the east-west right-of-way is adjacent to the north-south right-of-way. The south side of the east-west right-of-way is adjacent to Lots 1-9A, 9B, 10, and 11 of NCB 188. The west side of the east-west right-of-way is adjacent to Lot 17A of NCB 188.

The applicant is requesting the closure to replat the alley rights-of-way into adjacent properties. The alley right-of-way to the east and west is currently not developed with a street. The alley right-of-way to the north and south is developed with a street. The surrounding properties around the alley right-of-way to the north and south are owned by the applicant.

On November 5, 2024, 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, November 8, 2024, of the ten notices mailed, one notices was returned in favor and none in opposition to the requested closure.

All other departments have reviewed the application and anticipate no significant 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 closure of two alley rights-of-way.

Attachments:

Ordinance
Aerial Map
Location Map
Notification Map

Drafted/Recommended By:
Department Leader Kyle Kingma, AICP, CFM, 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 TWO UNIMPROVED ALLEY RIGHTS-OF-WAY. THE NORTH SIDE OF THE NORTH-SOUTH RIGHT-OF-WAY IS ADJACENT TO WEST FERGUSON STREET. THE EAST SIDE OF THE NORTH-SOUTH RIGHT-OF-WAY IS ADJACENT TO LOT 19C OF NCB 91. THE SOUTH SIDE OF THE NORTH-SOUTH RIGHT-OF-WAY IS ADJACENT TO WEST ERWIN STREET. THE WEST SIDE OF THE NORTH-SOUTH RIGHT-OF-WAY IS ADJACENT TO LOTS 11 AND 12 OF NCB 188 AND THE EAST-WEST RIGHT-OF-WAY. THE NORTH SIDE OF THE EAST-WEST RIGHT-OF-WAY IS ADJACENT TO LOTS 12, 13, 14A, AND 16A OF NCB 188. THE EAST SIDE OF THE EAST-WEST RIGHT-OF-WAY IS ADJACENT TO THE NORTH-SOUTH RIGHT-OF-WAY. THE SOUTH SIDE OF THE EAST-WEST RIGHT-OF-WAY IS ADJACENT TO LOTS 1-9A, 9B, 10, AND 11 OF NCB 188. THE WEST SIDE OF THE EAST-WEST RIGHT-OF-WAY IS ADJACENT TO LOT 17A OF NCB 188. 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 two 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 C24-008

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

> Two unimproved alley rights-of-way. The north side of the north-south right-of-way is adjacent to West Ferguson Street. The east side of the north-south right-of-way is adjacent to Lot 19C of NCB 91. The south side of the north-south right-of-way is adjacent to West Erwin Street. The west side of the north-south right-of-way is adjacent to Lots 11 and 12 of NCB 188 and the east-west right-of-way. The north side of the east-west right-of-way is adjacent to Lots 12, 13, 14A, and 16A of NCB 188. The east side of the east-west right-of-way is adjacent to the north-south right-of-way. The south side of the east-west right-of-way is adjacent to Lots 1-9A, 9B, 10, and 11 of NCB 188. The west side of the east-west right-of-way is adjacent to Lot 17A of NCB 188. The rights-of-way to be closed are 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 rights-of-way are 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 13th day of November A.D., 2024.

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

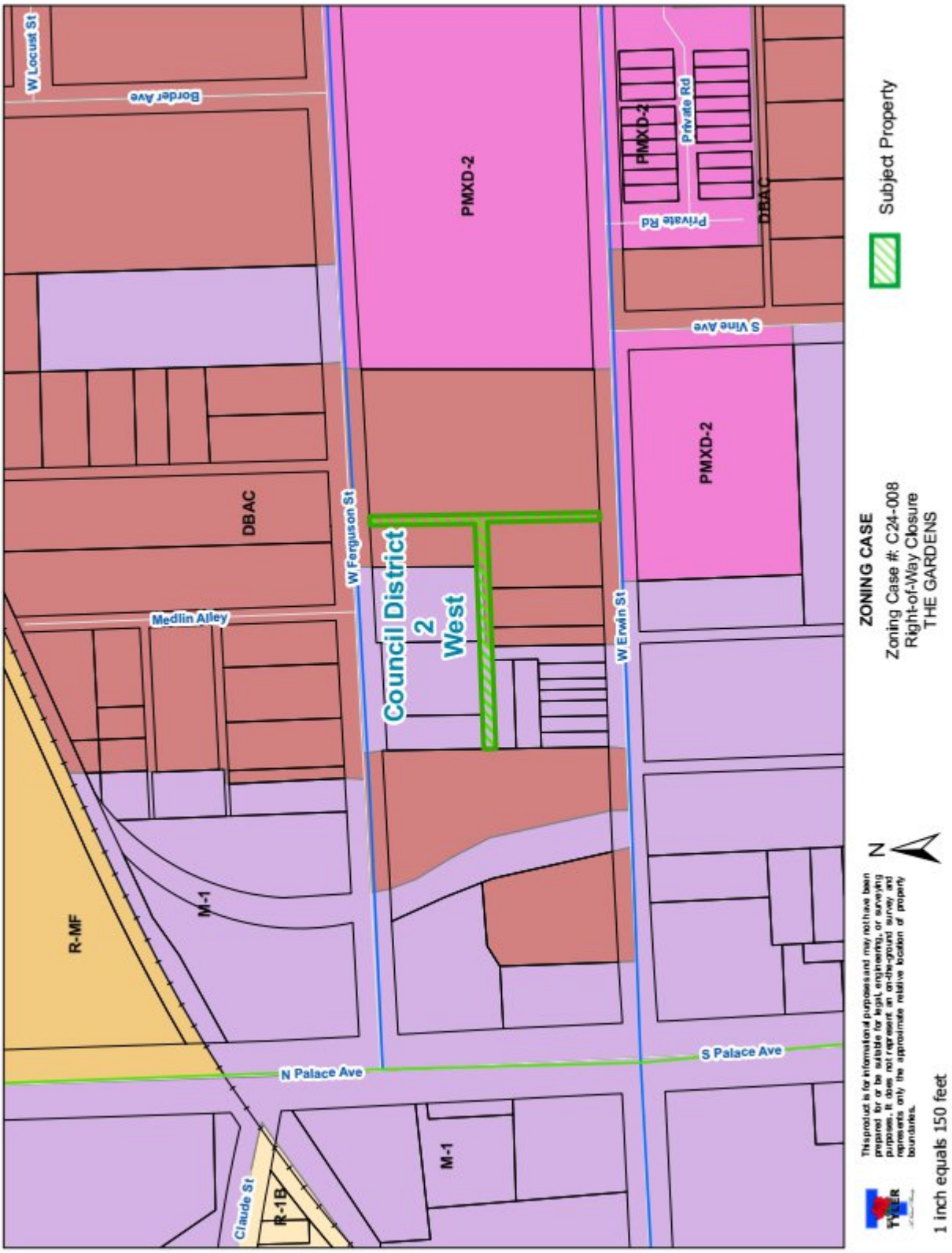
A T T E S T:

_____
CASSANDRA BRAGER, CITY CLERK

APPROVED:

_____
DEBORAH G. PULLUM,
CITY ATTORNEY

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





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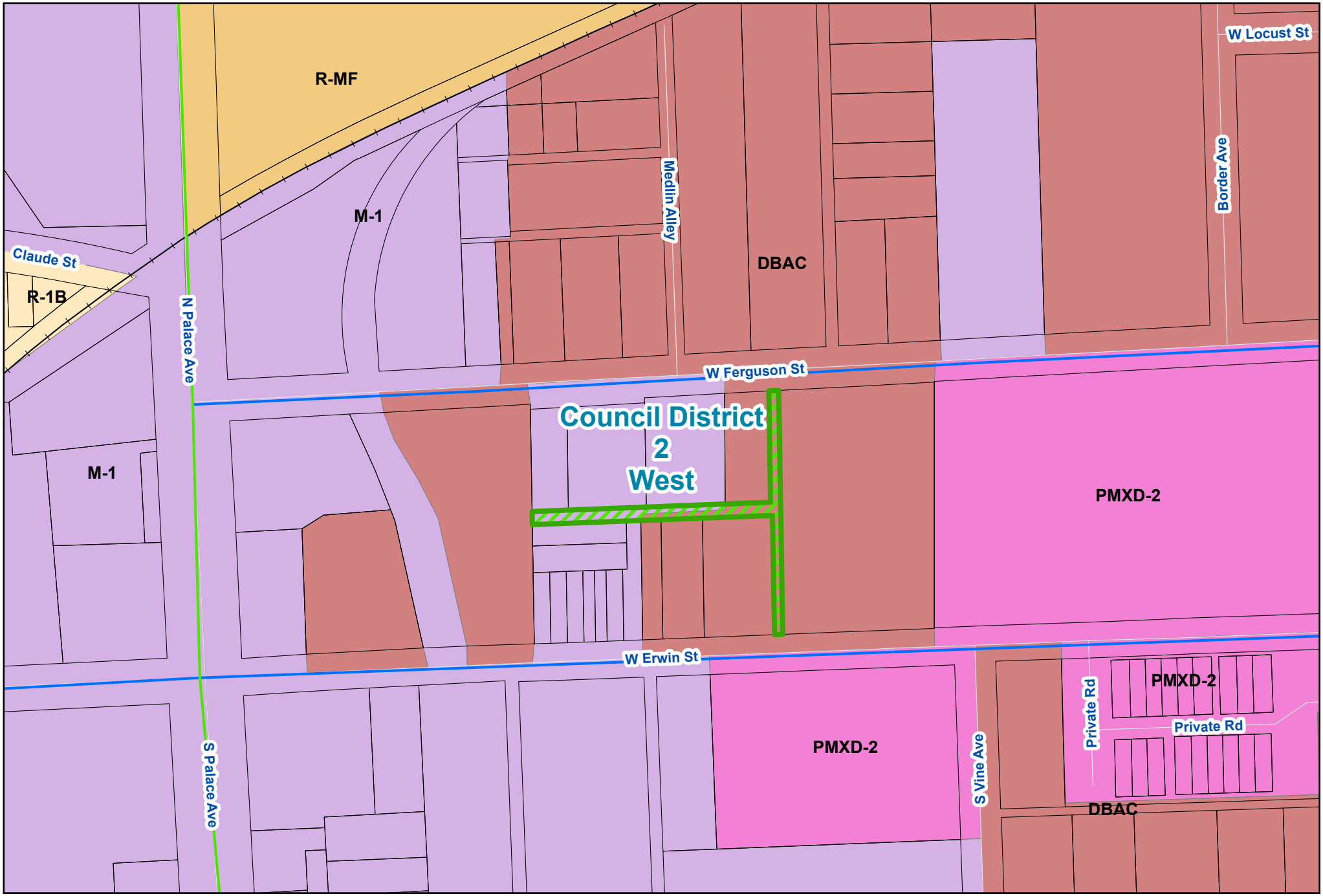
1 inch equals 100 feet

N

ZONING CASE

Zoning Case #: C24-008
Right-of-Way Closure
THE GARDENS

Subject Property



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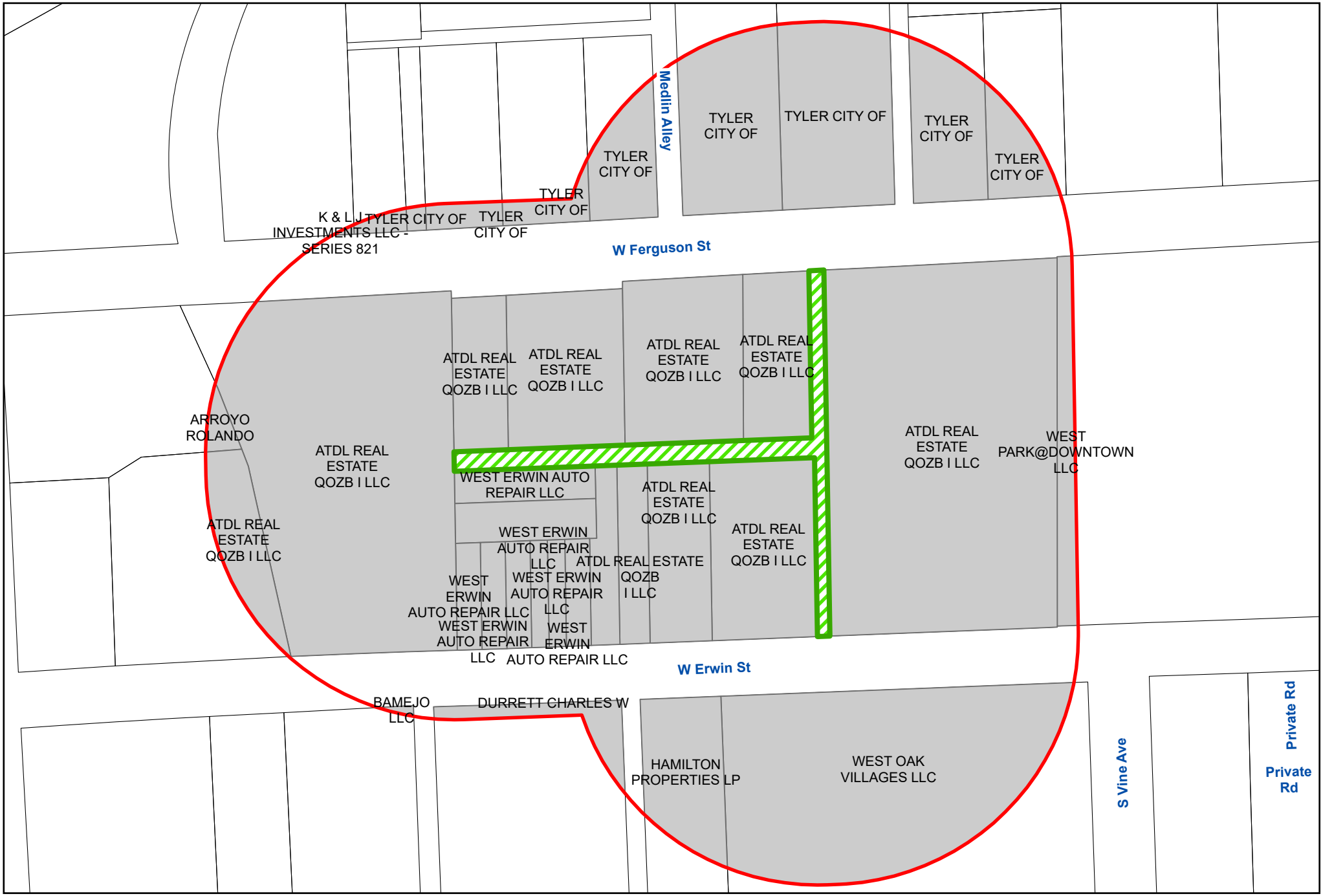
1 inch equals 150 feet

N

ZONING CASE

Zoning Case #: C24-008
Right-of-Way Closure
THE GARDENS

Subject Property



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1 inch equals 100 feet

N

ZONING CASE

Zoning Case #: C24-008
Right-of-Way Closure
THE GARDENS

Subject Property

200' Mailed Notification Area

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. Z-3

Date: November 13, 2024

Subject: PD24-024 THE GARDENS AT WEST OAK (710, 714, 718, 728, 730, 802, AND 812 WEST FERGUSON STREET AND 717, 725, 729, 823 AND 829 WEST ERWIN STREET) Request that the City Council consider adoption of an Ordinance approving a zone change from 'DBAC', Downtown Business, Arts and Culture District and 'M-1', Light Industrial District to 'PMXD-2', Planned Mixed Use District-2 with a final site plan.

Item Reference:

The applicant is requesting the zone change to develop multifamily housing units on Lots 9B, 10, 11, 12, 13, 14A, 16A, and 17A of NCB 188, Lot 19C of NCB 91, and Lot 12B of NCB 343, 10 lots containing approximately 4.41 acres of land located east of the northeast intersection of North Palace Avenue and West Erwin Street (710, 714, 718, 728, 730, 802, and 812 West Ferguson Street and 717, 725, 729, 823 and 829 West Erwin Street).

According to the Unified Development Code (UDC), the 'PMXD-2', Planned Mixed Use District is primarily intended to implement the Tyler 1st Comprehensive Plan by accommodating a combination of high-density office, institutional, retail and service, and residential uses that function as a center of economic activity for residents of Tyler, Smith County, and the East Texas region. All developments created in a PMXD-2 district must be designed and developed in accordance with an approved site development plan or a written narrative detailing the development parameters with sufficient detail that it can be evaluated and submitted for approval to the Planning Commission and City Council. Where narrative is submitted and approved by the City Council, future site plans may be approved by staff when they are consistent with the standards included in the narrative.

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 are zoned 'DBAC', Downtown Business, Arts and Culture District and 'M-1', Light Industrial District and are developed with a police station and industrial uses. The adjacent property to the east is zoned 'PMXD-2', Planned Mixed-Use District-2 and is developed with an apartment complex. The adjacent properties to the south are zoned 'M-1', Light Industrial District and 'PMXD-2', Planned Mixed-Use District-2 and are developed with retail buildings, an auto body shop, and is undeveloped. The adjacent properties to the west are zoned 'M-1', Light Industrial District and are developed with commercial uses.

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

The applicant is proposing to develop apartment units with a density of 41 units per acre. The site plan proposes six residential buildings with a maximum height of 165 feet. The building setbacks, landscaping, signage, and parking requirements are to be consistent with the UDC standards for the 'DBAC', Downtown Business, Arts, and Culture District. The use and other standards are consistent with what is permissible in 'DBAC'.

The proposed development will help achieve a number of goals found in the downtown chapter of the Tyler 1st Comprehensive Plan including creating a full-service mixed-use 'Destination Downtown' that functions as the center of the region and creating new urban residential districts with infill. Successful downtowns:

- Are great places to live, work, and play
- Are generally mixed-use in character
- Tend to have multiple activity generators within walking distance of one another
- Are walkable and have streets that act as parks for pedestrians
- Have strong downtown residential and adjacent neighborhoods
- Are safe and secure
- Have broad public/private investment in the future of downtown
- Are beloved by the citizenry

On November 5, 2024, the Planning and Zoning Commission held a public hearing for this request. The

applicant was present to answer any questions. There was no significant discussion.

As of Friday, November 1, 2024, of the 20 notices mailed, none were returned in favor or in opposition to the request.

All other departments have reviewed the application and anticipate a positive 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 'DBAC', Downtown Business, Arts and Culture District and 'M-1', Light Industrial District to 'PMXD-2', Planned Mixed Use District-2 with a final site plan.

Attachments:
Ordinance
Final Site Plan
Location Map
Future Land Use Guide Map
Notification Map

Drafted/Recommended By:
Department Leader Kyle Kingma, AICP, CFM, 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 "DBAC", DOWNTOWN BUSINESS, ARTS, AND CULTURE DISTRICT AND "M-1", LIGHT INDUSTRIAL DISTRICT TO "PMXD-2", PLANNED MIXED USE DISTRICT-2 WITH FINAL SITE PLAN ON LOTS 9B, 10, 11, 12, 13, 14A, 16A, AND 17A OF NCB 188, LOT 19C OF NCB 91, AND LOT 12B OF NCB 343, 10 LOTS CONTAINING APPROXIMATELY 4.41 ACRES OF LAND LOCATED EAST OF THE NORTHEAST INTERSECTION OF NORTH PALACE AVENUE AND WEST ERWIN STREET (710, 714, 718, 728, 730, 802, AND 812 WEST FERGUSON STREET AND 717, 725, 729, 823 AND 829 WEST ERWIN STREET); 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 PD24-024

That the following described property, which has heretofore been zoned "DBAC", Downtown Business, Arts, and Culture District and "M-1", Light Industrial District, shall hereafter bear the zoning classification of "PMXD-2", Planned Mixed Use District-2, to wit:

> On Lots 9B, 10, 11, 12, 13, 14A, 16A, and 17A of NCB 188, Lot 19C of NCB 91, and Lot 12B of NCB 343, 10 lots containing approximately 4.41 acres of land located east of the northeast intersection of North Palace Avenue and West Erwin Street (710, 714, 718, 728, 730, 802, and 812 West Ferguson Street and 717, 725, 729, 823 and 829 West Erwin Street) 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 November 15th, 2024.

PASSED AND APPROVED this the 13th day of November A.D., 2024.

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

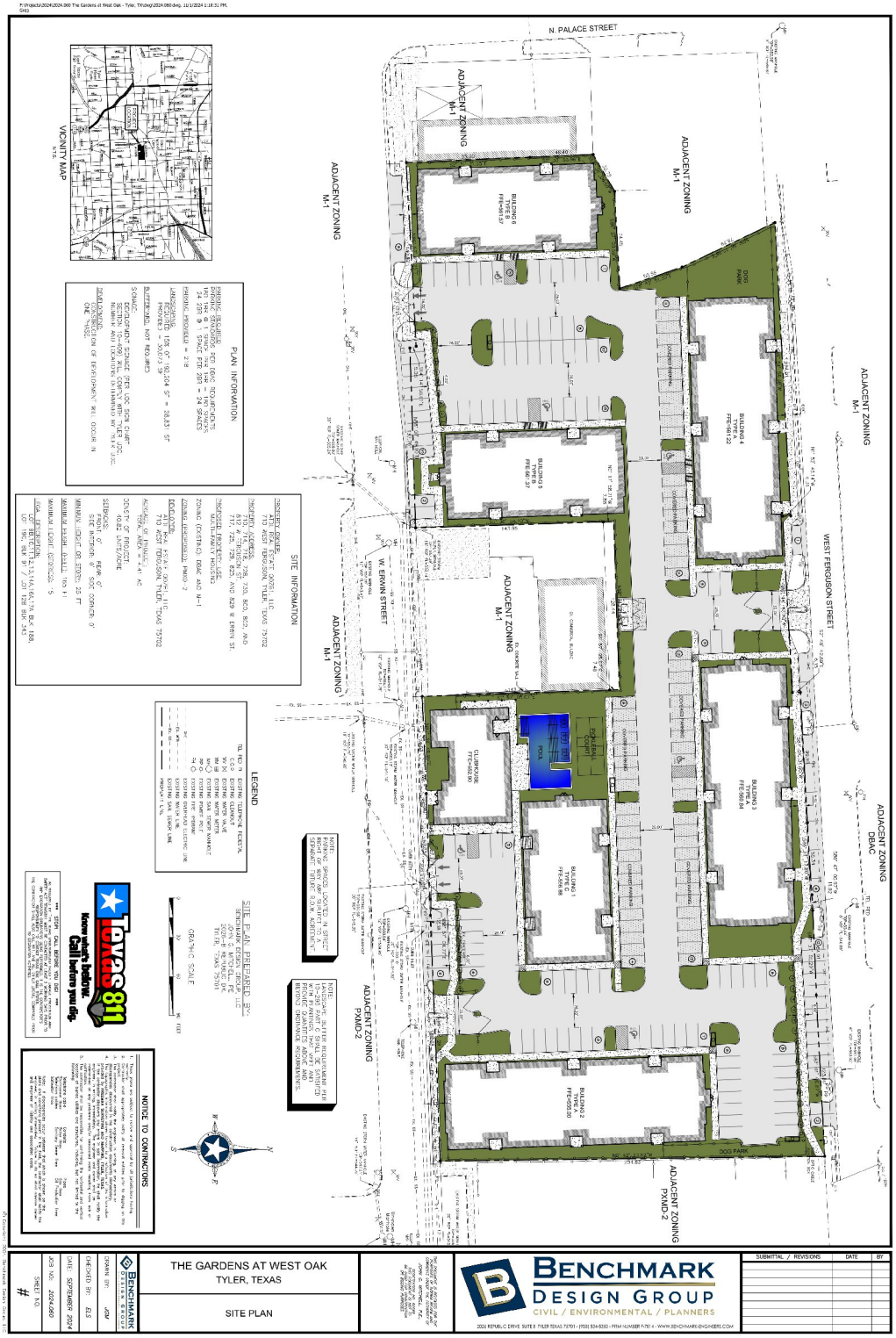
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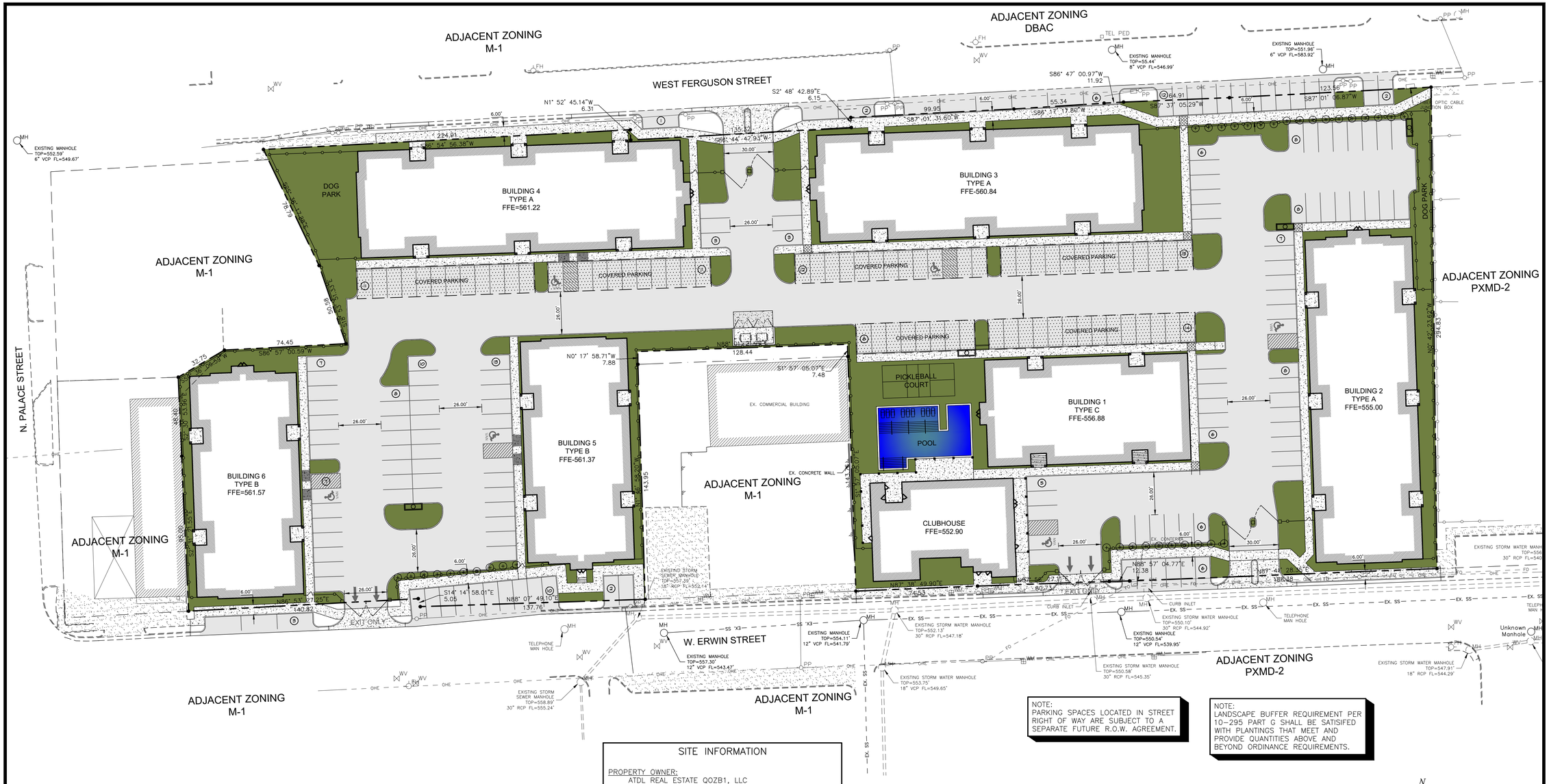
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CASSANDRA BRAGER, CITY CLERK

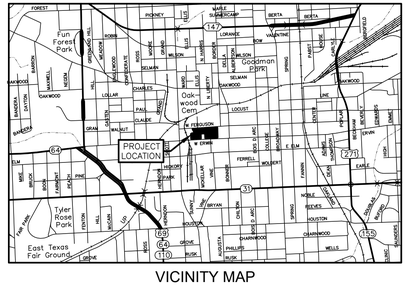
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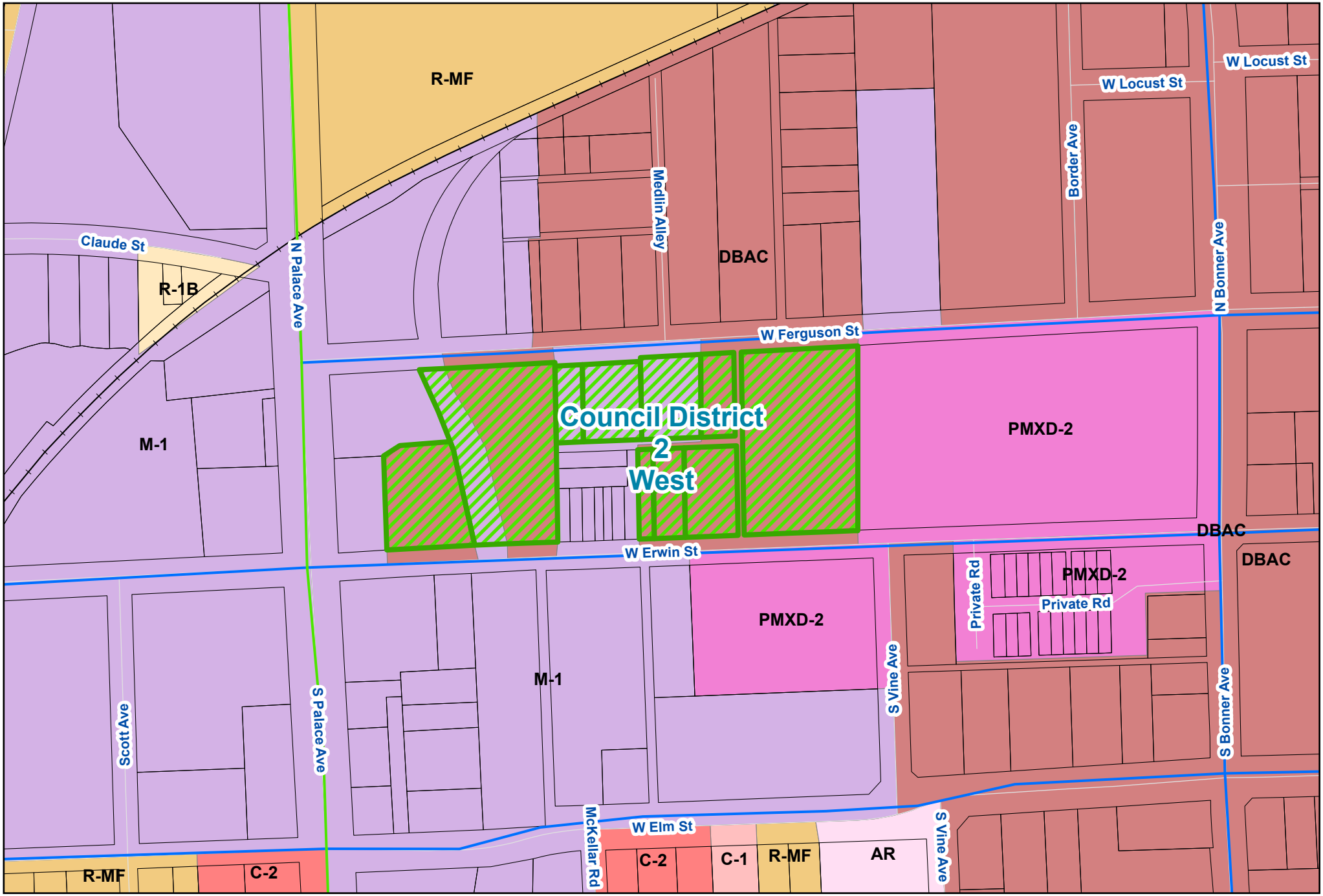
_____
DEBORAH G. PULLUM,
CITY ATTORNEY

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






PROJECT
LOCATION
Fun Forest Park
Oak-wood Cem
Goodman Park
Tyler Rose Park
East Texas Fair Grounds
W ERWIN
W FERGUSON
N PALACE
S PALACE
S BECKHAM
S BROADWAY
S GLENWOOD
S VINE
S COLLEGE
S ENGLISH
S FANNIN
S ROSE PARK
S BONNER
S CHILDRESS
S JACKSON
S HIGH



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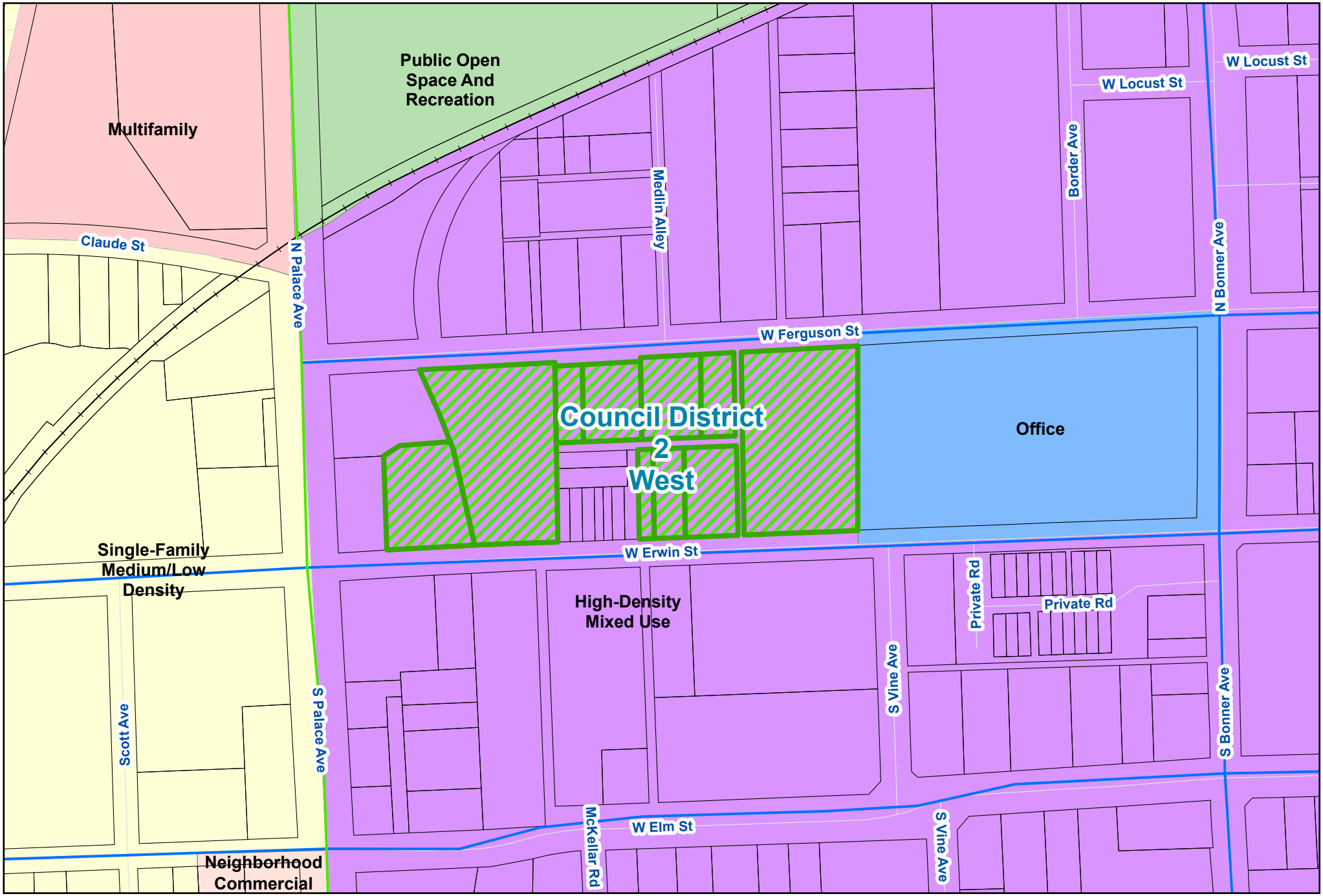
1 inch equals 200 feet

N

ZONING CASE

Zoning Case #: PD24-024
Current Zoning: DBAC and M-1
Proposed Zoning: PMXD-2
THE GARDENS AT WEST OAK

Subject Property



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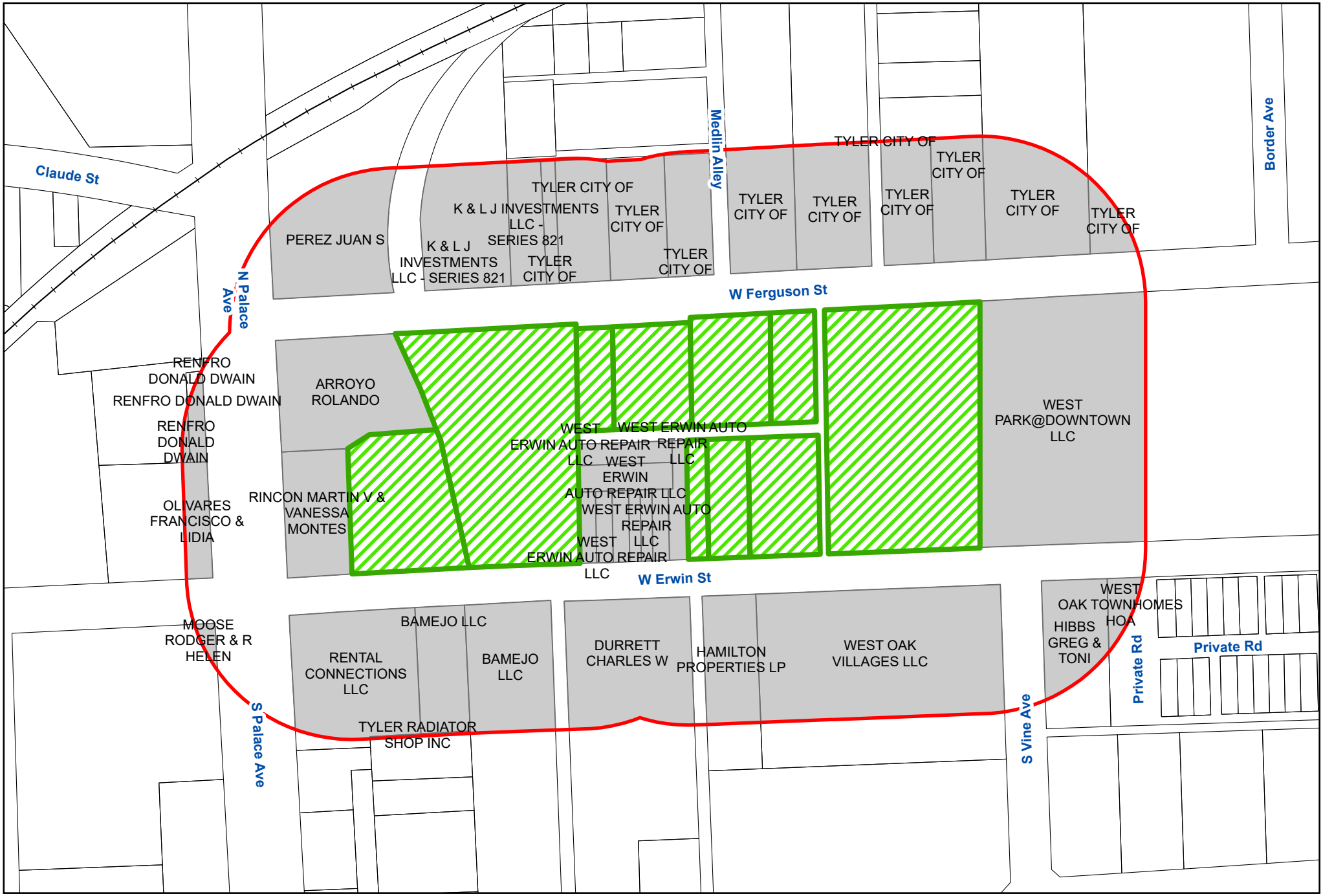
1 inch equals 200 feet

N

ZONING CASE

Zoning Case #: PD24-024
Current Zoning: DBAC and M-1
Proposed Zoning: PMXD-2
THE GARDENS AT WEST OAK

Subject Property



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1 inch equals 150 feet

N

ZONING CASE

Zoning Case #: PD24-024
Current Zoning: DBAC and M-1
Proposed Zoning: PMXD-2
THE GARDENS AT WEST OAK

Subject Property

200' Mailed Notification Area

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. Z-4

Date: November 13, 2024

Subject: Z24-033 GARRETT NEWMAN (2714 AND 2716 CALLOWAY ROAD) Request that the City Council consider adoption of an Ordinance approving a zone change from 'R-1A', Single-Family Residential District to 'R-1B', Single-Family Residential District.

Item Reference:

The applicant is requesting the zone change to develop the properties with single-family homes District on Tracts 174C and 174A, two tracts containing approximately 0.42 acres of land located east of the northeast intersection of Old Troup Highway and Calloway Road (2714 and 2716 Calloway 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.

The adjacent property to the east is zoned 'R-1A', Single-Family Residential District and is undeveloped. The adjacent property to the south is zoned 'M-1', Light Industrial District and is developed with storage units. The adjacent property to the west is zoned 'R-1B', Single-Family

Residential District and is developed with a single-family home.

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

Tracts 174C and 174A of the subject properties are currently undeveloped. Under the current 'R-1A' zoning, the subject property would not meet the minimum lot size of 9,000 square feet. The zone change will allow for a minimum lot size of 6,000 square feet. The applicant is requesting the zone change to develop the property with single-family homes on Tracts 174C and 174A. The applicant is aware that no building permit or certificate of occupancy will be issued for any parcel or tract of land inside the City limits until such property has received final plat approval and is in substantial conformity with subdivision and zoning regulations. The request would be in the applicant's best interest to re-zone the property so that the properties can be platted for future development.

On November 5, 2024, the Planning and Zoning Commission held a public hearing for the request. The applicant was present and available for questions. A neighbor expressed concern about changing the zoning and how it would affect their property.

As of Friday, November 8, 2024, of the 15 notices mailed, no notices were returned in favor and one was returned in opposition to the request with a total protest calculation of 28.80 percent. The opposition had concerns that re-zoning the property would interfere with the future sale of four acres in the area. As the written protest exceeds 20 percent, a favorable vote by a 3/4 majority of City Council will be required to approve this 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 a zone change from 'R-1A', Single-Family Residential District to 'R-1B', Single-Family Residential District.

Attachments:
Ordinance
Location Map
Future Land Use Guide Map
Protest Map

Drafted/Recommended By:
Department Leader Kyle Kingma, AICP, CFM, 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-1A", SINGLE-FAMILY RESIDENTIAL DISTRICT TO "R-1B", SINGLE-FAMILY RESIDENTIAL DISTRICT ON TRACTS 174C AND 174A, TWO TRACTS CONTAINING APPROXIMATELY 0.42 ACRES OF LAND LOCATED EAST OF THE NORTHEAST INTERSECTION OF OLD TROUP HIGHWAY AND CALLOWAY ROAD (2714 AND 2716 CALLOWAY ROAD); DIRECTING THE AMENDMENT OF THE FUTURE LAND USE GUIDE MAP; 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 Z24-033

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

> On Tracts 174C and 174A, two tracts containing approximately 0.42 acres of land located east of the northeast intersection of Old Troup Highway and Calloway Road (2714 and 2716 Calloway 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 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 13th day of November A.D., 2024.

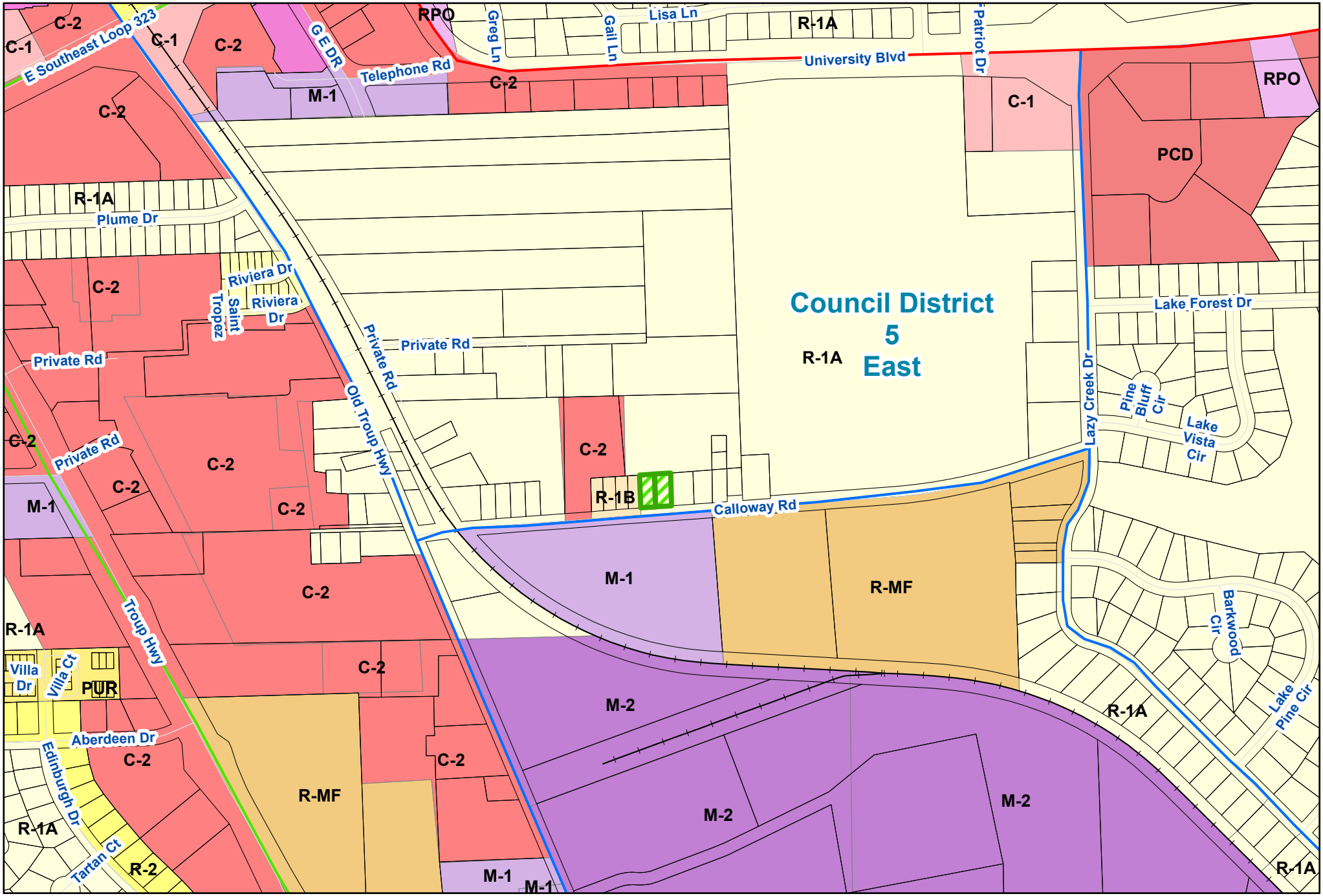
_____
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

_____
CASSANDRA BRAGER, CITY CLERK

_____
DEBORAH G. PULLUM,
CITY ATTORNEY



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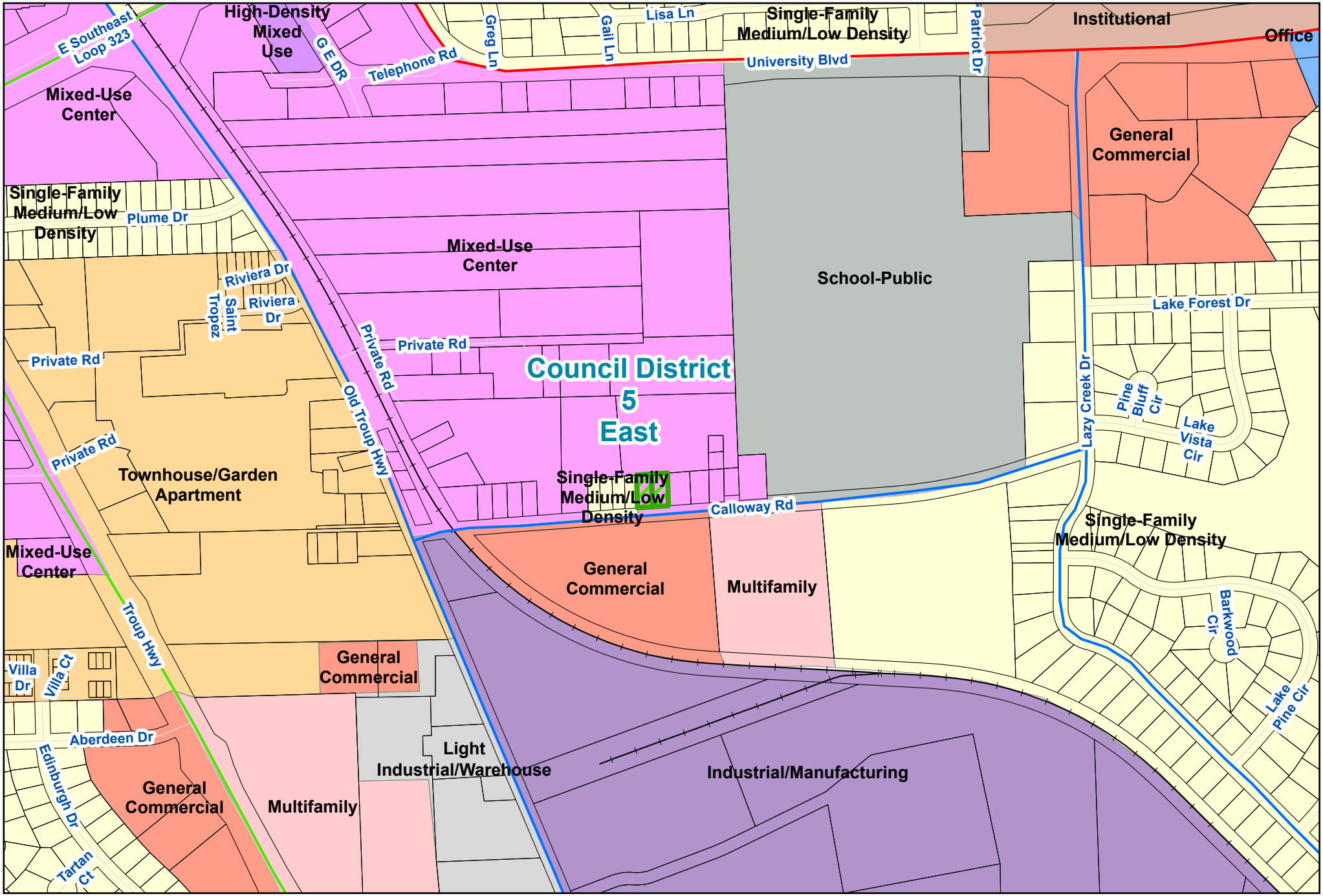
1 inch equals 500 feet

N

ZONING CASE

Zoning Case #: Z24-033
Current Zoning: R-1A
Proposed Zoning: R-1B
GARRETT NEWMAN

Subject Property



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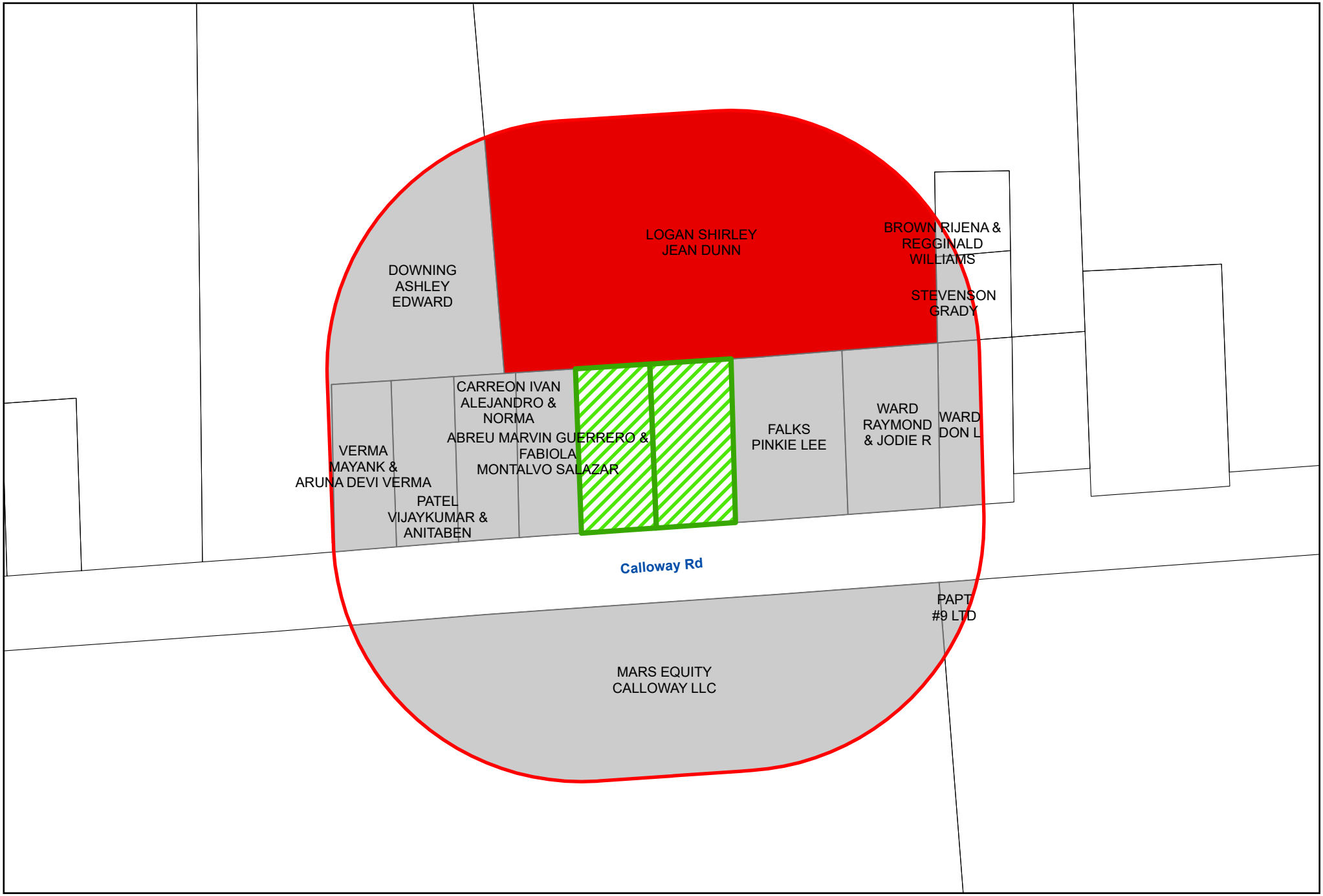
1 inch equals 500 feet

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ZONING CASE

Zoning Case #: Z24-033
Current Zoning: R-1A
Proposed Zoning: R-1B
GARRETT NEWMAN

Subject Property



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1 inch equals 100 feet

N

ZONING CASE

Zoning Case #: Z24-033
Current Zoning: R-1A
Proposed Zoning: R-1B
GARRETT NEWMAN

Subject Property

200' Mailed Notification Area

Protest Lots

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. Z-5

Date: November 13, 2024

Subject: Z24-034 GARRETT NEWMAN (2508 CALLOWAY ROAD) Request that the City Council consider adoption of an Ordinance approving a zone change from 'R-1A', Single-Family Residential District to 'R-1B', Single-Family Residential District.

Item Reference:

The applicant is requesting the zone change to develop the property with a single-family home on Tract 174G, one tract containing approximately 0.20 acres of land located east of the northeast intersection of Old Troup Highway and Calloway Road (2508 Calloway 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.

The adjacent property to the east is zoned 'R-1A', Single-Family Residential District and is undeveloped. The adjacent property to the south is zoned 'M-1', Light Industrial District and is developed with storage units. The adjacent property to the west is zoned 'R-1A', Single-Family

Residential District and is developed with a home.

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

The subject property, roughly estimated at 8,200 square feet, was subdivided by metes, and bounds years ago and is currently undeveloped. Like Tracts 174C and 174A, under the current 'R-1A' zoning, the subject property would not meet the minimum lot size of 9,000 square feet. The zone change will allow for a minimum lot size of 6,000 square feet. The applicant is requesting the zone change to develop the property with a single-family home. The applicant is aware that no building permit or certificate of occupancy will be issued for any parcel or tract of land inside the City limits until such property has received final plat approval and is in substantial conformity with subdivision and zoning regulations. The request would be in the applicant's best interest to re-zone the property so that the properties can be platted for future development.

On November 5, 2024, the Planning and Zoning Commission held a public hearing for the request. The applicant was present and available for questions. A neighbor expressed concern about changing the zoning and how it would affect their property.

As of Friday, November 8, 2024, of the 15 notices mailed, no notices were returned in favor of the request and one was returned in opposition to the request with a total protest calculation of 34.12 percent. The opposition had concerns that re-zoning the property would interfere with the future sale of four acres in the area. As the written protest exceeds 20 percent, a favorable vote by a 3/4 majority of City Council will be required to approve this 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 a zone change from 'R-1A', Single-Family Residential District to 'R-1B', Single-Family Residential District.

Attachments:
Ordinance
Location Map
Future Land Use Guide Map
Protest Map

Drafted/Recommended By:
Department Leader Kyle Kingma, AICP, CFM, 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 from "R-1A", SINGLE-FAMILY RESIDENTIAL DISTRICT TO "R-1B", SINGLE-FAMILY RESIDENTIAL DISTRICT ON TRACT 174G, ONE TRACT CONTAINING APPROXIMATELY 0.20 ACRES OF LAND LOCATED EAST OF THE NORTHEAST INTERSECTION OF OLD TROUP HIGHWAY AND CALLOWAY ROAD (2508 CALLOWAY ROAD); DIRECTING THE AMENDMENT OF THE FUTURE LAND USE GUIDE MAP; 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 Z24-034

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

> On Tract 174G, one tract containing approximately 0.20 acres of land located east of the northeast intersection of Old Troup Highway and Calloway Road (2508 Calloway 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 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 13th day of November A.D., 2024.

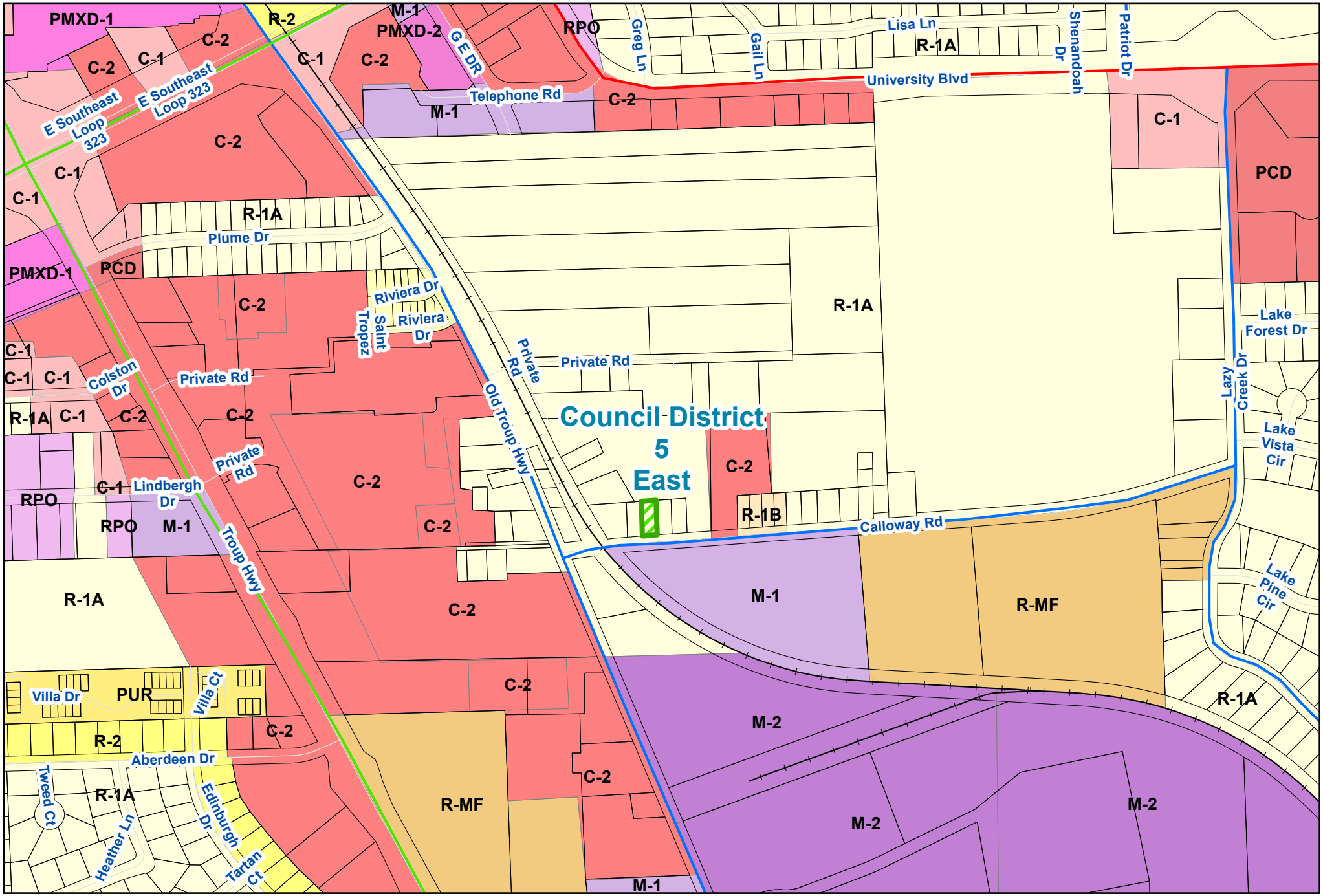
_____
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

_____
CASSANDRA BRAGER, CITY CLERK

_____
DEBORAH G. PULLUM,
CITY ATTORNEY



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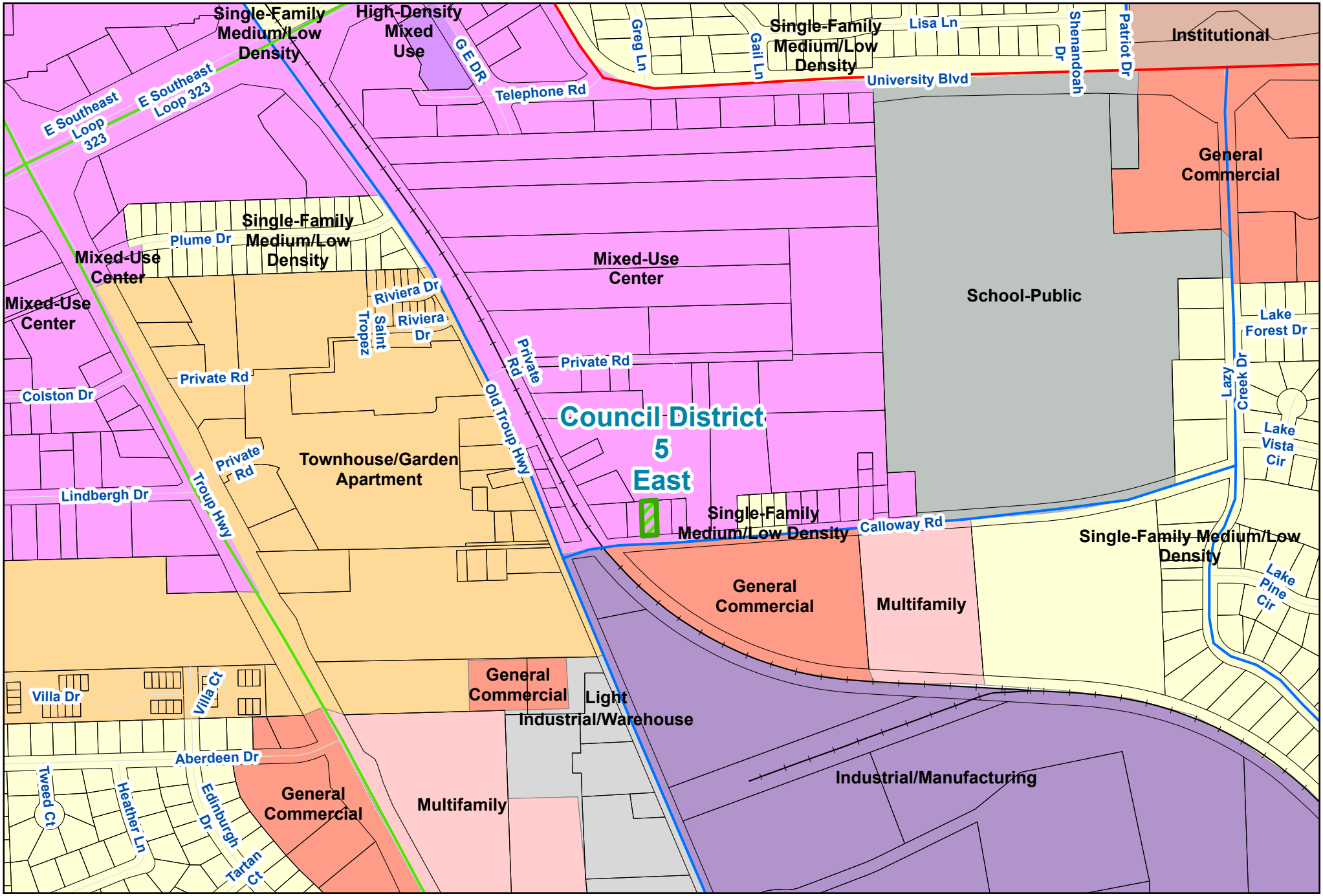
1 inch equals 500 feet

N

ZONING CASE

Zoning Case #: Z24-034
Current Zoning: R-1A
Proposed Zoning: R-1B
GARRETT NEWMAN

Subject Property



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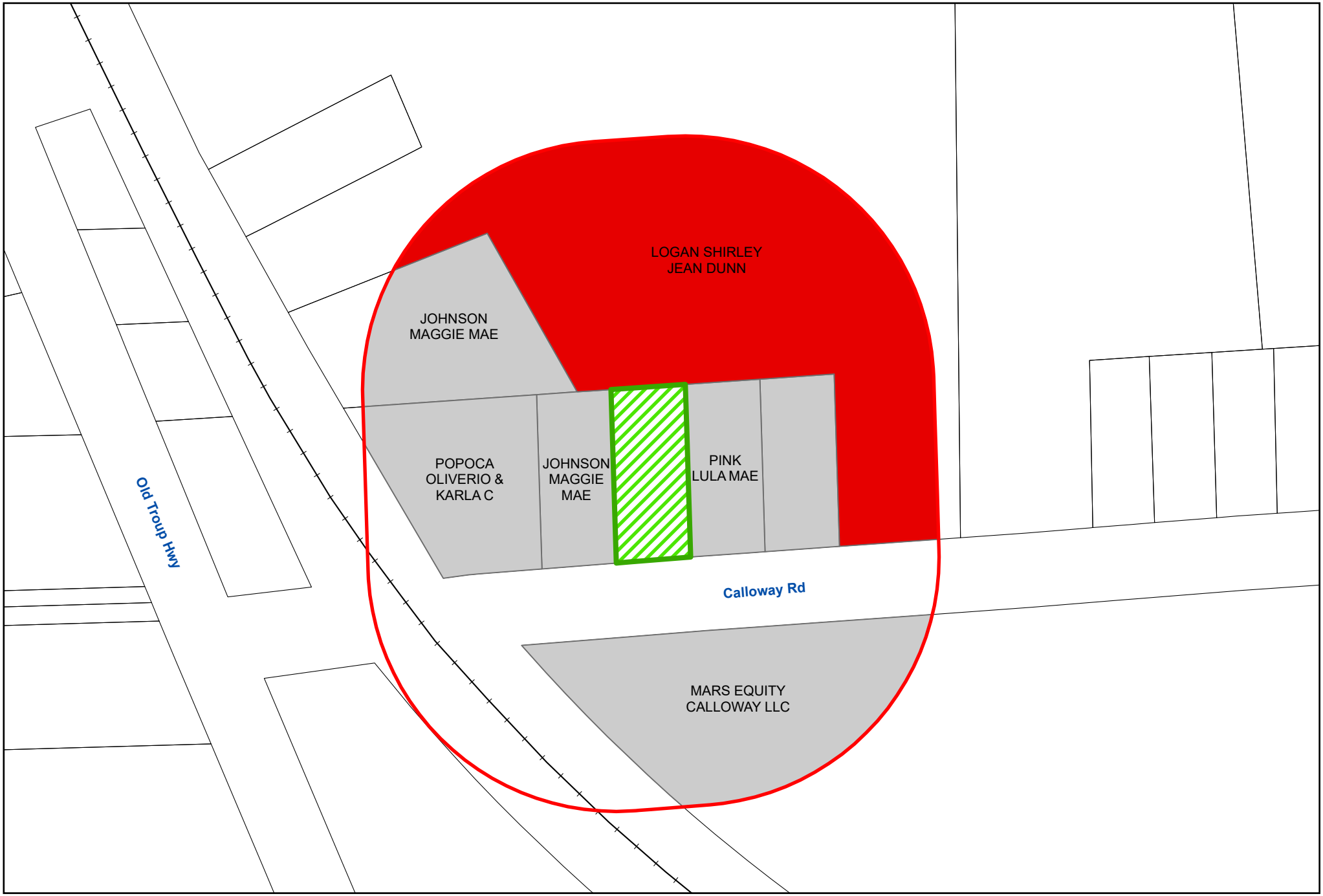
1 inch equals 500 feet

N

ZONING CASE

Zoning Case #: Z24-034
Current Zoning: R-1A
Proposed Zoning: R-1B
GARRETT NEWMAN

Subject Property



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1 inch equals 100 feet

N

ZONING CASE

Zoning Case #: Z24-034
Current Zoning: R-1A
Proposed Zoning: R-1B
GARRETT NEWMAN

Subject Property
200' Mailed Notification Area
Protest Lots

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. R-1

Date: November 13, 2024

Subject: Request that the City Council consider adopting a Resolution authorizing the City Manager, or the City Manager's Designee, as the designated representative of the City of Tyler, to execute Advanced Funding Agreements (AFA) with the Texas Department of Transportation (TxDOT) for multiple Highway Safety Improvement Program (HSIP) Projects.

Item Reference:

The Texas Department of Transportation, as part of their 2023 Highway Safety Improvement Program (HSIP) call for projects, approved two projects for the City of Tyler. The HSIP is federally funded. Projects located "on-system", which are TxDOT roadways, receive 90% of the construction cost from the federal government and 10% from TxDOT. Projects located "off-system", which are City streets, receive 90% of the construction cost from the federal government and 10% from the City of Tyler. The City is responsible for 100% of the engineering design fees associated with both the "on-system" and the "off-system" projects. The City of Tyler is responsible for 10% of the construction costs and any construction cost overruns for off-system projects that are above amounts outlined in the Advanced Funding Agreements (AFA). A summary of the two projects selected for the City of Tyler is provided below.

New Copeland Road Pedestrian Hybrid Beacon at Rose Rudman Trail/Hubbard Middle School (CSJ 0910-16-193) - This project includes the installation of a pedestrian hybrid beacon at the existing mid-block crosswalk on New Copeland Road between Rose Rudman Trail and Hubbard Middle School. The installation also includes a raised median refuge island with ADA curb ramps. This project is considered an "off-system" project.

Grande Boulevard at Sutherland Drive Pedestrian Signals and Facilities (CSJ 0910-16-194) - This project includes the installation of pedestrian signals at the existing signalized intersection of Grande Boulevard and Sutherland Drive. The new pedestrian signal upgrades will include a new traffic signal cabinet with battery backup, ADA curb ramp, and sidewalk extensions to tie into the existing shared-use trail on the north side of Grande Boulevard. This project is considered an "off-system" project.

The City of Tyler's contribution will be funded through the Half Cent Sales Fund.

RECOMMENDATION:

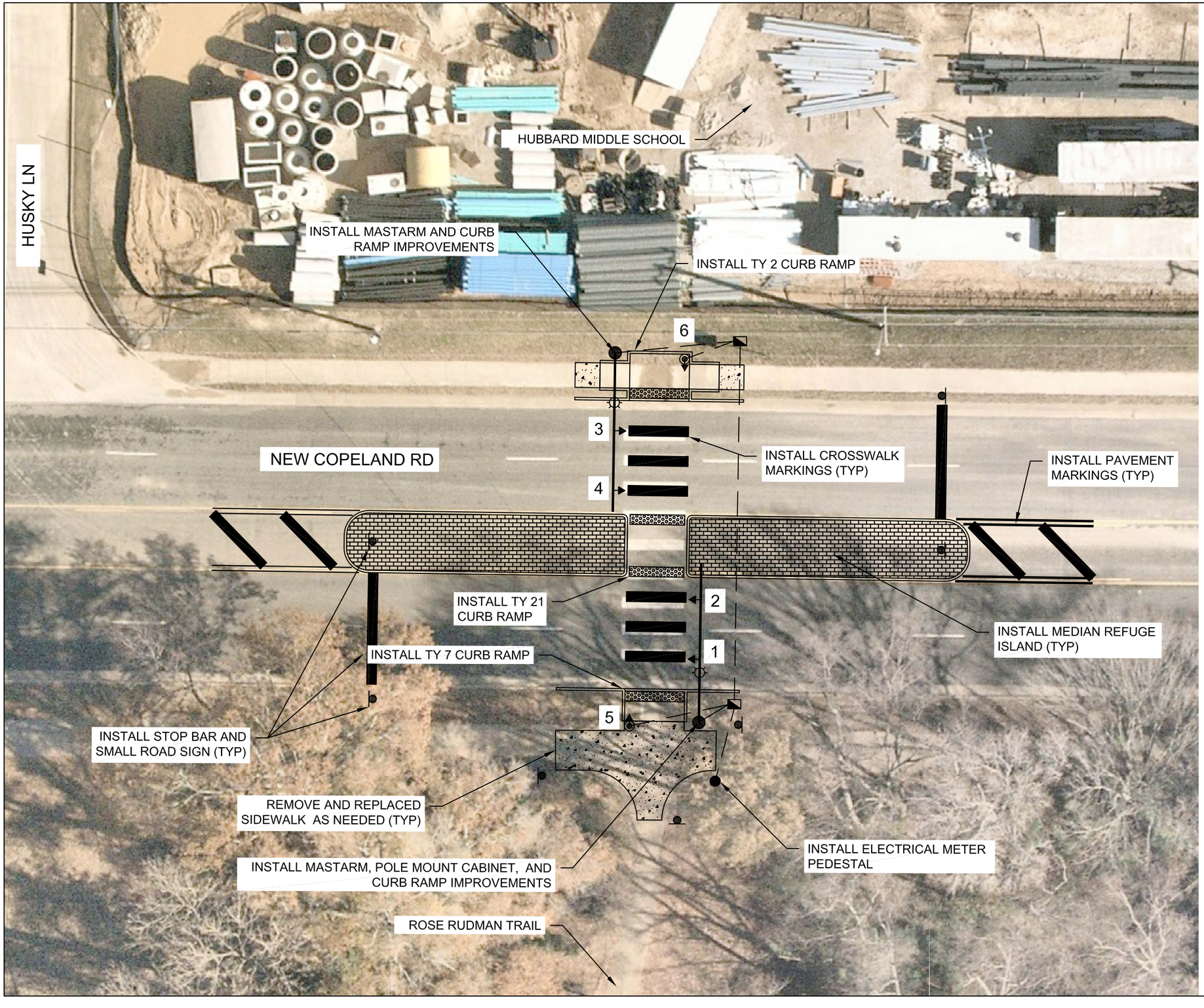
It is requested that the City Council adopt a Resolution authorizing the City Manager, or the City

Manager's Designee, as the designated representative of the City of Tyler, to execute Advanced Funding Agreements (AFA) with the Texas Department of Transportation (TxDOT) for multiple Highway Safety Improvement Program (HSIP) Projects.

Attachments:
Exhibit - New Copeland Road Pedestrian Hybrid Beacon
Exhibit - Grande Boulevard at Sutherland Drive Pedestrian Signal Improvements
Resolution - 2023 HSIP TxDOT AFA

Drafted/Recommended By:
Department Leader Cameron L. Williams, PE, PTOE, PTP - Traffic Engineer

Edited/Submitted By:
City Manager



PROPOSED SIGNAL HEADS



1,2,3,4



5,6

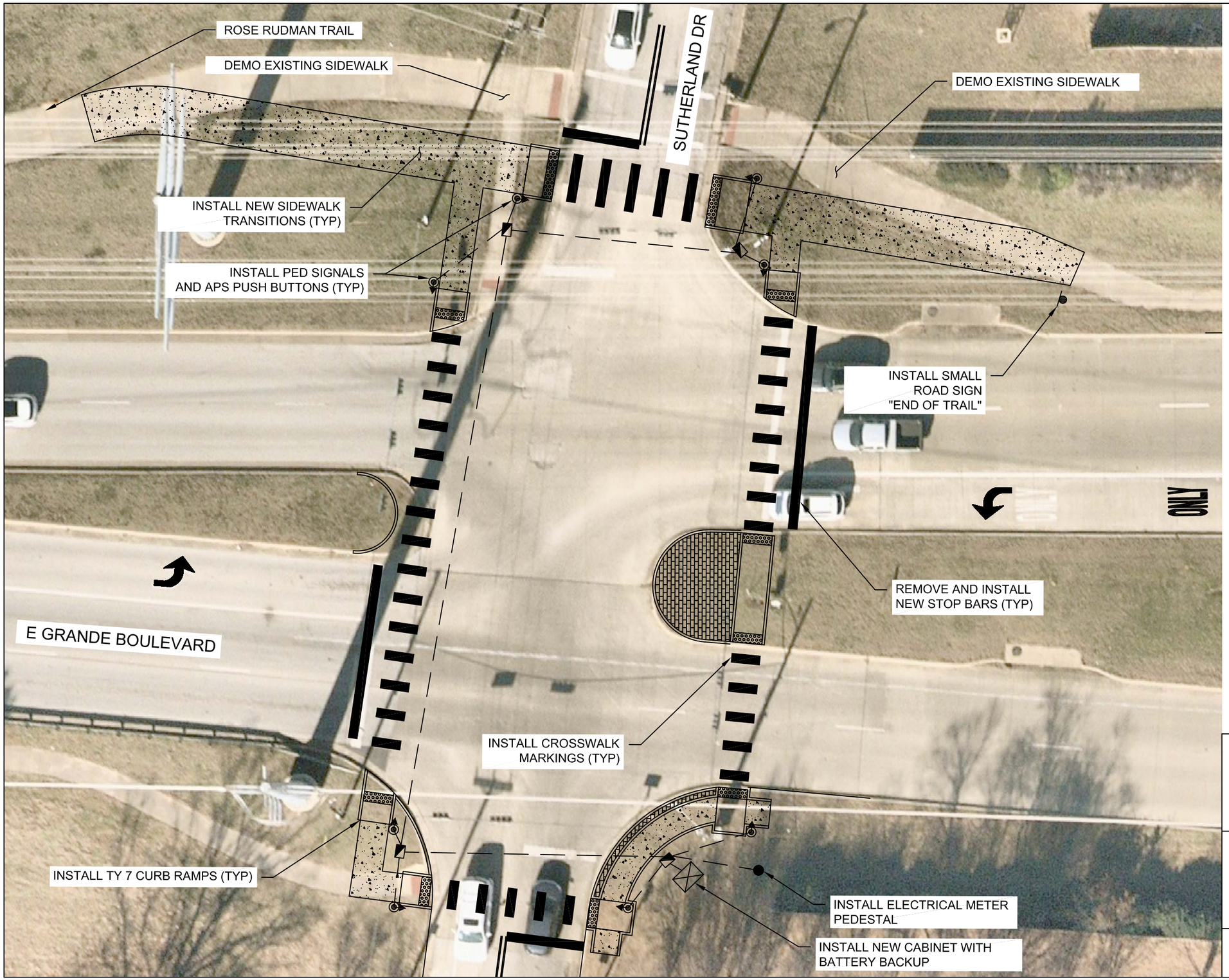
SCALE: 1" = 20'

0 20' 40'

NEW COPELAND ROAD
AT
ROSE RUDMAN TRAIL

EXHIBIT 1
CONCEPTUAL LAYOUT
PEDESTRIAN HYBRID BEACON

SCALE	DATE	DRAWN
1" = 20'	12/13/2023	CLW



PROPOSED SIGNAL HEADS

8

1,2,3,4,5,6,7,8

N

SCALE: 1" = 20'

0 20' 40'

E GRANDE BOULEVARD AT SUTHERLAND DRIVE

EXHIBIT 1 PEDESTRIAN SIGNAL IMPROVEMENTS

SCALE	DATE	DRAWN
1" = 20'	12/13/2023	CLW

RESOLUTION NO. R-2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AUTHORIZING THE CITY MANAGER OR THE CITY MANAGER'S DESIGNEE, AS THE DESIGNATED REPRESENTATIVE OF THE CITY OF TYLER, TEXAS, TO EXECUTE ADVANCE FUNDING AGREEMENTS (AFA) WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR HIGHWAY SAFETY IMPROVEMENT PROGRAM PROJECTS (HSIP); AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, the Texas Department of Transportation (TxDOT) has approved Highway Safety Improvement Projects (HSIP) for:

New Copeland Road Pedestrian Hybrid Beacon (CSJ 0910-16-193);
Grande Boulevard at Sutherland Drive Pedestrian Signal & Crosswalk Facilities (CSJ 0910-16-194)

WHEREAS, some Highway Safety Improvement Program (HSIP) projects require a local match, and the City of Tyler commits to provide the match. The local match is comprised of cash plus in-kind contributions, if any; and

WHEREAS, the City of Tyler is responsible for all non-reimbursable costs and 100% of overruns, if any; and

WHEREAS, the City Council of the City of Tyler desires to reaffirm its support of the Projects and approve and authorize the execution of an Advance Funding Agreement (AFA) with TxDOT for the Projects.

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

Part 1: That the City Council of the City of Tyler approves the execution of an Advance Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT), and the City Manager, or the City Manager's Designee, of the City of Tyler, Texas, is authorized to execute the AFA with TxDOT for the- aforementioned Highway Safety Improvement Program Projects (HSIP) on behalf of the City of Tyler, Texas.

Part 2: That the City Manager, or the City Manager's Designee's, filing of the AFA application, and all actions taken in connection therewith, are hereby affirmed.

Part 3: That the City Council hereby resolves and affirms to the TxDOT that the City of Tyler has the legal authority to apply for the AFA, execute the proposed projects, and if necessary, finance the proposed projects.

Part 4: That the City Council resolves and affirms to the TxDOT the City of Tyler's intent to comply with all of the assurances outlined in the AFA and all laws, regulations, and circulars incorporated by reference in the AFA.

Part 5: That the City Manager, or the City Manager's Designee, is hereby authorized and directed to provide such additional information as may be required by the TxDOT.

Part 6: That this Resolution shall be effective immediately upon adoption.

PASSED AND APPROVED, this the _____ day of _____, 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

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. O-1

Date: November 13, 2024

Subject: Request that the City Council consider adoption of an Ordinance amending Tyler City Code Chapter 3, Civil Service Classification Plan by amending the Civil Service Classification Plan and the number of authorized Civil Service positions for Fiscal Year 2024-2025.

Item Reference: **Texas Local Gov't Code (Section 143.021) and Tyler City Code (Chapter 3)**

AMENDMENT OF CIVIL SERVICE CLASSIFICATON PLAN TO ESTABLISH THE NUMBER OF AUTHORIZED POLICE AND FIRE CIVIL SERVICE POSITIONS FOR FISCAL YEAR 2024-2025

The attached Ordinance has been prepared for the City Council to consider formal approval of amendments to the Civil Service Classification Plan and the number of authorized Civil Service positions within the Police Department and Tyler Fire Department in accordance with Chapter 143 of the Texas Local Government Code included in this year's current budget (Fiscal Year 2024-2025).

The Civil Service Classifications were last updated on February 14, 2024. This ordinance reflects changes made to the positions in the Tyler Police Department, which includes the addition of two Police Officer positions awarded as part of a Department of Justice FY2024 COPS Hiring Program (CHP) grant. Additionally, the ordinance reflects changes made to the firefighter positions in the Tyler Fire Department, which includes one temporary authorized position. This temporary position will allow the department to start a new recruit in the upcoming training academy while waiting for the vacancy to be completed after promotional exams. The additional authorized firefighter position will be deleted 30 days after the completion of promotions. No additional budgetary funding is required for this temporary position. However, this one Fire Department hire will reduce staffing shortages and overtime.

Texas Local Government Code Section 143.021(a) provides that the Civil Service Commission shall provide the classification of all fire fighters and police officers, and that the municipality's governing body shall establish the classifications by ordinance. The governing body by ordinance shall prescribe the number of positions in each classification.

RECOMMENDATION:

It is recommended that the City Council approve the attached Ordinance amending Tyler City Code Chapter 3, Civil Service Classification Plan and number of Authorized Civil Service positions for Fiscal Year 2024-2025.

Attachments:
FY25 proposed Civil Service Classification Plan ordinance v2

Drafted/Recommended By:
Department Leader Jimmy Toler, Chief of Police

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 3 OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, "PERSONNEL/CIVIL SERVICE/TMRS", ARTICLE III., "CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS", DIVISION 2, "CLASSIFICATION PLAN", AMENDING THE CIVIL SERVICE CLASSIFICATION PLAN AND NUMBER OF AUTHORIZED CIVIL SERVICE POSITIONS FOR FISCAL YEAR 2024-2025; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS Chapter 143 of the Texas Local Government Code requires the City Council to approve a Fire and Police Civil Service employee classification plan and authorize the number of Civil Service employees for each position on an annual basis; and

WHEREAS the number and classification of authorized Civil Service positions can only be changed by City ordinance.

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

PART 1: That Tyler City Code Chapter 3, "Personnel/Civil Service/TMRS", Article III., "Civil Service for Firefighters and Police Officers", Division 2, "Classification Plan", is hereby amended by amending Section 3-43 to read as follows, with no other changes to the Civil Service Classifications:

Sec. 3-43. Classification plan adopted.
The following is adopted as the classification plan for Tyler Civil Service employees.

Police Department Classifications	FY 2021-2022 # of Positions	FY 2022-2023 # of Positions	FY 2023-2024 # of Positions	FY 2023-2024 # of Positions	(updated) **FY 2024-2025 # of Positions**
Assistant Police Chief I, II, III, IV	3	3	3	3	**3**
Police Lieutenant I, II, III, IV	8	8	8	8	**8**
Police Sergeant I, II, III, IV	27	27	27	28	**28**
Police Officer – Recruit, I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV	163	163	163	162	**164**
TOTALS	**201** * Two additional officers added	**201**	**201**	**201** * One Sergeant added; one Recruit removed	**203** ***Two Police Recruits added**

Fire Department Classifications	FY 2022-2023 # of Positions	FY 2022-2023 # of Positions	FY 2023-2024 # of Positions	FY 2023-2024 # of Positions	**(updated) FY 2024-2025 # of Positions**
Assistant Fire Chief I, II, III, IV	2	2	2	2	**2**
Fire Battalion Chief I, II, III, IV	7	7	7	7	**7**
Fire Senior Captain	14	14	16	17	**17**
Fire Captain I, II, III, IV	26	26	27	26	**26**
Fire Driver/Engineer I, II, III, IV	40	40	43	43	**43**
Firefighter – Recruit, I, II, III, IV, V, VI, VII, VIII, IX, X, XI	73	79	73	73	**74**
TOTALS	**162** *Two Fire Recruits added	**168** *Six Fire Recruits added (SAFER)	**168** *Six Fire Recruits converted to Promoted Positions for Sta. 10	**168** *One Senior Captain added; one Captain removed	**169** *Adding one temporary authorized firefighter position to be deleted 30 days after promotional completion.

The number and base salary of positions allocated to each classification shall be as set by the City Council in each new fiscal year budget, and classification ordinance. *

The position of Fire Marshal is a non-civil service position. Nothing herein shall be construed to create the Civil Service position of Fire Marshal. (Ord. O-97-43; 9/4/97) (Ord. No. O-99-21, 3/3/99) (Ord. No. O-99-29, 4/7/99) (Ord. No. O-99-42, 6/16/99) (O-99-68, 9/1/99) (Ord. O-2000-13, 3/15/00) (Ord. O-2000-63, 9/6/00) (Ord. O-2000-80, 10/18/00) (Ord. O-2000-99, 12/20/2000) (Ord. O-2001-10, 3/7/2001) (Ord. O-2001-10, 3/7/2001) (Ord. O-2001-16, 4/25/2001) (Ord. O-2001-42, 9/5/2001) (Ord. O-2001-48, 10/17/01) (Ord. O-2002-5, 2/6/02) (Ord. O-2002-12, 4/3/02) (Ord O-2002-39, 9/11/02))Ord O-2003-2, 1/8/03) (Ord. O-2003-21, 5/28/03) (O-2003-56, 11-12-03) (O-2006-10, 1/11/06) (Ord. O-2007-13, 2/14/07) (Ord. O-2007-140, 11/28/07) (O-2008-9, 1/9/08) (Ord. O-2008-46, 4/9/08) (Ord. O-2008-129, 9/24/08) (Ord. O-2008-153, 12/10/08) (Ord. O-2009-106, 10/14/2009)(Ord. O-2010-101, 10/13/10) (Ord. No. O-2011-90, 10/26/11) (Ord. O-2012-27, 3/28/12) (Ord. No. O-2013-98, 10/23/13) (Ord. No. O-2015-34; 3/25/15) (Ord. No. O-2015-103; 11/11/15) (Ord. No. O-2016-92, 09/28/16) (Ord. No. O-2017-107; 11/8/17) (Ord. No. O-2018-35; 4/11/18) (Ord. No. O-2019-15; 2/13/19) (Ord. No. O-2020-34; 3/25/20) (Ord. No. O-2021-18; 02/24/21 (Ord. No. O-2021-110; 12/08/2021) (Ord. No. O-2022-94; 10/12/22) (Ord. No. O-2023-34; 5/10/23) (Ord. No. O-2023-93; 9/27/23) (Ord. No. O-2024-18; 1/24/24) (Ord. No. O-2024-20; 2/14/24) (Ord. No. O-2024-__; 11/13/24)

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: This ordinance shall take effect immediately upon its adoption.

PASSED AND APPROVED this the 13th day of November, 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. O-2

Date: November 13, 2024

Subject: Request that the City Council consider conducting the annual investment policy review and consider adoption of an ordinance amending Tyler City Code Chapter 2 by adopting the investment policy.

Item Reference: **Texas Government Code Chapter 2256; City of Tyler Code of Ordinances, Chapter 2, and Article V. Investment Policy.**

The City Council is required by the Public Funds Investment Act to review its investment policy and investment strategies at least annually. The current policy is included in the City of Tyler Code of Ordinances, Chapter 2, Article V. A copy of the policy is attached for your review.

This policy review will help the City of Tyler obtain a "Certificate of Distinction" for having an investment policy that meets the requirements of the Public Funds Investment Act and the standards for prudent investing established by the Government Treasurer's Organization of Texas. Changes include:

*Investment Officers - Updated title change for officers to add "Controller" and remove "Treasury Manager"
*Authorized Investments - Added language for specific inclusion of credit unions and their collateral through NCUSIF under allowable investments
*Selection of Broker/Dealers - Updated broker name to SouthState|DuncanWilliams

RECOMMENDATION:

Request that the City Council consider conducting the annual investment policy review and consider adoption of an ordinance amending Tyler City Code Chapter 2 by adopting the investment policy.

Attachments:
Investment Policy 2024 Proposed.docx

Drafted/Recommended By:
Department Leader Keidric Trimble, Chief Financial Officer

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 2, "FINANCE AND TAXATION", ARTICLE V, "INVESTMENT POLICY", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Public Funds Investment Act, (currently Chapter 2256 of the Texas Government Code, Section 2256.005), requires that the City Council review and adopt its Investment Policy and strategy at least annually;

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

PART 1. That Tyler City Code Chapter 2, "Finance and Taxation", Article V., "Investment Policy", is hereby amended to read as follows:

ARTICLE V. INVESTMENT POLICY

Sec. 2-46. Introduction and Scope.

The Public Funds Investment Act, Chapter 2256, Texas Government Code, (the "PFIA") requires each city to adopt a written investment policy that includes a written investment strategy, quarterly reports to City Council with market values, an annual review of the policy by Council and an annual compliance audit among other requirements. This Policy shall apply to the investment and management of all City funds under its control, other than those expressly excluded within this document or by applicable law or valid agreement. The Fire Pension Fund is excluded from this Policy because it is separately organized and managed by contract with investment companies as directed by the Fire Pension Board, and the Lindsey Police and Firefighters' Endowment Fund is also excluded from this Policy because it is separately organized and managed by contract with an investment company as directed by the Lindsey Police and Firefighters' Fund Board. The Employees Deferred Compensation Agency Fund and the Retirees Health Benefits Trust Fund are also excluded. This Policy shall not supersede the restrictions on investment of specific funds because of legal limits, created by grants, bond covenants or similar regulations. In the event of conflict, the more restrictive policy shall be followed. (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-21; 3/22/00) (Ord. No. 0-2002-54, 11/13/2002) (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-37, 2/27/08) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (Ord. No. 0-2013-60, 7/24/13) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-47. Investment Strategy.

The City shall use a pooled cash and investment approach commingling money from various fund types for market efficiency to the extent that is practical and legal. The following investment strategy considerations recognize the unique advantages of a pooled cash and investment portfolio, including the reduction of cash flow uncertainty

and the increased opportunity of yield curve extension. Funds included in the portfolio will include those from the operating funds, debt service and debt reserve funds, and special projects. The liquidity requirements of the pooled investment portfolio will be projected and matched with maturities.

Pooled Fund Group

Suitability - Any investment eligible in the Investment Policy is suitable for Pooled Fund Groups.

Safety of Principal - All investments shall be of high quality with no perceived default risk. Market price fluctuations will occur. However, managing the weighted average days to maturity to less than 270 days and restricting the maximum allowable maturity to two years using the final stated maturity dates of each investment will minimize the price volatility of the portfolio.

Liquidity - Pooled Fund Groups require short-term liquidity to adequately fund any unanticipated cash outflow. Short-term financial institution deposits, investment pools and money market mutual funds will provide daily liquidity and may be utilized as a competitive yield alternative to fixed maturity investments.

Marketability - Securities with active and efficient secondary markets are necessary in the event of an unanticipated cash flow requirement. Historical market "spreads" between the bid and offer prices of a particular security-type of less than a quarter of a percentage point will define an efficient secondary market.

Diversification - Investment maturities should be staggered throughout the budget cycle to provide cash flow based on the anticipated operating needs of the City. Diversifying the appropriate maturity structure up to the two-year maximum will reduce interest rate risk.

Yield - Attaining a competitive market yield for comparable security types and portfolio restrictions is the desired objective. The yield of an equally weighted, rolling three-month Treasury Bill portfolio will be the minimum yield objective.

Special Project and Bond Proceeds Funds

At times special project and bond proceed funds may be better suited invested outside the Pooled Fund Group. In those cases, the following strategy shall be applicable:

Suitability - Any investment eligible in the Investment Policy is suitable for Special Project and Bond Proceeds Funds.

Safety of Principal - All investments will be of high quality with no perceived default risk. Market price fluctuations will occur. However, by managing Special Project and Bond Proceeds to not exceed the anticipated expenditure schedule the market risk of the overall portfolio will be minimized. Maximum maturity five years from date of purchase.

Liquidity - Special Project and Bond Proceeds Funds used for capital improvements programs have reasonably predictable draw down schedules. Therefore, investment maturities should generally follow the anticipated cash flow requirements. Short term financial institution deposits, investment pools and money market mutual funds will provide readily available funds generally equal to one month's anticipated cash flow needs, or a competitive yield alternative for short term fixed maturity investments. A singular repurchase agreement, or similarly structured investment vehicle, may be utilized if disbursements are allowed in the amount necessary to satisfy any expenditure request. This investment structure is commonly referred to as a flexible repurchase agreement.

Marketability - Securities with active and efficient secondary markets are necessary in the event of an unanticipated cash flow requirement. Historical market "spreads" between the bid and offer prices of a particular security-type of less than a quarter of a percentage point will define an efficient secondary market.

Diversification - Market conditions and arbitrage regulations influence the attractiveness of staggering the maturity of fixed rate investments for Special Project and Bond Proceeds Funds. Generally, when investment rates exceed the applicable cost of borrowing, the City is best served by locking in most investments. If the cost of borrowing cannot be exceeded, then concurrent market conditions will determine the attractiveness of diversifying maturities or investing in shorter and larger amounts. At no time shall the anticipated expenditure schedule be exceeded in an attempt to bolster yield.

Yield - Achieving a positive spread to the cost of borrowing is the desired objective, within the limits of the Investment Policy's risk constraints. The yield of an equally weighted, rolling six-month Treasury bill portfolio will be the minimum yield objective for non-borrowed funds. (Ord. No. 0-2000-21, 3/22/00) (Ord. No. 0-2001-51, 10/24/01) (Ord. No. 0-2002-54, 11/13/2002) (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord. No. 0-2014-98, 10/22/14) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-48. Objectives.

Principle investment objectives in order of priority are:

a. Preservation of capital and the protection of investment principal.

b. Maintenance of sufficient liquidity to meet anticipated disbursement and cash flows.

c. Preservation of public trust by avoiding any transaction, which might impair public confidence in the City's ability to manage public funds with which it is entrusted.

d. Conformance with all Federal statutes, State statutes, City Charter requirements, City ordinances, and other legal or policy requirements.

e. Diversification by investment type and maturity to avoid market risks and issuer defaults, where appropriate.

f. Attainment of a rate of return which is consistent with risk limitations and cash flow characteristics of the City's investments. (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-21, 3/22/00) (Ord. No. 0-2001-51, 10/24/01) (Ord. No. 0-2002-54, 11/13/2002) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2021-41; 05/12/21) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-49. Investment Officers.

The Chief Financial Officer, Controller and Accounting Manager are appointed as Investment Officers. The Investment Officer's authority will be limited by applicable laws, regulations and this Policy.

In order to ensure qualified and capable investment management, the City shall provide periodic training in investments for the investment personnel through courses and seminars offered by professional organizations and associations in compliance with the PFIA.

Investment Officers shall attend at least one training session, accumulating at least 10 hours of instruction, within twelve months of assuming their duties. An additional eight hours of training will be required not less than once in a two-year period that begins on the first day of the City's fiscal year and consists of the two consecutive fiscal years after that date. Training will address investment topics in compliance with the PFIA. The City approves the GFOA, GFOAT, GTOT, NTCOG, TCMA, TML, and UNT as independent sources for training.

The City maintains the right to hire Investment Advisers to assist City staff in the investment of funds. Investment Advisers shall adhere to the spirit, philosophy and specific terms of this Policy and shall invest within the same objectives. The Investment Officers shall establish criteria to evaluate Investment Advisers, including:

1. Understanding of the inherent fiduciary responsibility of investing public funds;

2. Adherence to the City's policies and strategies;

3. Investment strategy recommendations within accepted risk constraints;

4. Responsiveness to the City's request for services and information; and

5. Similarity in philosophy and strategy with the City's objectives.

Selected Investment Advisors must be registered under the Investment Advisers Act of 1940 or with the State Securities Board. A contract with an Investment Adviser may not be for a term longer than two years and any contract, renewal or extension is subject to approval by the City Council. (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-21, 3/22/00) (Ord. No. 0-2001-51, 10/24/01) (Ord. No. 0-2002-54, 11/13/2002) (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-50. Standards of Care, Ethics and Conflicts of Interest.

As provided for in the PFIA, the standard of care for the City's investments shall be the Prudent Person Rule, which states "investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived."

The overall investment program shall be designed and managed with a degree of care and professionalism that is worthy of the public trust. The Investment Officers shall recognize that the investment activities of the City are a matter of public record and public trust.

The Investment Officers, acting in accordance with written procedures and exercising the proper standard of care, shall be relieved of personal responsibility for an individual investment decision, provided that this Policy and the City's procedures were followed. In determining whether an Investment Officer has exercised the proper

standard of care, all investments over which the individual had responsibility will be considered rather than a single investment.

Investment Officers and employees of the City involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Investment Officers and employees of the City involved in the investment process shall not utilize investment advice concerning specific investments or classes of investments obtained in the transaction of the City's business for personal investment decisions, shall in all respects subordinate their personal investment transaction to those of the City particularly with regard to the timing of purchases and sales, and shall keep confidential all investment advice obtained on behalf of the City and all transactions contemplated and completed by the City, except when disclosure is required by law.

All Investment Officers of the City shall file with the Texas Ethics Commission and the City Council a statement disclosing any personal business relationship with a business organization offering to engage in an investment transaction with the City or any relationship within the second degree by affinity or consanguinity to an individual seeking to sell investments to the City.

The City shall develop written administrative procedures and internal controls consistent with this Policy for the operation of the City's investment program. Such procedures shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees of the City. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived; and (2) the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall address the following points:

- Avoidance of collusion,
- Separation of transactions authority from accounting and record keeping,
- Custodial safekeeping,
- Avoidance of physical delivery securities,
- Clear delegation of authority of subordinate staff members, and
- Written confirmation for transactions for investments and wire transfers

(Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-21, 3/22/00) (Ord. No. 0-2001-51, 10/24/01) (Ord. No. 0-2002-54, 11/13/2002) (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-51. Authorized Investments.

The Investment Officers shall use only investment options approved by City Council. Participation in any investment pool must also be approved by formal Council action. Subject to any limitations otherwise imposed by applicable law, regulations, bond indentures or other agreements, including but not limited to, the PFIA, the following are the only permitted investments for the City's funds:

a. Direct obligations of the United States government; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).

b. Debentures or discount notes issued by, guaranteed by, or for which the credit of any Federal Agencies and Instrumentalities, including the Federal Home Loan Banks, is pledged for payment. Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.

c. Bonds or other interest bearing obligations of which the principal and interest are guaranteed by the full faith and credit of the United States government, including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation. Principal-only and interest-only mortgage backed securities and collateralized mortgage obligations and real estate mortgage investment conduits are expressly prohibited.

d. Certificates of Deposit and other evidences of deposit at a financial institution that, a) has its main office or a branch office in Texas and is guaranteed or insured by the Federal Deposit Insurance Corporation (FDIC) or its successor or the National Credit Union Share Insurance Fund (NCUSIF) or its successor, b) is secured by obligations in a manner and amount provided by law for deposits of the City, or c) is placed through a broker or depository institution that has its main office or a branch office in Texas that meets the requirements of the PFIA. All deposits exceeding the FDIC or NCUSIF insurance limits shall be collateralized as required by Section 2-57 Selection of Depositories.

e. Local government investment pools organized under the Interlocal Cooperation Act that meet the requirements of the PFIA and have been specifically approved and authorized by the City Council.

f. Direct obligations of the State of Texas or its agencies, and obligations of agencies, counties, cities, and other political subdivisions of the State of Texas rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent.

g. No load "government" money market mutual funds that meet the requirements of the PFIA. Money market mutual funds must maintain an AAAm, or equivalent rating from at least one nationally recognized rating agency; and be specifically approved by the City Council or purchased through the City's primary depository as an overnight investment tool.

h. Repurchase agreements entered into in compliance with the PFIA.

NOTE: A security's "average life" does not constitute a stated maturity.

No investment type approved by the PFIA for public investment will be authorized by the City without specific City Council approval and adoption in this Investment Policy. Investments authorized at the time of purchase, which become unauthorized, need not be liquidated. The City shall monitor the rating of each issuer, as applicable, at least quarterly, and take all prudent measures to liquidate an investment that is downgraded to less than its required minimum rating by PFIA. The Investment Officer(s) will make specific suggestions as to the possible liquidation or retention in either situation. The City will provide a competitive environment for individual investment transactions, financial institution, money market mutual fund, and local government investment pool selections.

This Policy does not apply to an investment donated to the City for a particular purpose or under terms of use specified by the donor (Section 2256.004). (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-21, 3/22/00) (Ord. No. 0-2001-51, 10/24/01) (Ord. No. 0-2002-54, 11/13/2002) (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord.0-2014-98, 10/22/14) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-52. Investment Limits.

It is the City's policy to diversify its investment portfolio. Invested funds shall be diversified to minimize risk or loss resulting from over-concentration of assets in a specific maturity, specific issuer, or specific class of investment, where appropriate. Cash flow projections shall be utilized to spread investment maturities, smooth market fluctuations, and reduce reinvestment risk.

The maturity of an investment largely dictates its price volatility. Therefore, the City shall concentrate its investment portfolio in shorter-term maturities to protect market valuation from unanticipated rate movements. The City will attempt to avoid over-investment in cash equivalent investments and match a portion of its investments with anticipated cash flow requirements. The asset allocation in the portfolio will vary depending upon those requirements and the outlook for the economy and the security markets. (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-21, 3/22/00) (Ord. No. 0-2001-51, 10/24/01) (Ord. No. 0-2002-54, 11/13/2002) (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord. No. 0-2014-98; 10/22/14) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec 2-53. Selection of Broker/Dealers.

The City may utilize the in-house brokerage services of the bank qualifying as City primary depository in the acquisition and disposition of authorized securities. Other broker/dealers meeting the qualifications of this Policy section and selected by the Investment Officers are reviewed and approved by the City Council.

The approved list of broker/dealers includes the following firms:

SouthState|DuncanWilliams

FHN Financial

MBS Securities

SAMCO

Wells Fargo Securities

For brokers and dealers of investment securities, the City shall select only dealers reporting to the Market Reports Division of the Federal Reserve Board of New York, also known as the "Primary Government Security Dealers," unless analysis reveals that other firms are adequately experienced to conduct public business.

All financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply the following as appropriate:

- Annual audited financial statements
- Proof of Texas State Securities Commission registration

- Proof of Financial Industry Regulatory Authority (FINRA) certification

Each entity from which the City purchases investments (brokers/banks/pools) shall be provided the City's Investment Policy. Investment pools and discretionary investment management firms will be required to provide a written certification as described in the PFIA.

It is the policy of the City to create a competitive environment for all individual purchases and sales, financial institution deposits, money market mutual funds, and local government investment pools. (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-21, 3/22/00) (Ord. No. 0-2001-51, 10/24/01) (Ord. No. 0-2002-54, 11/13/2002) (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord. No. 0-2014-98; 10/22/14) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2021-41; 05/12/21) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-54. Safekeeping.

Eligible investment securities shall be purchased using the delivery versus payment method. That is, funds shall not be wired or paid until verification has been made that the security has been received by the City safekeeping/clearance agent. The security shall be held in the account of the City. The original copy of all safekeeping receipts shall be delivered to the City. An independent custodian will be used for securities safekeeping. (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-28, 3/22/00) (Ord. No. 0-2001-51, 10/24/01) (Ord. No. 0-2002-54, 11/13/2002) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (0-2013-60, 7/24/13) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-55. Reporting and Audits.

At least quarterly, the Investment Officer(s) shall submit a written report of all investments in compliance with the PFIA. The market valuations obtained by the City shall be from independent sources believed to be accurate and representative of the investments' true values. The reports shall be submitted to City Council.

An annual compliance audit of management's controls on investments and adherence to this Investment Policy shall be performed in conjunction with the annual financial audit and include a review of quarterly reports, with the result of the review reported to the City Council by that auditor.

The benchmark for the portfolio will be a rolling three-month Treasury Bill average yield for the reporting period. Reporting will include the benchmark as a gauge of the portfolio's performance and a measure of risk. Weighted average yield to maturity shall be the measure of portfolio performance. (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-21, 3/22/00) (Ord. No. 0-2001-51, 10/24/01) (Ord. No. 0-2002-54, 11/13/2002) (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2021-41; 05/12/21) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-56. Review of Investment Policy.

The City Council will review and adopt this Investment Policy and investment strategy at least annually, approving changes to policy or strategy. (Ord. No. 0-98-21; 3/18/98) (Ord. No. 0-2000-21, 3/22/00) (Ord. No. 0-2001-51, 10/24/01) (Ord. No. 0-2002-54, 11/13/2002) (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-57. Selection of Depositories.

The primary depository shall be selected through the City's banking services procurement process, which shall include a formal Request for Application (RFA) issued in compliance with applicable State law. A written contract shall be entered into and extended as per the RFA specifications. In selecting the primary depository, the credit worthiness of institution shall be considered, and the Investment Officers shall conduct a review of prospective depository's credit characteristics and financial history.

The City may also utilize other financial institutions to maintain back-up checking or other transactional accounts, and to place interest bearing deposits.

All deposits placed with the City's primary depository or other financial institution shall be insured or collateralized in compliance with applicable State law. The City reserves the right, in its sole discretion, to accept or reject any form of insurance or collateralization pledged towards deposits. The City shall receive original safekeeping receipts for securities pledged, copies of any pledged insurance policies or letters of credit, and all pledged securities shall be held by an unaffiliated custodian. Written authorization by an Investment Officer is required prior to the release of any pledged collateral, insurance, or letter of credit.

Except for deposits secured with irrevocable letters of credit at 100% of principal plus anticipated accrued interest, all financial institution deposits and repurchase agreement investments of City funds shall be secured by pledged collateral. The City requires market value of pledged securities in excess of 102% of all uninsured deposits plus accrued interest if any. All financial institutions pledging securities as collateral shall be required to sign a collateralization agreement with the City. The agreement shall define the City's rights to the collateral in case of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with Federal and State regulations, including:

a) The agreement must be in writing;

b) The agreement must be executed by the financial institution and the City contemporaneously with the deposit;

c) The agreement must be approved by the Board of Directors or designated committee of the financial institution and a copy of the meeting minutes must be delivered to the City; and

d) The agreement must be part of the financial institution's "official record" continuously since its execution.

The Investment Officers shall monitor deposit and collateral levels at least monthly to maintain adequate coverage. (0-2003-65, 11/26/03) (Ord. 0-2004-87, 11/10/04) (Ord. 0-2005-91, 11/9/05) (Ord. No. O-2006-93, 11/8/06) (Ord. No. 0-2007-130, 11/14/07) (Ord. No. 0-2008-143, 11/12/08) (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2021-41; 05/12/21) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-58. Authorized Collateral

The City shall accept only the following as collateral:

a. Bonds, certificates of indebtedness, or notes of the United States, its agencies or instrumentalities (including the Federal Home Loan Banks), or other evidence of indebtedness of the United States, its agencies or instrumentalities that is guaranteed as to principal and interest by the United States, its agencies or instrumentalities.

b. Obligations, the principal and interest on which, are unconditionally guaranteed or insured by the State of Texas.

c. Bonds of the State of Texas or a county, city or other political subdivision of the State of Texas having been rated no less than "A" or its equivalent by a nationally recognized rating agency with a remaining maturity of ten (10) years or less.

d. Letters of credit issued by the United States or its agencies and instrumentalities, including the Federal Home Loan Banks. (Ord. No. 0-2009-84, 8/12/09) Ord. No. 0-2010-121, 11/10/10) (Ord. No. 0-2011-94, 11/9/11) (0-2013-60, 7/24/13) (Ord. No. 0-2016-20; 02/24/16) (Ord. No. 0-2017-54; 07/12/17) (Ord. No. 0-2019-45; 06/12/19) (Ord. No. 0-2020-62; 7/8/20) (Ord. No. 0-2022-88; 9/14/22) (Ord. No. 0-2023-97; 10/11/23) (Ord. No. 0-2024-XX;XX/XX/24)

Sec. 2-59. Reserved.

PART 2: 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 3: That this ordinance shall be effective on and after its date of passage and approval by the City Council.

PASSED AND APPROVED this ___ day of _____, 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: November 13, 2024

Subject: Request that the City Council consider reviewing and accepting the Revenue and Expenditure Report for the period ending September 30, 2024.

Item Reference: **The Fiscal Year 2023-2024 Annual Budget**

Revenue and Expenditure Report:

The attached City of Tyler Revenue and Expenditure Report provides information about the General Fund and includes all the major operating funds, representing 70 percent of all appropriations in the FY 2023-2024 Budget. The Internal Service, Special Revenue, Utility Debt Service, Capital Projects, and Trust Funds make up the remaining 30 percent of the total budget.

This report compares actual revenues and expenses to date with revenues and expenses as of the same period last year. Budgeted revenue and expenditure amounts for the fiscal year can also be compared to current projected amounts.

Projected Variances from Budget:

General Fund revenues from all sources are projected to be $503,257 less than budgeted, primarily due to decreased Sales Tax. General Fund total expenditures, excluding inter-fund transactions for the fiscal year, are projected to be $582,776 less than budgeted due to requesting all General Fund departments forecast to come in 2.5% below budget to help offset the reduction in sales tax.

The Water Utility Fund revenues from all sources are projected to be $2,070,468 less than budgeted for the fiscal year. The total expenditures plus inter-fund transactions are projected to be $1,942,936 less than budgeted, primarily due to projected savings in contingencies, salary savings forecasted in Water Distribution and Waste Collection, chemical supplies savings forecasted in Water Plant, and savings in CD/CMOM special services.

The Solid Waste Fund revenues from all sources are projected to be $686,346 less than budgeted for the fiscal year, primarily due to a delay in implementing the 5% CPI increase to the commercial and roll-off customers. Solid Waste Fund's total expenditures, excluding inter-fund transactions for the fiscal year, are projected to be $752,452 more than budgeted.

The Airport Fund revenues from all sources, including transfers from other funds, are projected to be

$190,739 less than budgeted, primarily due to a grant that expands two years, we will see the remaining revenue recognized in FY 25. Airport Fund total expenditures plus inter-fund transactions for the fiscal year are projected to be $242,289 less than budgeted.

The Development Services Fund revenues from all sources are projected to be $226,315 more than budgeted for the fiscal year. The Development Services Fund's total expenditures plus inter-fund transactions for the fiscal year are projected to be $90,004 less than budgeted.

The Hotel Occupancy Tax Fund revenues are expected to be $148,164 less than budgeted, primarily due to Hotel Occupancy decreasing throughout the City. Expenditures are expected to be $275,383 less than budgeted.

The Employee Benefits Fund revenues are expected to be $216,989 more than budgeted, while expenses are expected to be $1,873,789 less than budgeted, primarily due to lower claims values this fiscal year.

RECOMMENDATION:

Request that the City Council review and consider reviewing and accepting the Revenue and Expenditure Report for the period ending September 30 2024.

Attachments:
Financial Statements.pdf
September 30, 2024 Revenue and Expense Report Presentation.pptx

Drafted/Recommended By:
Department Leader Lauren Justice, Controller

Edited/Submitted By:
City Manager

City of Tyler, Texas

Quarterly Revenue and Expenditure Report

For the Quarter Ended
September 30, 2024

General Fund (101)
Statement of Revenues, Expenditures, and Changes in Working Capital
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Unreserved Fund Balance				$ 5,300,880	$ 5,300,880
Operating Reserve				12,278,114	12,278,114
Beginning Fund Balance / Working Capital				**17,578,994**	**17,578,994**
Revenues					
Property Taxes	27,025,622	28,738,516	100.71%	28,534,768	28,738,516
Franchises	11,261,209	11,718,698	102.24%	11,461,879	11,718,698
Sales & Use Taxes	41,625,718	40,681,615	96.43%	42,185,725	40,681,615
Licenses & Permits	457,240	397,129	81.05%	489,989	397,129
Fines & Penalties	3,995,668	4,462,476	107.45%	4,153,000	4,462,476
Use of Money & Property	1,670,124	1,715,933	133.85%	1,281,985	1,715,933
Current Services	2,600,056	3,017,372	101.75%	2,965,473	3,017,372
Other Agencies	619,171	632,478	107.90%	586,195	632,478
Miscellaneous	692,059	527,816	71.69%	736,276	527,816
Total Revenues	**89,946,867**	**91,892,033**	**99.46%**	**92,395,290**	**91,892,033**
Expenditures					
General Government	8,524,307	8,404,352	94.82%	8,863,153	8,404,352
Police	33,227,798	36,484,770	100.92%	36,151,874	36,484,770
Police Grants	443,356	587,049	125.34%	468,382	587,049
Fire	23,054,346	25,507,813	103.61%	24,619,100	25,507,813
Public Services	7,952,641	8,243,377	89.48%	9,212,818	8,243,377
Parks and Recreation	4,472,913	4,933,130	96.28%	5,123,889	4,933,130
Library	1,979,190	2,093,340	95.93%	2,182,041	2,093,340
Municipal Court	2,164,926	2,203,910	91.10%	2,419,262	2,203,910
Total Expenditures	**81,819,477**	**88,457,743**	**99.35%**	**89,040,519**	**88,457,743**
Transfer In	-	-		-	-
Fair Plaza Fund (240)	-	-		-	-
(Transfer Out)	*(8,242,873)*	*(5,184,902)*		*(5,531,993)*	*(5,531,993)*
General Capital Projects (102)	(570,000)	(1,250,000)	100.00%	(1,250,000)	(1,250,000)
Quality Street Commitment Fund (103)	(1,829,862)	(2,045,688)	100.00%	(2,045,688)	(2,045,688)
Cemetery (204)	(300,000)	(325,000)	100.00%	(325,000)	(325,000)
TIF/ TIRZ #4 (217)	-	-		-	-
Transit (286)	(891,706)	(762,909)	68.73%	(1,110,000)	(1,110,000)
Property Facility (663)	(101,305)	(101,305)	100.00%	(101,305)	(101,305)
Productivity Fund (639)	(250,000)	(250,000)	100.00%	(250,000)	(250,000)
Technology Admin (671)	(1,300,000)	(450,000)	100.00%	(450,000)	(450,000)
Fair Parking Garage (240)	-	-		-	-
Rainy Day Fund (235)	(3,000,000)	-		-	-
Unreserved Fund Balance				2,045,694	2,212,629
Operating Reserve				13,356,078	13,268,661
Ending Fund Balance / Working Capital				**$ 15,401,772**	**$ 15,481,291**

General Fund (101)
Statement of Revenues
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Property Taxes					
Current	$ 26,604,078	$ 28,308,429	100.37%	$ 28,204,129	$ 28,308,429
Delinquent	187,175	177,074	122.56%	144,485	177,074
Penalty and Interest	234,369	253,012	135.92%	186,154	253,012
Total Property Taxes	**27,025,622**	**28,738,516**	**100.71%**	**28,534,768**	**28,738,516**
Franchises					
Power and Light	4,589,676	4,736,125	102.42%	4,624,264	4,736,125
Natural Gas	1,024,361	1,061,394	101.28%	1,047,933	1,061,394
Telephone	516,481	484,272	91.31%	530,371	484,272
Cable Television	1,006,625	962,380	91.07%	1,056,760	962,380
Commercial Waste Hauler	1,166,519	1,186,745	102.18%	1,161,374	1,186,745
Water and Sewer Franchise	2,957,548	3,287,782	108.11%	3,041,177	3,287,782
Total Franchises	**11,261,209**	**11,718,698**	**102.24%**	**11,461,879**	**11,718,698**
Sales and Use Taxes					
Sales Taxes	40,926,266	40,009,730	96.42%	41,497,196	40,009,730
Mixed Drink Taxes	664,824	646,552	99.70%	648,529	646,552
Bingo Taxes	34,627	25,333	63.33%	40,000	25,333
Total Sales and Use Taxes	**41,625,718**	**40,681,615**	**96.43%**	**42,185,725**	**40,681,615**
Licenses and Permits					
Parking Meters	125,724	80,970	55.56%	145,739	80,970
Wrecker Permits	3,850	3,880	91.29%	4,250	3,880
Burglar Alarms	327,666	312,279	91.85%	340,000	312,279
Total Licenses and Permits	**457,240**	**397,129**	**81.05%**	**489,989**	**397,129**
Fines & Penalties					
Moving Violations	2,063,492	2,362,155	114.67%	2,060,000	2,362,155
Tax Fees	135,436	107,729	72.79%	148,000	107,729
Arrest Fees	105,733	107,299	102.19%	105,000	107,299
Administrative Fees	78,633	87,514	96.17%	91,000	87,514
Warrant Fees	241,061	323,987	150.69%	215,000	323,987
Child Safety	128,361	150,598	116.74%	129,000	150,598
Teen Court Fines	20	20		-	20
Court Security	-	-		-	-
Miscellaneous Court	54,423	66,064	132.13%	50,000	66,064
Time Payment Fees	-	-		-	-
Special Court Fees	851,504	821,323	84.24%	975,000	821,323
Collection Firm Fees	261,734	342,784	122.42%	280,000	342,784
Court Fee - Clearing	2,354	1,745		-	1,745
Partners for Youth	-	-		-	-
Omnibase Program	23,025	42,239	156.44%	27,000	42,239
Parking Fines	34,184	33,838	65.07%	52,000	33,838
Scofflaw	6,082	4,268	35.56%	12,000	4,268
Animal Fines	9,625	10,913	121.26%	9,000	10,913
Total Fines and Penalties	**3,995,668**	**4,462,476**	**107.45%**	**4,153,000**	**4,462,476**
Use of Money and Property					
Glass Center Rental	27,237	27,843	79.55%	35,000	27,843
Senior Citizen Rental	3,360	3,560	71.20%	5,000	3,560
Miscellaneous Rent	38,388	47,918	123.42%	38,825	47,918
Ballfield Concessions	136	-	0.00%	2,500	-
Glass Rec Concessions	934	893	59.55%	1,500	893
Fair Plaza Non-Tenant Parking	12,094	16,784	150.39%	11,160	16,784
Interest Earnings	1,587,975	1,618,935	136.27%	1,188,000	1,618,935
Total Use of Money and Property	**1,670,124**	**1,715,933**	**133.85%**	**1,281,985**	**1,715,933**

General Fund (101)
Statement of Revenues
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Current Services					
Swimming Pool	21,746	23,470	117.35%	20,000	23,470
Fire Inspection	25,104	157,474	144.47%	109,000	157,474
Lot Mowing	47,582	44,443	72.69%	61,138	44,443
Glass Membership	69,503	74,215	114.18%	65,000	74,215
Copying Fees	17,330	15,883	105.89%	15,000	15,883
Utility Cuts	132,000	132,000	100.00%	132,000	132,000
Library Non Resident Fees	23,722	24,283	109.27%	22,222	24,283
Library Lost Books	3,627	3,643	151.78%	2,400	3,643
Library Fines	17,855	13,226	41.07%	32,200	13,226
Non Resident Internet Use	1,651	1,656	41.39%	4,000	1,656
Open Records	24,201	33,895	137.23%	24,700	33,895
Overhead Reimbursement - Fund 219	47,566	48,993	100.00%	48,993	48,993
1/2 Cent Administration Costs	183,750	343,263	100.00%	343,263	343,263
Overhead Reimbursement - Fund 502	1,399,273	1,441,250	100.00%	1,441,250	1,441,250
Overhead Reimbursement - Fund 560	129,542	266,857	100.00%	266,857	266,857
Volleyball Fees	-	3,625	75.52%	4,800	3,625
Tournament Fees	-	-		-	-
Other Sports Fees	5,655	90	1.64%	5,500	90
Field Maintenance	78,481	114,438	100.25%	114,150	114,438
Recreation Classes/Events	58,813	58,851	117.70%	50,000	58,851
Faulkner Tennis Center	-	-		-	-
Animal Adoption Fees	16,535	14,480	48.27%	30,000	14,480
Animal Shelter Fees	13,678	6,130	34.06%	18,000	6,130
Fire Cost Recovery Fees	282,443	195,207	125.94%	155,000	195,207
Total Current Services	**2,600,056**	**3,017,372**	**101.75%**	**2,965,473**	**3,017,372**
Other Agencies					
State Government	7,512	46,093	219.49%	21,000	46,093
Income from Restitution	305	417		-	417
Auto Theft Task Force	125,818	135,798	107.78%	126,000	135,798
School Crossing Guards	277,803	271,467	96.49%	281,334	271,467
Comprehensive Traffic	58,777	67,993	143.14%	47,500	67,993
County Haz-Mat Service	6,250	5,726	95.43%	6,000	5,726
FEMA Reimbursements	-	-		-	-
US Marshal	-	-		-	-
Fire TCLEOSE Allocation	-	11	1.10%	1,000	11
State JAG Allocation	27,500	47,117	100.00%	47,117	47,117
COPS Grant	81,440	20,440	108.56%	18,828	20,440
BJA Cares	-	-		-	-
Federal JAG Allocation	33,765	37,416	100.00%	37,416	37,416
Total Other Agencies	**619,171**	**632,478**	**107.90%**	**586,195**	**632,478**
Miscellaneous					
Miscellaneous	254,383	159,860	78.64%	203,276	159,860
Unclaimed Property Revenue	17,168	10,603	53.01%	20,000	10,603
Return Checks	425	175		-	175
Sale of Equipment	14	-	0.00%	500	-
Junk Vehicle Revenue	1,615	-		-	-
Methane Gas Sales	407,154	352,478	70.50%	500,000	352,478
Funeral Escorts	11,300	4,700	37.60%	12,500	4,700
Total Miscellaneous	**692,059**	**527,816**	**71.69%**	**736,276**	**527,816**
Total General Fund Revenues	**$ 89,946,867**	**$ 91,892,033**	**99.46%**	**$ 92,395,290**	**$ 91,892,033**

General Fund (101)
Statement of Expenditures
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
General Government					
General Government	$ 897,095	$ 896,611	86.67%	$ 1,034,506	$ 896,611
Outside Agencies	362,943	282,943	100.00%	282,943	282,943
GF Non-Dept Exp	3,039,492	2,725,812	93.06%	2,928,935	2,725,812
Innovation and Economic Development	8,758	10,196	102.02%	9,994	10,196
Finance	1,686,562	1,812,388	96.51%	1,877,843	1,812,388
Legal	1,338,656	1,402,291	100.13%	1,400,525	1,402,291
Communications	596,580	601,562	92.57%	649,848	601,562
Human Resources	594,221	672,551	99.11%	678,559	672,551
Total General Government	**8,524,307**	**8,404,352**	**94.82%**	**8,863,153**	**8,404,352**
Public Safety					
Police Services	33,227,798	36,484,770	100.92%	36,151,874	36,484,770
State JAG	27,501	47,117	100.00%	47,117	47,117
Federal JAG	33,765	37,416	100.00%	37,416	37,416
COPS Grant	211,471	254,568	128.87%	197,533	254,568
Auto Theft Task Force	163,107	231,494	139.19%	166,316	231,494
L.E. Education Grant	7,512	16,454	82.27%	20,000	16,454
Fire Services	23,054,346	25,507,813	103.61%	24,619,100	25,507,813
Total Public Safety	**56,725,500**	**62,579,632**	**102.19%**	**61,239,356**	**62,579,632**
Public Services					
Engineering Services	769,565	813,708	88.94%	914,929	813,708
Streets	3,189,031	3,228,246	87.57%	3,686,394	3,228,246
Traffic Operations	2,530,932	2,660,591	88.36%	3,011,207	2,660,591
Parking Garage	21,663	30,608	95.59%	32,020	30,608
Animal Services	1,441,450	1,510,224	96.30%	1,568,268	1,510,224
Total Public Services	**7,952,641**	**8,243,377**	**89.48%**	**9,212,818**	**8,243,377**
Parks & Recreation					
Administration	3,089,321	3,452,085	99.20%	3,479,918	3,452,085
Indoor Recreation	671,447	772,673	96.97%	796,795	772,673
Outdoor Recreation	289,641	297,081	82.47%	360,213	297,081
Median Maint/Arborist	422,504	411,291	84.46%	486,963	411,291
Total Parks & Recreation	**4,472,913**	**4,933,130**	**96.28%**	**5,123,889**	**4,933,130**
Library	**1,979,190**	**2,093,340**	**95.93%**	**2,182,041**	**2,093,340**
Municipal Court	**2,164,926**	**2,203,910**	**91.10%**	**2,419,262**	**2,203,910**
Total General Fund Expenditures	**$ 81,819,477**	**$ 88,457,743**	**99.35%**	**$ 89,040,519**	**$ 88,457,743**

Development Services Fund (202)
Statement of Revenues, Expenditures, and Changes in Working Capital
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Beginning Fund Balance				**2,416,491**	**2,416,491**
Revenues					
Building Permits	1,623,379	2,068,539	114.93%	1,799,822	2,068,539
Electrical Permits	269,203	244,012	122.01%	200,000	244,012
Plumbing Permits	176,717	131,787	90.89%	145,000	131,787
Zoning Permits	68,168	79,698	99.62%	80,000	79,698
Mechanical Permits	82,574	100,151	111.28%	90,000	100,151
Cert. of Occupancy Fees	24,790	24,520	81.73%	30,000	24,520
Local TABC Fee	24,830	6,430	42.87%	15,000	6,430
Billboard Registration	17,000	16,320	92.75%	17,595	16,320
Sign Permits	35,080	30,765	61.53%	50,000	30,765
Contractor License	48,040	52,250	130.63%	40,000	52,250
House Moving Permits	-	-		-	-
Permit Fee - Clearing	-	-		-	-
Interest Earnings	152,262	219,548	1097.74%	20,000	219,548
Copying/Printing Fees	47	123		-	123
Platting Fees	71,591	82,550	103.19%	80,000	82,550
Miscellaneous Income	-	-		-	-
Contractor Testing Fees	191,700	16,039	6.42%	250,000	16,039
Subdivision Plan Review	31,000	31,000	51.67%	60,000	31,000
CLG Grant	15,638	-		-	-
Total Revenues	**2,816,380**	**3,103,732**	**107.87%**	**2,877,417**	**3,103,732**
Expenditures					
Planning and Zoning	886,171	892,912	97.81%	912,912	892,912
Building Services	1,427,580	1,585,263	95.77%	1,655,267	1,585,263
Total Expenditures	**2,313,751**	**2,478,175**	**96.50%**	**2,568,179**	**2,478,175**
Transfer Out	-	-		-	-
Productivity Fund (639)	-	-		-	-
Ending Fund Balance				**2,725,729**	**3,042,048**

Water Utilities Fund(502)
Statement of Revenues, Expenditures, and Changes in Working Capital
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Unreserved Fund Balance				$ 13,492,886	$ 13,492,886
Operating Reserve				5,766,559	5,766,559
Beginning Fund Balance / Working Capital				**19,259,445**	**19,259,445**
Revenues					
Use of Money and Property	669,792	761,008	186.70%	407,604	761,008
Charges for Current Services	50,634,226	52,577,586	95.15%	55,256,380	52,577,586
Miscellaneous Income	58,584	306,413	595.08%	51,491	306,413
Total Revenues	**51,362,602**	**53,645,007**	**96.28%**	**55,715,475**	**53,645,007**
Expenditures					
741 Administration	4,985,458	5,586,349	85.94%	6,500,109	5,586,349
742 Water Office	2,686,454	3,461,251	113.61%	3,046,521	3,461,251
743 Water Distribution	4,639,623	5,154,058	106.00%	4,862,310	5,154,058
744 Water Plant	8,474,390	9,495,150	88.84%	10,687,740	9,495,150
745 Waste Collection	3,356,426	4,044,226	101.81%	3,972,486	4,044,226
746 Waste Treatment	5,443,792	6,057,482	99.87%	6,065,508	6,057,482
747 Lake Tyler	1,299,496	1,250,203	90.35%	1,383,705	1,250,203
749 GIS	1,173,754	1,352,988	98.26%	1,376,946	1,352,988
1741 Purchasing	296,510	329,912	100.45%	328,442	329,912
1745 CD/CMOM (Regulatory Monitoring)	4,406,481	4,445,649	91.16%	4,876,599	4,445,649
1746 Sludge Disposal	1,408,168	1,468,474	98.67%	1,488,313	1,468,474
Total Expenditures	**38,170,551**	**42,645,743**	**95.64%**	**44,588,679**	**42,645,743**
Transfer In	-	-		-	-
(Transfer Out)	*(10,984,135)*	*(13,111,721)*		*(13,111,721)*	*(13,111,721)*
Economic Development Fund (208)	(175,000)	(175,000)	100.00%	(175,000)	(175,000)
Utilities Capital Fund (503)	(5,500,000)	(5,500,000)	100.00%	(5,500,000)	(5,500,000)
Productivity Fund (639)	(250,000)	(250,000)	100.00%	(250,000)	(250,000)
Property and Facility Fund (663)	(50,653)	(50,653)	100.00%	(50,653)	(50,653)
Debt Service Fund (504)	(4,558,482)	(6,686,068)	100.00%	(6,686,068)	(6,686,068)
Technology Fund (671)	(450,000)	(450,000)	100.00%	(450,000)	(450,000)
General Capital Fund (102)	-	-		-	-
Unreserved Fund Balance				10,586,218	10,750,126
Operating Reserve				6,688,302	6,396,861
Ending Fund Balance / Working Capital				**$ 17,274,520**	**$ 17,146,988**

Water Utilities Fund(502)
Statement of Revenues
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Use of Money and Property					
Lake Tyler Lot Rental	65,376	71,389	98.33%	72,604	$ 71,389
Lake Tyler Marina	33,130	45,135	322.39%	14,000	45,135
Barge Concession	19,658	28,779	137.04%	21,000	28,779
Interest Earnings	551,628	615,705	205.24%	300,000	615,705
Total Use of Money and Property	**669,792**	**761,008**	**186.70%**	**407,604**	**761,008**
Charges for Current Services					
Meter Activation	435,296	314,280	83.81%	375,000	314,280
Water Service	205,782	91,115	45.56%	200,000	91,115
Sewer Service	166,824	110,290	63.02%	175,000	110,290
Sewer Activation	16,715	10,959	68.49%	16,000	10,959
EMS Billing Fees	7,953	7,953	100.01%	7,953	7,953
Water System Fee	120,372	118,894	101.34%	117,321	118,894
Meter Set & Test Fees	16,750	21,558	134.74%	16,000	21,558
Plug Fee	12,500	1,200	22.90%	5,240	1,200
After Hrs./Additional Trip Fees	42,950	52,454	174.85%	30,000	52,454
Water Quality Fee	146,275	144,735	101.35%	142,800	144,735
Current Water Sales	25,642,072	25,781,297	92.66%	27,823,547	25,781,297
Miscellaneous Water Sales	12,547	15,079	75.39%	20,000	15,079
Old Account Collection Fees	-	-		-	-
Reconnect Fees	390,325	393,150	108.60%	362,000	393,150
Overhead Reimbursment from Solid Waste Fund	301,546	347,884	100.00%	347,884	347,884
Sewer Charges	19,742,826	20,924,631	92.59%	22,598,235	20,924,631
Labor & Equipment	113,215	122,955	175.65%	70,000	122,955
Water Connect Fees	266,000	253,911	93.18%	272,500	253,911
Septic Tank Dumping Fees	862,115	1,302,347	156.07%	834,482	1,302,347
Wholesale Water Sales	1,383,116	1,799,034	163.55%	1,100,000	1,799,034
Late Notice Fees	513,675	525,438	105.09%	500,000	525,438
Fire Line Charges	191,928	193,502	97.98%	197,500	193,502
Overhead Reimbursment from Storm Water Fund	43,444	44,918	100.00%	44,918	44,918
Total Charges for Current Services	**50,634,226**	**52,577,586**	**95.15%**	**55,256,380**	**52,577,586**
Miscellaneous					
Miscellaneous Income	23,777	267,133	884.81%	30,191	267,133
Lake Tyler East Registration	2,580	2,670	95.36%	2,800	2,670
Returned Check Fees	32,227	36,610	197.89%	18,500	36,610
Total Miscellaneous	**58,584**	**306,413**	**595.08%**	**51,491**	**306,413**
Total Revenues	**$ 51,362,602**	**$ 53,645,007**	**96.28%**	**$ 55,715,475**	**$ 53,645,007**

Solid Waste Fund(560)
Statement of Revenues, Expenditures, and Changes in Working Capital
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Operating Reserve				2,511,447	2,511,447
Unreserved Fund Balance				(650,060)	(650,060)
Beginning Fund Balance / Working Capital				**1,861,387**	**1,861,387**
Revenues					
Interest and Rental Income	41,415	6,272	35.12%	17,859	6,272
Charges for Residential Serv.	9,031,987	9,528,810	96.92%	9,831,514	9,528,810
Charges for Commercial Serv.	4,718,573	4,873,038	94.62%	5,150,250	4,873,038
Recycle Sales	60,210	75,425	90.59%	83,259	75,425
Roll-Off	1,713,961	1,719,189	89.15%	1,928,410	1,719,189
Miscellaneous	1,694,794	1,751,342	107.50%	1,629,130	1,751,342
Total Revenues	**17,260,940**	**17,954,076**	**96.32%**	**18,640,422**	**17,954,076**
Expenditures					
Administration	1,976,293	2,287,395	106.02%	2,157,470	2,287,395
Residential Collection	8,367,349	8,694,943	101.45%	8,570,247	8,694,943
Commercial Collection	5,040,465	5,588,737	109.86%	5,087,275	5,588,737
Keep Tyler Beautiful	202,867	186,237	86.60%	215,043	186,237
Code Enforcement	1,131,343	1,313,706	101.95%	1,288,530	1,313,706
Total Expenditures	**16,718,316**	**18,071,017**	**104.34%**	**17,318,565**	**18,071,017**
(Transfer Out)	*(1,100,653)*	*(1,229,933)*	*96.42%*	*(1,275,653)*	*(1,229,933)*
Economic Development Fund (208)	(25,000)	-	0.00%	(100,000)	-
SW Capital Fund (562)	(725,000)	(879,280)	106.58%	(825,000)	(879,280)
Productivity Fund (639)	(50,000)	(50,000)	100.00%	(50,000)	(50,000)
Property and Facility Fund (663)	(50,653)	(50,653)	100.00%	(50,653)	(50,653)
Technology Fund (671)	(250,000)	(250,000)	100.00%	(250,000)	(250,000)
Operating Reserve				2,597,785	2,710,653
Unreserved Fund Balance				(690,194)	(2,196,141)
Ending Fund Balance / Working Capital				**1,907,591**	**514,512**

Solid Waste Fund(560)
Statement of Revenues
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Use of Money and Property					
Rent - Miscellaneous	$ 5,274	$ 9,985	273.19%	$ 3,655	$ 9,985
Interest Earnings	36,140	(3,713)	-26.14%	14,204	(3,713)
Total Use of Money and Property	**41,415**	**6,272**	**35.12%**	**17,859**	**6,272**
Charges for Current Services					
Residential Sanitation Fees	8,895,981	9,408,956	97.21%	9,678,910	9,408,956
Special Pickup Revenue	136,005	119,854	78.54%	152,604	119,854
Commercial Fees	4,718,573	4,873,038	94.62%	5,150,250	4,873,038
Roll-Off Collection Fees	1,713,961	1,719,189	89.15%	1,928,410	1,719,189
Total Charges for Current Services	**15,464,521**	**16,121,037**	**95.33%**	**16,910,174**	**16,121,037**
Recycle Sales					
Recycle Sales	60,210	75,425	90.59%	83,259	75,425
Total Recycle Sales	**60,210**	**75,425**	**90.59%**	**83,259**	**75,425**
Miscellaneous Income					
Landfill Royalty Fee	873,253	1,045,507	118.02%	885,900	1,045,507
Miscellaneous Income	821,540	705,834	94.97%	743,230	705,834
Total Miscellaneous Income	**1,694,794**	**1,751,342**	**107.50%**	**1,629,130**	**1,751,342**
Total Revenues	**$ 17,260,940**	**$ 17,954,076**	**96.32%**	**$ 18,640,422**	**$ 17,954,076**

Airport Operating Fund (524)
Statement of Revenues, Expenditures, and Changes in Working Capital
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Reserve for Construction				$ 300	$ 300
Reserve for Customer Facility				446,009	446,009
Unreserve Working Capital				694,148	694,148
Beginning Fund Balance				**1,140,457**	**1,140,457**
Revenues					
Use of Money and Property	1,154,322	1,274,290	122.14%	1,043,295	1,274,290
Current Service Charges	134,837	161,219	94.63%	170,360	161,219
Customer Facility Service Charges	104,817	131,150	131.15%	100,000	131,150
Miscellaneous Income	20,402	33,790	241.36%	14,000	33,790
Other Agencies	498,881	654,840	58.55%	1,118,372	654,840
Total Revenues	**1,913,260**	**2,255,288**		**2,446,027**	**2,255,288**
Expenditures					
Airport					
Operations	1,636,897	1,556,310	89.13%	1,746,087	1,556,310
Capital	22,580	-		-	-
Contingency	-	-	0.00%	50,000	-
Airport Total	**1,659,477**	**1,556,310**		**1,796,087**	**1,556,310**
Customer Facility					
Wash Bay Maintenance	3,565	14,884	104.82%	14,200	14,884
Wash Bay Debt Service	105,680	102,484	96.98%	105,680	102,484
Total Customer Facility	**109,245**	**117,368**		**119,880**	**117,368**
Total Expenditures	**1,768,722**	**1,673,678**		**1,915,967**	**1,673,678**
Transfer In	-	-		*72,000*	-
PFC (234)	-	-	0.00%	72,000	-
Transfer Out	*(37,000)*	*(37,000)*		*(87,000)*	*(37,000)*
Airport Grant Fund (525)	-	-	0.00%	(50,000)	*(50,000)*
Technology Fund (671)	(37,000)	(37,000)	100.00%	(37,000)	*(37,000)*
Productivity Fund (639)	-	-		-	-
Reserve for Construction				300	300
Reserve for Customer Facility				426,129	459,790
Unreserve Working Capital				1,229,088	1,224,976
Ending Fund Balance				**$ 1,655,517**	**$ 1,685,066**

Airport Operating Fund (524)
Revenue Detail
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Use of Money and Property					
Airline Facilities Rental	45,000	45,000	100.00%	45,000	45,000
Airport Long-Term Parking	467,313	500,867	130.10%	385,000	500,867
Interest Earnings	30,813	55,851	1396.27%	4,000	55,851
Landing Fees	40,133	41,189	102.92%	40,022	41,189
Restaurant Concessions	11,534	12,513	131.72%	9,500	12,513
FAA Building Rental	52,442	62,196	105.41%	59,005	62,196
Car Leasing Rental	322,114	336,421	112.14%	300,000	336,421
Agricultural Lease	-	2,105	124.34%	1,693	2,105
Hangar Land Lease	124,756	151,381	100.01%	151,363	151,381
HAMM	15,000	15,000	100.00%	15,000	15,000
Common Use Fees	16,216	17,965	118.10%	15,212	17,965
Wash Bay Fees	13,834	18,798	163.46%	11,500	18,798
Non Aviation Land Lease	15,166	15,005	250.08%	6,000	15,005
Total Use of Money and Property	**1,154,322**	**1,274,290**		**1,043,295**	**1,274,290**
Current Service Charges					
Airport Fuel Flowage	75,834	74,946	99.93%	75,000	74,946
Customer Facility Charge	104,817	131,150	131.15%	100,000	131,150
Advertising Space Fees	59,003	86,273	90.47%	95,360	86,273
Total Current Service Charges	**239,654**	**292,368**	**108.14%**	**270,360**	**292,368**
Miscellaneous Income					
Miscellaneous Income	17,153	30,891	280.83%	11,000	30,891
Oil Leases and Royalties	3,249	2,899	96.63%	3,000	2,899
Total Miscellaneous Income	**20,402**	**33,790**	**241.36%**	**14,000**	**33,790**
Other Agencies					
ARPA - Airport	176,397	654,840	58.55%	1,118,372	654,840
CRRSSA Grant	322,484	-		-	-
Total Other Agencies	**498,881**	**654,840**	**58.55%**	**1,118,372**	**654,840**
Total Revenues	**1,913,260**	**2,255,288**	**92.20%**	**2,446,027**	**2,255,288**

Hotel Tax Fund(211)
Statement of Revenues, Expenditures, and Changes in Working Capital
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Unreserved Fund Balance				$ 1,964,565	$ 1,964,565
Reserve (2% Tax)				(928,206)	(928,206)
Beginning Fund Balance / Working Capital				**1,036,359**	**1,036,359**
Revenues					
7 % Occupancy Tax	3,388,717	3,519,931	97.57%	3,607,455	3,519,931
2 % Occupancy Tax	972,398	1,010,250	97.82%	1,032,712	1,010,250
Interest Earnings	34,253	6,823	15.16%	45,000	6,823
Donations	500,000	500,000	100.00%	500,000	500,000
Total Revenues	**4,895,367**	**5,037,003**		**5,185,167**	**5,037,003**
Expenditures					
Texas Rose Festival	10,000	15,000	100.00%	15,000	15,000
Discovery Place	32,400	32,400	100.00%	32,400	32,400
Symphony	50,000	50,000	100.00%	50,000	50,000
Museum of Art	35,000	35,000	100.00%	35,000	35,000
Historical Museum	13,500	13,500	100.00%	13,500	13,500
Visitors and Convention Bureau	691,500	754,500	100.00%	754,500	754,500
Tyler Civic Theatre	-	-		-	-
McClendon House	4,500	4,500	100.00%	4,500	4,500
Historic Aviation Museum	13,500	13,500	100.00%	13,500	13,500
Texas Hotel & Lodging Dues	16,054	14,687	71.64%	20,500	14,687
2% Convention Center Facility	9,007,135	3,606,476	97.22%	3,709,500	3,606,476
Sport Tyler Award	25,000	25,000	100.00%	25,000	25,000
Special Services	49,222	(56,047)	-86.23%	65,000	(56,047)
Parking Lot Improvement	-	-		-	-
Tournament Expenses	-	-		-	-
Contingencies	-	-	0.00%	45,500	-
Total Expenditures	**9,947,810**	**4,508,517**		**4,783,900**	**4,508,517**
Transfers In	*3,250,000*	*2,375,000*		*2,375,000*	2,375,000
Half Cent (231)	3,250,000	-		-	-
Rainy Day Fund (235)	-	2,375,000	100.00%	2,375,000	2,375,000
(Transfers Out)	*(3,117,800)*	*(3,118,600)*		*(3,518,600)*	(3,118,600)
Tourism Fund (219)	(2,500,000)	(2,500,000)	86.21%	(2,900,000)	(2,500,000)
Debt Service Fund (302)	(592,800)	(593,600)	100.00%	(593,600)	(593,600)
Property and Facility Management (663)	(25,000)	(25,000)	100.00%	(25,000)	(25,000)
(Roof Replacement Tourism)					
Unreserved Fund Balance				1,524,020	1,470,678
Reserve (2% Tax)				(1,229,994)	(649,433)
Ending Fund Balance / Working Capital				**$ 294,026**	**$ 821,245**

Rainy Day Fund(235)
Statement of Revenues, Expenditures, and Changes in Working Capital
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Beginning Fund Balance / Working Capital				**$ 10,254,357**	**$ 10,254,357**
Revenues					
Oil Leases and Royalties	54,712	28,704	37.77%	76,000	28,704
Sale of Property	-	-		-	-
Interest Earnings	309,725	377,487	290.37%	130,000	377,487
Total Revenues	**364,437**	**406,191**		**206,000**	**406,191**
Expenditures					
Downtown Property Maintenance	-	-		-	-
Special Services	975,144	975,000		-	975,000
Building Improvements	-	-		-	-
Contingencies	-	-	0.00%	100,000	-
Total Expenditures	**975,144**	**975,000**		**100,000**	**975,000**
Transfers In	*3,000,000*	-		-	-
General Fund (101)	3,000,000	-		-	-
(Transfers Out)	*(451,792)*	*(2,375,000)*		*(2,375,000)*	*(2,375,000)*
Hotel Tax Fund (211)	-	(2,375,000)	100.00%	(2,375,000)	*(2,375,000)*
General Capital Projects Fund (102)	(451,792)	-		-	-
Ending Fund Balance / Working Capital				**$ 7,985,357**	**$ 7,310,548**

Risk Fund(650)
Statement of Revenues, Expenditures, and Changes in Working Capital
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Reserved for Workers Comp.				$ 283,127	$ 283,127
Reserved Property/Liability				94,376	94,376
Beginning Fund Balance / Working Capital				**377,503**	**377,503**
Revenues					
Distributed Interest	89,028	169,357	846.79%	20,000	169,357
Special Event Policy	2,285	13,350	1	10,500	13,350
Unemployment / Disability Premiums	116,006	113,594	101.10%	112,362	113,594
Property and Liability Premiums	1,889,222	1,798,363	100.72%	1,785,472	1,798,363
Workers Comp Premiums	1,998,896	2,157,367	110.86%	1,946,002	2,157,367
Outside Agency - ARPA Reimbursement	67,535	29,895		-	29,895
Total Revenues	**4,162,973**	**4,281,926**		**3,874,336**	**4,281,926**
Expenditures					
Employee Cost	201,978	219,668	106.60%	206,066	219,668
Unemployment / Disability	198,310	220,637	96.07%	229,653	220,637
Property and Liability	1,395,922	1,711,001	103.29%	1,656,542	1,711,001
Workers Comp	543,638	633,564	69.60%	910,308	633,564
Contingency	-	-	-	500,000	-
Total Expenditures	**2,339,848**	**2,784,870**		**3,502,569**	**2,784,870**
Transfer Out	-	-		-	-
Productivity Fund (639)	-	-		-	-
Reserved for Workers Comp.				561,953	1,405,919
Reserved Property/Liability				187,318	468,640
Ending Fund Balance / Working Capital				**$ 749,270**	**$ 1,874,559**

Employee Benefits Fund(661)
Statement of Revenues, Expenditures, and Changes in Working Capital
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Beginning Fund Balance				**$ 2,470,886**	**$ 2,470,886**
Revenues					
Health Benefits	14,258,545	15,248,273	98.67%	15,454,138	15,248,273
Dental Benefits	420,553	423,949	99.09%	427,825	423,949
Life Insurance	203,589	275,262	132.10%	208,366	275,262
Other Benefits	3,631,609	724,115	257.67%	512,692	724,115
Interest Earnings	67,137	136,368	517.74%	26,339	136,368
Outside Agencies -Grant Reimbursement	91,078	38,383		-	38,383
Total Revenues	**18,672,511**	**16,846,349**		**16,629,360**	**16,846,349**
Expenditures					
Health Benefits	16,864,659	14,077,867	88.25%	15,952,173	14,077,867
Dental Benefits	454,762	490,905	101.48%	483,724	490,905
Life Insurance	205,462	279,031	134.03%	208,184	279,031
Other Benefits	24,433	24,748	94.47%	26,196	24,748
Affordable Care Act	4,183	5,905	-	6,594	5,905
Special Services	45,495	44,634	59.85%	74,572	44,634
Travel and Training	-	-	-	2,000	-
Benefit Analyst	157,951	104,050	66.30%	156,941	104,050
Vision Insurance	94,386	95,145	-	85,691	95,145
Total Expenditures	**17,851,330**	**15,122,286**		**16,996,075**	**15,122,286**
Transfer In	-	-		-	-
(Transfer Out)	-	-		-	-
Ending Fund Balance				**$ 2,104,171**	**$ 4,194,949**

Employee Benefits Fund(661)
Statement of Revenues
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Interest Earnings	$ 67,137	$ 136,368	517.74%	$ 26,339	$ 136,368
Employee Assistance Program	5,949	5,949	22.71%	26,196	5,949
Section 125 Forfeiture	2,115	-		-	-
Health Benefits Paid by City	11,936,794	12,822,713	99.37%	12,903,497	12,822,713
Health Benefits paid by employee	2,321,751	2,425,560	95.10%	2,550,641	2,425,560
COBRA Premiums	1,989	5,066		-	5,066
Dental Benefits paid by employees	279,241	282,769	99.32%	284,708	282,769
Dental Benefits paid by City	141,311	141,180	98.65%	143,117	141,180
Life Insurance Premiums paid by City	7,786	7,867	99.99%	7,868	7,867
Life Insurance Premiums paid by employees	195,803	267,394	133.37%	200,498	267,394
Miscellaneous Income - Rebates	455,708	594,680	148.67%	400,000	594,680
Stop loss Reimbursement	3,090,774	43,782		-	43,782
Vision Insurance	75,074	74,638	86.29%	86,496	74,638
Outside Agency - ARPA Reimbursement	91,078	38,383		-	38,383
Total Revenues	**$ 18,672,511**	**$ 16,846,349**	**101.30%**	**$ 16,629,360**	**$ 16,846,349**

Employee Benefits Fund(661)
Statement of Expenditures
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Benefit Analyst	$ 157,951	$ 104,050	66.30%	$ 156,941	$ 104,050
Life Insurance Premiums	205,462	279,031	134.03%	208,184	279,031
Affordable Care Act	4,183	5,905	1	6,594	5,905
Special Services	45,495	44,634	59.85%	74,572	44,634
Travel and Training	-	-	-	2,000	-
Employee Assistance Program Fees	24,433	24,748	94.47%	26,196	24,748
Health Claim Payments	12,836,521	9,375,338	90.31%	10,380,754	9,375,338
Rx Claims	2,770,277	3,481,809	85.08%	4,092,612	3,481,809
Dental Administrative Fees	17,992	17,430	81.56%	21,372	17,430
Dental Claim	436,770	473,475	102.41%	462,352	473,475
Health Admin Fees	431,452	384,201	85.38%	450,000	384,201
Health Stop loss	826,410	836,519	81.31%	1,028,807	836,519
Vision Insurance	94,386	95,145	111.03%	85,691	95,145
Total Expenditures	**$ 17,851,330**	**$ 15,122,286**	**88.98%**	**$ 16,996,075**	**$ 15,122,286**

Retiree Benefits Fund(761)
Statement of Revenues, Expenditures, and Changes in Working Capital
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Beginning Fund Balance/Reserved for Commitments				**$ 78,920**	**$ 78,920**
Revenues					
Health Benefits	2,196,603	2,040,199	67.00%	3,045,124	2,552,848
Dental Benefits	124,530	89,201	100.94%	88,368	89,201
Interest Earnings	-	-		-	-
Total Revenues	**2,321,133**	**2,129,400**	**67.96%**	**3,133,492**	**2,642,049**
Expenditures					
Health Benefits	2,734,279	2,329,743	82.84%	2,812,339	2,329,743
Dental Benefits	196,978	215,954	115.20%	187,464	215,954
Life Insurance	31,682	29,619	80.99%	36,571	29,619
Special Services	25,199	23,604	74.30%	31,770	23,604
Benefit Analyst	72,068	45,041	66.96%	67,261	45,041
Affordable Care Act	1,793	506	36.63%	1,380	506
Total Expenditures	**3,062,000**	**2,644,466**	**84.30%**	**3,136,785**	**2,644,466**
Transfer In					
(Transfer Out)	-	-		-	-
Ending Fund Balance/Reserved for Commitments				**$ 75,627**	**$ 76,504**

Retiree Benefits Fund(761)
Statement of Revenues
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Interest Earnings	$ -	$ -		$ -	$ -
Retiree Health Premium	312,174	301,050	122.24%	246,274	301,050
Retiree Medicare Supplemental Ins Premiums	462,368	456,387	95.85%	476,134	456,387
Retiree Dental Premium	124,530	89,201	100.94%	88,368	89,201
PARS Trust Fund Reimbursement	1,422,062	1,282,763	55.23%	2,322,716	1,795,412
Health Stop Loss	-	-		-	-
Total Revenues	**$ 2,321,133**	**$ 2,129,400**	**$ 4**	**$ 3,133,492**	**$ 2,642,049**

Retiree Benefits Fund(761)
Statement of Expenditures
Fiscal Year 2023-2024

	Actuals 2022-2023	Actuals 2023-2024	Percent of Budget	Amended Budget 2023-2024	Projected 2023-2024
Life Insurance	$ 31,682	$ 29,619	80.99%	$ 36,571	$ 29,619
Benefit Analyst	72,068	45,041	66.96%	67,261	45,041
Special Services	25,199	23,604	74.30%	31,770	23,604
Medicare Supplement	889,295	937,565	96.43%	972,227	937,565
Health Claim Payments	1,372,501	805,890	68.65%	1,173,936	805,890
Rx Claims	327,551	436,084	91.74%	475,337	436,084
Dental Administrative Fees	9,285	9,035	102.25%	8,836	9,035
Dental Claim	187,693	206,919	115.84%	178,628	206,919
Health Admin Fees	52,608	58,657	80.27%	73,076	58,657
Health Stop loss	92,323	91,548	77.74%	117,763	91,548
Affordable Care Act	1,793	506	36.63%	1,380	506
Total Expenditures	**$ 3,062,000**	**$ 2,644,466**	**84.30%**	**$ 3,136,785**	**$ 2,644,466**



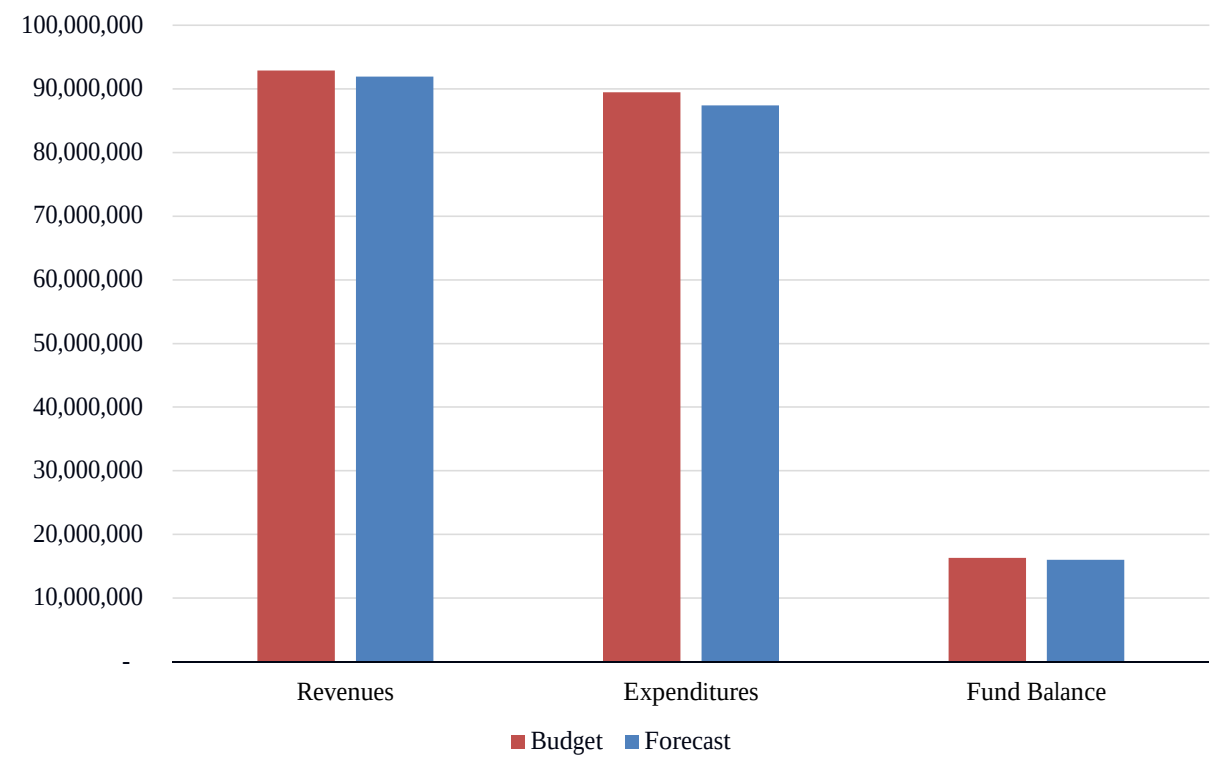
Revenue and Expense Report

Fiscal Year 2023-2024, Quarter 4

General Fund

General Fund revenues from all sources are projected to be $503,257 less than budgeted.

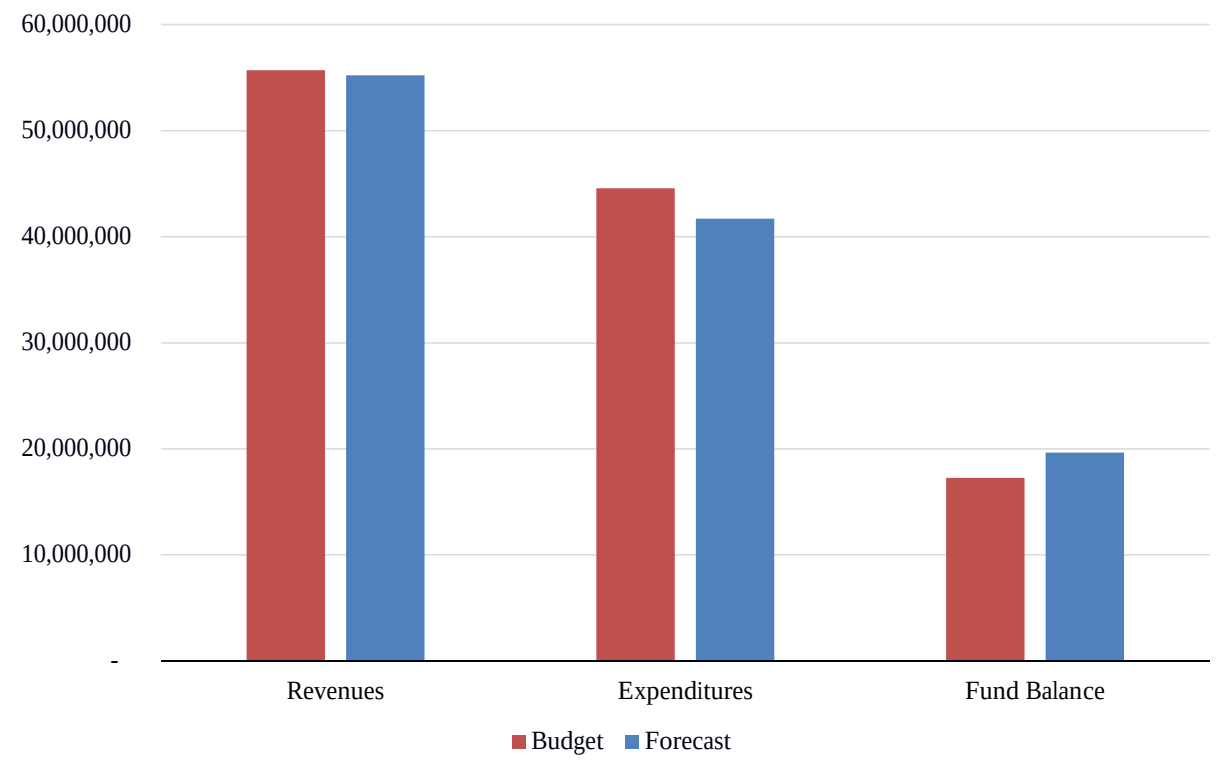
General Fund total expenditures excluding inter-fund transactions for the fiscal year are projected to be $582,776 less than budgeted.



Water Utility Fund

The Water Utility Fund revenues from all sources are projected to be $2,070,468 less than budgeted for the fiscal year.

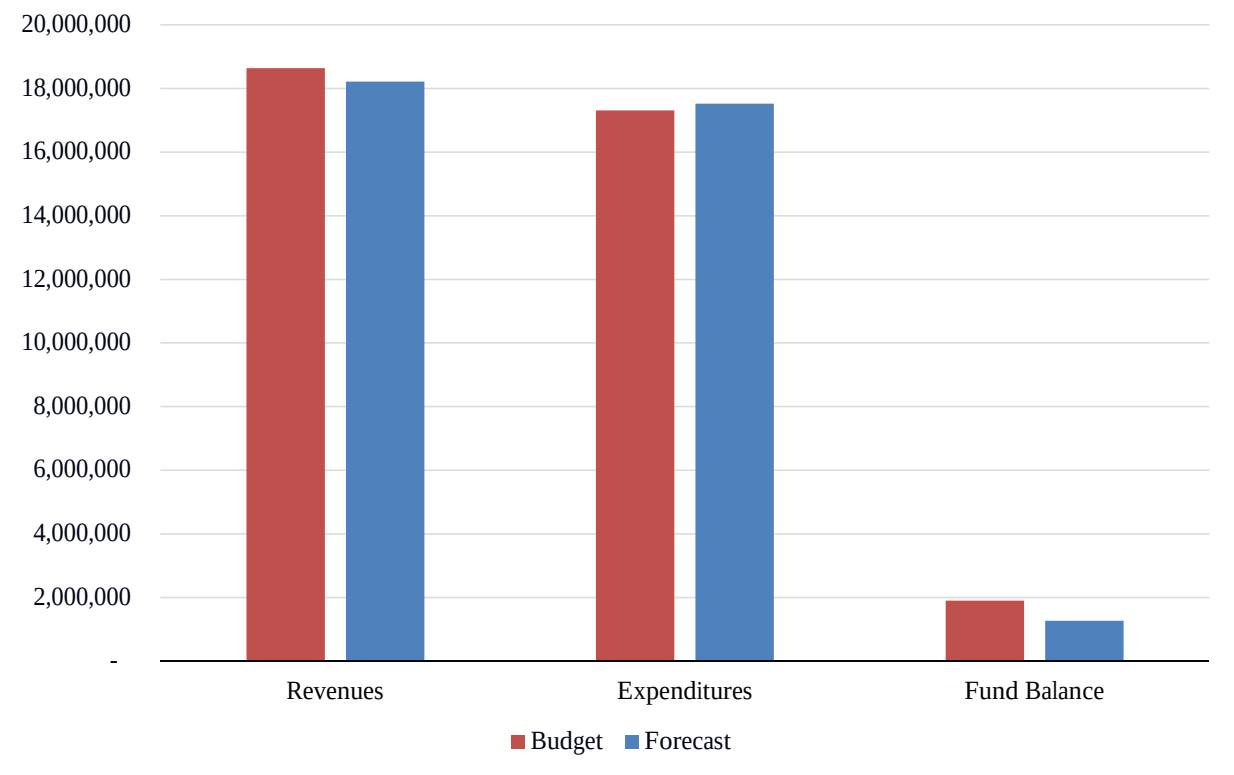
Total expenditures plus inter-fund transactions are projected to be $1,942,936 less than budgeted.



Solid Waste Fund

The Solid Waste Fund revenues from all sources are projected to be $686,346 less than budgeted for the fiscal year.

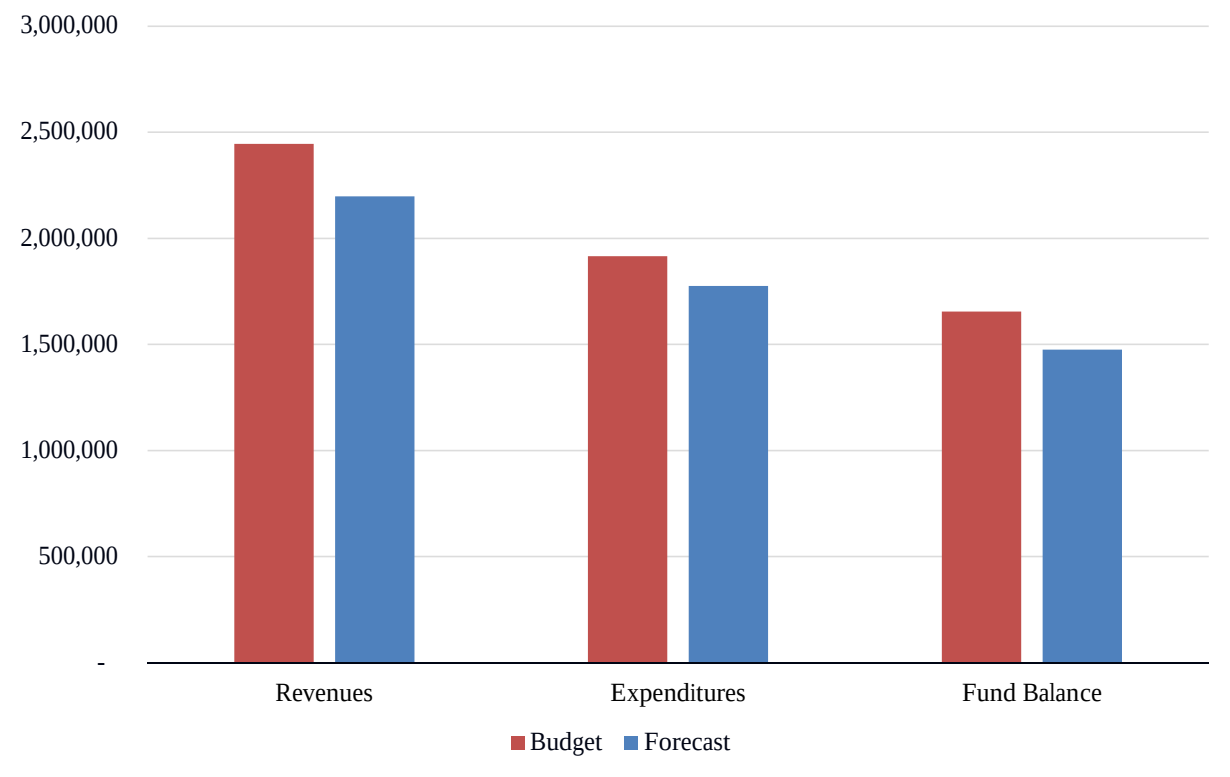
Solid Waste Fund total expenditures excluding inter-fund transactions for the fiscal year are projected to be $752,452 greater than budgeted.



Airport Fund

The Airport Fund revenues from all sources, including transfers from other funds, are projected to be $190,739 less than budgeted.

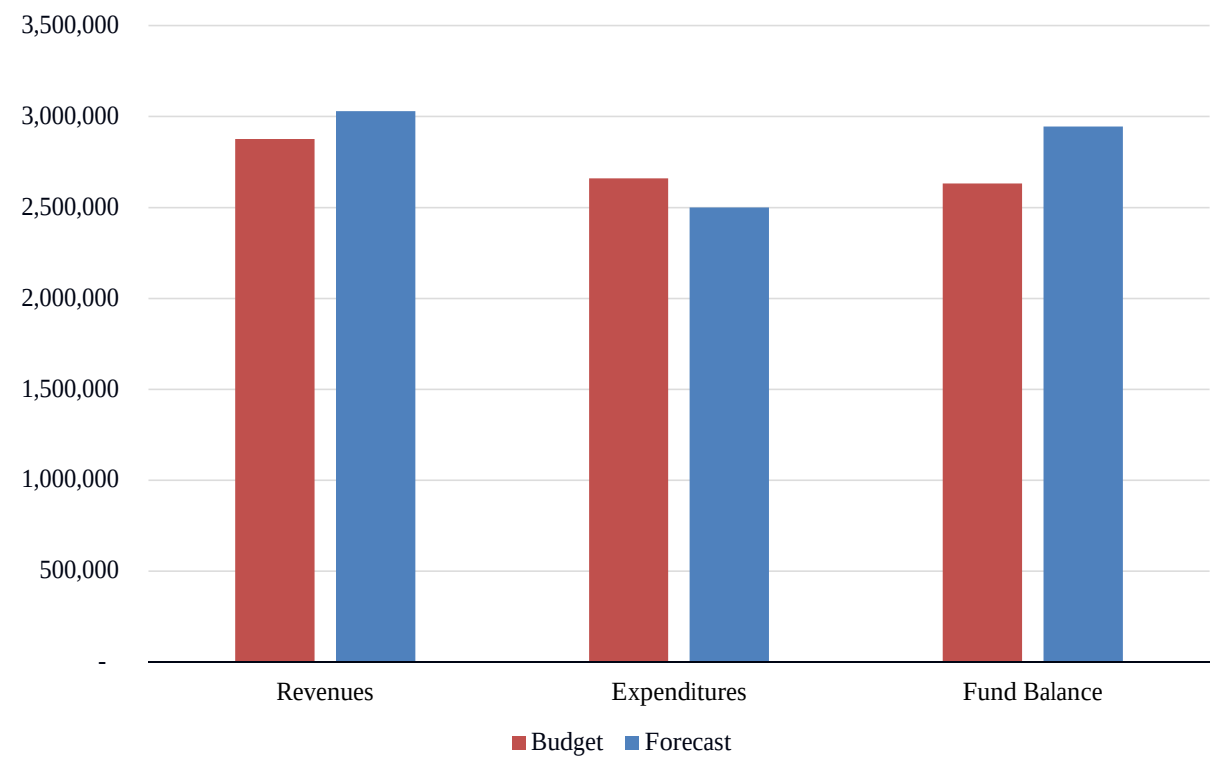
Airport Fund total expenditures plus inter-fund transactions for the fiscal year are projected to be $242,289 less than budgeted.



Development Services Fund

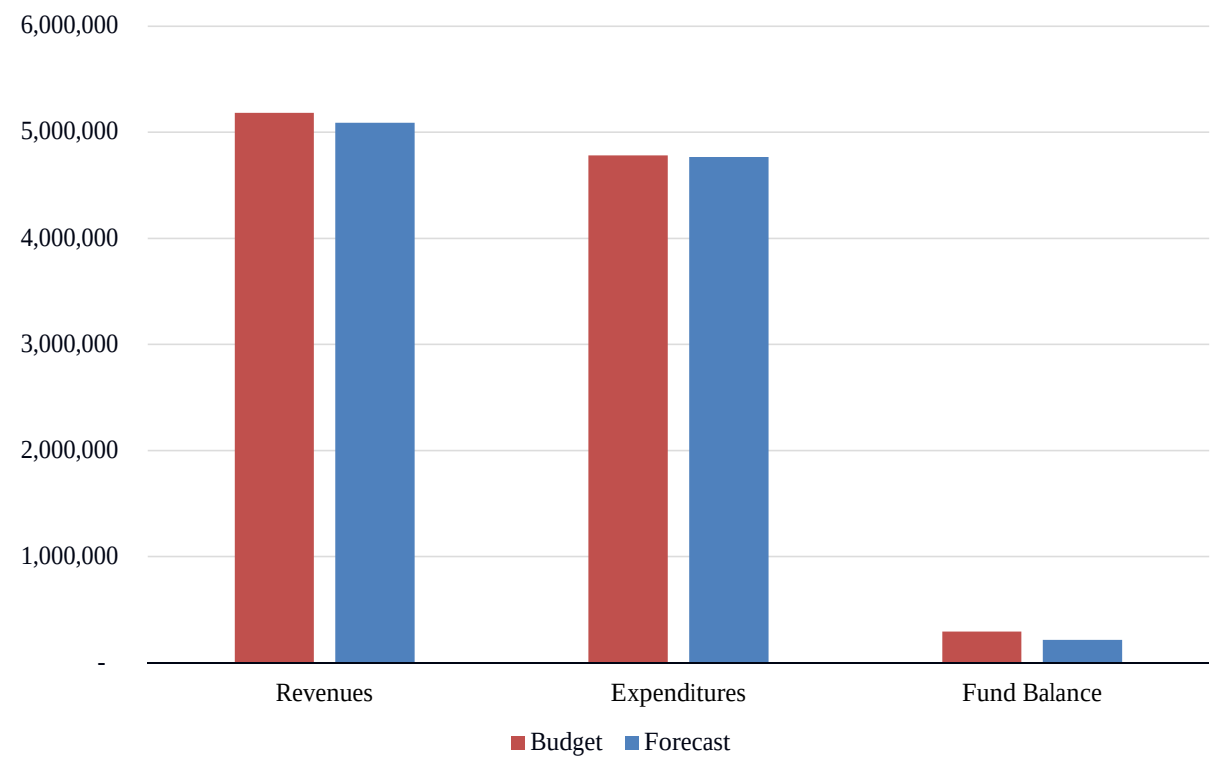
The Development Services Fund revenues from all sources are projected to be $226,315 more than budgeted for the fiscal year.

The Development Services Fund total expenditures plus inter-fund transactions for the fiscal year are projected to be $90,004 less than budgeted.



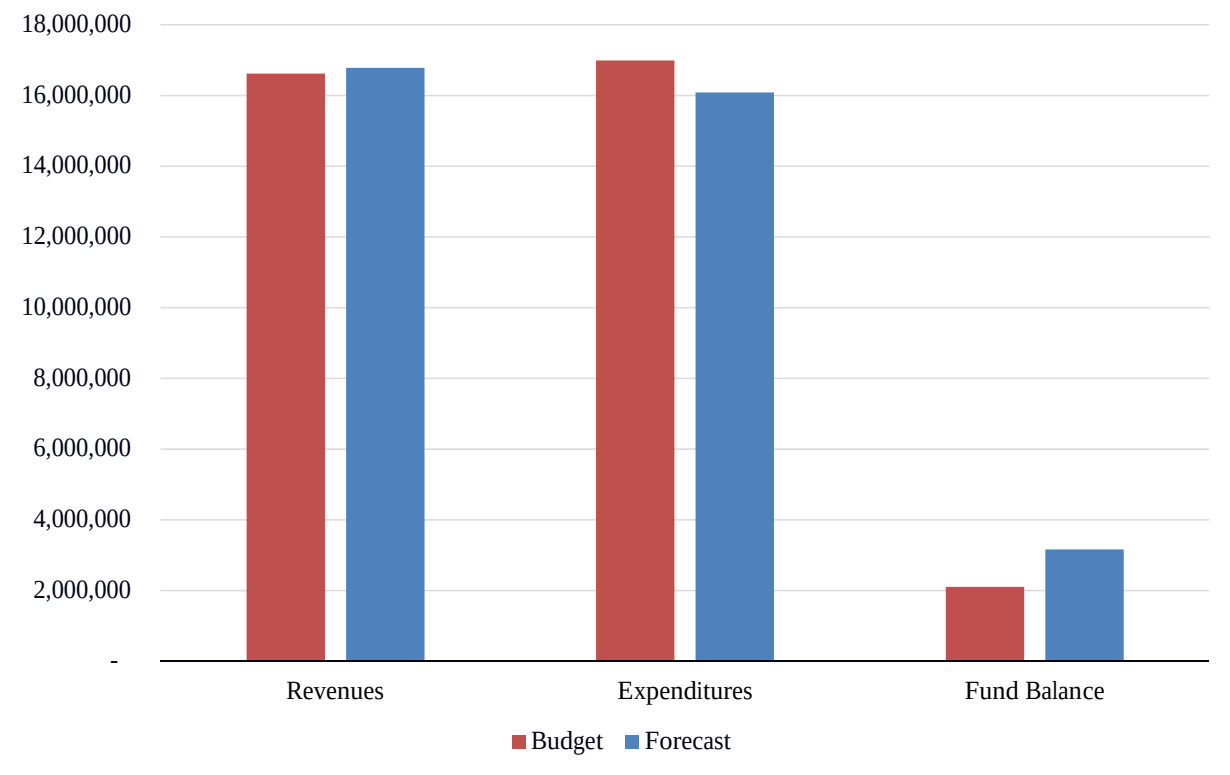
Hotel Occupancy Tax Fund

The Hotel Occupancy Tax Fund revenues are expected to be $148,164 less than budgeted, while expenses are expected to be $275,383 less than budgeted.



Employee Benefits Fund

The Employee Benefits Fund revenues are expected to be $216,989 more than budgeted, while expenses are expected to be $1,873,789 less than budgeted.



CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. M-2

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a Capital Improvement Project (CIP) construction contract with Baker & Company Construction, LLC, for the West Mud Creek, Tributary A (Glenwood Church of Christ) Erosion Remediation project, Bid No. 24-036, for $3,388,043.00.

Item Reference: **City Council April 12, 2023, Item M-5; Half Cent April 11, 2023, Item 23-04-08**

Just south of Rice Road, two (2) tributaries of West Mud Creek (WMC) come together (a confluence). These two (2) tributaries of WMC are Tributary A and Tributary A-1. There is currently undermining of the concrete rip rap at the downstream side of the western tributary (Trib A), and the sides of the tributary are highly eroded and threatening the property of the Glenwood Church of Christ. A portion of the church building is built immediately adjacent to the floodway, and the majority is very close, putting it at risk of future erosion of the stream bank.

In addition, residents on the eastern side of the tributary south of the confluence are threatened by stream bank erosion. Farther downstream, the outfalls of two (2) storm drains are undermined. Thus, the primary purpose of this project is to mitigate the erosion of the channel bottom and walls in order to protect property.

Erosion will be mitigated using gabion baskets, gabion blankets, turf reinforcement mats, and rock riprap. Failing stormwater outfalls will be replaced and/or repaired, and better access to inspect and maintain will be put in place.

The challenge to stay below the United States Army Corps of Engineer's (USACE) trigger for mitigation was accomplished, allowing the work to proceed under a Nationwide Permit. This eliminated the need to pursue an individual permit and additional mitigation costs.

The project was advertised on Friday, September 27 and Friday, October 4, 2024, with an estimated EOPC (Engineer's Opinion of Probable Cost) of $2,700,000 to $3,100,000.

Bids were opened Tuesday, October 22 with three (3) bidders:
1. $5,906,075.00 - Reynolds & Kay, LTD
2. $4,323,325.00 - Austin Filter Systems, Inc.
3. $3,388,043.00 - Baker & Company Construction, LLC

Funding source: American Rescue Plan Act (ARPA) Funds

This project was originally approved to be funded from the Half Cent Sales Tax account. Use of ARPA funds requires that the construction contractor be under contract by the end of calendar year 2024, and for construction to be completed by September 30, 2026. However, projects intended for the use of these funds, e.g. the Tyler Downtown Project, were unable to meet these requirements. Thus, ARPA funds have been reallocated to cover the cost of this West Mud Creek, Tributary A (Glenwood Church of Christ) Erosion Remediation project, freeing up Half Cent Sales Tax funds for other priority projects.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to execute a Capital Improvement Project (CIP) construction contract with Baker & Company Construction, LLC, for the West Mud Creek, Tributary A (Glenwood Church of Christ) Erosion Remediation project, Bid No. 24-036, for $3,388,043.00.

Attachments:
WMC Trib A (Glenwood Church of Christ & Rice Rd)
IMG_4404
IMG_3128
IMG_4410
IMG_3459
West Mud Creek Stream Restoration Bid Tabulation
WMC 01
WMC 02

Drafted/Recommended By:
Department Leader Paul Neuhaus, P.E., M.S. - Stormwater Management and Environmental Compliance Engineer

Edited/Submitted By:
City Manager


Rice Rd
Rocky Dr
Spring Creek Dr
Top Hat Dr
Meadow Creek Dr







HALFF ASSOCIATES, Inc.
1121 E SE Loop 323, Suite 117
Tyler, Texas 75701

CLIENT: City of Tyler
PROJECT: West Mud Creek Stream Restoration
DATE: 10/25/2024
PREPARED BY: WB
Bid No: 24-036

Key	
	Apparent Low Bidder
	Different From Bid Tab

Bid Tabulation

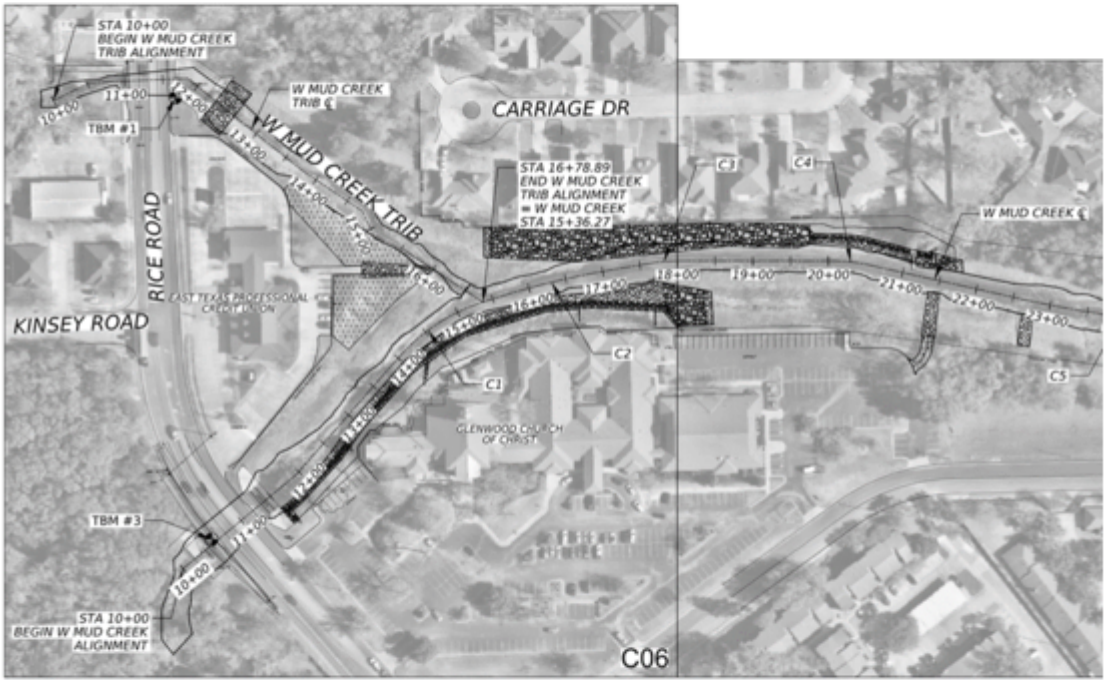
Item No.	Description	Unit	Total Quantity	AUSTIN FILTER SYSTEMS, INC.		Baker & Company Construction, LLC		Reynolds & Kay, LTD	
	Section I - Base Bid								
General Improvements				**Unit Price ($)**	**Total ($)**	**Unit Price ($)**	**Total ($)**	**Unit Price ($)**	**Total ($)**
101	Site Preparation	LS	1	$50,000.00	$50,000.00	$35,000.00	$35,000.00	$242,000.00	$242,000.00
102	Prepare and Implement SWPPP and Erosion Control	LS	1	$20,000.00	$20,000.00	$56,250.00	$56,250.00	$30,000.00	$30,000.00
103	Excavation	CY	1,130	$85.00	$96,050.00	$37.00	$41,810.00	$60.00	$67,800.00
104	Embankment (Select Fill)	CY	930	$100.00	$93,000.00	$59.00	$54,870.00	$80.00	$74,400.00
105	~~Cement Treated Subgrade~~	~~SY~~	~~0~~	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
106	~~Cement (80 lbs/SY)~~	~~TON~~	~~0~~	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
107	Seeding and Topsoil	SY	1,720	$15.00	$25,800.00	$11.00	$18,920.00	$25.00	$43,000.00
108	Sod and Topsoil	SY	120	$35.00	$4,200.00	$40.00	$4,800.00	$38.00	$4,560.00
110	Removing Conc (Curb or Curb & Gutter)	LF	30	$10.00	$300.00	$96.00	$2,880.00	$30.00	$900.00
110	Remove Fence	LF	40	$35.00	$1,400.00	$72.00	$2,880.00	$140.00	$5,600.00
111	Install 12' Gate and Fence (Match Existing)	EA	1	$3,000.00	$3,000.00	$7,150.00	$7,150.00	$14,000.00	$14,000.00
112	Install 17' Metal A-Frame Gate and Fence (Match Existing)	EA	1	$4,500.00	$4,500.00	$4,950.00	$4,950.00	$15,000.00	$15,000.00
113	Remove Headwall	EA	7	$1,000.00	$7,000.00	$2,465.00	$17,255.00	$3,000.00	$21,000.00
114	Project Signs	EA	2	$1,500.00	$3,000.00	$550.00	$1,100.00	$2,500.00	$5,000.00
115	Mobilization (5% Max)	LS	1	$200,000.00	$200,000.00	$170,000.00	$170,000.00	$280,000.00	$280,000.00
	Subtotal - General Improvements				**$508,250.00**		**$417,865.00**		**$803,260.00**
Paving Improvements									
116	8" Flexbase (Grade 2, Type A)	SY	94	$85.00	$7,990.00	$150.00	$14,100.00	$200.00	$18,800.00
117	6" Reinforced Concrete Driveways	SY	82	$150.00	$12,300.00	$83.00	$6,806.00	$270.00	$22,140.00
	Subtotal - Paving Improvements				**$20,290.00**		**$20,906.00**		**$40,940.00**
Drainage Improvements									
118	12" PVC (C900)	LF	33	$90.00	$2,970.00	$186.00	$6,138.00	$200.00	$6,600.00
119	24" RCP (CL III)	LF	81	$250.00	$20,250.00	$196.00	$15,876.00	$175.00	$14,175.00
120	30" RCP (CL III)	LF	5	$800.00	$4,000.00	$670.00	$3,350.00	$230.00	$1,150.00
121	54" RCP (CL III)	LF	11	$1,000.00	$11,000.00	$517.00	$5,687.00	$550.00	$6,050.00
122	Trench Safety System for Storm Drains, Water and Sanitary Sewer Lines	LF	130	$25.00	$3,250.00	$111.00	$14,430.00	$15.00	$1,950.00
123	Junction Box	EA	3	$42,000.00	$126,000.00	$17,710.00	$53,130.00	$25,000.00	$75,000.00
124	30" RCP Concrete Safety End Treatment (TY II)(3:1)	EA	1	$3,500.00	$3,500.00	$4,030.00	$4,030.00	$3,000.00	$3,000.00
125	36" RCP Concrete Safety End Treatment (TY II)(3:1)	EA	1	$4,500.00	$4,500.00	$4,750.00	$4,750.00	$4,000.00	$4,000.00
126	54" RCP Concrete Safety End Treatment (TY II)(3:1)	EA	1	$13,000.00	$13,000.00	$14,630.00	$14,630.00	$9,000.00	$9,000.00
127	54" RCP Concrete Safety End Treatment (TY II)(4:1)	EA	1	$13,000.00	$13,000.00	$14,630.00	$14,630.00	$12,000.00	$12,000.00
128	Concrete Headwall (Located in Gabion Wall)	CY	81	$1,300.00	$105,300.00	$2,085.00	$168,885.00	$3,500.00	$283,500.00
129	18" Rock Riprap (Protection) (Ungrouted)	CY	1,357	$250.00	$339,250.00	$145.00	$196,765.00	$345.00	$468,165.00
	Subtotal - Drainage Improvements				**$646,020.00**		**$502,301.00**		**$884,590.00**

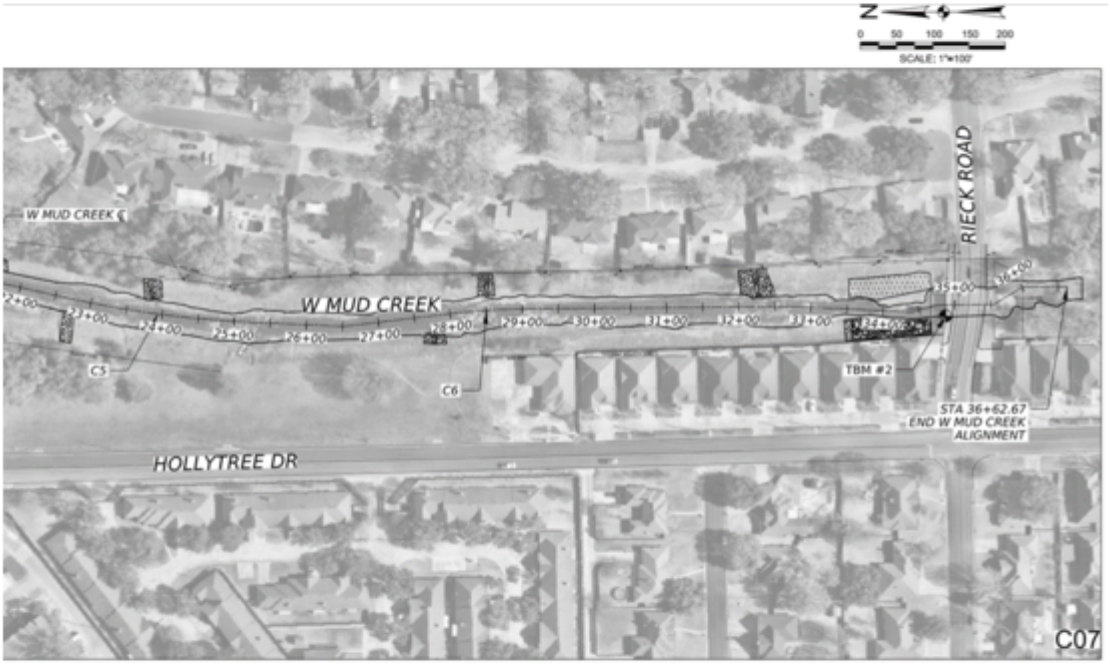
CLIENT: City of Tyler
PROJECT: West Mud Creek Stream Restoration
DATE: 10/25/2024
PREPARED BY: WB
Bid No: 24-036

Key	
	Apparent Low Bidder
	Different From Bid Tab

Bid Tabulation

Item No.	Description	Unit	Total Quantity	AUSTIN FILTER SYSTEMS, INC.		Baker & Company Construction, LLC		Reynolds & Kay, LTD	
Miscellaneous Improvements				**Unit Price ($)**	**Total ($)**	**Unit Price ($)**	**Total ($)**	**Unit Price ($)**	**Total ($)**
130	Gabion Mattress (including concrete toe,filter fabric, etc.)	SY	2626	$225.00	$590,850.00	$190.00	$498,940.00	$335.00	$879,710.00
131	Gabion Basket Wall (including 2' clay cap)	CY	1500	$1,000.00	$1,500,000.00	$425.00	$637,500.00	$870.00	$1,305,000.00
132	Permanent Turf Reinforcement Mat	SY	400	$25.00	$10,000.00	$18.00	$7,200.00	$38.00	$15,200.00
133	Concrete Tie Beam	CY	182	$990.00	$180,180.00	$1,020.00	$185,640.00	$1,500.00	$273,000.00
134	Soil Nail Anchors (6 inch)	LF	698	$50.00	$34,900.00	$106.00	$73,988.00	$150.00	$104,700.00
135	Soil Nail Anchors (8 inch)	LF	8122	$55.00	$446,710.00	$87.00	$706,614.00	$150.00	$1,218,300.00
136	Contingency	LS	1	$250,000.00	$250,000.00	$250,000.00	$250,000.00	$250,000.00	$250,000.00
Subtotal - Miscellaneous Improvements					**$3,012,640.00**		**$2,359,882.00**		**$4,045,910.00**
Total Base Bid - Section I					**$4,187,200.00**		**$3,300,954.00**		**$5,774,700.00**
Section II - Bid Alt 1									
Bid Alt 1				**Unit Price ($)**	**Total ($)**	**Unit Price ($)**	**Total ($)**	**Unit Price ($)**	**Total ($)**
201	Site Preparation	LS	1	$5,000.00	$5,000.00	$5,750.00	$5,750.00	$5,000.00	$5,000.00
202	Excavation	CY	460	$85.00	$39,100.00	$25.00	$11,500.00	$60.00	$27,600.00
203	Embankment (Select Fill)	CY	130	$100.00	$13,000.00	$115.00	$14,950.00	$80.00	$10,400.00
~~204~~	~~Cement Treated Subgrade~~	~~SY~~	~~0~~	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
~~205~~	~~Cement (80 lbs/SY)~~	~~TON~~	~~0~~	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
206	Sod and Topsoil	SY	320	$35.00	$11,200.00	$34.00	$10,880.00	$25.00	$8,000.00
207	Mobilization (5% Max)	LS	1	$1,000.00	$1,000.00	$4,400.00	$4,400.00	$5,000.00	$5,000.00
208	18" Rock Riprap (Protection) (Ungrouted)	CY	90	$250.00	$22,500.00	$184.00	$16,560.00	$345.00	$31,050.00
209	Permanent Turf Reinforcement Mat	SY	1773	$25.00	$44,325.00	$13.00	$23,049.00	$25.00	$44,325.00
Subtotal - Bid Alt 1					**$136,125.00**		**$87,089.00**		**$131,375.00**
Total Bid Alt 1 - Section II					**$136,125.00**		**$87,089.00**		**$131,375.00**
Total Base Bid (Section I)+ Bid Alt 1 (Section II)					**$4,323,325.00**		**$3,388,043.00**		**$5,906,075.00**


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C4
W MUD CREEK
RICE ROAD
KINSEY ROAD
EAST TEXAS PROFESSIONAL
CREDIT UNION
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C1
C5
GLENWOOD CHURCH
OF CHRIST
TBM #3
STA 10+00
BEGIN W MUD CREEK
ALIGNMENT
C06


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W MUD CREEK
RIECK ROAD
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31+00
32+00
33+00
34+00
35+00
36+00
C5
C6
TBM #2
STA 36+62.67
END W MUD CREEK
ALIGNMENT
HOLLYTREE DR
C07

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. M-3

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed $4,177,105, with KSA Engineers, Inc. for the Consent Decree Capacity Work Group 3 Design.

Item Reference:

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 City of Tyler contracted Pipeline Analysis, LLC in association with LNV, LLC to develop a wastewater hydraulic model to analyze the City's Wastewater Collection and Transmission System, identify confirmed capacity constraints and develop remedial measures to mitigate each. The objectives of this work were 1) reduce sanitary sewer overflows and 2) comply with EPA consent decree hydraulic modeling and capacity assessment requirements and timelines. This resulting capacity assessment and remedial measures plan was completed in October 2020.

Construction of Group 1 of the Capacity projects is complete and Group 2 of the Capacity projects are in final Design.

The scope of engineering services with KSA Engineers, Inc. for the Consent Decree Capacity Work Group 3 Design includes: preliminary and final design, bid phase and construction inspection as well as property owner coordination and right of way acquisition. This design is expected to be grouped into four (4) separate projects.

Attached for review is a summary of the scope of work and proposed fee.

RECOMMENDATION:

It is recommended the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed $4,177,105, with KSA Engineers, Inc. for the Consent Decree Capacity Work Group 3 Design.

Attachments:
1012946 Group 3 Capacity - Draft Agreement

Drafted/Recommended By:

Department Leader	Tiffany Currie, P.E. / Project Engineer; Kate Dietz, P.E. / Director of Utilities

Edited/Submitted By:
City Manager

STATE OF TEXAS §

STANDARD FORM OF AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

COUNTY OF SMITH §

This AGREEMENT is entered into, with an Effective Date of _____ [*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 **KSA Engineers, Inc** (ENGINEER or ARCHITECT), hereinafter referred to as "E/A," for the purpose of acquiring all professional engineering and/or architectural services required for the project known as **"Consent Decree Capacity Work Group 3 Implementation"** (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 = $2,331,300
- Hourly/Reimbursable Expenses = $1,845,805
- **Total Contract Price** = **$4,177,105**

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:
KSA Engineers, Inc.
Attn: Christopher B. Aylor, P.E.
6781 Oak Hill Blvd.
Tyler, TX 75703

OWNER:
City of Tyler
Attn: Tiffany Currie, 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: _____
City Manager Date

Edward Broussard
Printed Name

By: _____
City Clerk

Cassandra Brager
Printed Name

APPROVED:

By: _____
City Attorney's Office Date

_____
Printed Name

RECOMMENDED:

By: _____
Department Leader Date

_____
Printed Name

CITY COUNCIL APPROVAL:

AGENDA ITEM NUMBER: _____
DATE APPROVED: _____

FOR THE E/A:

By: _____

Director of Client Services Date

Joncie H. Young, P.E.

Printed Name

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

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

_____

Notary Public In and For The State of Texas

My Commission Expires: _____

_____

Notary's Printed Name

INDEX OF EXHIBITS

Exhibit A - E/A's Scope of 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 A
Scope of Service
Consent Decree Capacity Work Group 3 Implementation

This Agreement constitutes authorization by the City of Tyler (OWNER) for KSA Engineers, Inc. (ENGINEER) to provide engineering services for the **Consent Decree Capacity Work Group 3 Implementation** (hereinafter called the Project).

PROJECT DESCRIPTION

- Construction and/or improvements of Capacity Work Group 3 as identified in Appendix J of the October 10, 2020 *Capacity Assessment and Remedial Measures Plan* shown below and illustrated in the following exhibits:
  - Group 3 Capacity Sites: 14b1, 14b2, 14b3, 14b4, 14b5, 14c1, 14c2, 17a1, 17a2, 17a3, 19a1, 19a2, 19b1, 19c1 and 19d1

The scope of services based on the design of four (4) construction projects with a pre-design opinion of probable construction cost of $19,200,000.

SCOPE OF SERVICES

The scope of services for this part of the work is as follows:

Basic Services of ENGINEER: The ENGINEER is hereby authorized to perform the following basic services:

A. Study and Report Phase: Not Used.
B. Preliminary Design Phase: Provide services as stated in Section 1.3 of the Agreement.
C. Final Design Phase: Provide services as stated in Section 1.4 of the Agreement.
D. Bidding or Negotiating Phase: Provide services as stated in Section 1.5 of the Agreement.
E. Construction Phase: Provide services as stated in Section 1.6 of the Agreement.
F. Operational Phase: Not Used.

Additional Services of ENGINEER: The ENGINEER is hereby authorized to perform the following additional services:

A. Reimbursable Expenses
B. Surveying (Design/Construction/Easement)
C. Geotechnical Investigation
D. Property Owner Coordination
E. Right-of-Way Agent
F. Full Time Project Representative on Four Construction Projects
G. TxDOT Utility Installation Requests

ENGINEER's Exclusions:

A. Reroutes of existing sewer lines;
B. Historical, Wetland, and Archeological investigations, environmental investigations, categorical exclusions, nationwide permits;
C. Coordination, application, or permitting with any and all local, State, and/or Federal agencies other than the Texas Department of Transportation;
D. Stormwater pollution plans, applications, and/or permits;
E. Traffic control plans
F. Legal services;

G. The relocation of gas, electric, communications, or other utilities;
H. Hydrologic studies;
I. Hydraulic studies;
J. Construction material testing

OWNER's Responsibilities: The OWNER's responsibilities shall be as described in SECTION 3 of the ENGINEERING CONTRACT in addition to the following responsibilities: Sampling and testing as required

Exhibit B
Project Schedule
Consent Decree Capacity Work Group 3 Implementation

PROJECT SCHEDULE

Engineer shall complete its services with the following time specific time period upon OWNER's notice to proceed.

Basin 14 Open Cut Construction Contract:

1. Complete Preliminary Design: 180 Days
2. Complete Final Design: 120 calendar days following receipt of OWNER's comments on submitted preliminary design documents
3. Complete Bidding Phase: Within the time designated by the OWNER based upon an approved bid schedule developed following receipt of OWNER's comments on the submitted final design plans.
4. Complete Construction Phase– 450 days (15 months) following issuance of notice to proceed to Contractor.

Basin 14 Pipe Bursting Construction Contract:

1. Complete Preliminary Design: 90 Days
2. Complete Final Design: 60 calendar days following receipt of OWNER's comments on submitted preliminary design documents
3. Complete Bidding Phase: Within the time designated by the OWNER based upon an approved bid schedule developed following receipt of OWNER's comments on the submitted final design plans.
4. Complete Construction Phase– 90 days (3 months) following issuance of notice to proceed to Contractor.

Basin 17 Open Cut Construction Contract:

1. Complete Preliminary Design: 120 Days
2. Complete Final Design: 60 calendar days following receipt of OWNER's comments on submitted preliminary design documents
3. Complete Bidding Phase: Within the time designated by the OWNER based upon an approved bid schedule developed following receipt of OWNER's comments on the submitted final design plans.
4. Complete Construction Phase– 180 days (6 months) following issuance of notice to proceed to Contractor.

Basin 19 Open Cut Construction Contract:

1. Complete Preliminary Design: 150 Days
2. Complete Final Design: 60 calendar days following receipt of OWNER's comments on submitted preliminary design documents
3. Complete Bidding Phase: Within the time designated by the OWNER based upon an approved bid schedule developed following receipt of OWNER's comments on the submitted final design plans.
4. Complete Construction Phase– 360 days (12 months) following issuance of notice to proceed to Contractor.

Exhibit C
Fee Summary
Consent Decree Capacity Work Group 3 Implementation

FEE SUMMARY

Engineering Fees: The fees for the scope of services described above is as follows:

Basin 14 Open Cut Construction Contract:

Preliminary Design	$658,600	Lump Sum
Final Design	$439,100	Lump Sum
Bidding Phase	$15,000	Lump Sum
Construction Phase	$150,000	Lump Sum[1]
Reimbursable Expenses	$10,000	Reimbursable
Surveying (Design/Construction/Easement)	$185,000	Hourly and Reimbursable[2]
Property Owner Coordination	$30,000	Hourly and Reimbursable[2]
Right-Of-Way Agent	$186,840	Hourly and Reimbursable[2]
Geotechnical Investigation	$54,000	Hourly and Reimbursable[2]
Full-Time Resident Project Representative	$398,700	Hourly and Reimbursable[1]
TxDOT Coordination	$20,000	Hourly and Reimbursable[2]
Total	$2,147,240	

Basin 14 Pipe Bursting Construction Contract:

Preliminary Design	$91,300	Lump Sum
Final Design	$60,900	Lump Sum
Bidding Phase	$10,000	Lump Sum
Construction Phase	$30,000	Lump Sum[3]
Reimbursable Expenses	$5,000	Reimbursable
Surveying (Design/Construction/Easement)	$25,000	Hourly and Reimbursable[2]
Full-Time Resident Project Representative	$79,800	Hourly and Reimbursable[3]
Total	$302,000	

Basin 17 Open Cut Construction Contract:

Preliminary Design	$125,800	Lump Sum
Final Design	$83,900	Lump Sum
Bidding Phase	$10,000	Lump Sum
Construction Phase	$60,000	Lump Sum[4]
Reimbursable Expenses	$5,000	Reimbursable
Surveying (Design/Construction/Easement)	$62,500	Hourly and Reimbursable[2]
Property Owner Coordination	$15,000	Hourly and Reimbursable[2]
Right-Of-Way Agent	$43,440	Hourly and Reimbursable[2]
Geotechnical Investigation	$16,625	Hourly and Reimbursable[2]
Full-Time Resident Project Representative	$159,500	Hourly and Reimbursable[4]
TxDOT Coordination	$10,000	Hourly and Reimbursable[2]
Total	$591,765	

Basin 19 Open Cut Construction Contract:

Preliminary Design	$280,000	Lump Sum
Final Design	$186,700	Lump Sum
Bidding Phase	$10,000	Lump Sum
Construction Phase	$120,000	Lump Sum[5]
Reimbursable Expenses	$5,000	Reimbursable
Surveying (Design/Construction/Easement)	$90,000	Hourly and Reimbursable[2]
Property Owner Coordination	$20,000	Hourly and Reimbursable[2]
Right-Of-Way Agent	$64,500	Hourly and Reimbursable[2]
Geotechnical Investigation	$30,900	Hourly and Reimbursable[2]
Full-Time Resident Project Representative	$319,000	Hourly and Reimbursable[5]
TxDOT Coordination	$10,000	Hourly and Reimbursable[2]
Total	$1,136,100	

Total Fee Budget: $4,177,105

Notes:

1. Construction Administration and Full Time Resident Project Representative assumes a construction period of 450 consecutive calendar days. ENGINEER's work on these phases beyond the construction period will be billed at hourly rates.
2. Compensation shall be billed monthly for Engineer's services based on time charged by each category at the hourly rates or subconsultant charges (if any)
3. Construction Administration and Full Time Resident Project Representative assumes a construction period of 90 consecutive calendar days. ENGINEER's work on these phases beyond the construction period will be billed at hourly rates.
4. Construction Administration and Full Time Resident Project Representative assumes a construction period of 180 consecutive calendar days. ENGINEER's work on these phases beyond the construction period will be billed at hourly rates.
5. Construction Administration and Full Time Resident Project Representative assumes a construction period of 360 consecutive calendar days. ENGINEER's work on these phases beyond the construction period will be billed at hourly rates.

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]

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.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-1

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to purchase two fire trucks and sign documents to enter into a five-year capital lease program for the acquisition of one (1) Pierce Pumper $935,838.63 and one (1) ariel $1,685,321.99, plus a $2000.00 HGAC fee for a total purchase cost of $2,623,160.62 from Siddons Martin HGAC Contract # FS12-23.

Item Reference:

The fleet replacement program budgets for departments to replace their vehicles on a regular basis, particularly those with mileage and/or maintenance cost expectations. After meeting with the Fire Department to discuss City specifications Vehicle Services recommends awarding the purchase for two fire trucks. One (1) Pierce Pumper $935,838.63 and one (1) ariel $1,685,321.99 plus a $2000.00 HGAC fee for a total purchase cost of $2,623,160.62 from Siddons Martin HGAC Contract # FS12-23. Attached Quote SMEG-0008041-4 and SMEG-0008042-4. These trucks will be a lease for five years and will be paid for with General Capital Project Funds with first payment due November 1, 2025. Region's Bank is the successful bidder at an interest rate not to exceed 4.27% and terms not to exceed 60 months.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to purchase two fire trucks and sign documents to enter into a five-year capital lease program for the acquisition of one (1) Pierce Pumper $935,838.63 and one (1) ariel $1,685,321.99, plus a $2000.00 HGAC fee for a total purchase cost of $2,623,160.62 from Siddons Martin HGAC Contract # FS12-23.

Attachments:
Proposal - Single and Multiple Trucks - 2024 single pumper-aerial (002)

Drafted/Recommended By:
Department Leader Stan Stoffregen Fleet Manager

Edited/Submitted By:
City Manager

Siddons Martin Emergency Group, LLC
3500 Shelby Lane
Denton, TX 76207
GDN P115891
TXDOT MVD No. A115890

July 31, 2024

DAVID COBLE, FIRE CHIEF
CITY OF TYLER
1718 W HOUSTON ST
TYLER, TX 75702

Proposal For: 2024 Tyler Pumpers/Ladders

Siddons-Martin Emergency Group, LLC is pleased to provide the following proposal to CITY OF TYLER. Unit will comply with all specifications attached and made a part of this proposal. Total price includes delivery FOB CITY OF TYLER and training on operation and use of the apparatus.

Description	Amount

Qty. 1 - 1251 - Pierce-Custom Enforcer Pumper, 2nd Gen
(Unit Price - $1,069,409.00)
Delivery within 38-39 months of order date
QUOTE # - SMEG-0008041-4

Vehicle Price	$1,069,409.00
Multi Truck Discount	($17,200.00)
Full Prepay Discount	($116,370.37)
1251 - UNIT TOTAL	**$935,838.63**

Qty. 1 - 1253 - Pierce-Custom Enforcer Aerial - 105'
(Unit Price - $1,937,846.00)
Delivery within 39-40 months of order date
QUOTE # - SMEG-0008042-4

Vehicle Price	$1,937,846.00
Aerial Prepay Discount	($6,961.43)
Multi Truck Discount	($31,366.00)
Full Prepay Discount	($214,196.58)
1253 - UNIT TOTAL	**$1,685,321.99**

SUB TOTAL	$2,621,160.62
HGAC FS12-23 (FIRE)	$2,000.00
TOTAL	**$2,623,160.62**

Price guaranteed for 60 days

Additional: 'Due to global supply chain constraints, any delivery date contained herein is a good faith estimate as of the date of this order/contract, and merely an approximation based on current information. Delivery updates will be made available, and a final firm delivery date will be provided as soon as possible.
Persistent Inflationary Environment Notification: If the Producer Price Index of Components for Manufacturing [www.bls.gov Series ID: WPUID6112] (the "PPI") has increased at a compounded annual growth rate greater than 5.0% from the date of acceptance of this proposal letter (the "Order Month") and 14 months prior to the anticipated Ready for Pickup Date (the "Evaluation Month"), then the proposal price may be increased by an amount equal to any increase exceeding 5.0% for the time period between the Order Month and the Evaluation Month. Siddons Martin and Pierce will provide documentation of such increase and the updated price for the customer's approval before proceeding with completion of the order along with an option to cancel the order.'

Taxes: Tax is not included in this proposal. In the event that the purchasing organization is not exempt from sales tax or any other applicable taxes and/or the proposed apparatus does not qualify for exempt status, it is the duty of the purchasing organization to pay any and all taxes due. Balance of sale price is due upon acceptance of the apparatus at the factory.

Late Fee: A late fee of .033% of the sale price will be charged per day for overdue payments beginning ten (10) days after the payment is due for the first 30 days. The late fee increases to .044% per day until the payment is received. In the event a prepayment is received after the due date, the discount will be reduced by the same percentages above increasing the cost of the apparatus.

Cancellation: In the event this proposal is accepted and a purchase order is issued then cancelled or terminated by Customer before completion, Siddons-Martin Emergency Group may charge a cancellation fee. The following charge schedule based on costs incurred may be applied:

(A) 10% of the Purchase Price after order is accepted and entered by Manufacturer;
(B) 20% of the Purchase Price after completion of the approval drawings;
(C) 30% of the Purchase Price upon any material requisition.

The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. Siddons-Martin Emergency Group endeavors to mitigate any such costs through the sale of such product to another purchaser; however, the customer shall remain liable for the difference between the purchase price and, if applicable, the sale price obtained by Siddons-Martin Emergency Group upon sale of the product to another purchaser, plus any costs incurred by Siddons-Martin to conduct such sale.

Acceptance: In an effort to ensure the above stated terms and conditions are understood and adhered to, Siddons-Martin Emergency Group, LLC requires an authorized individual from the purchasing organization sign and date this proposal and include it with any purchase order. Upon signing of this proposal, the terms and conditions stated herein will be considered binding and accepted by the Customer. The terms and acceptance of this proposal will be governed by the laws of the state of Texas. No additional terms or conditions will be binding upon Siddons-Martin Emergency Group, LLC unless agreed to in writing and signed by a duly authorized officer of Siddons-Martin Emergency Group, LLC.

Sincerely,

Brandon Cotten

I, _____, the authorized representative of CITY OF TYLER, agree to purchase the proposed and agree to the terms of this proposal and the specifications attached hereto.

_____

Signature & Date

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-2

Date: November 13, 2024

Subject: Request that the City Council consider approving the Reconciliation Order and retainage in the amount of $9,112.99 to Reynolds & Kay, LTD for the 2024 Seal Coat Project.

Item Reference:

On February 28, 2024, the City Council authorized the award of the 2024 Seal Coat Program Project to Reynolds & Kay, LTD in the amount of $961,024.44. The construction has been successfully completed and the total cost of the project is $911,299.17 which is $49,725.27 under the original contract amount.

This request is for approval of the Reconciliation Order and retainage in the amount of $9,112.99.

FUNDING: General Fund 103.

RECOMMENDATION:

It is recommended that the City Council approve the Reconciliation Order and retainage in the amount of $9,112.99 to Reynolds & Kay, LTD for the 2024 Seal Coat Program Project.

Attachments:
24 SCP No. 7- I-104 Final not paid 10-21-25
24 SCP Reconciliation Order.

Drafted/Recommended By:
Department Leader Darin Jennings, P.E. Engineer

Edited/Submitted By:
City Manager

REYNOLDS & KAY LTD.
P.O. BOX 88
TYLER, TX 75710

INVOICE NUMBER J-104

TO: CHUCK SAMSON P.E.
CITY OF TYLER
P.O. BOX 2039
TYLER, TX. 75710

ESTIMATE #: 7 & FINAL
PROJECT #: 4412
DATE: 10/17/2024

2024 SEAL COAT PROJECT

CONTRACT AMOUNT: $961,024.44

ITEM #	DESCRIPTION	UNIT	(A) ORIGINAL PROJECT ESTIMATE	(B) CONTRACT UNIT PRICE	(C) CONTRACT BID AMOUNT	(D) PREVIOUSLY COMPLETED WORK	(E) WORK COMPLETED THIS PERIOD	(F) WORK COMPLETED TO DATE	(G) (B) X (F) COST WORK COMPLETED
	BASE BID								
315-5	FOG SEALS, NO. 5 ROCK	GAL	2,210.00	$11.60	$25,636.00	2,196.00	0.00	2,196.00	$25,473.60
315-4	FOG SEALS, NO. 4 ROCK	GAL	2,258.00	$11.50	$25,967.00	2,212.00	0.00	2,212.00	$25,438.00
316-A	AC-20-5TR OR AC-20-XP	GAL	48,429.00	$4.35	$210,666.15	48,429.00	0.00	48,429.00	$210,666.15
316-PD4	TYPE PD OR PL, GRADE 4 AGGR	SY	86,747.00	$1.67	$144,867.49	86,534.00	0.00	86,534.00	$144,511.78
316-PD5	TYPE PD OR PL, GRADE 5 AGGR	SY	68,801.00	$1.48	$101,825.48	66,507.00	0.00	66,507.00	$98,430.36
351	FLEX PVMT STR REPAIR 6" (TY C)	TON	800.00	$224.00	$179,200.00	636.34	0.00	636.34	$142,540.16
502	BARRICADES, SIGNS, TRAFFIC	LS	1.00	$19,800.00	$19,800.00	1.00	0.00	1.00	$19,800.00
666SY-4	REFL PV MRK TY I (Y)(4")(SLD)	LF	18,230.00	$1.46	$26,615.80	26,250.00	0.00	26,250.00	$38,325.00
666BY-4	REFL PV MRK TY I (Y)(4")(BRK)	LF	1,647.00	$2.35	$3,870.45	1,670.00	0.00	1,670.00	$3,924.50
666BW-4	REFL PV MRK TY I (W)(4")(BRK)	LF	2,518.00	$2.35	$5,917.30	3,910.00	0.00	3,910.00	$9,188.50
666SW-8	REFL PV MRK TY I (W)(8")(SLD)(TN LN)	LF	888.00	$2.35	$2,086.80	928.00	0.00	928.00	$2,180.80
666SW-12	REFL PV MRK TY I (W)(12")(SLD)(XWLK)	LF	314.00	$6.00	$1,884.00	124.00	0.00	124.00	$744.00
666SWSB-	REFL PV MRK TY I (W)(24")(STP RR)	LF	250.00	$8.00	$2,000.00	315.00	0.00	315.00	$2,520.00
666-RR	REFL PV MRK TY I (W)(RR-XING)	EA	1.00	$900.00	$900.00	1.00	0.00	1.00	$900.00
666-O	REFL PV MRK TY I (W)("ONLY")	EA	1.00	$350.00	$350.00	10.00	0.00	10.00	$3,500.00
666A-LT	REFL PV MRK TY I (LT TN ARROW)	EA	12.00	$235.00	$2,820.00	10.00	0.00	10.00	$2,350.00
666A-R	REFL PV MRK TY I (RT TN ARROW)	EA	4.00	$235.00	$940.00	0.00	0.00	0.00	$0.00
666A-SR	REFL PV MRK TY I (STR-RT ARROW)	EA	2.00	$350.00	$700.00	0.00	0.00	0.00	$0.00
666A-SL	REFL PV MRK TY I (STR-LT ARROW)	EA	2.00	$350.00	$700.00	2.00	0.00	2.00	$700.00
672-I-C	RAISED PV MRKS, TYPE I-C	EA	118.00	$7.00	$826.00	177.00	0.00	177.00	$1,239.00
672-II-A-A	RAISED PV MRKS, TYPE II-A-A	EA	196.00	$7.00	$1,372.00	254.00	0.00	254.00	$1,778.00
672-II	RAISED PV MRKS, TY II (BLUE)	EA	54.00	$12.00	$648.00	0.00	0.00	0.00	$0.00
800	ALLOWANCE FOR CONTINGENCY	LS	1.00	$50,000.00	$50,000.00	0.00	0.00	0.00	$0.00

REYNOLDS & KAY LTD.
P.O. BOX 88
TYLER, TX 75710

INVOICE NUMBER J-104

TO: CHUCK SAMSON P.E.
CITY OF TYLER
P.O. BOX 2039
TYLER, TX. 75710

ESTIMATE #: 7 & FINAL
PROJECT #: 4412
DATE: 10/17/2024

2024 SEAL COAT PROJECT

CONTRACT AMOUNT: $961,024.44

ITEM #	DESCRIPTION	UNIT	(A) ORIGINAL PROJECT ESTIMATE	(B) CONTRACT UNIT PRICE	(C) CONTRACT BID AMOUNT	(D) PREVIOUSLY COMPLETED WORK	(E) WORK COMPLETED THIS PERIOD	(F) WORK COMPLETED TO DATE	(G) (B) X (F) COST WORK COMPLETED
	ADD ALT. 1: CROW GROUP								
315	FOG SEALS, NO. 4 ROCK	GAL	495.00	$12.00	$5,940.00	239.00	0.00	239.00	$2,868.00
316-A	AC-20-5TR OR AC-20-XP	GAL	3,958.00	$4.50	$17,811.00	3,958.00	0.00	3,958.00	$17,811.00
316-PD4	TYPE PD OR PL, GRADE 4 AGGR	SY	10,994.00	$1.68	$18,469.92	10,994.00	0.00	10,994.00	$18,469.92
351	FLEX PVMT STR REPAIR 6" (TY C)	TON	118.00	$224.00	$26,432.00	136.59	0.00	136.59	$30,596.16
	ADD ALT. 2: MAXWELL GROUP								
315	FOG SEAL	GAL	227.00	$12.00	$2,724.00	246.00	0.00	246.00	$2,952.00
316-A	AC-20-5TR OR AC-20-XP	GAL	1,457.00	$4.50	$6,556.50	1,500.00	0.00	1,500.00	$6,750.00
316-PD5	TYPE PD OR PL, GRADE 5 AGGR	SY	5,828.00	$1.50	$8,742.00	5,830.00	0.00	5,830.00	$8,745.00
351	FLEX PVMT STR REPAIR 6" (TY C)	TON	49.00	$224.00	$10,976.00	94.23	0.00	94.23	$21,107.52
672-II	RAISED PV MRKS, TY II (BLUE)	EA	3.00	$12.00	$36.00	0.00	0.00	0.00	$0.00
	ADD ALT. 3: BARRON GROUP								
315	FOG SEAL	GAL	256.00	$12.00	$3,072.00	261.00	0.00	261.00	$3,132.00
316-A	AC-20-5TR OR AC-20-XP	GAL	1,644.00	$4.60	$7,562.40	1,720.00	0.00	1,720.00	$7,912.00
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Name of Project: 2024 Seal Coat Project
Contractor Name: Reynolds & Kay LTD.
Account number to use: General Fund 103
Type of invoice: Construction work.
Has open PO.: Yes

TOTAL COMPLETED & STORED TO DATE	$911,299.17
LESS 0% RETAINAGE	$0.00
TOTAL EARNED LESS RETAINGE	$911,299.17
LESS PREVIOUS PAID APPLICATIONS	$902,186.18
LESS PREVIOUS UNPAID APPLICATIONS	$0.00
CURRENT PAYMENT DUE	$9,112.99

Final Retainage Payment

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TYLER, TX 75710

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2024 SEAL COAT PROJECT
Reconciliation
Change Order No. 1

ITEM #	DESCRIPTION	UNIT	(A) ORIGINAL PROJECT ESTIMATE	(B) CONTRACT UNIT PRICE	(C) CONTRACT BID AMOUNT	(D) PREVIOUSLY COMPLETED WORK	(E) WORK COMPLETED THIS PERIOD	(F) WORK COMPLETED TO DATE	(G) (B) X (F) COST WORK COMPLETED
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672-II	RAISED PV MRKS, TY II (BLUE)	EA	4.00	$12.00	$48.00	0.00	0.00	0.00	$0.00

Name of Project: 2024 Seal Coat Project
Contractor Name: Reynolds & Kay LTD.
Account number to use: General Fund 103
Type of invoice: Construction work.
Has open PO.: Yes

TOTAL COMPLETED & STORED TO DATE	$911,299.17
LESS 0% RETAINAGE	$0.00
TOTAL EARNED LESS RETAINGE	$911,299.17
LESS PREVIOUS PAID APPLICATIONS	$902,186.18
LESS PREVIOUS UNPAID APPLICATIONS	$0.00
CURRENT PAYMENT DUE	$9,112.99

Final Retainage Payment
and Reconciliation Order

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-3

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to declare certain designated vehicles as surplus and ready to be auctioned.

Item Reference:

Request that the City Council consider authorizing the City Manager to declare certain designated vehicles as surplus and ready to be auctioned.

See attached auction list.

Proceeds from the sale of these units will be deposited in Vehicle Services Account 640-0000-361.57-20.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to declare certain designated vehicles as surplus and ready to be auctioned.

Attachments:
Auction List november 2024

Drafted/Recommended By:
Department Leader Stan Stoffregen Fleet Manager

Edited/Submitted By:
City Manager

Unit#	Description	Department	Miles/Hrs	Reason	Auction Notes
00261	2001 Ford F250 utility bed	VES	56,175	replacement	
09204	2009 Chevy Colorado	Mainstreet	33,096	replacement	
09231	2009 Freightliner Dump Truck	Water Dist	77,053	replacement	
11252	2011 Ford F150 Crew Cab	SW RESI	97,681	replacement	
11258	2011 F150 Reg Cab	Water Dist	87,952	replacement	
11262	2011 F750 Dump Truck	Waste Collection	92,508	replacement	
11268	2011 F150 Super Cab	Parks	48,277	replacement	
12283	2012 Chevy 1500 Ext Cab	Rose Garden	53,827	replacement	gas/cng
14216	2014 Chevy Tahoe	Fire	90,833	replacement	
15297	2015 Chevy 1500 Crew Cab	Water Office	128,843	replacement	
15444	2015 Kubota TL500 Bucket and backhoe	Rose Garden	809 hrs	replacement	
15804	2015 Ford Explorer PPV	Police	79,499	replacement	
15809	2015 Ford Explorer PPV	Police	90,179	replacement	
15812	2015 Ford Explorer PPV	Police	80,128	replacement	
15874	2015 Ford Explorer PPV	Police	106,973	replacement	
15877	2015 Ford Explorer PPV	Police	98,400	replacement	
16218	2016 Ford F250 reg Cab Animal bed	Animal Control	113,967	replacement	
16345	2016 F450 Reg Cab utility bed crane	Waste treatment	88,077	replacement	
16819	2016 Ford Explorer PPV	Police	92,884	replacement	
16823	2016 Ford Explorer PPV	Police	103,504	replacement	
16833	2017 Ford Explorer PPV	Police	79,890	replacement	
19889	2019 Dodge Charger	Police	68,269	replacement	
20875	2020 Chevy Tahoe	Police	85,785	replacement	

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-4

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to approve Addendum #1 to existing contract with Token Transit over the life of the five (5) year contact for reoccurring fees at $20,900 per year, for a total of $104,500. Staff is also recommending the purchase of an additional thirteen (13) Token validators at a cost of $47,600, for a total cost of $68,500 the first year of the amended contract. Any additional validators will cost $4,400 each the first year of the purchase and installation.

Item Reference:

In April 2024, staff researched informal bids for cashless fare equipment. That initial contract was in the amount of $49,300. After utilizing the equipment since that timeframe, staff determined that we needed additional equipment so to adequately operate a cashless fare system throughout the bus fleet. Because this purchase is a sole source, this action will require an addendum to the existing contract. Addendum #1 will extend the life of the contract until 12/12/29 in the amount of $104,500.00 and will also allow us to purchase additional equipment, and installation, for the remainder of the fleet so we can move forward with a cashless fare system. The cost of the additional equipment and installation is the amount of $47,600. The total cost of $68,500 is for the first year of the amended contract for equipment and reoccurring fees. This will be a total of $152,100 for the life of the contract. This will allow for any additional needed validators for the cost of $4,400 each for the first year of the purchase and installation.

Adding more Token validators to the fleet will allow for Tyler Transit to better track fares. This will not eliminate cash at this time.

Funding will be from 5307, 5310, or 5339 Grant with TDC's to help with Local Match.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to approve Addendum #1 to existing contract with Token Transit over the life of the five (5) year contact for reoccurring fees at $20,900 per year, for a total of $104,500. Staff is also recommending the purchase of an additional thirteen (13) Token validators at a cost of $47,600, for a total cost of $68,500 the first year of the amended contract. Any additional validators will cost $4,400 each the first year of the purchase and installation.

Attachments:
City of Tyler dba Tyler Transit Token Transit Agency Terms 2024-10-24 Final
Token agency-master-platform-terms-20240403
Token Transit - QR Scan Validators - tylertx - Oct2024 Additional 12 - Quote
tylertx_Token Transit - QR Scan Validators_RecurringCosts_Oct2024 Additional 12 - Recurring SaaS Quote

Drafted/Recommended By:
Department Leader Russ Jackson/Transit Manager

Edited/Submitted By:
City Manager

Addendum #1 - Agency Order Terms 2024-10-24

These Agency Order Terms 2024-10-24 are for the purchase by Agency of a subscription to the Services specified below. Provision of the Services is subject to the Master Platform Terms and any additional terms referenced below and incorporated herein (these Agency Order Terms together with the Master Platform Terms, may be referred to as the "Agreement") between the customer specified below ("Agency") and Token Transit, Inc. ("TT"). These Agency Order Terms are effective, upon signature of both Agency and TT (the "Agency Order Terms Effective Date").

These Agency Order Terms 2024-10-24 supplement (e.g., by adding Additional Services) any prior Agency Order Terms documents and such prior Agency Order Terms documents remain in full force and effect except as supplemented by these Agency Order Terms 2024-10-24, unless otherwise indicated below.

Agency Name: City of Tyler dba Tyler Transit	Agency Physical Address: P.O. Box 2039, Tyler, TX, 75710 Agency Billing Address (if different than physical address):
Primary Agency Contact: Name: Russ Jackson Email: RJackson@tylertexas.com Phone: 903-533-8057	Invoice Contact: Name: Russ Jackson Email: RJackson@tylertexas.com Phone: 903-533-8057

Services (descriptions in Section 1 of the Master Platform Terms):

Agency's Target Service Launch Date (as the parties may amend in writing, email to suffice): Dec 1, 2024

Territory: United States

Core: included (required)

Hardware Validation Service (defined in the Hardware Validation Services Addendum): TT to provide Hardware Validators (at additional cost)

Required Network Availability: MUST HAVE ACCESS TO ETHERNET PORT ON MODEM WITH INTERNET CONNECTIVITY

Fees:

Passes: Fees are calculated as follows:

- $6500/year (includes all processing fees). Subject to revision and adjustment on an annual basis.

Hardware Validation Service (if applicable):

- Hardware Validation Service Fee: $600; annual recurring fee with initial annual fee to be paid on or before the Service Launch Date (as defined in the Master Platform Terms).
- Hardware Validator Fee: $2000; due within thirty (30) days of the Agency Order Terms Effective Date and prior to any shipment or installation.
- OPTIONAL - Hardware Validator Installation Fee: $1800; due within thirty (30) days of the Agency Order Terms Effective Date and prior to any shipment or installation if option is selected.

Technical Services (if applicable):

All fees indicated do not include any taxes, if applicable, which are the sole responsibility of Agency.

Master Platform Terms:

https://agency.tokentransit.com/legal/agency-master-platform-terms-20240403.pdf

The Master Platform Terms govern Agency's use of TT's platform services, and include reference to the terms of service between Agency and the third-party payment processor responsible for processing and settling payments to Agency. By entering into this Agreement, Agency is agreeing to those terms of service. The Master Platform Terms version referenced above supersedes and replaces any prior agreement (including any prior version of the Master Platform Terms) between Agency and TT, if any.

Additional Terms (if applicable):

- Section 8.2 (Agency Indemnification) is preceded with the statement "To the extent permitted by the Constitution and the laws of the State of Texas". The statement "including, but not limited to, reasonable legal fees," is removed from Section 8.2 in its entirety
- Section 9.1 (Disclaimer of Damages.) is preceded with the statement "To the extent permitted by the Constitution and the laws of the State of Texas"
- Section 12.1 (Applicable Law and Jurisdiction) is modified to replace "Laws of the State of California" with "Laws of the State of Texas" and to replace "California State and Federal Courts located in San Francisco, California" with "Smith County, Texas, and Federal Courts located in the Eastern District of Texas.
- Section 12.2 (Legal Fees) is deleted in its entirety and replaced with the following: "In any action to enforce this agreement, each party will bear its own costs and legal fees."

No terms included in any purchase order, acknowledgment or other non-TT ordering document shall apply to the Services. The pricing and Services presented in these Agency Order Terms are TT confidential information (to the maximum extent permitted under applicable law). All fees indicated above do not include any taxes, if applicable, which are the sole responsibility of Agency.

By signing below, the parties through their duly authorized representatives agree to the terms as documented in these Agency Order Terms.

Token Transit, Inc. (TT)	City of Tyler dba Tyler Transit (Agency)
By: Name: Title: Date:	By: Name: Title: Date:

TOKEN TRANSIT™ AGENCY MASTER PLATFORM TERMS
Version: April 3, 2024

This "**Agreement**" consists of these Token Transit Agency Master Platform Terms (the "**Master Platform Terms**") together with the applicable Agency Order Terms (defined below), and is entered into by and between Token Transit, Inc. ("**TT**") and the entity (e.g., company or government agency) placing an order for or accessing the Services ("**Agency**") (each of TT and Agency may be referred to as a "**Party**"). For clarity, this Agreement includes the terms and conditions set forth below including any exhibits or addenda identified herein and any ordering documents, online registration, order descriptions or order confirmations referencing this Agreement and agreed to by the Parties ("**Agency Order Terms**"). You represent that you are authorized to accept this Agreement on behalf of the Agency.

The "**Effective Date**" of this Agreement is the date which is the Agency Order Terms Effective Date of the first Agency Order Terms referencing this Agreement. This Agreement will govern Agency's initial purchase on the Effective Date as well as any future purchases made by Agency that reference this Agreement.

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING THE SERVICES, YOU ARE AGREEING TO BE BOUND BY ALL TERMS, CONDITIONS AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT USE THE SERVICES. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT.

SECTION 1. TT SERVICES

Overview. TT's platform offers transportation entities (e.g., municipal agencies and private transportation companies) an evolving suite of cloud-based Services to manage ticketing and other transportation-related needs of transit users who have direct relationship with TT, as further described below and in the Documentation.

1.1 **Core Services**. TT's "**Core Services**" (i) connect transit fares, third party participants (e.g., employers, universities, social service agencies) and modes of transit offered by Agency (e.g., bus, bikeshare, micro-transit, para-transit) and (ii) enable transit users (Riders, as defined below) to purchase and use transit passes (Passes, as defined below) through the Services (including the TT Rider App). Core Services include the TT Rider App, Third-Party Integrations (each defined below) unless expressly indicated otherwise in the Agency Order Terms, and Fare Capping at Agency's election (e.g., via e-mail). Agency acknowledges that the Services are on-line, subscription-based products, and that in order to provide improved customer experience TT may make changes to the Services (and update the applicable Documentation accordingly); provided, however, that such changes shall not materially reduce the features or functionality of the Core Services as of the Effective Date.

1.2 **Additional Services**. If included in Agency Order Terms, Agency may also receive access to additional TT services, as TT may make available from time to time, that may be used with the Core Services (such as Optional Technical Services, and Hardware Validation Service (defined below)) (collectively, "**Additional Services**"). The features of any Additional Services will be further described in an applicable Agency Order Terms and may be subject to additional terms and conditions. For clarity, any Additional Services are considered part of the "Services" for purposes of this Agreement. If Agency selects Hardware Validation Service in

Agency Order Terms, the additional terms and conditions set forth in the Hardware Validation Service Addendum at **Exhibit A** are hereby incorporated herein.

1.3 **Definitions.**

"**Agency Data**" means all data provided by the Agency to TT, including any Personal Information provided directly by the Agency with respect to Riders or other individuals (e.g., to designate to TT which Riders are eligible to participate in a specific Agency program for discounted Passes, if applicable). For the avoidance of doubt Agency Data does not include data collected by TT.

"**Agency Materials**" means materials, systems and other resources that Agency provides to TT in connection with Optional Technical Services.

"**Agency Policy Information**" means information regarding Agency's Passes such as pricing, refund and Pass expiration information, collection, use and disclosure of Personal Information, legal authority, any applicable terms, limitation, restrictions or conditions and contact information.

"**Data Protection Laws**" means all applicable laws and regulations relating to the processing of Personal Information and privacy in the United States and Canada, including without limitation, as applicable, the California Consumer Privacy Act ("**CCPA**") and with respect to Canada, the Personal Information Protection and Electronic Documents Act, and the substantially similar state and provincial privacy laws.

"**Documentation**" means the end user technical documentation provided with the Services that TT may generally make available, as may be modified from time to time.

"**Fare Media**" means the method through which Riders present their Pass(es) to Agency for validation. Fare Media may be in various formats such as digital (e.g., via the TT Rider App or Third Party Integrations), Smart Card, printed passes, etc. as may be made available for sale and supported by TT from time to time.

"**Hardware Validation Service**" means hardware validation, analytics, and other hardware-related services that TT offers, as may be further defined in the Hardware Validation Service Addendum.

"**Laws**" means all applicable local, state, municipal, provincial, federal, and other laws within the Territory, including the Data Protection Laws.

"**Passes**" means transit fares purchased or received by Agency or its Riders from TT or otherwise provided through the Services. Passes may cover one or multiple rides in accordance with the Agency Policy Information.

"**Personal Information**" means any data that (i) identifies, describes, is associated with, or is reasonably capable of being associated with a particular individual or (ii) is otherwise defined as personal data or personal information (or similar term) under the Data Protection Laws.

"**Riders**" means riders (or other users) of Agency's transit system who purchase or are provided Passes. For clarity, all Riders will have a direct relationship with TT as users of the Services (i.e. as an end user of Fare Media).

"**Service(s)**" means the TT proprietary hosted services, including the Core Services and any Additional Services specified in the Agency Order Terms, including any related TT dashboards or web portal (the "**TT Agency Web Portal**"). "Services" do not include Optional Technical Services.

"**Service Launch Date**" means the earlier of (i) when Service is first offered to Riders (based on TT's reporting system) or (ii) the target launch date set forth in the Agency Order Terms.

"**Smart Card**" means a contactless smart card that stores Passes and is provided by Token Transit to Riders or Agency for use by Riders.

"**Optional Technical Services**" means premium support, implementation or other technical services to be provided by TT, if any, pursuant to the Agency Order Terms.

"**Territory**" means the United States or Canada, as expressly stated in an applicable Agency Order Terms.

"**Third-Party Integration(s)**" means one or more third-party mobile apps, websites, or other online services (e.g., trip planning and multimodal apps and services) that, pursuant to agreement with TT, enable Riders to purchase Passes from within the third-party's mobile apps, websites, or other online services.

"Fare Capping" means combining prior activated Passes into new Passes valid for the remainder of the applicable time period in accordance with fare capping rules defined by the Agency.

"**TT Rider App**" means the TT mobile application and/or website which enables Riders to access, purchase and use Passes. For clarity: (i) the same TT Rider App is used by TT across multiple customers and (ii) all of TT's end users, including Riders, have a direct relationship with TT (including through Third Party Integrations) and may use the TT Rider App across all participating transit agencies and entities.

"**TT Rider Data**" means and refers to any data provided or inputted by or on behalf of the Riders via the Services (e.g., through the TT Rider App or through the integration of the Services into the Third-Party Integrations) for the sale or purchase of Passes using the Services, which may include email address, full name, cardholder information, credit cards or debit card information and bank information of the Riders, and any other data as described in TT's privacy policy for the Services (currently available at https://tokentransit.com/legal/privacy). For clarity, TT Rider Data does not include Agency Data.

Additional capitalized terms have the meaning ascribed to them herein.

1.4 **Provision of the Services; Compliance with Laws**.

(a) The Services are provided on a subscription basis for a set term pursuant to Section 10 (Term and Termination). Agency shall purchase and TT shall provide the Services and any related Optional Technical Services (as further described in Section 1.7 below) as specified in the applicable Agency Order Terms.

(b) To receive payments through the Services, Agency must agree to the terms of service of the third-party payment processor designated by TT ("Payment Processor"), located at https://stripe.com/connect-account/legal. The Payment Processor terms of service are solely between Agency and the Payment Processor. Agency acknowledges that by entering into this Agreement, it is agreeing to and will comply with such Payment Processor terms of service. The Payment Processor is responsible for settling funds to Agency. TT does not at any point hold, own or control funds, actually or constructively receive, take possession of or hold any money or monetary value for transmission, or advertise, solicit or hold itself out as receiving money for transmission.

(c) Each Party shall comply with its obligations under the Laws in connection with this Agreement.

1.5 **Access to the Services.**

Subject to the terms of this Agreement, including payment of the Fee, TT grants to Agency, during the Term, a limited, non-transferable, nonexclusive right to access and use the Services, as TT may modify it from time to time, in connection with Agency's Riders, solely for Agency's internal purposes within the Territory. Access to the Services, including the TT Agency Web Portal, is limited to Agency's employees and contractors acting for the sole benefit of Agency ("**Permitted Users**"). Agency and its Permitted Users may need to register for a TT account in order to access or use the Services. Account registration information must be accurate, current and complete, and will be governed by TT's Privacy Policy. Agency is responsible for any use of the Services by its Permitted Users and their compliance with this Agreement. Agency shall keep confidential its user IDs and passwords for the Services and remain responsible for any actions taken through its accounts.

1.6 **Restrictions**. Agency shall not (and shall not permit any third party to): (a) rent, lease, provide access to (other than with respect to Riders as contemplated herein) or sublicense the Services to a third party; (b) use the Services to provide, or incorporate the Services into, any product or service provided to a third party (other than with respect to Riders as contemplated herein); (c) use the Services to develop a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Services, except to the extent expressly permitted by Law (and then only upon advance notice to TT); (e) copy, modify or create any derivative work of the Services or any Documentation; (f) remove or obscure any proprietary or other notices contained in the Services (including any reports or data printed from the Services); (g) publicly disseminate any TT Confidential Information (except to the extent required by Laws and pursuant to Section 5 (Confidentiality)); or (h) use the Services except as expressly permitted herein.

1.7 **Optional Technical Services**. Any purchased Optional Technical Services will be as described in the relevant Agency Order Terms, subject to the fees and any additional terms in the Agency Order Terms. Agency will reimburse TT for reasonable, pre-approved travel and lodging expenses incurred in providing Optional Technical Services. For prepaid Optional Technical Services, unless specified in the Agency Order Terms, Agency is paying for the availability and efforts of TT personnel over the time period specified in the Agency Order Terms (e.g., up to eight hours in a week); any unused time expires at the end of such period (or at maximum, six (6) months after purchase) and may not be banked, accumulated or saved for future periods or purchases. To facilitate Optional Technical Services, Agency will provide TT with access to reasonably requested Agency Materials and cooperation and will designate an internal project manager to serve as TT's single point of contact. If Agency fails to do so, TT's obligation to provide Optional Technical Services will be excused until Agency does. TT will use Agency Materials only for purposes of providing Optional Technical Services. If TT provides deliverables as part of Optional Technical Services, Agency may use the deliverables only as part of its authorized use of the Services, subject to the same terms as for the Services, including pursuant to Section 1 (TT Services).

1.8 **Trials and Betas**. If Agency receives access to the Services or Service features on a free or trial basis or as an alpha, beta or early access offering ("**Trials and Betas**"), use is permitted only for Agency's internal evaluation during the period designated by TT (or if not designated, 30 days). Trials and Betas are optional and either party may terminate Trials and Betas at any time for any reason. Trials and Betas may be inoperable, incomplete or include features that TT may never release, and their features and performance information are TT's Confidential Information. Notwithstanding anything else in this Agreement, TT provides no warranty, indemnity, support for Trials and Betas and its liability for Trials and Betas will not exceed Fifty United States Dollars (US $50). TT is relying on the foregoing disclaimers and limitation of liability in offering Trials and Betas to Agency.

1.9 **Retained Rights**. Except for the rights expressly licensed pursuant to this Agreement, TT retains all right, title, and interest in and to the Services (and all other products, works, and other intellectual property created, used, or provided by TT for the purposes of this Agreement excluding only Agency Confidential Information, Agency Policy Information, and Agency Materials).

SECTION 2. AGENCY POLICY INFORMATION AND CUSTOMER SUPPORT

2.1 Agency Policy Information. Agency shall provide TT with Agency Policy Information, which may include through the TT Agency Web Portal. TT currently makes available the TT Agency Web Portal as part of the Services which is subject to the terms herein (and TT's then current website terms of service applicable to the TT Agency Web Portal, if any) in order for Agency to upload Agency Policy Information and/or access certain data from TT such as payment reports. Agency represents and warrants that it has all rights and authorizations necessary to

grant the rights stated in this Agreement, to provide TT with Agency Policy Information, and that the Agency Policy Information is accurate and complies with Laws. Agency shall ensure that Agency Policy Information is presented to the Rider in compliance with Laws (e.g., via the TT Rider App).

2.2 **Support Obligations**.

(a) As part of the Services, TT will (i) make available through the TT Rider App and Third Party Integration(s), the ability of Riders to purchase Passes and, based on the then current functionality of the Services to view Agency Policy Information as may be provided by Agency and (ii) provide commercially reasonable customer service to Riders with respect to the functionality of the Services and to Agency in a manner consistent with the support that it provides all users of the Services and its other transit customers, as TT determines in its reasonable discretion.

(b) Agency hereby authorizes the sale of Passes to Riders via the Services (including, for the avoidance of doubt via the TT Rider App and Third-Party Integrations). Agency shall honor the Passes and comply with the Agency Policy Information and Law. Agency shall be responsible throughout the Term (and thereafter as stated in Section 10.3) for (i) ensuring that the correct fare structure is provided through the Services, including fees paid by Riders and Pass expiration terms; (ii) validating that each Rider has purchased the correct Pass for the ride, as reflected in the Fare Media, at the time of the ride; (iii) ensuring that only Permitted Users access the TT Agency Web Portal component of the Services on behalf of Agency and that all such data obtained by Agency from TT is used solely as permitted in this Agreement for Agency's internal purposes and in compliance with Laws; and (iv) providing all customer support for Riders relating to Agency's transit service, which may include the ability to issue refunds to Riders through the TT Agency Web Portal.

(c) Agency shall determine the fees charged for Passes; provided, however, to the maximum extent permitted by Laws, the fees charged by Agency via the Services must be no greater than the fees charged for tickets purchased via other means (cash, paper passes etc.).

SECTION 3. FEES AND PAYMENT

3.1 Fees.

(a) Core Services.

(i) Rider Purchases. Unless otherwise stated in the Agency Order Terms, the Agency will pay a fee ("**Pass Fee**") in the form of commissions retained by TT for Passes purchased by Riders through the Services during each calendar month as specified in the Agency Order Terms. Through the Payment Processor, the net total proceeds (less the Pass Fee), will be remitted to Agency's designated account held in trust with the Payment Processor on a monthly basis, subject to TT's withholding of any refunds, credits, chargebacks, uncaptured transactions for the purpose of aggregating purchases into larger transactions, or other amounts owed to TT, within five (5) business days following the end of each calendar month. TT may delay payment if a negative balance occurs until Agency has a positive balance in its account.

(ii) Agency Purchases. If Agency authorizes TT in writing (email to suffice) to provide Passes at no charge to Riders participating in one or more Agency pass programs, TT will either automatically deduct the applicable Pass Fee from the net total proceeds otherwise payable to Agency hereunder or invoice Agency for the applicable Pass Fee (which is the same Pass Fee for Rider purchases unless otherwise agreed upon between TT and Agency in writing (email to suffice)) on a monthly basis. Unless otherwise set forth in the Agency Order Terms, Agency shall make full payment within thirty (30) days of the invoice date for invoices provided.

(b) Smart Card Purchases. Agency may purchase Smart Cards from Token Transit as well as allow Riders to purchase Smart Cards from Token Transit directly. Fees for the purchase of Smart Cards either by Agency or by the Rider will be charged by Token Transit to the Rider and/or Agency. Unless otherwise set forth in the Agency Order Terms, Agency shall

make full payment within thirty (30) days of the invoice date for invoices provided. Smart Card fees are Additional Fees (and separate from Pass Fees).

(b) Additional Fees. If applicable, Agency shall pay additional fees for Optional Technical Services and Additional Services pursuant to one or more Agency Order Terms and/or additional terms that are incorporated herein ("**Additional Fees**"; Additional Fees and Pass Fees may be referred to as "**Fees**"). Unless otherwise set forth in the Agency Order Terms, Agency shall make full payment within thirty (30) days of the invoice date for invoices provided.

(c) All payments by Agency shall be made in U.S. Dollars or Canadian Dollars, as applicable. In addition to any other remedies available to TT hereunder, if Agency fails to pay any amounts within thirty (30) days after payment is due or delivery of the invoice if applicable, then Agency shall pay TT a late payment charge equal to 1.25% per month with respect to Agencies in the United States and 15% annually with respect to Agencies in Canada (or the highest rate permitted by Law, if lower). TT additionally reserves the right to deduct any Fees from amounts otherwise due to Agency pursuant to the Agreement, in the event Agency does not pay within thirty (30) days of the invoice date.

3.2 Reports. TT shall provide Agency with reports showing the Pass Fee calculation and/or access to an online reporting system as part of the Services ("**Reports**"). If Agency believes that TT has calculated the Pass Fee or any Additional Fees incorrectly, Agency shall notify TT by no later than thirty (30) days after the date on the first Report or invoice in which the error or problem appeared. TT will investigate such alleged error or problem, and will provide Agency an adjustment or credit if such error or problem is confirmed by TT.

3.3 Taxes. Each Party will be responsible for any applicable taxes and TT may withhold from any payments to Agency any taxes that are required to be withheld under Laws.

3.4 Fare Capping. The following terms apply to Fare Capping:

(a) If, in the current Fare Capping period, a Rider participating in the Fare Capping program reaches the threshold number of certain Pass activations ("**Prior Passes**") pursuant to the Fare Capping program terms, (i) TT will issue Rider new Passes valid for the remainder of the Fare Capping period (the "**Successor Pass**") in accordance with the Fare Capping program terms; (ii) Agency will honor the Successor Pass in accordance with the applicable Successor Pass terms; and (iii) Agency may void the Prior Passes as necessary.

(b) If TT issues Successor Pass to Rider, (i) TT will issue a refund (if any) to Rider equal to the difference between the cost of the Successor Pass and the total cost of the Prior Passes; and (ii) Agency will reimburse TT for such refund amount (if any), which TT may obtain by invoice (payable by the invoice terms) or by withholding such refund amount from any amounts owed to Agency.

SECTION 4. TT RIDER DATA

4.1 TT Rider Data. Agency agrees and acknowledges that TT has a direct relationship with all users of its Services, including Agency's Riders (which may be through the TT Rider App or the Third-Party Integrations) through which it collects TT Rider Data (along with similar data from riders of other transit customers of TT), and accordingly, TT Rider Data is owned and controlled by TT, subject to the limited rights granted herein to Agency.

4.2 TT's Data Obligations.

(a) With respect to TT Rider Data, TT shall: (i) use the TT Rider Data in compliance with its privacy policy (as TT may update it from time to time) and Laws; (ii) comply with applicable Card Networks' Operating Rules (i.e., applicable PCI standards, if any), as the same may be amended from time to time; provided, however, that Agency agrees and acknowledges that TT uses the services of third party payment processors; and (iii) maintain appropriate industry-standard administrative, physical, and technical safeguards to protect the security and integrity of the Services and TT Rider Data.

(b) With respect to Agency Data provided to TT that is Personal Information, TT shall: (i) use such Agency Data to provide the Services to Agency, in compliance with the TT privacy policy and Laws; (ii) maintain appropriate industry-standard administrative, physical, and technical safeguards to protect the security and integrity of the Agency Data that is Personal Information; and (iii) shall not sell such Agency Data. The Agreement shall not restrict use of, and TT is expressly permitted to use for its own purposes, anonymous, aggregate, de-identified, or non-personal data (as determined under Laws) that is processed in the course of providing the Services

4.3 Agency's Data Obligations.

(a) With respect to TT Rider Data provided to Agency, Agency shall: (i) use (1) TT Rider Data at all times in compliance with the terms of this Agreement and (2) TT Rider Data that is Personal Information for the sole purpose of providing customer support to Riders with respect to their use of the Services during the Term; (ii) use TT Rider Data in compliance with the then current TT privacy policy, Card Networks' operating rules (as the same may be amended from time to time), any written instructions from TT, and Laws; (iii) maintain appropriate industry-standard administrative, physical, and technical safeguards to protect the security and integrity of TT Rider Data and immediately notify TT in the event of any unauthorized access to, loss of, or use of TT Rider Data, and assist TT in the response to or remediation of such incident as requested by TT; (iv) return or securely destroy such TT Rider Data at the request of TT, or the termination of this Agreement, whichever occurs first; (v) treat such TT Rider Data as the Confidential Information of TT; and (vi) not sell TT Rider Data.

(b) With respect to any Agency Data provided to TT, (i) Agency authorizes and instructs TT to use such Agency Data to provide the Services and as otherwise may be required by Laws, (ii) Agency represents and warrants that it has obtained all necessary consents or has provided any required notices needed under the Laws to provide Agency Data to TT for use as contemplated herein, and that such use by TT complies with all Laws.

4.4 No Sale of Personal Information; Cooperation.

(a) Without limiting the generality of Section 4.2 and Section 4.3: Neither Agency nor TT provides Personal Information to the other Party in exchange for monetary or other valuable consideration. Any provision by TT to Agency of TT Rider Data that is Personal Information and any provision by Agency to TT of Agency Data that is Personal Information is not intended to constitute a "sale" under the CCPA or other Data Protection Law.

(b) The Parties acknowledge that new Data Protection Laws are being enacted and therefore the Parties agree to cooperate and take additional necessary steps as needed to ensure ongoing compliance with Data Protection Laws.

SECTION 5. CONFIDENTIALITY

5.1 Confidential Information. As used herein, "**Confidential Information**" means all confidential and proprietary information of a Party ("**Disclosing Party**") disclosed to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including all code, inventions, know-how, business, technical, and financial information. The TT Rider Data and any nonpublic element of the Services are deemed the Confidential Information of TT without any further marking or designation requirement. Any Agency Data that is not publicly available (or otherwise subject to the exceptions below) is deemed the Agency's Confidential Information without any further marking or designation requirement. Any evaluations and suggestions provided by Agency regarding the Services shall not be deemed Agency's Confidential Information and may be used by TT without restriction. Confidential Information shall not include, or shall cease to include, as applicable, information or materials that (a) were available to the public on the Effective Date; (b) become available to the public after the Effective

Date, other than as a result of violation of this Agreement by Receiving Party; (c) were rightfully known by the Receiving Party prior to its receipt thereof from the Disclosing Party; (d) are or were disclosed by the Disclosing Party generally without restriction on disclosure; (e) the Receiving Party received from a third party without that third party's breach of agreement or obligation to the Disclosing Party; or (f) are independently developed by the Receiving Party.

5.2 Non-Disclosure. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. For the avoidance of doubt, Confidential Information may be shared with the Receiving Party's employees, contractors, agents, sub-contractors, or consultants as required to perform Receiving Party's obligations hereunder; provided that, such individuals have agreed to be bound by obligations of confidentiality that are at least as restrictive as those contained in this Section 5. Each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such Confidential Information. If the Receiving Party is compelled by Law, including public records laws, to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior timely notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance. Absent the entry of a protective order, the Disclosing Party shall disclose only such information as is necessary to be disclosed in response to such subpoena, court order or other similar document compelling disclosure.

SECTION 6. AGENCY IDENTIFICATION AND USE OF TRADEMARKS

For the term of this Agreement, TT may disclose to third parties that Agency is one of its customers. Agency grants TT a non-exclusive license to use Agency's name(s), mark(s), and logo(s) (collectively, "**Agency Marks**") in its publicity and marketing materials, its website, social media and in connection with the Services; TT may sublicense the foregoing rights in the Agency Marks to its Third Party Integration providers in connection with their use and promotion of the Service(s). Similarly, during the Term, Agency is authorized to use TT's name, mark(s) and logo(s) in Agency's municipal publications, website, social media, publicity and marketing materials, solely for publicizing the availability of the Services to its Riders. Agency agrees to participate in reasonable marketing activities that promote the benefits of the Services to other potential customers. Each Party agrees to comply with all reasonable usage requirements, or policies communicated by the other Party from time to time respecting its name(s), mark(s), and logo(s).

SECTION 7. WARRANTY DISCLAIMERS

EXCEPT AS EXPRESSLY SET FORTH TO THE CONTRARY IN THIS AGREEMENT, AGENCY ACKNOWLEDGES AND AGREES, THAT THE SERVICES, INCLUDING ALL COMPONENTS THEREOF (E.G., THE TT RIDER APP AND ELEMENTS INTEGRATED INTO ANY THIRD-PARTY INTEGRATIONS), AND ACCESS THERETO ARE PROVIDED "AS IS". TT DISCLAIMS ALL WARRANTIES AND CONDITIONS RELATING TO THE SERVICES AND ALL THIRD-PARTY INTEGRATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES AND CONDITIONS OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM STATUTE, USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE. THE PARTIES ARE NOT RELYING AND HAVE NOT RELIED ON ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES WHATSOEVER REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER LEGAL, EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMERS, TT MAKES NO WARRANTY, AND PROVIDES NO CONDITIONS, AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES, OR THAT THE SERVICES WILL BE ERROR-FREE OR AVAILABLE AT ANY GIVEN TIME.

SECTION 8. INDEMNIFICATION

8.1 TT Indemnification. TT shall indemnify, defend and hold harmless Agency from and against any and all third party claims, damages, losses, expenses or liabilities, including, but not limited to, reasonable legal fees, in each case payable to unaffiliated third parties, arising out of or resulting from the following: (a) TT's breach of its obligations set forth in Section 4.2 (TT Data Obligations) or Section 5 (Confidentiality) or (b) any claim by a third party alleging that the Services when used as authorized under this Agreement infringe any copyright or trademark. If Agency's use of the Services is (or in TT's opinion is likely to be) enjoined, if required by settlement or if TT determines such actions are reasonably necessary to avoid material liability, TT may, in its sole discretion: (i) substitute substantially functionally similar products or services; (ii) procure for Agency the right to continue using the Services; or if (i) and (ii) are not commercially reasonable, (iii) terminate the Agreement and, if applicable, refund to Agency the fees paid by Agency for the portion of the Term that was paid by Agency but not rendered by TT. The foregoing indemnification obligation of TT shall not apply: (1) if the Services are modified by any party other than TT, but solely to the extent the alleged infringement is caused by such modification; (2) if the Services are combined with products or processes not provided by TT (including Agency Materials or Agency Policy Information), but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Services; (4) to any action arising as a result any third-party deliverables or components contained within the Services; (5) if Agency settles or makes any admissions with respect to a claim without TT's prior written consent; or (6) to beta releases or any use of the Services provided on a no-charge or evaluation basis. This Section 8.1 sets forth TT's and its suppliers' sole liability and Agency's sole and exclusive remedy with respect to any claim of intellectual property infringement.

8.2 Agency Indemnification. Agency shall indemnify, defend and hold harmless TT from and against any and all third party claims, damages, losses, expenses or liabilities, including, but not limited to, reasonable legal fees, in each case payable to unaffiliated third parties (including Riders or other TT end users), arising out of or resulting from the following: (a) Agency's breach of its obligations set forth in Section 4.3 (Agency's TT Rider Data Obligations) or Section 5 (Confidentiality); (b) claims regarding or relating to the Agency's transit service (and not the Services itself) including those relating to expired but unused Passes and any unauthorized use or disclosure of TT Rider Data by Agency; (c) Agency Material, Agency Policy Information, and/or use of Agency Marks; (d) Agency's obligations pursuant to or claims arising out of the Payment Processor terms of service; or (e) breach of Agency's obligations with respect to Additional Services.

*8.*3. Conduct. A Party's indemnification obligations under Section 8 shall not apply unless: (a) the indemnifying Party has the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise, and to settle or compromise any such claim, provided such settlement or compromise is wholly paid for by the indemnifying Party; (b) the indemnified Party cooperates; and (c) the indemnified Party gives the indemnifying Party prompt written notice of any threat, warning, or notice of any such claim or action, with copies of any and all documents the indemnified Party may receive relating thereto.

SECTION 9. DAMAGE DISCLAIMERS AND LIABILITY LIMITATION

9.1 Disclaimer of Damages. Except for Excluded Claims each Party's aggregate maximum liability for damages or other obligations arising out of or in connection with this Agreement, whether based upon a theory of contract or tort (including negligence) or otherwise, shall not exceed (i) the total amount of the Fee paid or due during the prior 12 month period or (ii) $10,000, whichever is greater (the "**Base Cap**"). The Parties further acknowledge that nothing in this Section 9.1 shall be deemed to waive the rights to equitable relief. "**Excluded Claims**" means (a) any claim arising from Agency's breach of Sections 1.6 (Use Restrictions); (b) Agency's payment obligations; (c) any claim arising from a breach of Section 4.3 (Agency's TT Rider Data Obligations); (d) any amounts payable to third parties

pursuant to TT's indemnification obligations under Section 8.1 (TT Indemnification) or Agency's indemnification obligations under Section 8.2 (Agency Indemnification); or (e) either Party's breach of Section 5 (Confidentiality). With respect to Excluded Claims, in no event will TT's aggregate maximum liability for damages or other obligations arising out of or in connection with this Agreement, whether based upon a theory of contract or tort (including negligence) or otherwise, exceed the greater of (i) five (5) times the Base Cap or (ii) One Hundred Thousand United States Dollars (US $100,000).

9.2 Consequential Damages Disclaimer. Except with respect to willful misconduct, claim arising from Agency's breach of Sections 1.6 (Use Restrictions), and Agency's payment obligations; and without limiting either Party's indemnification obligations, to the maximum extent permitted by Law, in no event shall either Party be liable for any special, punitive, consequential, incidental, or indirect damages, including loss of profits, income, goodwill, cost of procurement of substitute goods or services, interruption of business or any reliance damages of any kind, even if informed of their possibility in advance.

9.3 Basis of Bargain. EACH PARTY RECOGNIZES AND AGREES THAT THE DISCLAIMERS AND LIMITATIONS OF LIABILITY AND REMEDY IN THIS AGREEMENT: (a) ARE MATERIAL AND BARGAINED FOR BASES OF THIS AGREEMENT; AND (b) THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

SECTION 10. TERM AND TERMINATION

10.1 Term.

(a) Unless otherwise stated in the Agency Order Terms, this Agreement will commence upon the Effective Date and continue in effect for a period of twelve (12) months following the Service Launch Date, unless earlier terminated as set forth herein (the "**Initial Term**").

(b) Unless otherwise stated in the Agency Order Terms and unless terminated earlier as permitted herein, at the end of the Initial Term and each Renewal Term, the Agreement will be extended automatically for successive twelve (12) month terms (each a "**Renewal Term**") (collectively, the Initial Term and Renewal Terms may be referred to as the "**Term**").

10.2 Termination.

(a) Unless otherwise stated in the Agency Order Terms: either Party may elect not to renew this Agreement by giving written notice to the other Party at least thirty (30) days prior to the end of the then current Initial Term or Renewal Term.

(b) Unless otherwise stated in the Agency Order Terms, either Party may terminate this Agreement for any reason or no reason upon sixty (60) days' written notice to the other Party.

(c) Either Party may terminate this Agreement in the event the other Party (i) is in material breach and does not cure such breach within thirty (30) days after receiving written notice of the breach; (ii) ceases operation without a successor; or (iii) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days.

(d) Upon termination: (i) subject to Section 10.3, below, the license and rights granted hereunder to Agency shall immediately terminate; (ii) Agency shall immediately return or, at TT's election permanently destroy, any and all documents, notes and other materials regarding the Services to TT, including, without limitation, all software and TT Confidential Information, including any TT Rider Data and at TT's request certify that all TT Rider Data has been permanently deleted; and (iii) subject to Section 10.3, below, upon written request TT shall cease using the Agency's name(s), mark(s), and logo(s); and return or permanently

destroy, any and all, Agency Confidential Information including Agency Data that is Personal Information to the extent required by Laws.

10.3 Obligations to Agency's Riders Upon Termination. Upon termination or expiration of this Agreement (a) TT shall terminate the right of the Agency's Riders to purchase any new Passes on Agency's transit service and (b) TT and Agency shall each keep active the right of Riders to activate and use existing pre-purchased but unused Passes for a period of one hundred and twenty (120) days from the expiration or termination date of this Agreement. For the avoidance of doubt, TT shall have no obligation to support pre-purchased Passes for more than one hundred and twenty (120) days after termination or expiration of this Agreement regardless of Agency's policy.

SECTION 11. MODIFICATIONS

11.1. Notice of Modifications. TT may modify the terms and conditions of this Agreement (which may include changes to Services pricing and plans) from time to time by giving notice to Agency in accordance with Section 12.6 (Notices).

11.2 Timing and Effect of Modifications. The modifications shall become effective upon renewal of Agency's current Initial Term or Renewal Term or entry into a new Agency Order Terms; provided, however, that TT may provide notice of an earlier effective date if required by change in Laws. If TT specifies that the changes will take effect prior to the next Renewal Term (due to changes in Laws), Agency may object within thirty (30) days and terminate this Agreement for convenience and receive a pro-rata refund of any fees pre-paid by Agency (e.g., with respect to Hardware Validation Service), if any, with respect to the remainder of the Initial Term or Renewal Term, as applicable. Agency may be required to click to accept or otherwise agree to the modified Agreement in order to continue using the Services, and, in any event, continued use of the Services after the updated version of this Agreement goes into effect will constitute Agency's acceptance of such updated version.

SECTION 12. GENERAL

12.1 Applicable Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the Laws of the State of California without regard to the conflicts of laws provisions therein, unless otherwise expressly set forth in the Agency Order Terms. The jurisdiction and venue for actions related to the subject matter of this Agreement shall be the California State and United States Federal Courts located in San Francisco, California, and each Party hereby submits to the personal jurisdiction of such courts, unless otherwise expressly set forth in the Agency Order Terms.

12.2 Legal Fees. In any action to enforce this Agreement, the prevailing Party will be entitled to costs and reasonable legal fees.

12.3 Severability. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

12.4 Force Majeure. If the performance of this Agreement or any obligation hereunder is prevented or restricted by reasons beyond the reasonable control of a Party or its subcontractors, the Party so affected shall be excused from such performance to the extent of such prevention or restriction.

12.5 Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no representations, warranties or other agreements between the Parties, in connection with the subject matter of this Agreement except as specifically set out in this Agreement. Any modifications of this Agreement must be in writing and signed by both Parties except as otherwise stated herein (including in Section 11 (Modifications)).

12.6 Notices. Any notice or communication required or permitted under this Agreement shall be in writing.

If to TT, notices must be provided to:
Token Transit, Inc.
2261 Market Street STE 5999
San Francisco, CA 94114
Attention: Morgan Kikuchi-Conbere

Such notice to TT shall be deemed to have been received (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch; or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

If to Agency, TT may provide notice to Agency's email or physical address on file or through the Services (including via the TT Agency Web Portal) and such notices shall be deemed to have been received upon delivery. Either Party may update its address with notice to the other Party.

12.7 Equitable Relief. Due to the unique nature of the Parties' Confidential Information disclosed hereunder and of any Personal Information that may be received in connection with this Agreement, there can be no adequate remedy at Law for a Party's breach of its obligations hereunder, and any such breach may result in irreparable harm to the non-breaching Party. Therefore, upon any such breach or threat thereof, the Party alleging breach shall be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it, without the requirement of posting a bond.

12.8 Assignment. Neither Party may assign or transfer this Agreement or any interest therein directly or indirectly, by operation of Law or otherwise, without the prior written consent of the other Party, which shall not be unreasonably withheld; provided, however, that TT may assign or transfer this Agreement or any interest therein to an affiliate or a successor to all or substantially all of its business or assets, whether through an acquisition, merger, change of control, or otherwise. Any attempted assignment or transfer in violation of this Section shall be void and without effect.

12.9 Independent Contractors. The Parties shall be independent contractors under this Agreement, and nothing herein shall constitute either Party as the employer, employee, agent, or representative of the other Party, or both Parties as Parties to a joint venture or partners for any purpose.

12.10 Headings and Interpretation. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice versa.

12.11 Export Control. In its use of the Services, TT and the Agency agree to comply with all export and import Laws and regulations of the United States, the Territory, and other applicable jurisdictions. Without limiting the foregoing, (i) Agency represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Agency shall not (and shall not permit any of its users to) access or use the Services in violation of any U.S. export embargo, prohibition or restriction, and (iii) Agency shall not submit to the Services any information that is controlled under the U.S. International Traffic in Arms Regulations.

12.12 Government End-Users. Elements of the Services are commercial computer software. If the user or licensee of the Services is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services, or any related documentation of any kind, including technical data and manuals, is restricted by

a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Services were developed fully at private expense. All other use is prohibited.

12.13 Survival. Sections 1.6 (Restrictions), 1.8 (Trials and Betas, with respect to liability limits), 1.9 (Retained Rights), 2.2(b) (Support Obligations), 3 (Fees and Payment, with respect to Fees not yet paid as of termination), 4.1 (TT Rider Data), 4.2(b) (TT's Data Obligations), 4.3 (Agency's Data Obligations), 5 (Confidentiality), 6 (Agency Identification and Use of Trademarks), 7 (Warranty Disclaimers), 8 (Indemnification), 9 (Damage Disclaimers and Liability Limitation), 10.2 (Termination), 10.3 (Obligations to Agency's Riders Upon Termination), 12.1-12.13 (General) and other terms which by their nature are intended to survive, shall survive termination or expiration of this Agreement.

Exhibit A

Hardware Validation Service Addendum

This Hardware Validation Service Addendum (the **"Hardware Validation Service Addendum**") is incorporated into and a part of the Agency Master Platform Terms (the "**Master Platform Terms")** by and between Token Transit, Inc. ("**TT**") and the entity (e.g., company or government agency) placing an order for or accessing the Hardware Validation Service ("**Agency**") and is applicable only if Agency elects to add the Hardware Validation Service (defined below) pursuant to the Agency Order Terms. This Hardware Validation Service Addendum consists of the terms and conditions set forth below, any exhibits or addenda identified below and any Agency Order Terms (the Master Platform Terms, as modified by this Hardware Validation Service Addendum, may be referred to as the "**Agreement**"). You represent that you are authorized to accept this Hardware Validation Service Addendum on behalf of the Agency.

Agency desires to add functionality to the Services (as defined in the Master Platform Terms) by using hardware validators ("**Hardware Validators**") installed on Agency's vehicles. Hardware Validators allow Agency to validate that each Rider has purchased Passes for the ride at the time of the ride as well as on an aggregate basis for analytical purposes through the Hardware Validation service (as defined below). Agency can purchase Hardware Validators from TT at additional cost ("**TT Provided Hardware Validators**") or Agency can provide its own compatible Hardware Validators at its own cost ("**Agency Provided Hardware Validators**").

The effective date of this Hardware Validation Service Addendum ("**Hardware Validation Service Effective Date**") is the effective date of the first Agency Order Terms referencing this Hardware Validation Service Addendum. This Hardware Validation Service Addendum will govern Agency's initial purchase on the Effective Date as well as any future Hardware Validator purchases made by Agency that reference this Hardware Validation Service Addendum or the Agreement.

All capitalized terms not defined in this Hardware Validation Service Addendum have the same meaning given to them in the Master Platform Terms. Except as expressly provided in this Hardware Validation Service Addendum, the Master Platform Terms applies without modification by the terms and conditions of this Hardware Validation Service Addendum.

BY INDICATING YOUR ACCEPTANCE OF THIS HARDWARE VALIDATION SERVICE ADDENDUM OR ACCESSING OR USING THE HARDWARE VALIDATION SERVICE, YOU ARE AGREEING TO BE BOUND BY ALL TERMS, CONDITIONS AND NOTICES CONTAINED OR REFERENCED IN THIS HARDWARE VALIDATION SERVICE ADDENDUM. IF YOU DO NOT AGREE TO THIS HARDWARE VALIDATION SERVICE ADDENDUM, PLEASE DO NOT USE THE HARDWARE VALIDATION SERVICE. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS HARDWARE VALIDATION SERVICE ADDENDUM IS LEGALLY BINDING UPON IT.

1. INTRODUCTION

1.1 Applicability. This Hardware Validation Service Addendum applies only if Agency has selected to add the Hardware Validation Service to the Services pursuant to the Agency Order Terms.

1.2 Hardware Validation Service. The "Hardware **Validation Service**" means the use of Hardware Validators that have an internet connection. Schedule 1 describes the data flow and available data for the Hardware Validation Service.

1.3 TT Provided Hardware Validators;

Upgrades to TT Provided Hardware Validators. A TT Provided Hardware Validator is a Hardware Validator sold to the Agency by TT pursuant to the Agency Order Terms. With respect to TT Provided Validators (if any), TT may offer upgraded or replacement Validator hardware to Agency at its discretion during the Term which if accepted by Agency shall be "TT Provided Hardware Validators" and included in the "Hardware Validation Service". Unless a different fee for replacement Hardware Validators is otherwise expressly stated in the Agency Order Terms, (a) Agency shall maintain at least a ten percent (10%) reserve number of spare/unused Hardware Validators in reserve ("**Reserve Requirement**") in excess of the number of vehicles using the Hardware Validators to be used to immediately replace malfunctioning Hardware Validators and (b) Agency shall purchase additional Hardware Validators from TT at the then current Hardware Validator Fees to maintain the Reserve Requirement at all times throughout the Term.

1.5 Agency Provided Hardware Validators. An Agency Provided Hardware Validator is Validator Hardware provided by the Agency at Agency's sole cost and approved by TT as meeting TT's requirements for compatibility with the Hardware Validation Service.

2. TT HARDWARE VALIDATION SERVICE INTEGRATION. The Hardware Validation Service comprises the following:

2.1. TT Provided Hardware Validators. If Agency purchases TT Provided Hardware Validators, TT will provide Hardware Validators that will work on vehicles at any point of entry. Agency will install the TT Provided Hardware Validators at Agency's expense. TT will provide guidance on preferred placement of the hardware validators to optimize the Rider validation experience.

2.2. Agency Provided Hardware Validators. If Agency elects to use Agency Provided Validators, Agency must install the Validator Hardware and ensure that the Validator Hardware is placed to optimize Rider validation experience.

2.3 Analytics Dashboard. Purchasing Hardware Validation Service gives access to detailed aggregated and anonymous information in the TT Agency Web Portal. Agency is required to provide TT with stop, trip, origin, and vehicle identification numbers along with other information required by TT to provide the analytic data.

3. TERM AND TERMINATION.

3.1 Term and Renewal.

(a) Unless otherwise set forth in the Agency Order Terms, the initial term of this Hardware Validation Service Agreement ("**Initial Hardware Term**") will commence upon the Service Launch Date and continue in effect for a period of twelve (12) months.

(b) Unless otherwise set forth in the Agency Order Terms, the Initial Hardware Term will automatically renew for consecutive twelve (12) month periods (each a "**Hardware Renewal Term**", and collectively the Initial Hardware Term and Hardware Renewal Terms may be referred to as the "**Hardware Term**"); unless either Party provides notice of non-renewal at least thirty (30) days prior to the end of the Initial Hardware Term or a then current Hardware Renewal Term.

3.2 Termination.

(a) Unless otherwise set forth in an applicable Agency Order Terms, either Party may terminate an Initial Hardware Term or a Hardware Renewal Term at any time on sixty (60) days notice for convenience and without liability. If TT terminates an Initial Hardware Term or Hardware Renewal Term for convenience, TT will provide a pro-rata refund of fees paid pursuant to this Hardware Validation Service Addendum for the remainder of the applicable Initial Hardware Term or Hardware Renewal Term.

(b) Either Party may terminate this

Hardware Validation Service Addendum if the other Party commits a material breach that remains uncured following thirty (30) days prior written notice.

(c) This Hardware Validation Service Addendum shall automatically terminate upon the expiration or termination of the Master Platform Terms for any reason.

(d) Upon expiration or termination of this Hardware Validation Service Addendum, Agency shall return to TT or destroy the TT Provided Hardware Validators, as directed by TT.

4. TT HARDWARE VALIDATOR PRICING AND PAYMENT.

4.1. Fees.

(a) Hardware Validation Service Fee. The fees for the Hardware Validation Service ("**Hardware Validation Service Fees**") are recurring annual fees commencing with the Service Launch Date; such fees as set forth in an applicable Agency Order Terms, and shall be paid by Agency in accordance with the payment terms set forth in the Agency Order Terms. If no payment terms are set forth in the Agency Order Terms, TT's then current Hardware Validation Service Fees as published by TT shall apply and Agency shall pay such fees in advance for the Initial Hardware Term and each Hardware Renewal Term. The Hardware Validation Service Fees are non-refundable except (a) as set forth in the Master Platform Terms Section 11 (Modification) or (b) in the event TT terminates the Hardware Validation Service Addendum for convenience, in which event Agency will receive a prorated refund of Hardware Validation Service Fees that Agency has pre-paid for use of the Hardware Validation Service for the terminated portion of the applicable Initial Hardware Term or Hardware Renewal Term.

(b) TT Provided Hardware Validator and Installation Fees. If Agency purchases TT Provided Hardware Validators, the fees for the Hardware Validators and, if applicable, installation ("**Hardware Validator Fees**") are set forth in an applicable Agency Order Terms, and shall be paid by Agency prior to shipment and, if applicable, installation, in accordance with the payment terms set forth in the Agency Order Terms. If no payment terms are set forth in the Agency Order Terms or if Agency purchases additional Hardware Validators, TT's then current Hardware Validator Fees as published by TT shall apply to Agency unless TT agrees in writing to a different fee.

4.2. Taxes. Agency acknowledges that it is responsible for any sales, value-added, use or other taxes, tariffs and governmental charges that are due (if any) in connection with any TT Provided Hardware Validators and provision of the Services described in this Hardware Validation Service Addendum (except taxes based on TT's net income for which TT shall be solely responsible), and that if TT is required to pay any such taxes or charges based on the Services or other items provided to Agency, then such charges shall be billed to and paid by Agency. Agency shall obtain and provide to TT any certificate of exemption or similar document required to exempt any transaction under the Agreement from sales tax, use tax or other tax liability.

4.3. Fee Increases. TT reserves the right to increase the Hardware Validation Service Fees and/or Hardware Validator Fees by providing notice at least thirty (30) days before the commencement of the next Hardware Renewal Term.

5. ADDITIONAL TERMS.

5.1. Disclaimer. For the avoidance of doubt, this Hardware Validation Service Addendum is subject to indemnity, liability limitations and warranty disclaimers and damage disclaimers terms set forth in the Master Platform Terms. TT expressly does not represent the accuracy of the Hardware Validators, the percentage of Riders that will have location tracking in connection with the Hardware Validators enabled or that they will function at all

times. Agency acknowledges that its use of any Hardware Validator and the Hardware Validation Service is "As Is" without any representations, warranties or conditions of any kind, whether legal, express or implied, arising from statute, course of dealing, usage of trade or otherwise. Agency additionally agrees to defend, indemnify and hold TT harmless from and against any us of Agency Provided Hardware Validators.

5.2 Rider Data. The Parties' confidentiality and data privacy obligations, including Agency's obligations pertaining to TT Rider Data apply to this Hardware Validation Service Addendum. All data that TT makes available to Agency is TT Rider Data. Agency shall at all times use "TT Rider Data" in accordance with Laws and TT's then current privacy policy (unless contrary to Laws). Agency, and not TT, shall be responsible for ensuring that Agency's use of the Hardware Validator as described herein complies with all Laws. Nothing in this Hardware Validation Service Addendum obligates TT, and TT does not intend, to provide Personal Information of Riders or other TT customers hereunder, but only aggregated and/or anonymized data. In no event shall Agency directly or indirectly link (or attempt to link) TT Rider Data or aggregated or anonymized data obtained from the Hardware Validator or Hardware Validation Service data with any data so as to re-identify any Rider.

Schedule 1: Data Flow for the Hardware Validation Service

1. Rider creates TT account directly with TT or with a third party integrator.
    a. Rider agrees to TT's Terms and is presented with TT's privacy notice.
2. Rider chooses a Pass using their preferred application. The Pass is recorded in the Token Transit Service.
3. Rider seeks to redeem the Pass. To redeem, the Rider must have a validatable Token Transit Pass and interact with a Hardware Validator on the Agency's vehicle.
    a. When the Rider seeks to validate a Pass, TT checks the Pass against the record in the Token Transit Service. The Rider may ride if their Pass is valid.
    b. The rider is required to present Fare Media containing a valid Pass to the Hardware Validator to pass Validation Information to Agency.
4. There are some circumstances in which TT cannot pass Validation Information to Agency.
    a. If Agency did not provide GTFS data, TT will not send Validation Information.
    b. If the Hardware Validator does not have an internet connection, TT will not send Validation Information.

"**Validation Information**" means the following data elements.

- Timestamp
    - Validation_timestamp - when the validation occurred
- Location of stop nearest validation
- Vehicle_number - This is the vehicle number Agency gives TT in Agency's validator/bus mapping spreadsheet
- IDs that are associated with GTFS-realtime
    - Stop_code/Stop_id – The ID of the Agency's transit stops, which come from Agency's GTFS feeds.
    - Trip_id - The ID of that trip made by Agency's vehicle, which comes from Agency's GTFS feed. For example: "Bus 123 on route 1 on Tuesday at 8:00a" would be a trip and have its own ID. This is sometimes called a "run number".
    - Route_id – Agency's route name (typically a number) in Agency's GTFS feed as customers refer to that specific route.
- User IDs
    - User ID - A unique Rider ID that is associated with the Rider's actions.
    - Pass ID - A unique pass ID that is associated with a specific validation of the Rider's Pass.
- IDs associated with Fares
    - Fare_id - The type of Pass used.
    - Distribution - This field is to tell if a Pass is part of a pass program and will be left blank if not part of a pass program.
    - Distribution_code - This field has the ID number used to register for a pass program and will be left blank if not part of a pass program.

Token Transit

Token Transit
2261 Market Street STE 5999
San Francisco, CA 94114
415-918-6770

Quote

Submitted on 10/11/24

Token Transit Contact
Tamara Lima
tamara@tokentransit.com
415-529-3668 Ext 802

Project Name
Token Transit Fare Collection

Quote for
Token Transit Validators & Validator Software

To:
City of Tyler dba Tyler Transit

Project Term Length
1 Year

Start Date
January 1, 2025

Quote Valid Until
November 30, 2024

Payment Term
Upfront net 30 days for annual recurring costs

Description	Unit Price (USD)	Qty	Years	Total price
VAL100 Hardware Validators (One-time cost)				
Total units for additional vehicles in existing fleet	$2,000.00	12	1	$24,000.00
10% spares	$2,000.00	1	1	$2,000.00
* Includes 5 year warranty & mounting kit				
Hardware Validation Service Fee (Annual recurring cost)	$600.00	12	1	$7,200.00
Validator software: Software that supports scanning & data collection	Included	-	-	-
Validator data reporting software ("Back Office"): data dashboards on validated fares, including data on fare type, fare ID, rider type, service type, pass viability	Included	-	-	-
Validator management software ("Back Office"): Validator management and monitoring dashboard	Included	-	-	-
Customer success: project management of validator installation, onboarding, and other agency-focused support	Included	-	-	-
	Total			**$33,200.00**

Optional Add-Ons

Description	Unit Price (USD)	Qty	Years	Total Price
VAL100 Hardware Installation (One-time cost)	$1,800.00	12	1	$21,600.00

On-site vehicle survey	Included	-	-	-
On-site installation	Included	-	-	-
Custom mounting hardware	Included	-	-	-
	Optional Add-On Year 1			**$21,600.00**

Token Transit

Token Transit
2261 Market Street STE 5999
San Francisco, CA 94114
415-918-6770

Quote

Submitted on 10/18/24

Token Transit Contact
Tamara Lima
tamara@tokentransit.com
415-529-3668 Ext 802

Project Name
Token Transit Fare Collection

Quote for
Token Transit Validator Software, Payment Processing, and Customer Support (All Annual Recurring Costs)

To:
City of Tyler dba Tyler Transit

Project Term Length
5 Year

Start Date
January 1, 2025

Quote Valid Until
December 31, 2024

Payment Term
Upfront net 30 days for annual recurring costs

Description	Unit Price (USD)	Qty	Years	Total price
Hardware Validation Service (Annual recurring cost)	$600.00	24	1	$14,400.00
Maintenance & Support of Token Transit Validator software	Included	-	-	-
Data & reporting for validations (Token Transit Portal)	Included	-	-	-
Hardware management and monitoring dashboards (Token Transit Portal)	Included	-	-	-
Customer Success: install management, implementation, and ongoing support	Included	-	-	-
Pass Sale Commission (Annual recurring cost)	$6,500.00	1	1	$6,500.00
Fare payment processing of mobile and physical fares	Included	-	-	-
Send-a-pass and Community Pass Program functionality	Included	-	-	-
Rider Support: front line for rider support	Included	-	-	-
Customer Success: ongoing support	Included	-	-	-

Year 1	**$20,900.00**
Year 2-5	**$83,600.00**
Total Cost - 5 Years	**$104,500.00**

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-5

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a new Master Services Agreement for professional engineering services with Yvonne Newman Engineering, Inc. to provide engineering services.

Item Reference: **City Council Agenda Item R-1, 9/13/2023**

A Request for Qualification (RFQ) Statements was published in January 2023 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 Statements of Qualification. 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. Yvonne Newman Engineering, Inc. was selected to provide services in the following categories:

* Traffic Systems

A master services agreement (MSA) for professional services with Yvonne Newman Engineering, Inc. has been prepared to address general provisions from planning through construction management of a variety of 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.

The proposed term of the MSA is a five (5) year contract. 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:

It is requested that the City Council authorize the City Manager to execute a new Master Services Agreement for professional engineering services with Yvonne Newman Engineering, Inc. to provide engineering services.

Attachments:

MSA Contract - YNE

Drafted/Recommended By:

Department Leader Cameron L. Williams, PE, PTOE, PTP, Traffic 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 Yvonne Newman 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:
Yvonne Newman Engineering, Inc.
Attn: Yvonne Newman, PE
613 Shelley Park Plz, Ste. 200
Tyler, Texas 75701

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

Darin Jennings
Printed Name

CITY COUNCIL APPROVAL:

AGENDA ITEM NUMBER: Item No.
DATE APPROVED: Enter approval date

FOR THE E/A:

By: Yvonne I Newman 10-3-2024
President Date

Yvonne I. Newman, P.E.
Printed Name

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Yvonne I. Newman, who is known to me, or who was proved to me through D.L. 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 3rd day of October, 2024.

SANDI BAILEY
Notary Public State of Texas
COMM. EXP. 06/04/2028
NO. 129012619

Sandi Bailey
Notary Public In and For The State of Texas

My Commission Expires: 6-4-2028

Sandi Bailey
Notary's Printed Name

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-6

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a Work Order No. 2 with Kimley-Horn and Associates, Inc., for engineering services, related to the City of Tyler's Traffic Management Center, for a cost not to exceed $150,000.00.

Item Reference: **City Council Agenda M-3, 4/10/19; M-1, 8/12/20**

In April 2019, the City Council authorized an engineering contract with Kimley-Horn and Associates, Inc. to provide a year-long study of the City's traffic signal system. One of the recommendations of the study as presented to the City Council in August 2020 was to upgrade the City's Traffic Management Center (TMC) located in the Traffic Operations Facility located at 406 Oakwood Street.

The scope of services for upgrading the TMC includes evaluating CCTV technologies, video management platforms, preliminary layouts and specifications for the TMC, and development of a Dashboard for reporting the performance of the traffic signal system. The services provided under this work order will lay the groundwork for upgrading the TMC.

The planned upgrades to the TMC include new workstations and an improved video wall which will allow staff to view live traffic signal controller operations and live video of intersections. This will allow staff to better manage our traffic signal system on a daily basis as well as in emergency operations. Staff can confirm calls about signal malfunctions, traffic congestion, and emergency incidents and provide real time information to traffic signal technicians and emergency operators. The plan is to have the staff, whether admin or signal technicians, monitor the TMC 8 AM to 5 PM. These upgrades will take advantage of the enhancements that have been implemented during the first four years of the Intelligent Transportation System (ITS) Master Plan as well as prepare the way for future capabilities, ultimately helping staff to better monitor our transportation system and be more responsive to the needs of the traveling public.

The scope also includes a design contingency task for additional services that may be needed. The Half-Cent Sales Tax Board approved funding on November 12, 2024.

FUNDING: HALF CENT SALES TAX

RECOMMENDATION:

It is requested that the City Council authorize the City Manager to execute Work Order No. 2 with Kimley-Horn and Associates, Inc., for engineering services, related to the City of Tyler's

Traffic Management Center, for a cost not to exceed $150,000.00.

Attachments:
MSA Work Order 2 - Tyler TMC Engr Services

Drafted/Recommended By:
Department Leader Cameron L. Williams, PE, PTOE, PTP

Edited/Submitted By:
City Manager

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: City of Tyler Traffic Management Center Engineering Services
WORK ORDER NUMBER: 2

This Work Order constitutes authorization by the City of Tyler, Texas (OWNER) for Kimley-Horn and Associates, Inc. (ENGINEER) to provide engineering services for the above titled project (hereinafter called the PROJECT). 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 **November 27, 2023**. 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. 2 to the CONTRACT dated November 27, 2024 on this the _____ day of _____ , 2024.

OWNER:	ENGINEER:
CITY OF TYLER, TEXAS	_____
BY:_____	BY:_____
ATTEST:_____	ATTEST:_____
DATE:_____	DATE:_____

Half Cent Sales Tax Board Approval Date: November 12, 2024

City Council Approval Date: November 13, 2024, Agenda Item Number: Item No. _____

Exhibit A – Scope of Services
Tyler TMC Build Out

Task 0. Project Management (Lump Sum)

Task 0.1 Project Administration
Project administration spans the duration of the project and is crucial to the success of the project. This task involves the monitoring and coordination of services to be provided to the City of Tyler, Texas (the "City") to achieve timely and efficient completion of the project. This task consists of project control and management, reporting requirements, project status meetings, and schedule development and maintenance.

Task 0.2 Project Control and Management
The Engineer will be responsible for the day-to-day activities of managing the Project, which is assumed to have a duration of 6 months. Specific activities consist of ongoing reassessments of contract and schedule adherence.

Task 0.3 Status Reports and Invoicing
Six monthly status reports will be prepared and submitted to the City. The status reports will contain a concise report of Project progress and contract fulfillment. The report will address technical progress, contract progress, and management-related topics.

Task 0.4 Project Status Meetings
In addition to the reporting requirements outlined above, project status meetings with the City will help the Engineer maintain schedule and contract adherence. Up to a total of eight virtual status meetings will be conducted; one per month plus two additional at the city's direct.

Task 1. CCTV camera deployment, management, and use (Lump Sum)

Subtask 1.1 CCTV camera deployment
Engineer will summarize in an Excel Spreadsheet City-collected manufacture data on the following key aspects:

- CCTV hardware architecture
  - Dome
  - Tube
- CCTV market focus
  - Transportation
  - Security
- Distinguishing factors
  - Gas filled
  - Zoom (optical vs. digital)
  - Mounting options
  - Resolution and compression standards

- Using vehicle detection cameras for camera surveillance of approach
    - Focus on Iteris Next and Econolite Vision
    - Suitability of image, such as resolution
    - Additional hardware required to view imagery

Subtask 1.2 CCTV Recording

The Engineer will provide a summary via PowerPoint slides the results of previously-collected data from another project the following:

- Identify results of a recent survey on recording
    - Who records
    - How long does a recorded video remain
    - Who has a policy
- What are the issues to consider
    - Private information
    - Data storage

Subtask 1.3 CCTV video management platform

The Engineer will compile data and summarize via an Excel spreadsheet up to five manufactures or integrators related to video management systems. The Engineer will work with the distributor of Centracs to identify how the City can leverage their existing investment in the ATMS.

- Identify the options to viewing CCTV video stream
    - Proprietary vendor software
    - Cloud-based viewing tool (if approp).
    - "Security industry" platforms
    - Transportation focused platforms
    - What systems provide video wall control
- Identify what capabilities are available in Centracs (Standard and Advanced Video modules)
    - City has this platform and they have add-ons for CCTV module
    - What capabilities are available through Glance Platform (Applied information) – Since the City already has viewing capability
- Discuss intersection detection cameras that have video outputs (Iteris Vantage Next)
- Streaming bandwidth budgets
- Streaming storage, if appropriate.
- Possible solutions (scenario planning)
- Integration and implementation planning
- Procurement options (including co-op)

Assumptions: video would be streamed over a fiber optic cable network. Limited video may be streamed on-demand over a cellular network.

Subtask 1.4 Cost Projections

The Engineer will compile available cost data, such as cooperative buy-boards, recent bid solicitations, or distributor-provided data to report on the following:

- Cost for video management system deployment in the City, inclusive of

    - Hardware
    - Software
    - Maintenance
    -
- Pros and cons of the following purchase options
    - Bid
    - Co-operative

Subtask 1.5 Develop PowerPoint and present findings to City staff
Engineer will prepare for and conduct 2-hour workshop via Teams with City staff. The Engineer will prepare in-advance of the meeting a briefing paper that sets out the expectations for the workshop and what decisions must be reached.

- There are a variety of departments and projects within the City. This workshop should identify where there is synergy. Participants should include:
    - Traffic
    - TPD
    - TFD
    - TPW
    - IT
    - Transit
    - Tyler ISD
- This workshop will identify:
    - Common needs
        - Where to place units
        - How to share images or video stream
    - Management (command, control, view only)
    - Who will serve as system administrator.
    - Is recording desired, and if so, is there a need for policy.
    - Does TPD require a chain-of-custody protection feature for any recorded video?

Subtask 1.6 Technical requirements
The Engineer will prepare technical requirements that could be used in a procurement or used to solicit bids/quotes from vendors.

Task 2 Traffic Management Center (Hourly, not to exceed)

Subtask 2.1 TMC layout
The Engineer will conduct one on-site study of the proposed TMC location (signal shop). The City will document existing conditions, and record the data using CAD the following information:

- Dimensions of the entire room
- Location of existing power outlets
- Electrical circuit breaker size
- Existing lighting

- Structural elements (load bearing walls, columns, ceiling trusses)

While on-site, the Engineer will meet with the City Information Technology Department to discuss the city's network, location of on-premise servers, and use of cloud-services.

The Engineer will develop one TMC layout using Sketch up. Up to three illustrations will be provided with the City for consideration and discussion.

- Rough Dimensions
- Layout scenarios
- Workstations
- Lighting needs

The Engineer will work with a manufacture of TMC furniture to identify possible workstations and layout space for the TMC.

The Engineer will calculate power requirements and location of power and networking outlets.

Subtask 2.2 Displays

The Engineer will leverage decisions made in subtask 2.1 as it relates to TMC layout. From that information, the Engineer will prepare a PowerPoint presentation that describes and educates the City on the various options for displays to be installed in the TMC space. Other displays may be identified in other areas of the building, or even other offices within the City. The PowerPoint will identify:

- Recommended location
- Lighting impacts (probable location cannot control lighting)
- How many displays
- Quality
- Remote control options
- Control of displays using Centracs

Subtask 2.3Meeting

The Engineer will conduct a Teams meeting with the City to confirm decisions related to:

- TMC layout option
- TMC displays
- TMC consoles
- TMC room fitment (wall coverings, lighting, ceiling modifications)

Subtask 2.4 Specifications

The Engineer will develop general specifications to provide to local architect for design and buildout.

- Full build-out
  - Wall covering (painting, etc.)
  - Window covering (to control light)
  - Lighting (canister, reset, dimmable)

        - Consoles vs. simple desk
        - Cabling consideration (access through the existing walls?)
    - Schedule of design and construction completion

The developed specifications will be used by the City in the development of a PS&E construction documents by others.

Task 3 Develop Website / Dashboard (Hourly, not to exceed)

The Engineer will develop one basic dashboard using MS PowerBI. The Engineer will require access to the City's Centracs and Centracs Mobility database to retrieve elements related to signal communications, detector status, or other elements. Reference to Excel spreadsheets may also be used. Alternatively, the Engineer could perform a data pull from the INRIX probe-data sources utilizing an available API provided by INRIX. The use of INRIX data would require data use agreements via the TxDOT data contract.

The dashboard will reside on the City's network.

The Engineer will provide a summary document that identifies the databases used, any unique configuration parameters, and access credentials, if used.

Task 4 Work as Assigned (Hourly, not to exceed)

The Engineer will perform additional add-services at the direction of the City. Those services may consider of, but not limited to, the following:

The Engineer may research TPD's flock camera system

- Identify functionality of flock Condor
- Identify if Traffic cameras can be used in the flock system

The Engineer may develop cost estimates related to:

- Construction of the TMC at the Signal shop
- Construction of the TMC workstations

Construction phase services

    - TMC construction
    - CCTV management system roll out
- Acceptance testing
- Deploy UDOT ATSPM website

Any expenses associated with Task 4 will be invoiced on actuals.

Exhibit B - E/A's PROJECT Schedule

Task	Subtask	Description	November-24	December-24	January-25	February-25	March - 25	April - 25	May - 25
		Notice to Proceed							
0	**0**	**Project Administration**							
1		**CCTV deployment**							
	1.1	*Compile data*							
	1.2	*CCTV Recording Findings*							
	1.3	*CCTV video Management*							
	1.4	*CCTV Cost Data*							
	1.5	*Develop PPT and Present*							
2	**2**	**TMC Design**							
	2.1	*TMC layout*							
	2.2	*TMC Displays*							
	2.3	*TMC Meeting*							
	2.4	*TMC specifications*							
3	**3**	**Develop Website/Dashboard**							
		Research, Design, Build, Deploy							

Exhibit C - E/A's Rate Schedule and Hourly Fees

Exhibit C
Payment Schedule
City of Tyler TMC Build Out Project

October 2024

Task	Task Description			Fee ($)	Billing Type
0	Project Management		$	13,300	Lump Sum
1	CCTV Deployment Options and Consideratinos		$	55,000	Lump Sum
2	TMC Build Out at Signal Shop		$	30,000	hourly
3	Develop Website/Dashboard		$	25,000	hourly
4	Work, as assigned (Contingency)		$	25,000	hourly
		Subtotal	$	148,300	
	Expenses - travel		$	1,700	Lump Sum
	Project Total Fee		**$**	**150,000**	

Standard Hourly Rate Schedule

Senior Professional II	$345 - $380
Senior Professional I	$260 - $360
Professional	$235 - $300
Senior Technical Support	$160 - $285
Analyst	$165 - $250
Support Staff	$ 110 - $150

The rates listed above are applicable for up to 18 months after the date of execution of this agreement. Any services provided after 18 months from this notice to proceed will be based on the above rates plus five percent (5%) escalation.

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.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-7

Date: November 13, 2024

Subject: Request that the City Council consider reviewing and accepting the Investment Report for the quarter ending September 30, 2024.

Item Reference:

The City of Tyler Investment Portfolio Summary includes all of the core information required under the Public Funds Investment Act plus some additional supporting information that has been prepared to assist the City Council in the quarterly review process. Please reference the attachment labeled as Investments held on September 30, 2024.

RECOMMENDATION:

Request that the City Council consider reviewing and accepting the Investment Report for the quarter ending September 30, 2024.

Attachments:
Investment Portfolio September 30, 2024 Signed
Investments_held_on_September_30
Market Outlook 2024 10 04

Drafted/Recommended By:
Department Leader Keidric Trimble, CFO

Edited/Submitted By:
City Manager

INVESTMENT PORTFOLIO SUMMARY

For the Quarter Ended

September 30, 2024

Prepared by

Valley View Consulting, L.L.C.

The investment portfolio of the City of Tyler is in compliance with the Public Funds Investment Act and the Investment Policy.

Chief Financial Officer

Controller

Accounting Manager

Disclaimer: These reports were compiled using information provided by the City. No procedures were performed to test the accuracy or completeness of this information. The market values included in these reports were obtained by Valley View Consulting, L.L.C. from sources believed to be accurate and represent proprietary valuation. Due to market fluctuations these levels are not necessarily reflective of current liquidation values. Yield calculations are not determined using standard performance formulas, are not representative of total return yields and do not account for investment advisor fees.

Annual Comparison

FYE Results by Investment Category:

City Funds

	September 30, 2023			September 30, 2024		
Asset Type	**Ave. Yield**	**Book Value**	**Market Value**	**Ave. Yield**	**Book Value**	**Market Value**
Pools/Bank	4.21%	$ 26,340,557	$ 26,340,557	3.74%	$ 13,857,201	$ 13,857,201
Securities/CDs	4.63%	111,514,382	111,320,540	4.98%	119,061,762	119,061,762
Totals		**$ 137,854,939**	**$ 137,661,097**		**$ 132,918,963**	**$ 132,918,963**
Fourth Quarter-End Yield	**4.55%**			**4.85%**		
Quarterly Interest Income		$1,520,187	Approximate		$1,666,423	Approximate
Year-to-date Interest Income		$4,761,966	Approximate		$6,849,216	Approximate

Hotel Bond

	September 30, 2023			September 30, 2024		
Asset Type	**Ave. Yield**	**Book Value**	**Market Value**	**Ave. Yield**	**Book Value**	**Market Value**
Pools/Bank	5.52%	$ 7,156	$ 7,156	5.23%	$ 5,656	$ 5,656
Totals		**$ 7,156**	**$ 7,156**		**$ 5,656**	**$ 5,656**
Fourth Quarter-End Yield	**5.52%**			**5.23%**		
Quarterly Interest Income		$485	Approximate		$76	Approximate
Year-to-date Interest Income		$2,157	Approximate		$342	Approximate

Annual Comparison

FYE Results by Investment Category:

Water Utilities Revenue Bond

	September 30, 2023			September 30, 2024		
Asset Type	**Ave. Yield**	**Book Value**	**Market Value**	**Ave. Yield**	**Book Value**	**Market Value**
Pools/Bank	5.47%	$ 8,573,914	$ 8,573,914	5.12%	$ 46,105,688	$ 46,105,688
Securities/CDs	0.00%	–	–	0.00%	–	–
Totals		**$ 8,573,914**	**$ 8,573,914**		**$ 46,105,688**	**$ 46,105,688**
Fourth Quarter-End Yield	**5.47%**			**5.12%**		
Quarterly Interest Income		$171,015 Approximate			$636,862 Approximate	
Year-to-date Interest Income		$1,060,566 Approximate			$2,490,170 Approximate	

Total Portfolio

Current Quarter Average Yield *(1)*		**Current Quarter Average Yield** *(1)*	
Total Portfolio	**4.60%**	Total Portfolio	**4.92%**
Quarterly Interest Income	$1,691,687 Approximate		$2,303,361 Approximate
Year-to-date Interest Income	$5,824,689 Approximate		$9,339,728 Approximate

Average Quarter-End Yields (1):

	2023 Fiscal Year	**2024 Fiscal Year**
City Funds	3.87%	4.78%
Hotel Bond	4.98%	5.41%
Water Utilities Revenue Bond	4.89%	5.13%
Total Portfolio	3.79%	4.89%
Rolling Three Month Treasury	4.95%	5.42%
Rolling Six Month Treasury	4.77%	5.34%
TexPool	4.74%	5.29%

(1) Average Quarterly Yield calculated using quarter-end report average yield and adjusted book value.

Summary
Quarter End Results by Investment Category

City Funds

Asset Type	June 30, 2024 Ave. Yield	June 30, 2024 Book Value	June 30, 2024 Market Value	September 30, 2024 Ave. Yield	September 30, 2024 Book Value	September 30, 2024 Market Value
Pools/Bank	4.31%	$ 23,045,989	$ 23,045,989	3.74%	$ 13,857,201	$ 13,857,201
Securities/CDs	4.98%	117,607,078	117,607,078	4.98%	119,061,762	119,061,762
Totals	4.87%	**$ 140,653,067**	**$ 140,653,067**	4.85%	**$ 132,918,963**	**$ 132,918,963**

Current Quarter Average Yield *(1)*

Total Portfolio	4.85%

Fiscal Year-to-Date Average Yield *(2)*

Total Portfolio	4.78%

Interest Earnings

Quarterly Interest Income	$ 1,666,423	Approximate
Year-to-date Interest Income	$ 6,849,216	Approximate

Bank Fees Offset

Quarterly Bank Fees Offset	$ 11,094
Year-to-date Bank Fees Offset	$ 45,368

Hotel Bond

Asset Type	June 30, 2024 Ave. Yield	June 30, 2024 Book Value	June 30, 2024 Market Value	September 30, 2024 Ave. Yield	September 30, 2024 Book Value	September 30, 2024 Market Value
Pools/Bank	5.41%	$ 5,580	$ 5,580	5.23%	$ 5,656	$ 5,656
Totals	5.41%	**$ 5,580**	**$ 5,580**	5.23%	**$ 5,656**	**$ 5,656**

Current Quarter Average Yield *(1)*

Total Portfolio	5.23%

Fiscal Year-to-Date Average Yield *(2)*

Total Portfolio	5.41%

Interest Earnings

Quarterly Interest Income	$ 76	Approximate
Year-to-date Interest Income	$ 342	Approximate

Summary
Quarter End Results by Investment Category

Water Utilities Revenue Bond

Asset Type	June 30, 2024 Ave. Yield	June 30, 2024 Book Value	June 30, 2024 Market Value	September 30, 2024 Ave. Yield	September 30, 2024 Book Value	September 30, 2024 Market Value
Pools/Bank	5.13%	$ 52,952,392	$ 52,952,392	5.12%	$ 46,105,688	$ 46,105,688
Totals	5.13%	**$ 52,952,392**	**$ 52,952,392**	5.12%	**$ 46,105,688**	**$ 46,105,688**

Current Quarter Average Yield *(1)*	
Total Portfolio	5.12%

Fiscal Year-to-Date Average Yield *(2)*	
Total Portfolio	5.13%

Interest Earnings		
Quarterly Interest Income	$ 636,862	Approximate
Year-to-date Interest Income	$ 2,490,170	Approximate

Total Portfolio

Current Quarter Average Yield *(1)*	
Total Portfolio	4.92%
Rolling Three Month Treasury	5.24%
Rolling Six Month Treasury	5.17%
TexPool	5.16%

Fiscal Year-to-Date Average Yield *(2)*	
Total Portfolio	4.89%
Rolling Three Month Treasury	5.42%
Rolling Six Month Treasury	5.34%
TexPool	5.29%

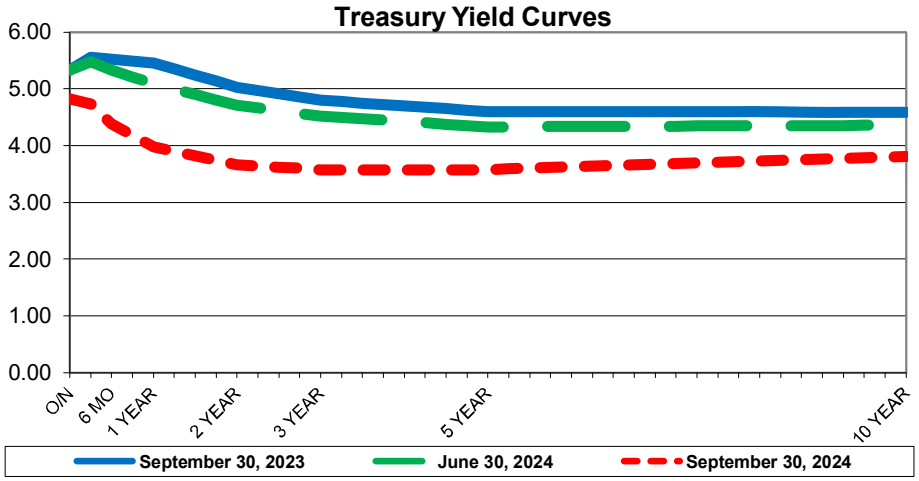
(1) **Current Quarter Weighted Average Yield** - calculated using quarter end report yields and adjusted book values; does not reflect a total return analysis, realized or unrealized gains/losses, or account for investment advisory fees. The yield for the reporting month is used for bank, pool, and money market balances.

(2) **Fiscal Year-to-Date Weighted Average Yields** - calculated using quarter end report yields and adjusted book values and does not reflect a total return analysis or account for advisory fees.

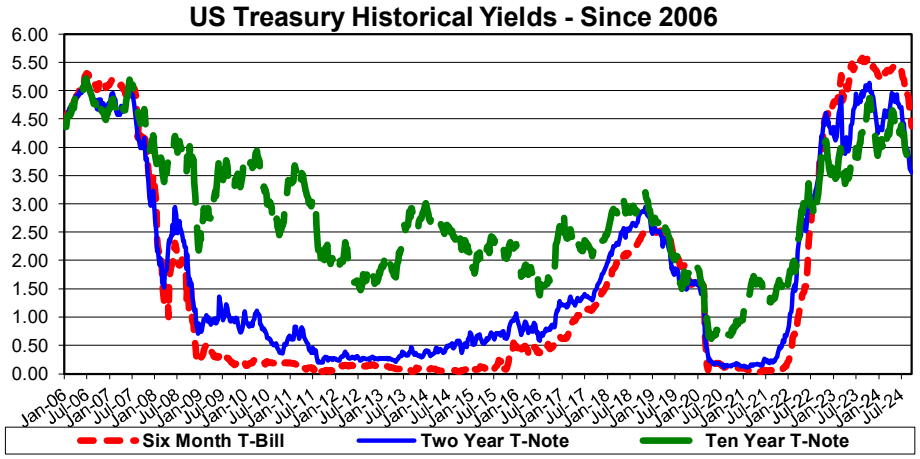
Economic Overview

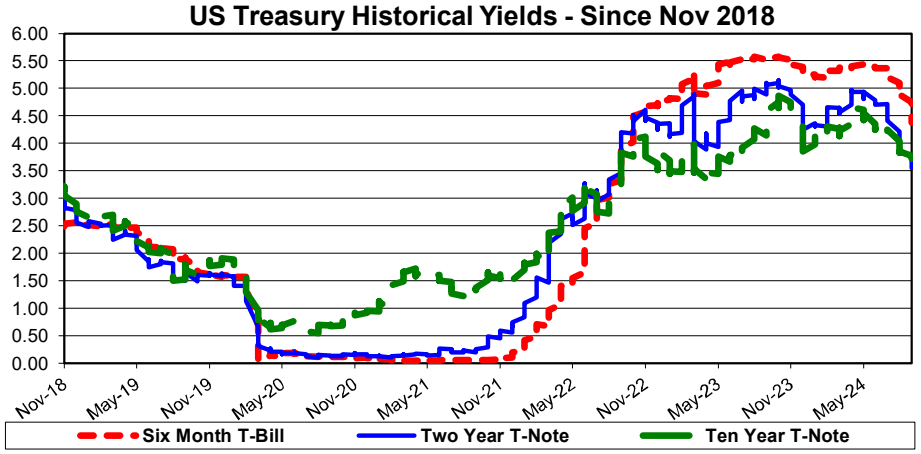
9/30/2024

The Federal Open Market Committee (FOMC) reduced the Fed Funds target range 0.50% to 4.75% - 5.00% (Effective Fed Funds trade +/-4.83%). Expectations are for two more 0.25% cuts by 12/31, although any actions will be meeting-by-meeting and "data-dependent." Sep Non-Farm Payroll surged 254k new jobs (above expectation), with the previous two months revised up boosting the Three Month Rolling Average 186k (from the previous 116k). Second Quarter 2024 GDP remained +3.0% due to increased consumer spending. The S&P 500 Stock Index exceeded 5,700 making new records. The yield curve dropped with the FOMC action and anticipated future actions. Crude Oil drifted slightly higher to +/- $74 per barrel. Inflation remains above the FOMC 2% target (Core PCE +/-2.7% and Core CPI +/-3.2%). Declining global economic outlook, ongoing/expanding military conflicts and the domestic elections increase uncertainty.









Investment Holdings

September 30, 2024

Description	Ratings	Coupon/ Discount	Maturity Date	Settlement Date	Par Value	Book Value	Market Price	Market Value	Life (days)	Yield
City Funds										
Cash - Pooled (3)		0.50%	10/01/24	09/30/24	$ 4,695,527	$ 4,695,527	1.00	$ 4,695,527	1	0.50%
NOW		5.48%	10/01/24	09/30/24	4,204,694	4,204,694	1.00	4,204,694	1	5.48%
NOW #2		5.48%	10/01/24	09/30/24	3,419,030	3,419,030	1.00	3,419,030	1	5.48%
InterBank MMA		5.00%	10/01/24	09/30/24	1,537,950	1,537,950	1.00	1,537,950	1	5.00%
Southside Bank CD		4.50%	10/10/24	04/10/23	3,701,693	3,701,693	100.00	3,701,693	10	4.58%
Citizen's 1st Bank CD		4.52%	11/08/24	05/08/23	3,189,865	3,189,865	100.00	3,189,865	39	4.59%
Veritex Community Bank CD		4.92%	01/27/25	01/26/24	10,842,971	10,842,971	100.00	10,842,971	119	5.03%
East West Bank CD		5.08%	02/26/25	02/26/24	9,792,802	9,792,802	100.00	9,792,802	149	5.21%
Southside Bank CD		4.70%	03/14/25	03/14/23	10,729,450	10,729,450	100.00	10,729,450	165	4.78%
American Nat'l Bank & Trust CD		4.50%	05/05/25	05/04/23	4,248,087	4,248,087	100.00	4,248,087	217	4.59%
Texas Bank CD		4.56%	06/05/25	06/08/23	8,494,882	8,494,882	100.00	8,494,882	248	4.66%
Cornerstone Capital Bank CDARS		5.31%	06/26/25	06/27/24	10,140,552	10,140,552	100.00	10,140,552	269	5.45%
Third Coast Bank CD		5.10%	06/29/25	06/29/23	5,327,722	5,327,722	100.00	5,327,722	272	5.20%
Veritex Community Bank CD		5.00%	07/11/25	07/11/23	3,180,759	3,180,759	100.00	3,180,759	284	5.12%
American Nat'l Bank & Trust CD		5.10%	08/14/25	08/17/23	3,177,312	3,177,312	100.00	3,177,312	318	5.23%
American Nat'l Bank & Trust CD		5.30%	10/23/25	10/26/23	5,253,787	5,253,787	100.00	5,253,787	388	5.44%
American Nat'l Bank & Trust CD		5.00%	11/27/25	11/29/23	3,128,417	3,128,417	100.00	3,128,417	423	5.13%
American Nat'l Bank & Trust CD		5.00%	12/04/25	12/07/23	3,125,419	3,125,419	100.00	3,125,419	430	5.13%
First Nat'l Bank CD		4.75%	02/21/26	02/21/24	10,238,252	10,238,252	100.00	10,238,252	509	4.84%
BOK Financial CDARS		4.63%	03/19/26	03/21/24	1,024,920	1,024,920	100.00	1,024,920	535	4.74%
BOK Financial CDARS		4.63%	03/26/26	03/28/24	1,024,010	1,024,010	100.00	1,024,010	542	4.74%
BOK Financial CDARS		4.63%	03/26/26	03/28/24	1,024,010	1,024,010	100.00	1,024,010	542	4.74%
BOK Financial CDARS		4.63%	04/02/26	04/04/24	204,620	204,620	100.00	204,620	549	4.75%
BOK Financial CDARS		4.63%	04/02/26	04/04/24	1,534,652	1,534,652	100.00	1,534,652	549	4.74%
BOK Financial CDARS		4.63%	04/09/26	04/11/24	817,754	817,754	100.00	817,754	556	4.74%
BOK Financial CDARS		4.63%	04/09/26	04/11/24	817,754	817,754	100.00	817,754	556	4.74%
BOK Financial CDARS		4.63%	04/16/26	04/18/24	1,838,314	1,838,314	100.00	1,838,314	563	4.74%
BOK Financial CDARS		4.63%	04/16/26	04/18/24	1,940,442	1,940,442	100.00	1,940,442	563	4.74%
NexBank CD		4.90%	04/22/26	04/22/24	8,165,673	8,165,673	100.00	8,165,673	569	5.01%
NexBank CD		4.80%	05/20/26	05/17/24	6,097,642	6,097,642	100.00	6,097,642	597	4.91%
City Funds - Sub Total					**$ 132,918,963**	**$ 132,918,963**		**$ 132,918,963**	**283**	**4.85%**
									(1)	**(2)**

Investment Holdings

September 30, 2024

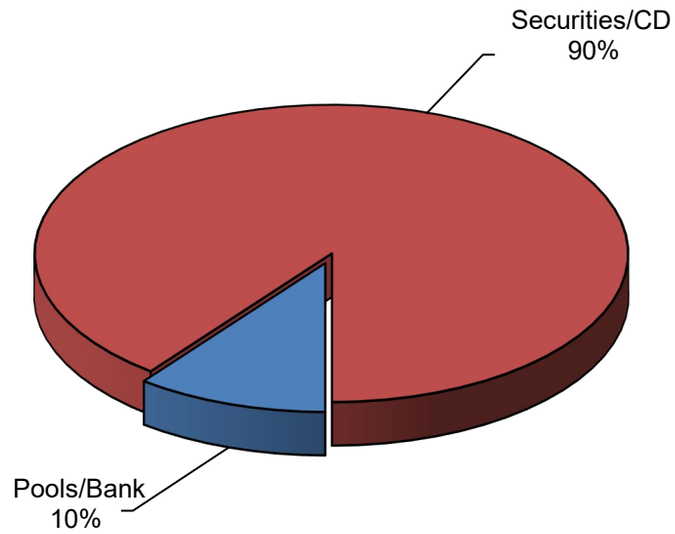
Description	Ratings	Coupon/ Discount	Maturity Date	Settlement Date	Par Value	Book Value	Market Price	Market Value	Life (days)	Yield
Hotel Bond										
LOGIC - Hotel Bond	AAAm	5.23%	10/01/24	09/30/24	$ 5,656	$ 5,656	1.00	$ 5,656	1	5.23%
Hotel Bond - Sub Total					**$ 5,656**	**$ 5,656**		**$ 5,656**	**1**	**5.23%**
									(1)	**(2)**
Water Utilities Revenue Bond										
NOW #3 - Bond		5.48%	10/01/24	09/30/24	$ 365,686	$ 365,686	1.00	$ 365,686	1	5.48%
NOW #4 - Bond		5.12%	10/01/24	09/30/24	29,609,311	29,609,311	1.00	29,609,311	1	5.12%
NOW #5 - Bond		5.12%	10/01/24	09/30/24	15,198,066	15,198,066	1.00	15,198,066	1	5.12%
TexSTAR - Bond	AAAm	5.13%	10/01/24	09/30/24	932,625	932,625	1.00	932,625	1	5.13%
Water Utilities Revenue Bond - Sub Total					**$ 46,105,688**	**$ 46,105,688**		**$ 46,105,688**	**1**	**5.12%**
									(1)	**(2)**
Total Portfolio					**$ 179,030,307**	**$ 179,030,307**		**$ 179,030,307**	**211**	**4.92%**
									(1)	**(2)**

(1) Weighted average life - For purposes of calculating weighted average life, TexPool, TexSTAR, and bank account investments are assumed to have a one day maturity.

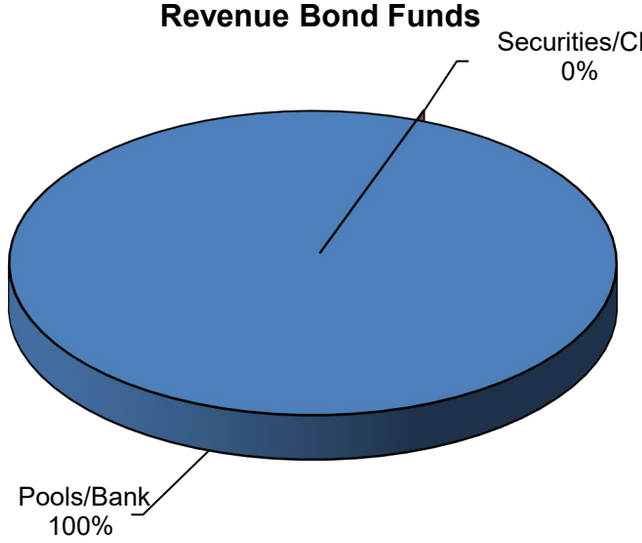
(2) Weighted average yield to maturity - The weighted average yield to maturity is based on adjusted book value, realized and unrealized gains/losses and investment advisory fees are not considered. The yield for the reporting month is used for TexPool, TexSTAR, and bank account investments.

(3) Cash - Pooled funds are used as compensating balances to offset bank service charges and do not generate hard interest.

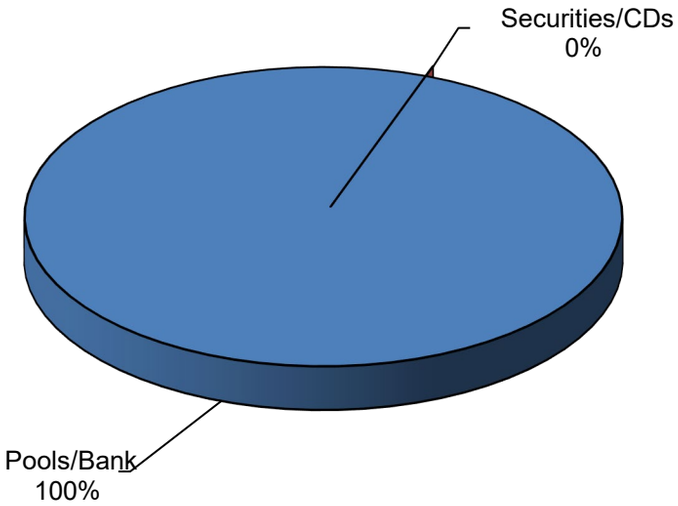
Portfolio Composition - City Funds



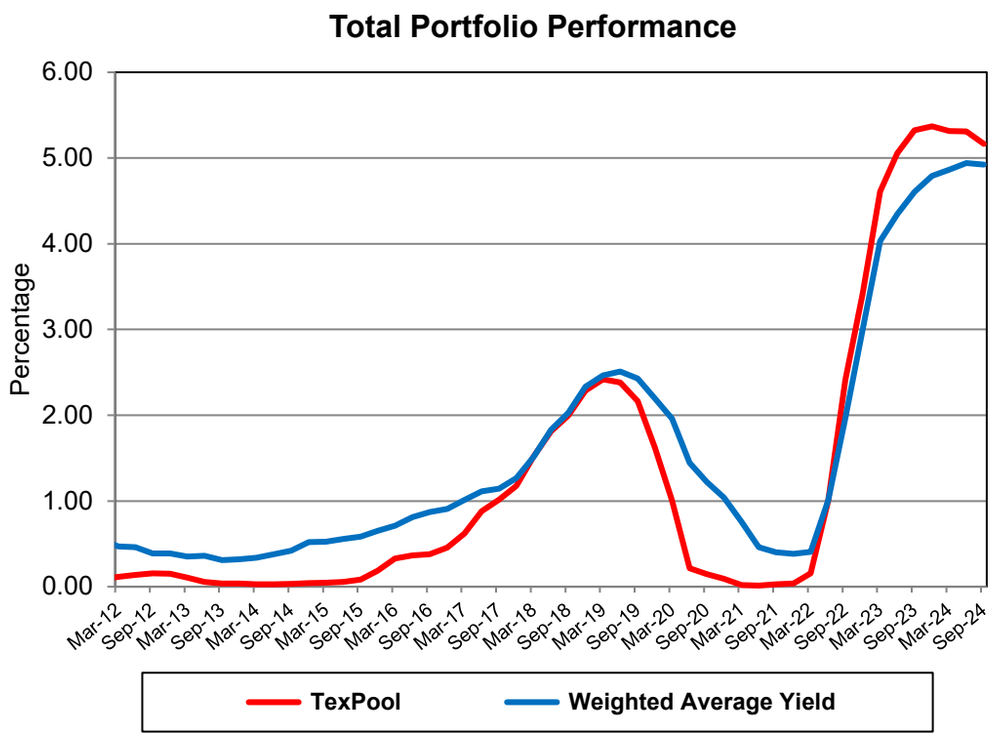
Portfolio Composition - Water Utility Revenue Bond Funds



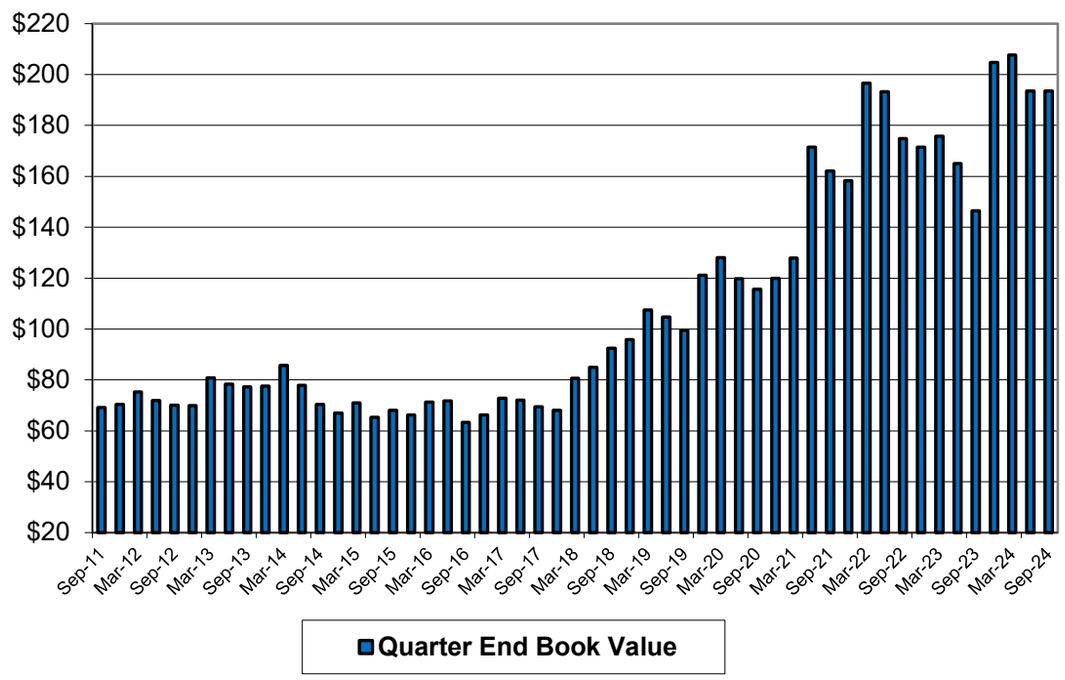
Portfolio Composition - Hotel Bond Funds



Total Portfolio Performance



Total Portfolio (Millions)



Book & Market Value Comparison

Issuer/Description	Yield	Maturity Date	Book Value 06/30/24	Increases	Decreases	Book Value 09/30/24	Market Value 06/30/24	Change in Market Value	Market Value 09/30/24
Cash - Pooled	0.50%	10/01/24	$ 5,796,054	$ –	$ (1,100,527)	$ 4,695,527	$ 5,796,054	$ (1,100,527)	$ 4,695,527
NOW	5.48%	10/01/24	6,413,795	–	(2,209,101)	4,204,694	6,413,795	(2,209,101)	4,204,694
NOW #2	5.48%	10/01/24	9,319,195	–	(5,900,165)	3,419,030	9,319,195	(5,900,165)	3,419,030
NOW #3 - Bond	5.48%	10/01/24	413,500	–	(47,814)	365,686	413,500	(47,814)	365,686
NOW #4 - Bond	5.12%	10/01/24	31,958,265	–	(2,348,954)	29,609,311	31,958,265	(2,348,954)	29,609,311
NOW #5 - Bond	5.12%	10/01/24	19,547,295	–	(4,349,230)	15,198,066	19,547,295	(4,349,230)	15,198,066
InterBank MMA	5.00%	10/01/24	1,516,944	21,006	–	1,537,950	1,516,944	21,006	1,537,950
TexSTAR - Bond	5.13%	10/01/24	1,033,332	–	(100,707)	932,625	1,033,332	(100,707)	932,625
LOGIC - Hotel Bond	5.23%	10/01/24	5,580	76	–	5,656	5,580	76	5,656
Southside Bank CD	4.50%	10/10/24	3,660,624	41,069	–	3,701,693	3,660,624	41,069	3,701,693
Citizen's 1st Bank CD	4.52%	11/08/24	3,153,964	35,901	–	3,189,865	3,153,964	35,901	3,189,865
Veritex Community Bank CD	4.92%	01/27/25	10,709,610	133,361	–	10,842,971	10,709,610	133,361	10,842,971
East West Bank CD	5.08%	02/26/25	9,668,219	124,583	–	9,792,802	9,668,219	124,583	9,792,802
Southside Bank CD	4.70%	03/14/25	10,603,831	125,619	–	10,729,450	10,603,831	125,619	10,729,450
American Nat'l Bank & Trust CD	4.50%	05/05/25	4,200,265	47,822	–	4,248,087	4,200,265	47,822	4,248,087
Texas Bank CD	4.56%	06/05/25	8,397,915	96,967	–	8,494,882	8,397,915	96,967	8,494,882
Cornerstone Capital Bank CDARS	5.31%	06/26/25	10,000,000	140,552	–	10,140,552	10,000,000	140,552	10,140,552
Third Coast Bank CD	5.10%	06/29/25	5,260,287	67,435	–	5,327,722	5,260,287	67,435	5,327,722
Veritex Community Bank CD	5.00%	07/11/25	3,141,008	39,752	–	3,180,759	3,141,008	39,752	3,180,759
American Nat'l Bank & Trust CD	5.10%	08/14/25	3,136,733	40,580	–	3,177,312	3,136,733	40,580	3,177,312
American Nat'l Bank & Trust CD	5.30%	10/23/25	5,184,074	69,713	–	5,253,787	5,184,074	69,713	5,253,787
American Nat'l Bank & Trust CD	5.00%	11/27/25	3,089,241	39,176	–	3,128,417	3,089,241	39,176	3,128,417
American Nat'l Bank & Trust CD	5.00%	12/04/25	3,086,280	39,139	–	3,125,419	3,086,280	39,139	3,125,419
First Nat'l Bank CD	4.75%	02/21/26	10,117,123	121,128	–	10,238,252	10,117,123	121,128	10,238,252
BOK Financial CDARS	4.63%	03/19/26	1,013,026	11,894	–	1,024,920	1,013,026	11,894	1,024,920
BOK Financial CDARS	4.63%	03/26/26	1,012,127	11,884	–	1,024,010	1,012,127	11,884	1,024,010
BOK Financial CDARS	4.63%	03/26/26	1,012,127	11,884	–	1,024,010	1,012,127	11,884	1,024,010
BOK Financial CDARS	4.63%	04/02/26	202,246	2,375	–	204,620	202,246	2,375	204,620
BOK Financial CDARS	4.63%	04/02/26	1,516,842	17,810	–	1,534,652	1,516,842	17,810	1,534,652
BOK Financial CDARS	4.63%	04/09/26	808,264	9,490	–	817,754	808,264	9,490	817,754
BOK Financial CDARS	4.63%	04/09/26	808,264	9,490	–	817,754	808,264	9,490	817,754
BOK Financial CDARS	4.63%	04/16/26	1,816,980	21,334	–	1,838,314	1,816,980	21,334	1,838,314
BOK Financial CDARS	4.63%	04/16/26	1,917,923	22,519	–	1,940,442	1,917,923	22,519	1,940,442
NexBank CD	4.90%	04/22/26	8,065,646	100,027	–	8,165,673	8,065,646	100,027	8,165,673
NexBank CD	4.80%	05/20/26	6,024,460	73,182	–	6,097,642	6,024,460	73,182	6,097,642
TOTAL / AVERAGE	**4.92%**		**$ 193,611,040**	**$ 1,475,765**	**$ (16,056,497)**	**$ 179,030,307**	**$ 193,611,040**	**$ (14,580,733)**	**$ 179,030,307**

Cash and Investments by Fund

		09/30/2024	06/30/2024	Difference
General Fund	101	$ 29,517,898	$ 34,078,980	$ (4,561,082)
General Capital Projects Fund	102	672,783	886,005	(213,222)
Street Improvement Fund	103	1,076,380	1,710,628	(634,249)
Development Services Fund	202	5,188,482	4,883,275	305,206
Cemeteries Operating Fund	204	218,156	218,415	(259)
Forfeitures Fund	205	376,319	355,558	20,761
Court Technology Fund	207	347,245	288,143	59,102
Hotel-Motel Tax Fund	211	879,907	305,698	574,209
Donations Fund	216	1,367,264	1,335,341	31,923
TIF/TIRZ # 3	218	1,143,763	1,128,129	15,634
Tyler Tourism & Convention Facilities Fund	219	414,551	630,463	(215,912)
Half Cent Sales Tax Fund	231	27,762,765	26,161,439	1,601,326
Passenger Facility Fund	234	639,659	582,059	57,600
Oil & Natural Gas Fund	235	7,298,880	7,201,414	97,466
PEG Fee Fund	236	1,281,658	1,242,707	38,951
Fair Plaza Fund	240	(1,728)	(1,728)	–
Retained HUD Admin Fee Fund	274	466	460	6
Housing Assistance Fund	276	1,575,945	1,397,178	178,767
State/Federal Grants Fund	285	(66,000)	(60,018)	(5,982)
Transit System Fund	286	(924,995)	(908,051)	(16,944)
CDBG Grant Fund	294	113,430	96,779	16,651
HOME Grant Fund	295	1,155,631	966,755	188,876
HOT Debt Service Fund	302	2,363	419,163	(416,800)
Revenue Bond HOT 2021	402	5,656	5,580.41	76
Utilities Fund	502	13,494,743	12,700,038	794,705
Utilities Construction Fund	503	5,290,482	6,566,975	(1,276,493)
Utilities Debt Service Fund	504	2,136,758	9,876,657	(7,739,900)
Utilities Debt Reserve Fund	505	10,838	10,701	137
Revenue Bond Series 2021	512	932,625	1,033,332	(100,707)
Revenue Bond Series 2022	513	365,686	413,500	(47,814)
Revenue Bond Series 2023 CIP	520	29,609,311	31,958,265	(2,348,954)
Revenue Bond Series 2023 CD	521	15,198,066	19,547,295	(4,349,230)
Airport Fund	524	1,728,052	1,394,162	333,890
Airport Grant Fund	525	(1,005,502)	(1,189,160)	183,658
Solid Waste Fund	560	(106,857)	(271,083)	164,227
Solid Waste Capital Projects Fund	562	321,582	224,304	97,278
Storm Water Management	575	1,704,700	2,135,565	(430,865)
Productivity Improvement Fund	639	2,039,048	2,136,898	(97,850)
Fleet Replacement Fund	640	2,778,929	2,296,730	482,199
Prop, Liab, W/C Insurance Fund	650	4,487,843	4,372,703	115,139
Employee Benefits Fund	661	3,186,109	2,711,883	474,226

Cash and Investments by Fund

		09/30/2024	06/30/2024	Difference
Prop & Facility Management Fund	663	1,155,000	1,280,872	(125,872)
Technology Fund	671	4,018,072	3,671,409	346,663
Payroll Fund	710	1,712,435	1,239,219	473,217
Cemetery Trust Fund	713	3,352,667	3,336,967	15,700
Landfill Trust Fund	720	3,427,452	3,322,144	105,308
Retiree Benefits Fund	761	(523,078)	(82,218)	(440,860)
Section 125 Trust Fund	772	312,015	289,696	22,318
TOTAL		**$ 175,673,453.70**	**$ 191,901,227.44**	**$ (16,227,773.74)**

Investments held on September 30, 2024 by type and by major fund are shown below:

Investment Category	Book Value	Market Value	Quarterly Average Yield	Average Maturity
City Funds				
Pools/Bank	13,857.201	13,857,201	3.74	1 day
Securities/CD's	119,061,762	119,061,762	4.98	262 days
Hotel Bond				
Pools/Bank	5,656	5,656	5.23	1 day
Revenue Bond				
Pools/Bank	46,105,688	46,105,688	5.12	1 day
Securities/CD's	0	0	0	0 days
	179,030,307	179,030,307	4.92	211 days

*Totals listed about reflect rounded figures

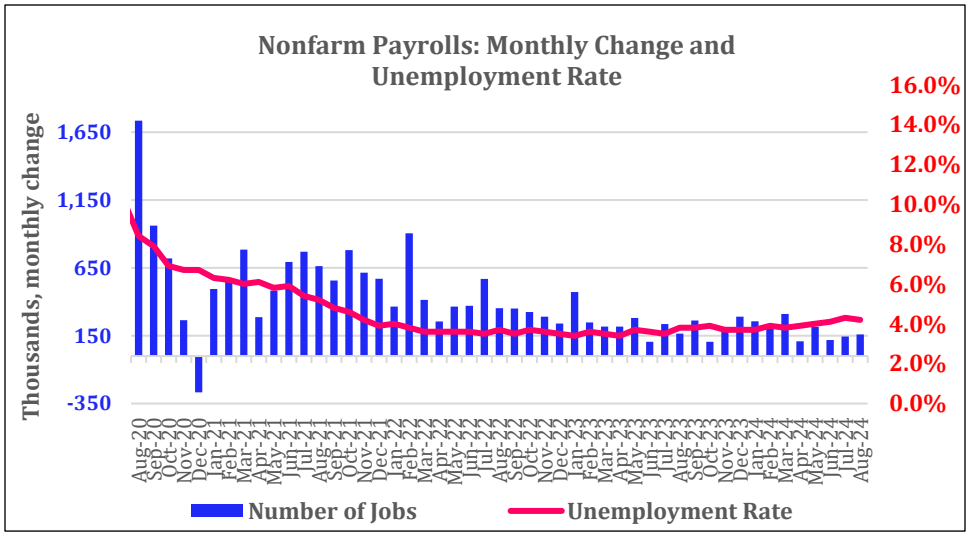
Benchmarks: Rolling 3 month Treasury average yield was 5.24 percent
Rolling 6 month Treasury average yield was 5.17 percent
The Tex Pool average yield for this quarter was 5.16 percent
The Fiscal Year-to-Date Average Yield was 4.89 percent

Valley View Consulting, L.L.C.

Market Outlook

October 4, 2024

The Federal Open Market Committee (FOMC) voted to lower the Fed Funds target range by 50 basis-points at their September meeting. This marks the first rate cut since the emergency measures taken in March 2020 as COVID lockdowns threatened economic activity. Mortgage rates continued to fall, however housing supply issues persist and will continue to pose challenges for buyers looking to hop back into the market. Retail sales remained positive, and second quarter GDP showed 3.0% growth.



The September Employment report added 254,000 jobs, well above market expectations of 140,000. The previous two months were adjusted with a net increase of 72,000 jobs. August was revised to +159,000 from the +142,000 previously reported, and July was revised to +144,000 from the previously reported +89,000 jobs. The three-month average increased to +186,000 per month (the previous three-month average was +116,000 per month). For September, Health/Education (+81,000), Leisure/Hospitality (+78,000), Government (+31,000), and Construction (+25,000) enjoyed sizable gains. Professional/Business (+17,000) and Retail (+15,600) remained positive, but Mining (-300), Manufacturing (-7,000), and Transportation/Warehousing (-8,600) edged down for the month. The September Labor Participation Rate, a measure of the percentage of eligible workers that hold jobs, remained unchanged from the previous two months at 62.7%, still below its pre-pandemic level of 63.4%. The September Unemployment Rate decreased slightly to 4.1% from 4.2% in August. The U6 rate (or the under-employed rate – those that are either over-qualified for their job or working fewer hours than they desire) fell to 7.7% after reaching 7.9% last month. Average Hourly Earnings (AHE) for September increased 0.4%, above market forecasts of a 0.3% rise. This brought AHE year-over-year to 4.0% from prior month's 3.8%. Job openings increased by 329,000 to 8.04 million jobs in August, above market expectations of 7.66 million jobs. The number of unemployed people decreased to 6.8 million.

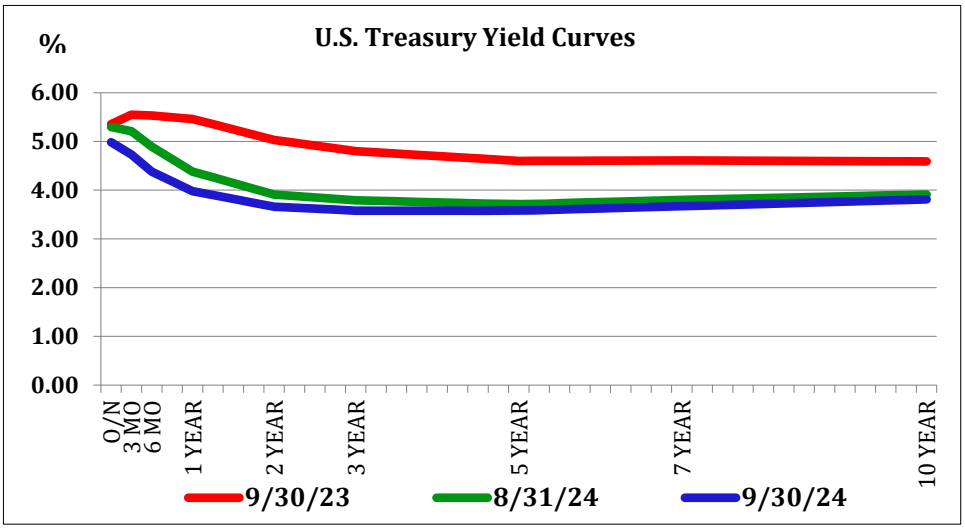
Despite the drop in mortgage rates, Existing Home Sales declined 2.5% in August after rising 1.5% in July, marking the fourth decline of the year. The median existing-home sales price was $416,900 for the month, up 3.1% from August 2023. Inventories of Existing Homes for sale rose 0.7% from July, with the supply at 4.2 months at the current sales pace. Following the 10.3% surge in July, New Home Sales fell 4.7% in August, slightly above market expectations of a 5.1% decline. The supply of New Homes for sale increased slightly from 7.5 months in July to 7.8 months, still above the 6-month supply expected in a balanced market. The median sales price of new homes was $420,600 for the month. The average 30-year mortgage rate at the end of September fell to 6.08% from 6.35% at the end of August. The S&P Case Shiller report of home prices in 20 metropolitan areas reported no change in home values during the month of July. The Federal Housing Finance Agency (FHFA), the entity that analyzes all domestic home prices, showed a 0.1% increase in home values for July after a flat reading in June. Year-over-year Case Shiller is up 5.9% (versus 6.5% from June), the thirteenth consecutive month of year-over-year increases in home prices. The FHFA index is up 4.5% year-over-year (compared to 5.3% in June). Pending Home Sales rose 0.6% in August after plummeting 5.5% in July. This brought year-over-year pending home sales to -3.0% from -8.5% the prior month. Housing Starts saw its sharpest increase in six months rising 9.6% in August after dropping 6.9% in July. Building Permits increased 4.6%, following July's 3.3% fall, and Construction Spending slid 0.1% in August, the third consecutive monthly decline.

Second quarter GDP for 2024 remained at +3.0%, unchanged from the previous estimate, exceeding the upwardly revised 1.6% expansion in Q1. Industrial Production grew 0.8% in August, the biggest gain in six months, exceeding market expectations of a 0.2% increase. Year-over-year, industrial production was flat following the negatively revised 0.7% drop in July. August Durable Goods Orders were flat after the unexpected 9.8% surge in July and exceeded market expectations of a 2.6% drop. Excluding transportation, durable goods orders rose 0.5% for the

month. Factory Orders decreased 0.2% in August, missing forecasts for a flat month. Excluding transportation, Factory Orders fell 0.1%. Business inventories increased 0.4% in July, the fourth consecutive monthly increase. As an inflation impact measurement, the Producer Price Index (PPI) rose 0.2% in August after seeing no change in July and is up 1.7% from this time last year, the lowest year-over-year reading in six months. The Consumer Price Index (CPI) increased 0.2% in August matching that of July with shelter prices again making the largest contribution to the increase. Year-over-year, CPI slowed for the fifth consecutive month to 2.5% from 2.9% the previous month, the lowest reading since February 2021. Core CPI, or the results after food and energy numbers are excluded (due to price volatility), increased 0.3% in August, slightly above market expectations of 0.2%, but year-over-year core CPI remained at 3.2%, the lowest reading since April 2021. The Purchasing Managers Index remained unchanged at 47.2% in September, continuing its sixth consecutive month in contractionary territory (below 50%) as demand slowed and companies appeared unwilling to invest in capital and inventory amid monetary policy and election uncertainty.

Personal Consumption for the second quarter of 2024 was revised down to 2.8% from the previous estimate of 2.9% growth. Retail Sales increased 0.1% in August after surging 1.1% in July, with year-over-year retail sales up 2.1%. Excluding vehicle and gas purchases, sales rose 0.2% in August, following July's 0.4% increase. Consumers' attitudes as measured by both the Consumer Sentiment report (+2.2 points) and the Consumer Confidence report (-6.9 points) offered mixed readings in September while consumer inflation expectations for the next year decreased to 2.7% from 2.8% in August. Personal Consumption Expenditures (PCE) in August were in line with market expectations, rising 0.1%, with PCE year-over-year declining to 2.2% from 2.5% in July. The Core PCE Index measuring consumption net of food and energy, and one of the indicators watched closely by the FOMC, edged higher to 2.7% year-over-year from July's 2.6%, exceeding the FOMC's target inflation rate of 2.0% for the forty first consecutive month. Month-over-month, Core PCE rose 0.1%, after rising 0.2% in each of the previous two months. The Personal Income component of the PCE series indicated that incomes rose 0.2% in August, below market forecasts of a 0.4% increase, and Personal Spending also increased by 0.2% for the month, slightly below market expectations of a 0.3% rise.

The FOMC delivered its first cut to the Fed Funds rate that had been in place since July 2023 bringing the target range down 50 basis-points to 4.75% to 5.00%. Chair Powell stated that the decision reflects their confidence that recalibration of their restrictive policy stance to a more neutral level can keep employment strong and inflation moving toward their 2.0% goal. The Committee is not on a preset course and will make decisions meeting by meeting after careful assessment of the incoming data, evolving economic outlook, and the balance of risks. Their updated Summary of Economic Projections showed anticipated economic growth of 2.0% for each of the next two years with unemployment remaining around 4.4%, and an anticipated Fed Funds rate of 4.4% by the end of 2024 and 3.4% by the end of 2025. The market is currently anticipating two additional 25 basis-point cuts by the end of 2024, in line with the FOMC's projections.



Government Security Investment Pool yields declined notably this month to +/- 4.97% after a slight decline in August to +/- 5.28%. US Treasury and Agency rates fell again from the prior month. The 1-year Treasury closed September at 3.98% after ending August at 4.38%. The 2-year Treasury fell to 3.66% at the end of September from August's close of 3.91%. Following the release of the better-than-expected September employment data, the 1-year Treasury climbed back to 4.17% and the 2-year Treasury to 3.92%. The yield curve remains inverted with short-term rates higher than longer-term rates, peaking prior to 3-months. Bank CDs continue to offer opportunities to lock-in rates above securities in the short-term with 1-year CD yields at +/- 4.37%, but bank appetite continues to wane. With the market's expectations for further rate cuts, we have seen notable declines in yield, but locking-in rates ahead of the anticipated reductions can still help sustain portfolio yields over the long term.

Disclaimer: This material, based on data believed to be reliable, but not independently verified, is not intended to constitute an offer, solicitation or recommendation regarding any securities transaction or a guarantee of market conditions and is for informational purposes only. For use by the intended recipient only.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-8

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to purchase the City vehicles and equipment identified from the recommended bidders.

Item Reference:

The fleet replacement program budgets for departments to replace their vehicles on a regular schedule, particularly those with mileage and/or maintenance cost expectations. After meeting with the departments, Vehicle Services conducted sealed bids 24-046 for Police PPV units and various types of vehicles all with City specified options. Sealed bid 24-046 was sent to 7 different vendors consisting of both local vendors and Buyboard vendors. All bids have the option to purchase additional units if needed at the same price if available at the time of need. All units have bumper to bumper extended warranty of 4 years 100k miles. It is unlikely vendors will have additional units available at a later date for purchase. This bid was opened 10/22/24 at 2:00 pm and the results are listed below:

Line 1
Tyler Ford - Ford Escapes Qty. 4 purchase $28,589.75 each total cost $114,359.00 (lowest bidder)
Tyler Motor Co. (DBA Hall Chevrolet/ Buick) - Buick Envista Qty.4 purchase $28,900.00 each total cost $115,500.00
Line 2
Tyler Ford - Ford Explorer $47,554.75 would have to be ordered no guarantee of delivery
Tyler Motor Co. (DBA Hall Chevrolet/ Buick) - Chevy Tahoe $57,750.00 Total purchase $115.500.00 Guaranteed delivery January 2025 - winning bid due to delivery
Line 3
Tyler Ford - F250 $52,154.50 (winning bid)
Tyler Motor Co. (DBA Hall Chevrolet/ Buick) - Chevy 2500 $52,900.00
Line 4
Tyler Ford - F150 4x4 $50,476.75 total cost $100,953.50
Tyler Motor Co. (DBA Hall Chevrolet/ Buick) - Chevy 1500 4x4 $49,200.00 total cost $98,400.00 (winning bid)
Line 5
Tyler Ford - Ford Ranger $36,757.75 total cost $147,031.00
Tyler Motor Co. (DBA Hall Chevrolet/ Buick) - Chevy Colorado $35,990.00 total cost $143,960.00 (winning bid)
Line 6
Tyler Ford- F150 $46,371.75

Tyler Motor Co. (DBA Hall Chevrolet/ Buick) - Chevy 1500 $45,900.00 (winning bid)
Funding for these purchases is in the replacement fund 640-0661-641-26-04 fiscal year 2024/2025

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to purchase the mentioned City vehicles and equipment from the recommended bidders.

Attachments:
Bid 24-046 bid packets

Drafted/Recommended By:
Department Leader Stan Stoffregen Fleet Manager

Edited/Submitted By:
City Manager

Purchasing Department
Bid "As Read Results"

City of Tyler Bid No. / Description: 24-046 Purchase various types of new current year model vehicles FY 25 – VES/ D. Schreck

Date Opened: Oct 22, 2024

	Vendor	Vendor	Vendor	Vendor	Vendor
	Tyler Motor Co.	Tyler Ford			
~~Unit Cost~~ 1	U - 28 900.00 T - 115,600.00	28,589.75 114,359.00			
~~Total~~ 2	U - 57,750.00 T - 115,500.00	47,554.75 95,109.50			
~~Bid Bond~~ 3	U - 52,900.00 T - 52,900.00	52,154.50 52,154.50			
~~Addenda~~ 4	U - 49,200.00 T - 98,400.00	50,476.75 100,953.50			
~~Base Bid~~ 5	U - 35,990.00 T - 143,960.00	36,757.75 147,031.00			
~~Alternate~~ 1 6	U - 45,900.00 T - 45,900.00	46,371.75 46,371.75			
Alternate 2					
Alternate 3					
Base Bid + Alternates					

Purchasing Personnel in attendance:

Sherry Pettit, Purchasing Manager

Signature: Sherry Pettit

Gary Durham or Gina Elzea, Purchasing Agent

Signature: _____

Form #	Work Instruction # Form #	Originating Date	Revision Date	Revision #
PURF003	PURWI001	6/1/2012		

PRICE, DATA, AND SPECIFICATION SHEET

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

Telephone: (903) 531-1232

All or none

DATE: 10/04/2024

BID # / PROPOSAL # 24-046

CLOSING TIME: 2:00 pm
CLOSING DATE: 10/22/2024

PROPOSERS MUST COMPLETE THIS SECTION

ITEM NO.	QUANTITY	DESCRIPTION	BRAND	UNIT PRICE	TOTAL NET PRICE
1	4	Four (4) new current-year model crossover SUV mid-size with the option to purchase additional units See specifications below – 15109.15111.15112.18113 - Police	FORD Escape Active	$28,589 TS Includes 5yr/100,000 mile warranty	$114,359 00
2	2	Two (2) new current-year model PPV SUV with the option to purchase additional units see specifications below – Police – 13857 (White) Fire 17109 (fire engine red)	FORD POLICE INTERCEPTOR UTILITY 1 White 1 Red	$47,554 TS Includes 5yr/100,000 mile warranty	Order $95,109 50 No quantity
3	1	One (1) new current-year model ¾ ton crew cab pick with the option to purchase additional units. See specifications below – parks 14217	FORD F-250 Crew Cab 4x2 XL	$52,154 50 Includes 5yr/100,000 mile warranty	$52,154 50
4	2	Two (2) new current-year model ½ ton crew cab pickups 4x4 with the option to purchase additional units. See specifications below – 14203 street, 15231 airport	FORD F-150 Crew Cab 4x4 XL	$50,476 TS Includes 5yr/100,000 mile warranty	$100,953 50
5	4	Four (4) new current-year model Mid-Size Crew Cab Pick Up truck. See specifications below – Water office 19213,19319 Water dist. -11258, 15219 – waste treatment	FORD RANGER Crew Cab XL 4x2	$36,757 TS Includes 5yr/100,000 mile warranty	$147,031 00
6	1	One (1) new current-year model 1/2-ton reg cab truck 4X4. See specifications below – 14218 water plant	FORD F-150 Reg Cab 4x4 XL	$46,371 TS Includes 5yr 100,000 mile warranty	$46,371 TS

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 1

Four (4) new current-year model Mid-Size crossover SUVs with the option to purchase additional units.
15109,15111,15112,18113 Police

** This unit is to be equipped with the manufacturer's standard equipment and/or optional equipment as follows

Mid-Size	Mid-size crossover SUV
	gas engine smallest available hp
Automatic transmission	Automatic
Steering	power steering
Brakes	four-wheel disk with anti-lock
Air Conditioning	Factory AC and heat
Charging system	factory installed battery and alternator
Body exterior	exterior color - Black, Navy, Silver, Dark Brown, Grey (any combination)
	Spare tire and rim
Body Interior	Interior color to match exterior color standard
	intermittent wipers
	tilt steering
	AM/FM radio blue tooth
	Power seats, door locks, and windows Power Seats N/A w/o Tech Package
	Floor Liners if carpet
	legally tinted windows
	Rear backup camera if available
Warranty	Factory plus 5-year extended warranty
4 keys	4 key fobs to open locks

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 2

Two (2) new current-year model PPV SUVs with the option to purchase additional units.
White – 13857 police and Fire Red 17109 fire dept.

BOTH UNITS MUST HAVE A GUARANTEED BUILD AND DELIVERY DATE

** This unit is to be equipped with the manufacturer's standard equipment and/or optional equipment as follows

PPV	Police Pursuit unit
	gas engine smallest available hp
Automatic transmission	4X4 with transmission oil cooler if available
Steering	power steering
Brakes	four-wheel disk with anti-lock
Air Conditioning	Factory AC and heat
Charging system	factory installed battery and alternator
Body exterior	exterior color (1) white and (1) fire engine red
	Spare tire and wheel
	Dual power mirrors
Body Interior	White Police package (no Rear seats)
	Fire engine Red – PPV package with rear seats
	intermittent wipers if available standard
	tilt steering if available standard
	AM/FM radio blue tooth
	Power seats, door locks and windows Power Seats N/A
	Floor Liners if carpet
	legally tinted windows
	Rear backup camera if available
Warranty	Factory plus 5-year 100,000-mile extended warranty
4 keys	4 keys fobs total to open doors and start unit

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 3

One (1) new current-year model ¾ ton crew cab with the option to purchase additional units.
Parks - 14217

** This unit is to be equipped with the manufacturer's standard equipment and/or optional equipment as follows

¾ ton	Ford F250, Chevy 2500, GMC 2500, dodge 2500 or equivalent Crew Cab
	gas engine smallest available hp
Automatic transmission	transmission oil cooler if available
Steering	power steering
Brakes	four-wheel disk with anti-lock
Air Conditioning	Factory AC and heat
Charging system	factory installed battery and alternator
Body Exterior	exterior color white
	Steps on both sides of the truck black in color
	Spare tire and wheel
	dual power mirrors
	Angel wing toolbox
	Spray in bed liner black in color
	Tow package
Body Interior	black or grey seats and flooring (prefer vinyl if standard)
	cruise control if standard
	intermittent wipers if standard
	tilt steering if standard
	AM/FM radio blue tooth
	Power seats, door locks and windows Power Seats N/A
	Floor Liners if carpet
	legally tinted windows
	Rear backup camera if available
Warranty	Factory plus 5-year extended warranty
Strobes	2 front,2 rear amber/white (must be led)
4 keys	4 keys total with fobs to open locks

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 4

Two (2) new current-year model ½ ton crew cab pickup 4X4 gas engines with option to purchase additional units.
Streets - 14203, Airport - 15231,

** This unit is to be equipped with the manufacturer's standard equipment and/or optional equipment as follows

½ ton	F150, Chevy 1500, Ram 1500 or equivalent
	gas engine smallest available hp
Automatic transmission	Automatic transmission
	4-wheel drive
Steering	power steering
Brakes	four-wheel disk with anti-lock
Air Conditioning	Factory AC and heat
Charging system	factory installed battery and alternator
Body Exterior	exterior color – white
	dual power mirrors
	Spare tire/wheel and jack
	Steps on either side of cab are black in color
	Angel Wing toolbox
	Headache rack
	Spray in bed liner black
	Tow package
Body Interior	Black or grey interior (prefer vinyl if standard)
	intermittent wipers if standard
	tilt steering if standard
	AM/FM radio blue tooth
	Power seats, door locks, and windows
	Rear backup camera if available
	Floor Liners if carpet
	legally tinted windows
Strobes	2 front,2 rear amber/white (must be led)
Warranty	Factory plus 5-year extended warranty
4 keys	4 keys with key fobs to open locks

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 5

Four (4) new current-year model Mid-Size crew cab pickups with the option to purchase additional units.
19213,19319 Water Office. 11258 Water distribution,15219 Waste treatment

** This unit is to be equipped with the manufacturer's standard equipment and/or optional equipment as follows

Mid-Size	Ford Ranger, Chevy Colorado or Dodge Dakota or equivalent
	gas engine smallest available hp
Automatic transmission	transmission oil cooler if available
Steering	power steering
Brakes	four-wheel disk with anti - lock
Air Conditioning	factory ac and heat
Charging system	factory installed battery and alternator
Body exterior	exterior color white
	Spare tire and wheel
	dual power mirrors if standard
	Spray in bed liner black
	Tow package
Body Interior	black or grey vinyl seats and flooring
	intermittent wipers if standard
	tilt steering if standard
	AM/FM radio blue tooth
	power seats, door locks and windows Pwr Seats N/A D/XL
	Floor Liners if carpet
	legally tinted windows
	Rear backup camera if available
Warranty	Factory plus 5-year extended warranty
Strobes	2 front,2 rear amber/white (must be led)
4 keys	4 keys with key fobs to open locks

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 6

One (1) new current year model 1/2-ton regular cab pickup 4x4
Water Plant – 14218

** This unit is to be equipped with manufacturer's standard equipment and/or optional equipment as follows

½ ton	F150, Chevy 1500, Ram 1500 crew cab or equivalent
	gas engine smallest available hp
Automatic transmission	transmission oil cooler if available
	4-wheel drive
Steering	power steering
Brakes	four-wheel disk with anti-lock
Air Conditioning	Factory AC and heat
Charging system	factory installed battery and alternator
Body exterior	exterior color white
	Steps on both sides of truck black in color
	Spare tire and wheel
	dual power mirrors
	Spray in bed liner black
	Angel wing toolbox black
	Heavy-duty tow package
Body Interior	black or grey vinyl seats and flooring
	intermittent wipers if standard
	tilt steering if standard
	AM/FM radio blue tooth
	power seats, door locks and windows
	Floor liners if carpet
	legally tinted windows
	Rear backup camera if available
Warranty	Factory plus 5-year extended warranty
Strobes	2 front,2 rear amber/white (must be led)
4 keys	4 keys total with key fobs to open locks

REQUEST FOR QUOTATION

THIS IS NOT AN ORDER

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

Telephone: (903) 531-1232

10/04/24
DATE MAILED

Quote No: 24-046
(Number must appear on ALL correspondence)

Closing Time:2:00 PM

Closing Date: 10/22/2024

Addressed To:
City of Tyler
Vehicle Service Department
410 W. Oakwood
Tyler, Texas 75702

INSTRUCTIONS:
1. Keep duplicate copy of proposal for your files.
2. Federal Excise Taxes are exempted, also Federal Transportation Tax, State Tax, and City Sales Tax.
3. Return this form at once if unable to quote.
4. Specify Trade name or brand in space.

Please quote as per instructions indicated below for the articles described. Quotes must be submitted on City of Tyler forms to be considered. All items or services called for must be in strict accordance with all of the requirements and specifications attached hereto or furnished upon request.

Gary Durham
Purchasing Agent

Sealed quotes to furnish the following will be received in the Purchasing Office @ 304 North Border, Tyler, Texas 75702, Attn: Sherry Pettit until 2:00pm on 10/22/2024 and opened by City Staff in the City Council Chambers @ 212 North Bonner, City Hall, 2nd Floor @ 2:00pm on 10/22/2024

Purchase various types of new current year model vehicles FY 25 See full specifications for details.

QUOTE IDENTIFICATION:
Quote number, closing time, date, and item requested must appear on outside of envelope in lower left-hand corner.
DATA SHEETS:
All bidders must complete each specification data sheet in spaces provided on each item that is bid as well as all information requested on the price data sheet. Said price, data and specifications sheet is hereby made a part of this quotation.

DELIVERY:
Delivery must be stated in your quote on the data sheet as the number of calendar days from date of order.

The City of Tyler reserves the right to reject any and/or all bids and to waive any and/or all formalities and to award purchase total amount, partial amount or individual item basis.

In submitting the above, the vendor agrees that acceptance by the City of Tyler within a reasonable period constitutes a binding agreement.

In submitting the above request and attached bid to the City of Tyler, I hereby certify that we have not participated in nor been a party to any collusion, price fixing or any other agreements with any company, firm, or person concerning the pricing of the enclosed quotation.

NET 30 DAYS
INVOICING TERMS

10/18/24
DATE

TYLER FORD LTD
COMPANY NAME

DANIEL L. OLSON
AUTHORIZED REPRESENTATIVE (print)

SIGNATURE

TERMS AND CONDITIONS

Quotations are requested for furnishing the items described herein in accordance with the terms set forth. **ALL QUOTATIONS MUST BE F.O.B. DESTINATION** and include the cost of boxing and cartage to the delivery point as stated on this form.

In the case of default, the City of Tyler, Texas reserves the right to hold the original bidder or contractor liable for any and all resultant increased costs.

Samples, if requested by the City of Tyler, must be furnished at the bidder's expense, and if not destroyed in testing or retained as a standard, will be returned on the same terms, if requested by the bidder.

Quotes may be withdrawn on written or telegraphic request received from bidders prior to the time set for opening. Negligence on the part of the responder in preparing the proposal confers no right for the withdrawal of the proposal after the hour fixed for the opening.

Any oral statement by any representative of the City, modifying or changing any conditions of this contract, is an expression of opinion only and confers no right upon the seller.

All discounts, if applicable, shall be shown in discount amount space provided on data sheets - **EXCEPT IN TERMS FOR PROMPT PAYMENT.**

For proper identification, proposal number, closing time, date, and item requested must appear on outside of envelope in lower left hand corner.

If delay in delivery as specified on the purchase order is foreseen, supplier shall give written notice to Purchasing Office immediately. The City has the right to extend the delivery date if reasons appear valid. Supplier must keep the City advised at all times of the status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes the City of Tyler to purchase material elsewhere and charge full increase in cost and handling to the defaulting supplier and could also be reason for cancellation of the Purchase Order (at no expense to the City if the City of Tyler deems it necessary).

Any quote submitted on a public works project shall comply with the additional requirements and conditions attached hereto as well as the terms and conditions stated herein.

Certificate of Interested Parties:
In accordance with Texas Government Code Sec. 2252.908, for certain contracts entered into on or after January 1, 2016, the successful bidder must submit a ***Certificate of Interested Parties*** (Form 1295) at the time the signed contract is submitted to the **CITY** The law applies (with a few exceptions) only to a City contract between a business entity and a governmental entity or state agency that either (1) requires an action or vote by the City Council before the contract may be signed or (2) has a value of at least $1 million.

The ***Certificate of Interested Parties*** (Form 1295) must be filed electronically with the Texas Ethics Commission using the online filing application located at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

If you need additional information about the Certificate of Interested Parties Form 1295 Procedure, contact Purchasing at (903) 531-1232.

NOTICE TO BIDDERS AND/OR PROPOSERS

PROJECTS, SERVICES & SUPPLIES

The City of Tyler will accept bids and/or proposals for the following projects, services, and/or supplies in the Purchasing Office, 304 North Border, Tyler, Texas 75702, ATTN: Sherry Pettit until 2:00 p.m. on 10/22/2024, for the items shown below, at which time they will be publicly opened. All interested persons may attend.

Bid/Proposal

24-046 Purchase various types of current-year model vehicles FY25 See full specifications for details.

Plans, specifications and/or proposal forms must be obtained from the Vehicle Services Department during regular business hours Monday through Friday, 8:00 a.m. until 5:00 p.m. Telephone No. 903-531-1323. The City reserves the right to accept, reject, cancel or modify any bid or proposal, waive all formalities, and to award the bid most advantageous to the City.

In accordance with House Bill 1295, for certain contracts entered into on or after January 1, 2016, the successful bidder must submit a *Certificate of Interested Parties* (Form 1295) at the time the signed contract is submitted to the CITY. The law applies (with a few exceptions) only to a City contract between a business entity and a governmental entity or state agency that either (1) requires an action or vote by the City Council before the contract may be signed or (2) has a value of at least $1 million.

Tyler Morning Telegraph
1st Publication: 10/04/2024
2nd Publication: 10/11/2024

City of Tyler, Texas
Edward Broussard
City Manager

PRICE, DATA, AND SPECIFICATION SHEET

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

Telephone: (903) 531-1232

DATE: 10/04/2024

BID # / PROPOSAL # 24-046

CLOSING TIME: 2:00 pm

CLOSING DATE: 10/22/2024

PROPOSERS MUST COMPLETE THIS SECTION

ITEM NO.	QUANTITY	DESCRIPTION	BRAND	UNIT PRICE	TOTAL NET PRICE
1	4	Four (4) new current-year model crossover SUV mid-size with the option to purchase additional units See specifications below – 15109.15111.15112.18113 - Police IN STOCK	BUICK ENVISTA	$28,900.	$115,600.00
2	2	Two (2) new current-year model PPV SUV with the option to purchase additional units see specifications below – Police – 13857 (White) Fire 17109 (fire engine red) GM GUARANTEED ALLOCATION	CHEVROLET TAHOE P.P.V	$57,750.	$115,500.00
3	1	One (1) new current-year model ¾ ton crew cab pick with the option to purchase additional units. See specifications below – parks 14217 GM GUARANTEED ALLOCATION	CHEVROLET SILVERADO 2500	$52,900	$52,900.00
4	2	Two (2) new current-year model ½ ton crew cab pickups 4x4 with the option to purchase additional units. See specifications below – 14203 street, 15231 airport GM GUARANTEED ALLOCATION	CHEVROLET SILVERADO 1500	$49,200	$98,400.00
5	4	Four (4) new current-year model Mid-Size Crew Cab Pick Up truck. See specifications below – Water office 19213,19319 Water dist. -11258, 15219 – waste treatment GM GUARANTEED ALLOCATION	CHEVROLET COLORADO	$35,990	$143,960.00
6	1	One (1) new current-year model 1/2-ton reg cab truck 4X4. See specifications below – 14218 water plant GM GUARANTEED ALLOCATION	CHEVROLET SILVERADO 1500	$45,900	$45,900.00

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 1

Four (4) new current-year model Mid-Size crossover SUVs with the option to purchase additional units.
15109,15111,15112,18113 Police

** This unit is to be equipped with the manufacturer's standard equipment and/or optional equipment as follows

Mid-Size	Mid-size crossover SUV BUICK ENVISTA	
	gas engine smallest available hp	INC
Automatic transmission	Automatic	INC
Steering	power steering	INC
Brakes	four-wheel disk with anti-lock	INC
Air Conditioning	Factory AC and heat	INC
Charging system	factory installed battery and alternator	INC
Body exterior	exterior color - Black, Navy, Silver, Dark Brown, Grey (any combination)	INC
	Spare tire and rim	INC
Body Interior	Interior color to match exterior color standard	INC
	intermittent wipers	INC
	tilt steering	INC
	AM/FM radio blue tooth	INC
	Power seats, door locks, and windows	INC
	Floor Liners if carpet	INC
	legally tinted windows	90.00
	Rear backup camera if available	INC
Warranty	Factory plus 5-year extended warranty	1,735
4 keys	4 key fobs to open locks	400

$ 28,900.00
EACH

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 2

Two (2) new current-year model PPV SUVs with the option to purchase additional units.
White – 13857 police and Fire Red 17109 fire dept.

BOTH UNITS MUST HAVE A GUARANTEED BUILD AND DELIVERY DATE

** This unit is to be equipped with the manufacturer's standard equipment and/or optional equipment as follows

PPV	Police Pursuit unit	CHEVROLET TAHOE PPV
	gas engine smallest available hp	5.3 V8
Automatic transmission	4X4 with transmission oil cooler if available	INC
Steering	power steering	INC
Brakes	four-wheel disk with anti-lock	INC
Air Conditioning	Factory AC and heat	INC
Charging system	factory installed battery and alternator	INC
Body exterior	exterior color (1) white and (1) fire engine red	INC
	Spare tire and wheel	INC
	Dual power mirrors	INC
Body Interior	White Police package (no Rear seats)	INC
	Fire engine Red – PPV package with rear seats	INC
	intermittent wipers if available standard	INC
	tilt steering if available standard	INC
	AM/FM radio blue tooth	INC
	Power seats, door locks and windows	INC
	Floor Liners if carpet	INC
	legally tinted windows	90
	Rear backup camera if available	INC
Warranty	Factory plus 5-year 100,000-mile extended warranty	2725
4 keys	4 keys fobs total to open doors and start unit	INC

$57,750.00
EACH

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 3

One (1) new current-year model ¾ ton crew cab with the option to purchase additional units.
Parks - 14217

** This unit is to be equipped with the manufacturer's standard equipment and/or optional equipment as follows

¾ ton	Ford F250, Chevy 2500, GMC 2500, dodge 2500 or equivalent Crew Cab	2500 CHEVROLET SILVERADO
	gas engine smallest available hp	6.6 V8
Automatic transmission	transmission oil cooler if available	INC
Steering	power steering	INC
Brakes	four-wheel disk with anti-lock	INC
Air Conditioning	Factory AC and heat	INC
Charging system	factory installed battery and alternator	INC
Body Exterior	exterior color white	INC
	Steps on both sides of the truck black in color	345
	Spare tire and wheel	INC
	dual power mirrors	INC
	Angel wing toolbox	925
	Spray in bed liner black in color	350
	Tow package	INC
Body Interior	black or grey seats and flooring (prefer vinyl if standard)	INC
	cruise control if standard	INC
	intermittent wipers if standard	INC
	tilt steering if standard	INC
	AM/FM radio blue tooth	INC
	Power seats, door locks and windows	INC
	Floor Liners if carpet	INC
	legally tinted windows	90
	Rear backup camera if available	INC
Warranty	Factory plus 5-year extended warranty	1525
Strobes	2 front,2 rear amber/white (must be led)	750
4 keys	4 keys total with fobs to open locks	INC

52,900.00
EACH

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 4

Two (2) new current-year model ½ ton crew cab pickup 4X4 gas engines with option to purchase additional units.
Streets - 14203, Airport - 15231,

** This unit is to be equipped with the manufacturer's standard equipment and/or optional equipment as follows

½ ton	F150, Chevy 1500, Ram 1500 or equivalent	CHEVROLET SILVERADO 1500
	gas engine smallest available hp	2.7 TURBO
Automatic transmission	Automatic transmission	INC
	4-wheel drive	INC
Steering	power steering	INC
Brakes	four-wheel disk with anti-lock	INC
Air Conditioning	Factory AC and heat	INC
Charging system	factory installed battery and alternator	INC
Body Exterior	exterior color – white	INC
	dual power mirrors	INC
	Spare tire/wheel and jack	INC
	Steps on either side of cab are black in color	345
	Angel Wing toolbox	925
	Headache rack	520
	Spray in bed liner black	350
	Tow package	INC
Body Interior	Black or grey interior (prefer vinyl if standard)	INC
	intermittent wipers if standard	INC
	tilt steering if standard	INC
	AM/FM radio blue tooth	INC
	Power seats, door locks, and windows	INC
	Rear backup camera if available	INC
	Floor Liners if carpet	INC
	legally tinted windows	90
Strobes	2 front,2 rear amber/white (must be led)	750
Warranty	Factory plus 5-year extended warranty	1625
4 keys	4 keys with key fobs to open locks	INC

49,200.00
EACH

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 5

Four (4) new current-year model Mid-Size crew cab pickups with the option to purchase additional units.
19213,19319 Water Office. 11258 Water distribution,15219 Waste treatment

** This unit is to be equipped with the manufacturer's standard equipment and/or optional equipment as follows

Mid-Size	Ford Ranger, Chevy Colorado or Dodge Dakota or equivalent CHEVROLET COLORADO	
	gas engine smallest available hp	INC
Automatic transmission	transmission oil cooler if available	INC
Steering	power steering	INC
Brakes	four-wheel disk with anti - lock	INC
Air Conditioning	factory ac and heat	INC
Charging system	factory installed battery and alternator	INC
Body exterior	exterior color white	INC
	Spare tire and wheel	INC
	dual power mirrors if standard	INC
	Spray in bed liner black	350
	Tow package	INC
Body Interior	black or grey vinyl seats and flooring	INC
	intermittent wipers if standard	INC
	tilt steering if standard	INC
	AM/FM radio blue tooth	INC
	power seats, door locks and windows	INC
	Floor Liners if carpet	INC
	legally tinted windows	90
	Rear backup camera if available	INC
Warranty	Factory plus 5-year extended warranty	1525
Strobes	2 front,2 rear amber/white (must be led)	800
4 keys	4 keys with key fobs to open locks	500

$35,990.00
EACH

CITY OF TYLER SPECIFICATIONS FOR LINE ITEM 6

One (1) new current year model 1/2-ton regular cab pickup 4x4
Water Plant – 14218

** This unit is to be equipped with manufacturer's standard equipment and/or optional equipment as follows

½ ton	F150, Chevy 1500, Ram 1500 crew cab or equivalent CHEVROLET SILVERADO 1500	
	gas engine smallest available hp	INC
Automatic transmission	transmission oil cooler if available	INC
	4-wheel drive	INC
Steering	power steering	INC
Brakes	four-wheel disk with anti-lock	INC
Air Conditioning	Factory AC and heat	INC
Charging system	factory installed battery and alternator	INC
Body exterior	exterior color white	INC
	Steps on both sides of truck black in color	345
	Spare tire and wheel	INC
	dual power mirrors	INC
	Spray in bed liner black	350
	Angel wing toolbox black	925
	Heavy-duty tow package	INC
Body Interior	black or grey vinyl seats and flooring	INC
	intermittent wipers if standard	INC
	tilt steering if standard	INC
	AM/FM radio blue tooth	INC
	power seats, door locks and windows	INC
	Floor liners if carpet	INC
	legally tinted windows	90
	Rear backup camera if available	INC
Warranty	Factory plus 5-year extended warranty	1625
Strobes	2 front,2 rear amber/white (must be led)	750
4 keys	4 keys total with key fobs to open locks	400

$45,900
EACH

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-9

Date: November 13, 2024

Subject: Request that the City Council consider approving the 2024 Certified Property Tax Roll.

Item Reference: **State of Texas Tax Code Chapter 26.09 (e)**

The Certified Property Tax Roll requires approval by the governing body of the City of Tyler. The State of Texas Tax Code Chapter 26.09 (e) requires the appraisal roll with the amount of tax levy approved by the governing body each year. The 2024 Certified Value, as of October 15, 2024, is $13,414,384,987. The total tax levy is $30,514,778.19. The 2024 Certified Property Tax Roll has to be signed by Mayor Warren, and a copy must be available for the public.

Historic Adjusted Certified Values:
2015 - 7,516,421,837.00
2016 - 7,806,720,503.00
2017 - 8,113,743,804.00
2018 - 8,705,468,675.00
2019 - 9,062,567,868.00
2020 - 9,408,296,792.00
2021 - 9,833,817,127.00
2022 - 10,935,766,833.00
2023 - 12,180,348,615.00
2024 - 13,414,384,987.00

RECOMMENDATION:

It is recommended that the City Council consider approving the 2024 Certified Property Tax Roll.

Attachments:
Certified Property Tax Roll - 2024.pdf

Drafted/Recommended By:
Department Leader Keidric Trimble, Chief Financial Officer

Edited/Submitted By:
City Manager

OCT 25 AM 8:34

Tax Assessor-Collector
Property Tax 903-590-2920
Fax 903-590-2939

Auto Registration 903-590-2900
Fax 903-590-2908

COUNTY OF SMITH

Gary B Barber
Box 2011
Tyler, Texas 75710-2011

October 18, 2024

CITY OF TYLER

In accordance with Sec. 26.09 (e) of the Tax Code, the 2024 Tax Roll is hereby submitted for approval by your governing board. The tax roll reflects the following values and levy:

2024 Certified Value as of 07-31-2024	13,410,271,543
Adjusted Certified Value as of 10-15-2024	13,414,384,987
Total Levy	30,514,778.19

Please return a signed copy of the 2024 Tax Roll to the Smith County Tax Office. The Tax Code requires a copy be available for the public.

Signature of the Mayor

Date

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-10

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute Work Order No. 1 with WSB LLC, for engineering services related to the Highway Safety Improvement Program 2023 Pedestrian Signal Improvement Project, with a cost not to exceed $119,000.00.

Item Reference: **City Council Agenda Item P-1, 8/28/2024**

The Texas Department of Transportation, as part of their 2023 Highway Safety Improvement Program (HSIP) call for projects, approved two projects for the City of Tyler. Projects located "off-system", which are City streets, receive 90% of the construction cost from the federal government and 10% from the City of Tyler. The City is responsible for 100% of the engineering design fees associated with both the "on-system" and the "off-system" projects. The City of Tyler is also responsible for 10% of the construction costs and any construction cost overruns for off-system projects that are above amounts outlined in the Advanced Funding Agreements (AFA). A summary of the two projects selected for the City of Tyler is provided below.

New Copeland Road Pedestrian Hybrid Beacon at Rose Rudman Trail/Hubbard Middle School (CSJ 0910-16-193) - This project includes installing a pedestrian hybrid beacon at the existing mid-block crosswalk on New Copeland Road between Rose Rudman Trail and Hubbard Middle School. The installation also includes a raised median refuge island with ADA curb ramps. This project is considered an "off-system" project.

Grande Boulevard at Sutherland Drive Pedestrian Signals and Facilities (CSJ 0910-16-194) - This project includes installing pedestrian signals at the existing signalized intersection of Grande Boulevard and Sutherland Drive. The new pedestrian signal upgrades will include a new traffic signal cabinet with battery backup, ADA curb ramp, and sidewalk extensions to tie into the existing shared-use trail on the north side of Grande Boulevard. This project is considered an "off-system" project.

WSB, LLC, will produce plans, specifications, construction estimates, and project management for a fee not to exceed $119,000.00. The plans will be developed per Texas Department of Transportation (TxDOT)requirements and TxDOT will bid and oversee construction of the project. Full scope and fee are attached.

The scope also includes a design contingency for additional services that may be needed. The Half-Cent Sales Tax Board approved funding on November 12, 2024.

FUNDING: Half Cent Sales Tax

RECOMMENDATION:

It is requested that the City Council authorize the City Manager to execute Work Order No. 1 with WSB LLC, for engineering services related to the Highway Safety Improvement Program 2023 Pedestrian Signal Improvement Project, with a cost not to exceed $119,000.00.

Attachments:
MSA Work Order 1 - HSIP 2023 Ped Signal Improvements

Drafted/Recommended By:
Department Leader Cameron L. Williams, PE, PTOE, PTP - Traffic Engineer

Edited/Submitted By:
City Manager

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: HSIP 2023 – Pedestrian Signal Improvements
WORK ORDER NUMBER: 1

This Work Order constitutes authorization by the City of Tyler, Texas (OWNER) for WSB LLC fa WSM& Associates Inc dba WSB Engineers and Surveyors, 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 **December 19, 2023**. 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. 2 to the CONTRACT dated December 19, 2023 on this the _____ _____ day of _____ , 2024.

OWNER:	ENGINEER:
CITY OF TYLER, TEXAS	_____
BY:_____	BY:_____
ATTEST:_____	ATTEST:_____
DATE:_____	DATE:_____

Half Cent Sales Tax Board Approval Date: November 12, 2024

City Council Approval Date: November 13, Agenda Item Number: _____

WSB LLC

EXHIBIT A

SCOPE OF WORK

HSIP 2023 - PEDESTRIAN SIGNAL IMPROVEMENTS

CITY OF TYLER, TX

City of Tyler (the “Client”) desires to develop construction documents for pedestrian signal improvements at the locations listed below. The overall project scope includes developing plans for the design of pedestrian hybrid beacons, poles, signals and push buttons for the intersections listed below. Plans will include, but not limited to, existing condition diagram, conduit and cable run summary, pedestrian hybrid signal poles, pedestrian poles, phasing, pedestrian push buttons, pedestrian signal head layouts/wiring diagram, curb ramps, median modifications, and sidewalk improvements. WSB will perform the Scope of Services outlined below for this project. Plan development will generally follow the TxDOT traffic signal PS&E design process and be prepared in a format for TxDOT bidding.

WSB will prepare traffic signal construction plans for the following intersections:

1. E Grande Boulevard and Sutherland Drive
    a. This intersection currently has span-wire traffic signal.
    b. Scope includes design of new pedestrian signal poles, push buttons, curb ramps, modification of sidewalk on the north side of Grande Blvd, new signal cabinet, and pavement markings.
2. New Copeland Rd and Rose Rudman Trail
    a. A crosswalk currently exists at this location.
    b. Scope includes design of a new pedestrian hybrid beacon signal, addition of push buttons, curb ramps, modification of sidewalks, raised median refuge islands, and pavement markings.

ARTICLE A.1 – BASIC SCOPE OF SERVICES

A.1.1 BACKGROUND DATA COLLECTION

A. Obtain as built plans from the Client.

B. Obtain information from the Client on any known roadway improvements or planned developments that may impact the intersections.

C. Coordinate existing utility locates – Texas 811 (including gas, communication, and ONCOR electrical) and City of Tyler (including water, wastewater, and City electrical).

D. Perform a field visit and observe existing conditions for each intersection.

A.1.2 TRAFFIC SIGNAL DESIGN

A. Develop base drawings in MicroStation using survey data on 11”x17” plan sheets

B. Develop preliminary (30%) signal layouts with pedestrian poles, traffic signal poles for hybrid beacons, pedestrian push buttons, cabinet, and potential electrical service locations. Determine any conflicts with private property including fences, driveways, sidewalks, landscaping, etc.

C. Meet with the City of Tyler and/or TxDOT staff in the field and review and confirm items included in the 30% signal design layouts, if required.

D. Coordinate with the electric service provider to review and verify the point of power service in the field.

E. Develop traffic signal design plans at 60% completion in accordance with TxDOT Specifications and Manual and submit to the Client and TxDOT for review. The following items will be included:

   a. Plan sheets showing proposed signal pole/cabinet/ground boxes locations, illumination (if applicable), proposed conduit routes.

   b. Conductor schedules

   c. Signal data sheets

   d. Pedestrian ramp layouts

   e. Median nose modification layouts (where applicable)

   f. Sidewalk modification/paving layouts

   g. Signing and Pavement Marking layouts

F. Develop traffic signal design plans at 90% completion and submit to the Client for review. The following items will be included:

   a. Revised plan sheets addressing 60% review comments from the City and TxDOT

   b. Traffic signal notes

   c. Summary of quantities

   d. TxDOT Standard sheets supplemented as needed with City of Tyler standards

   e. Opinion of Probable Construction Cost (OPCC)

G. Develop 100% (final) traffic signal design plans and submit to the Client for review. The following items will be included:

   a. Revised plan sheets addressing 90% review comments from the City and TxDOT

   b. Signed/sealed submittal package (NOTE: One combined PS&E package will be developed for all both signals.)

   c. Upload OPCC and relevant PS&E forms in TxDOTCONNECT system.

A.1.3 SURVEY

A. Obtain a topographic survey for intersections to identify the locations of all existing roadway features, right-of-way (ROW) boundary, visible utilities (underground and overhead), and other items required for the traffic signal design.

A.1.4 DELIVERABLES

All Data utilized for the project including field notes will be submitted to the City in electronic format (editable format). CAD files of the design shall also be submitted to City in MicroStation CADD software (V8i) for future use as required by the City. Specific deliverables include:

A. Preliminary (30%) signal layouts

B. 60/90/100% plan set submittals

A.1.5 MEETINGS/COORDINATION

A. Attend up to two in person and up to three virtual meetings with TxDOT and/or City of Tyler Engineering staff. This includes 30% field review and 60/90% comment review meetings.

ARTICLE A.2 – CONSTRUCTION PHASE SERVICES

A.2.1 The following items are excluded from the Basic Scope of Services and will be provided on an hourly basis.

A. Review and respond to request for information (RFI).

B. Design changes during construction, including field visits during construction.

ARTICLE A.3 – INFORMATION TO BE PROVIDED BY THE CLIENT

A.3.1 The following items will be provided by the Client:

A. As built plans of the current intersections/signals.

B. Access to traffic signal cabinets and/or ground boxes for the Consultant staff to perform inventory, if needed.

ARTICLE A.4 – FEE SUMMARY

A.4.1 See Exhibit C

ARTICLE A.5 – PROJECT SCHEDULE

A.5.1 Base services included in the scope will begin after Notice to Proceed (NTP) received from the City and will be performed according to the schedule shown below:

A. NTP – November 2024 (Assumed)

B. Background Data Collection including Survey – January 2025

C. 30% design plans – March 2025

D. Field Review meeting with City/TxDOT – April 2025

E. 60% design plans – May 2025

F. City/TxDOT review of 60% plans – June 2025

G. 60% comment review meeting with City/TxDOT – July 2025

H. 90% design plans – August 2025

I. City/TxDOT review of 90% plans – September 2025

J. 90% comment review meeting with City/TxDOT – September 2025

K. 100% design plans – October 2025

ARTICLE A.6 – EXCLUSIONS

A.6.1 The following items are excluded from the scope of this project; however, WSB can provide these professional services for additional compensation to be determined as needed.

A. TDLR Review

B. Detailed SUE investigation

C. Traffic signal modification design (Modification to existing signal at E Grande and Sutherland Dr are limited to pedestrian ramps, pedestrian signals, and necessary conduits/conductors. No other modifications to the signal are expected.)

D. Development of As Built construction drawings

E. AutoTURN analysis
F. Intersection operational analysis.
G. Traffic signal timing.
H. Temporary traffic signal plans.
I. Presentation to City Council and stakeholders.
J. Crash data/analysis.
K. Illumination design

Exhibit B - E/A's PROJECT Schedule

WSB LLC

EXHIBIT B

PROJECT SCHEDULE

HSIP 2023 - PEDESTRIAN SIGNAL IMPROVEMENTS

CITY OF TYLER, TX

The Project Schedule for the HSIP Pedestrian Signal Design project is outlined below.

ARTICLE B.1 – SCHEDULE

B.1.1 Base services included in the scope will begin after Notice to Proceed (NTP) received from the City and will be performed according to the schedule shown below:

A. NTP – November 2024 (Assumed)

B. Background Data Collection including Survey – January 2025

C. 30% design plans – March 2025

D. Field Review meeting with City/TxDOT – April 2025

E. 60% design plans – May 2025

F. City/TxDOT review of 60% plans – June 2025

G. 60% comment review meeting with City/TxDOT – July 2025

H. 90% design plans – August 2025

I. City/TxDOT review of 90% plans – September 2025

J. 90% comment review meeting with City/TxDOT – September 2025

K. 100% design plans – October 2025

Exhibit C - E/A's Rate Schedule and Hourly Fees

WSB LLC

EXHIBIT C

FEE SUMMARY

HSIP 2023 - PEDESTRIAN SIGNAL IMPROVEMENTS

CITY OF TYLER, TX

ARTICLE C.1 – FEE SUMMARY

C.1.1 The basic scope of services described in this proposal will be performed at the following fee schedule:

Pedestrian Signal Design (two locations) – a lump sum fee of $80,600

Survey (two locations) – a lump sum fee of $17,800 (to be performed by sub-contractors)

(NOTE: This includes Data Collection, Design, Deliverables, and Meetings)

C.1.2 Construction phase services described in this proposal will be provided on hourly basis for a not to exceed amount of $10,600.

C.1.3 Design contingency (As needed and approved by the City) in an amount not to exceed $10,000.

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.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-11

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a contract with Morton Enterprise for the construction of the 2025 Asphalt Crack Seal Project in the amount of $314,719.00.

Item Reference:

Based on the pavement condition index scores and staff evaluation, a preliminary list of streets in need of crack sealing were put out to bid. This list will be revised as the work progresses. This work is in preparation for the 2025 Asphalt Enhancement and Seal Coat Projects. The bid was reviewed, and the Engineering Department recommends acceptance. The following bid was received on Tuesday, October 22, 2024:

Morton Enterprise: $314,719.00

Construction will begin in November 2024 and is scheduled to be completed in April 2025.

FUNDING:
General Fund - $114,719.00
ARPA Funds -$200,000.00

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a contract with Morton Enterprise for the construction of the 2025 Asphalt Crack Seal Project in the amount of $314,719.00.

Attachments:
Bid Tab Crack Seal
Street List Crack Seal
Maps for Crack Seal

Drafted/Recommended By:
Department Leader Darin Jennings

Edited/Submitted By:
City Manager

2025 Asphalt Crack Seal Project
2:00 PM, Tuesday, October 22nd, 2024
Bid Number 24-042

BASE BID

ITEM NO.	ITEM DESCRIPTION	UNIT OF MEASURE	CONTRACT QUANTITY	EOPC		1 Morton Enterprise	
712-A	Hot Crack Sealant	LB	120,000	$ 2.30	$276,000.00	$ 2.19	$262,800.00
502	Barricades, signs and traffic control	LS	1	$ 26,250.00	$26,250.00	$ 21,919.00	$21,919.00
800	Allowance for Contingency	LS	1	$ 30,000.00	$30,000.00	$ 30,000.00	$30,000.00
TOTAL IMPROVEMENTS					**$332,250.00**		**$314,719.00**

BASE BID

ITEM NO.	**ITEM DESCRIPTION**	**AWARD AMOUNT**
N/A	**Morton Enterprise**	**$314,719.00**

Proposed Seal Coat Streets

STREET	LIMITS FROM	LIMITS TO	GROUP	LENGTH (ft)	WIDTH (ft)
2025 Seal Coat					
Reick Rd	Broadway Ave	New Copeland	**Reick**	4300	36
S Oakland Ave	Houston St	Charnwood	Oakland	380	23
Houston	Fleishel	Broadway	Oakland	3580	36
Saunders	Front	Noble	Oakland	300	28
Saunders	Lawrence	Houston	Oakland	375	28
E Erwin	RR Tracks Fannin	Beckham	Oakland	1200	32
E Locust	Horace	Beckham	Oakland	2655	22
Carter Blvd	29th	34th	**Carter**	2010	28
Emma St	S Englewood	DE (S Confederate)	Lyons	524	24
S Englewood Ave	Shaw St	Emma St	Lyons	1015	27
S Confederate Ave	Connally St	Lindsey Ln	Lyons	910	28
S Confederate Ave	W Houston St	Connally St	Lyons	1146	28
S Confederate Ave	Bryan St	W Houston St	Lyons	439	20
S Confederate Ave	Glenwood Blvd	DE	Lyons	353	24
S Englewood Ave	Houston	Connally St	Lyons	1167	28
S Englewood Ave	S Houston Ave	DE	Lyons	100	28
S Houston St	Peach Ave	S Glenwood Blvd	Lyons	2362	52
Fair Park Dr	S Peach Ave	Rose Park	Lyons	2270	56
S Ross Ave	Lindsey Ln	W Dobbs (DE)	Lyons	313	22
W Dobbs	Glenwood	S Englewood	Lyons	925	28
McCain Dr	W Houston St	S Hill Ave	Lyons	980	27
Herndon Ave	Front St	Glenwood Blvd	Lyons	821	27
Bryan St	S Ross	Herndon	Lyons	135	18
Williams St	Herndon Ave	S Ross	Lyons	148	16
S Ross Ave	Glenwood Blvd	DE	Lyons	615	22
Nell St	W Dobbs	Lindsey Ln	Lyons	457	16
W Dobbs	S Palace Ave	S Vine Ave	Lyons	465	28
Bryan St	Glenwood Blvd	S Confederate Ave	Lyons	206	20
Grove	Englewood Ave	Ross	Lyons	631	24
Augusta Ave	Glenwood	Lindsey Ln	Lyons	2200	28

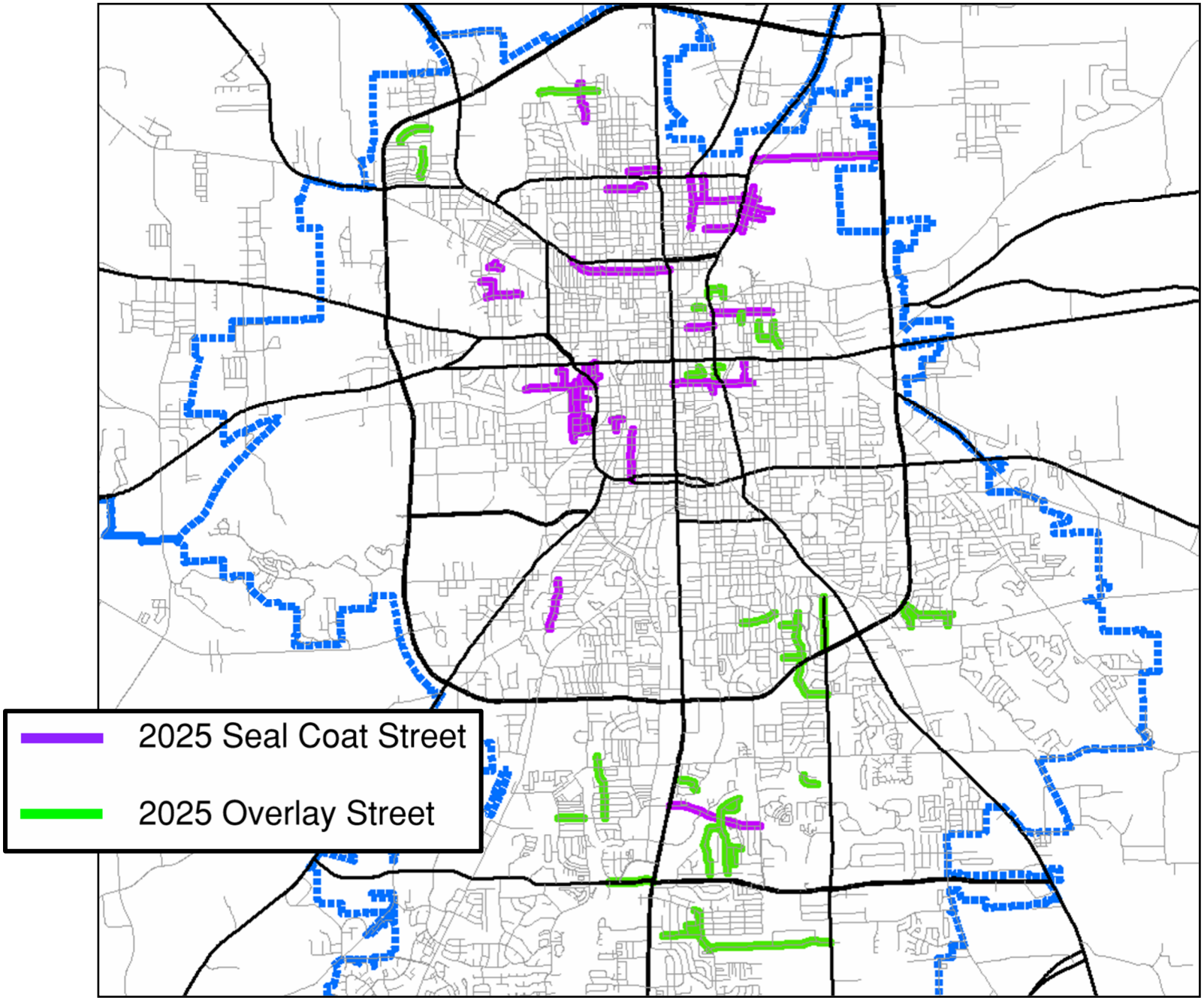
San Jacinto Dr	Lake Placid	Terra Haute Dr	Lyons	2330	32
W Oakwood St	N Parkdale Dr	Barron Ave	**Barron**	1454	28
Northcrest Dr	W Oakwood St	N Parkdale Dr	**Barron**	1180	28
McCullar	Bellaire Dr	Forest Ave	**Barron**	584	28
Lawler Pl	McCullar Dr.	DE	**Barron**	310	24
W Barret	N Border	N Broadway	Nutbush	1350	28
W Nutbush	Peuges Ave	Border	Nutbush	875	22
W Nutbush	Border	N Palace	Nutbush	910	22
Bow St	Gentry	Broadway	**Bow**	4540	35
Summit Ave	DE (E Vance)	DE (E Olive)	Vance	2075	25
Hillsboro	DE (N Central)	E Gentry	Vance	950	26
E Laurel St	Gentry Blvd	DE (N Central)	Vance	950	26
E Vance	E Gentry	N Church	Vance	2102	25
E Vance	Gentry Blvd	N Central	Vance	590	22
Church Ave	MLK	E Vance	Vance	1050	30
Church Ave	E Vance	Pabst	Vance	1230	22
N Carlyle Ave	MLK Blvd	E Vance	Vance	1170	28
Camp St	N Carlyle Ave	N Beckham Ave	Vance	1247	25
Duncan	E Gentry (Hwy 271)	Loop 323	Vance	5650	36

Proposed Overlay Streets

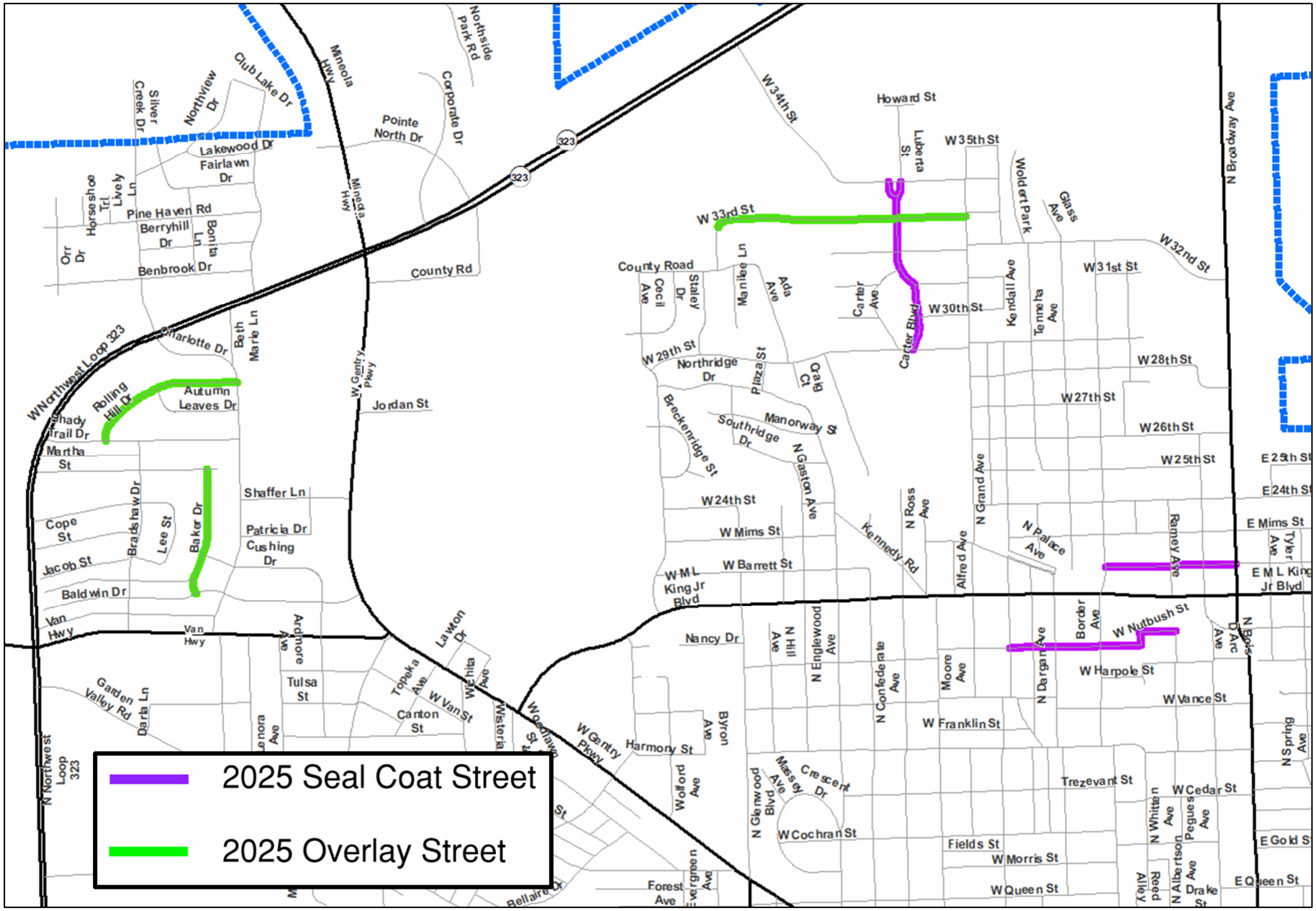
STREET	LIMITS FROM	LIMITS TO	GROUP	LENGTH (ft)	WIDTH (ft)
2025 Overlay					
Easy Street	Loop 323	Easy/Kidd Intersection	**Easy**	1540	28
Easy Street	Easy/Kidd Intersection	Paluxy	**Easy**	860	28
E Amherst	De Charles	Keaton Ave	**Easy**	1520	36
Paluxy Dr	Loop 323 - 500 ft	Dennis Dr	**Easy**	1975	48
Waverly	Birdwell	Jan Ave	**Easy**	750	28
Pettit Dr	Birdwell	Jan Ave	**Easy**	835	28
Birdwell	Loop 323	30' N of Decharles	**Easy**	2340	28
Quail Creek Dr	Covey Ln	DE (Blenheim)	Covey	1900	28
Blenheim Pl	Quail Creek Dr	Quail Creek Dr	Covey	980	28
Timber View Dr	Timber Creek	DE	Covey	870	28
Redcoat	Delores St	Riding Rd	Covey	760	28
Riding Rd	Foxcroft Rd	Wilderness Rd	Covey	645	28
Savannah Dr	Atlanta	Mobile	Covey	915	28
Mobile Dr	Savannah Dr	Donnybrook	Covey	215	28
Reick Rd	Plantation	Hollytree Dr	**Reick**	1125	35
Cloverdale	Carriage	DE (Trenton)	**Reick**	2750	28
Shenandoah Dr	University	DE	Amy	450	28
Amy Ln	Patriot	Loop 323	Amy	2406	28
Greg Ln	University	Rockbridge/Anita	Amy	1015	28
Cambridge Rd	Jeffrey Dr	190' N of Jeff Davis	**Grande**	500	36
R E Lee	Jewell	Jeffrey Dr	**Grande**	1430	36
Ronnette	Karen (Almost to S Pl)	RE Lee	**Grande**	1670	28
Pam Dr	Tina Dr	RE Lee	**Grande**	586	20
Grande	Broadway	Bridge (Spring Creek)	**Grande**	2655	48
Jeff Davis	Cambridge	Paluxy	**Grande**	5430	24
Oakland	Noble	Reeves	Reeves	360	28
Reeves St	Oakland	Beckham Ave	Reeves	75	28
Reeves St	S Fannin Ave	Oakland Ave	Reeves	740	28
Noble	Beckham	DE	Reeves	275	26
Horace	Clayton	Erwin	**Saleh**	1320	28

Saleh Ave	Erwin	McCurley	**Saleh**	761	24
McCurley/Saleh	Elm	Baxter	**Saleh**	440	23
N Poplar	E Oakwood	Social	**Saleh**	310	20
Social	N Beverly Ave	Poplar	**Saleh**	650	21
N Emmett Ave	E Erwin	E Locust	**Saleh**	425	12
E Thomas St	N Center Ave	N Frank Ave	**Saleh**	410	20
N Beverly	Oakwood	Social	**Saleh**	565	26
W 33rd	Grand	Commonwealth	Baker	2600	24
Commonwealth Dr	33rd	Ada Ave	Baker	480	19
Rolling Hill Dr	Shady Trail Dr	Charlotte Dr	Baker	1667	28
Baker	Martha	Baldwin	Baker	1331	28
Covey Lane	Hampton Hill	Quail Creek	**Covey**	2691	28
Wilderness	Quail Creek Dr	Hampton Hill	**Covey**	2161	28

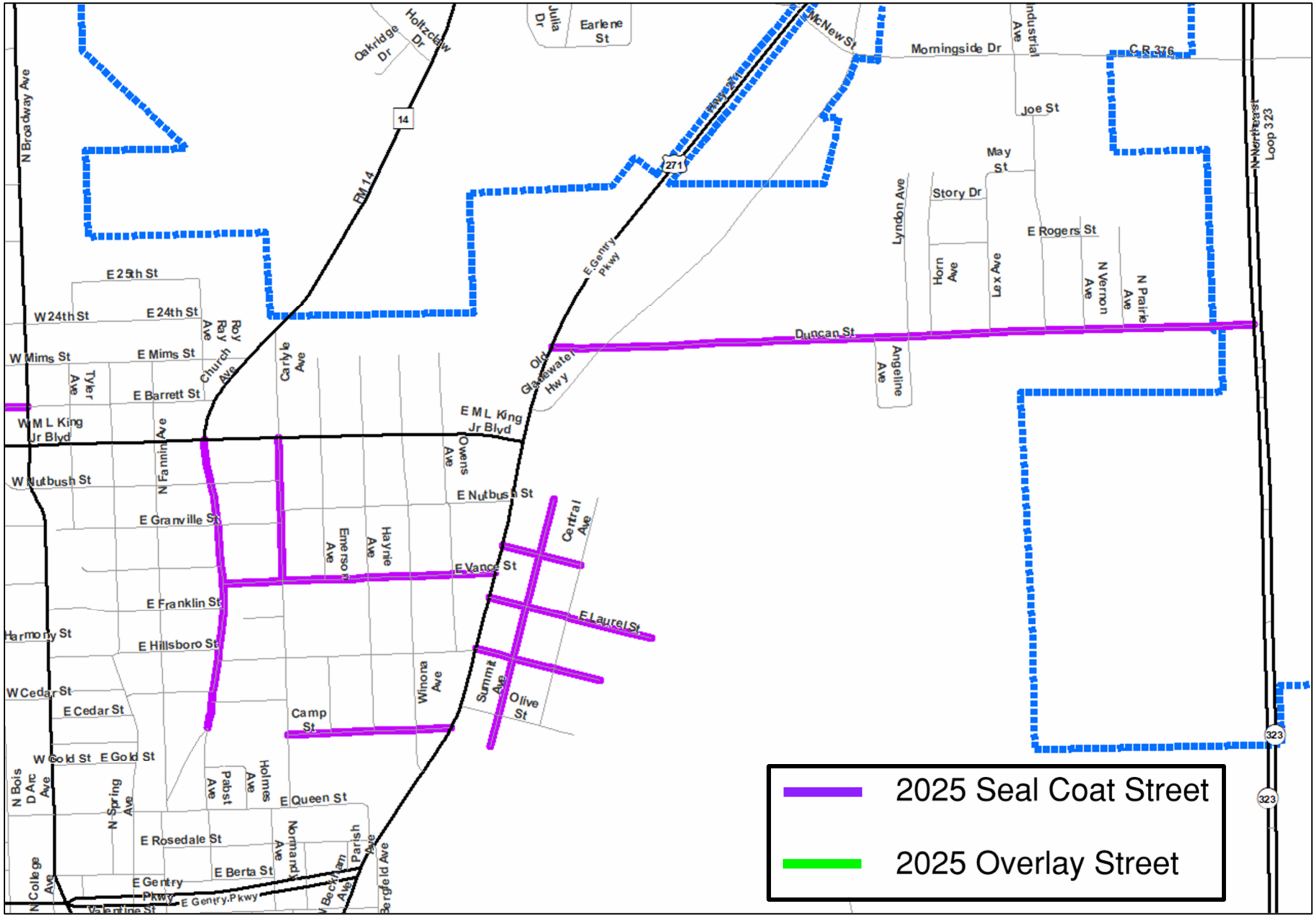
2025 Crack Seal Streets (All)



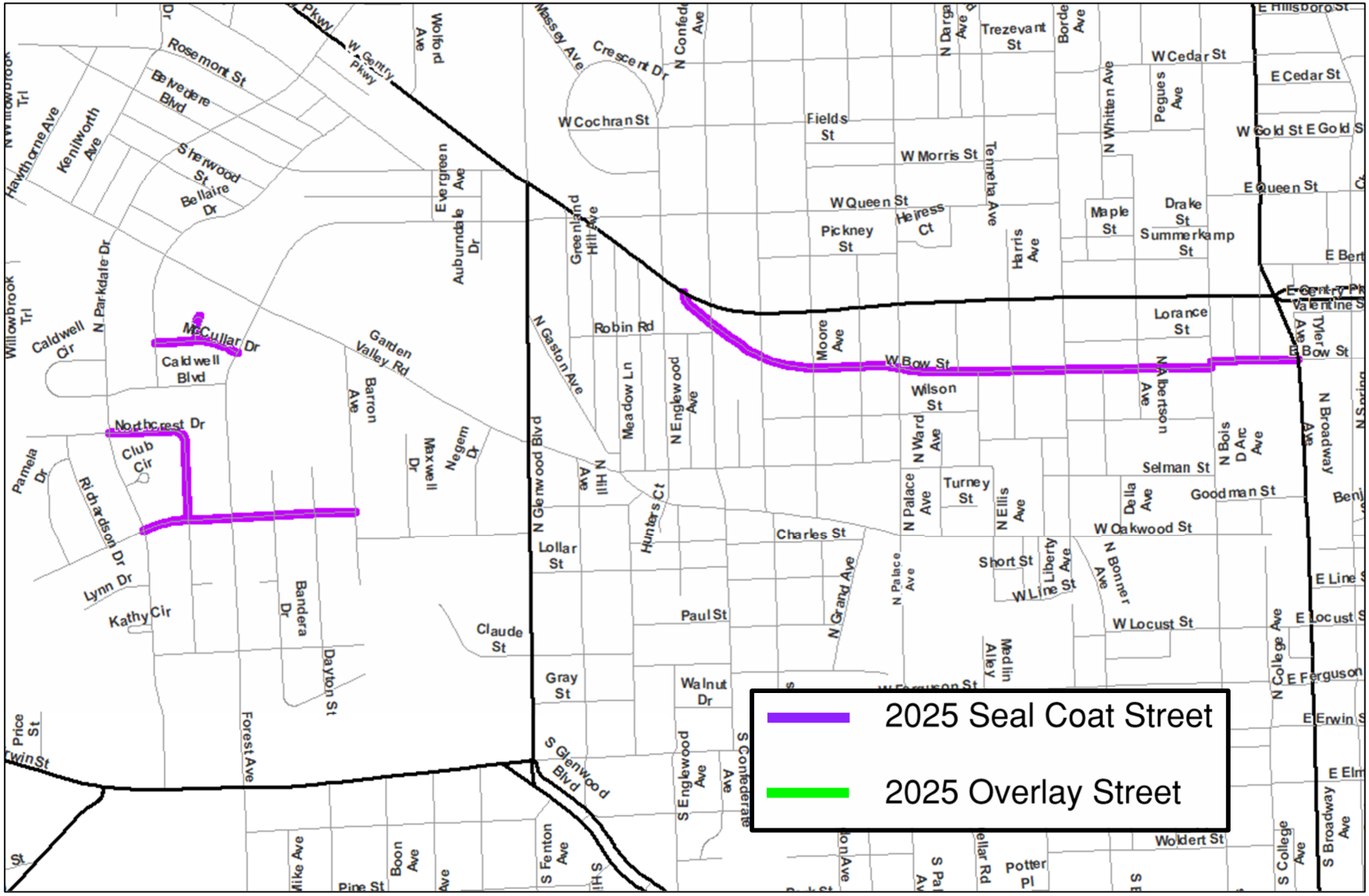
Northwest Tyler



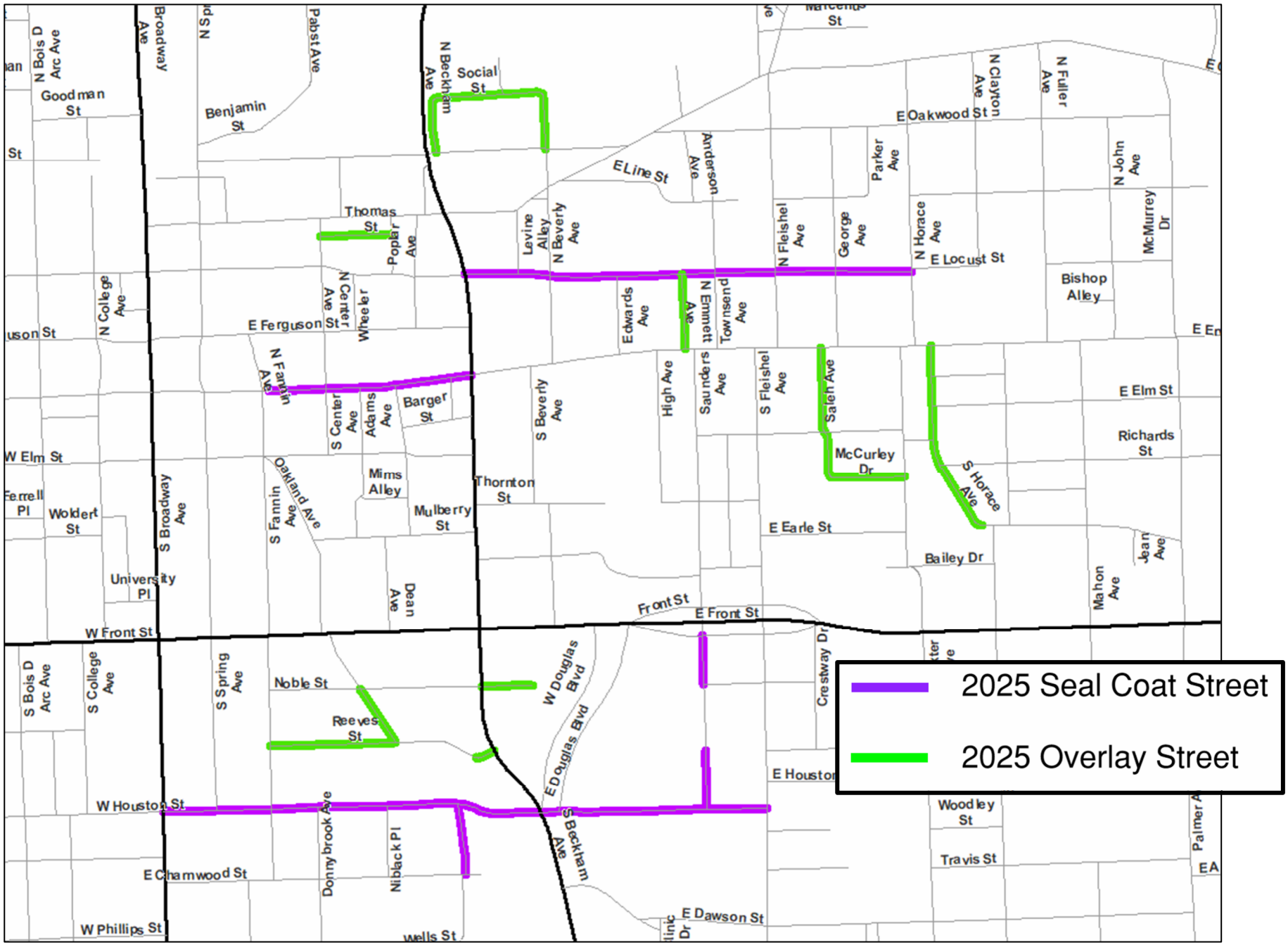
Northeast Tyler



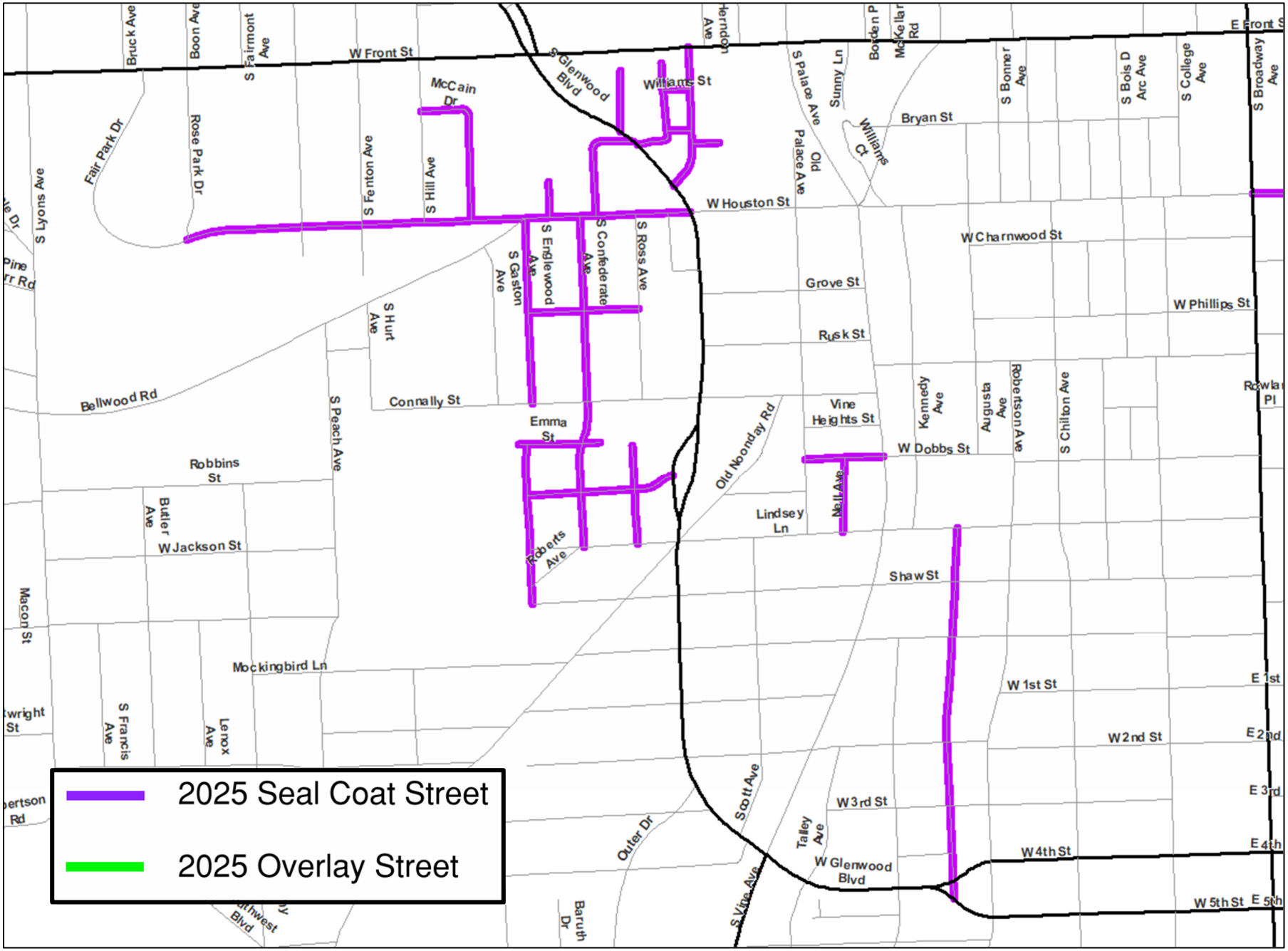
Central Northwest Tyler



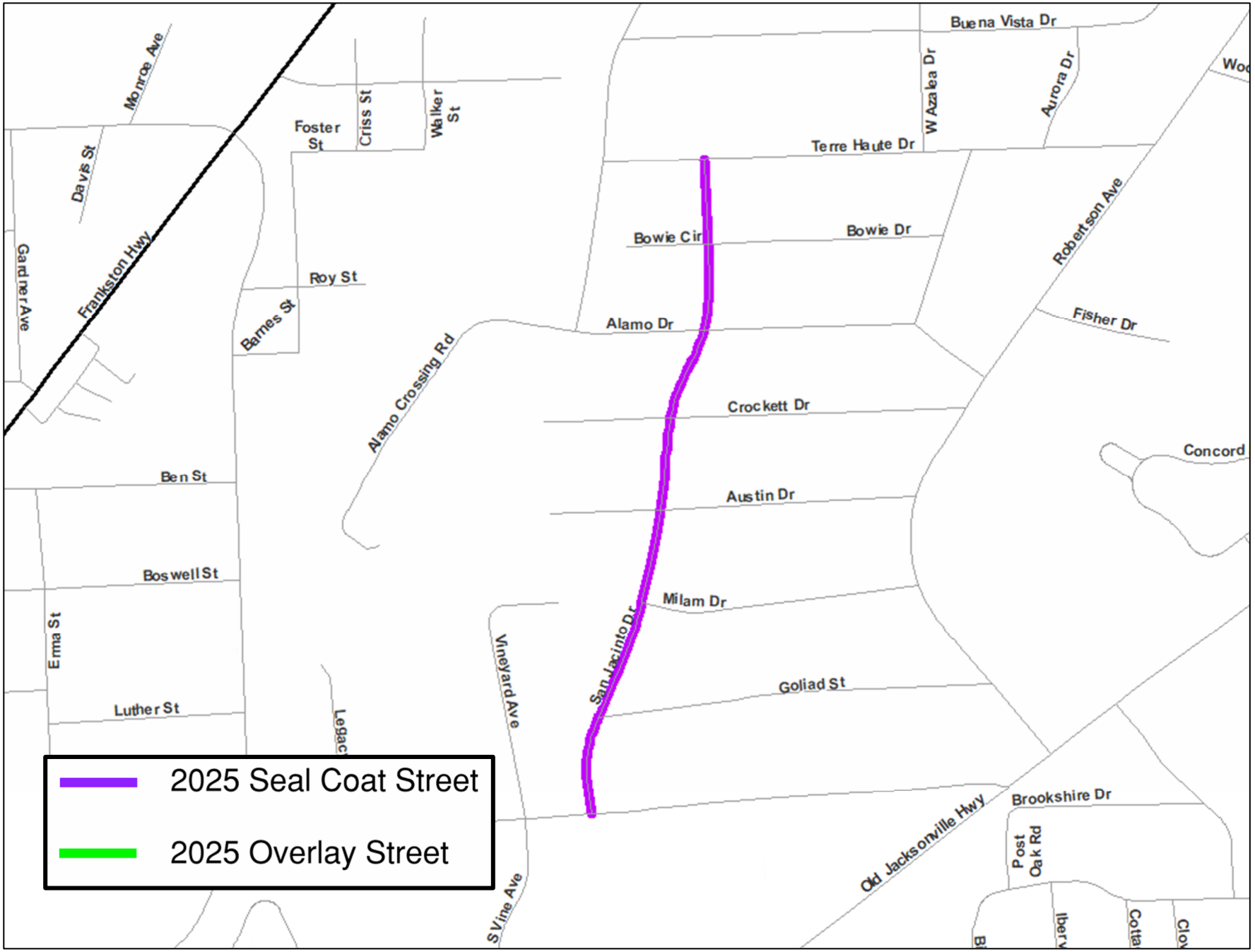
Central East Tyler



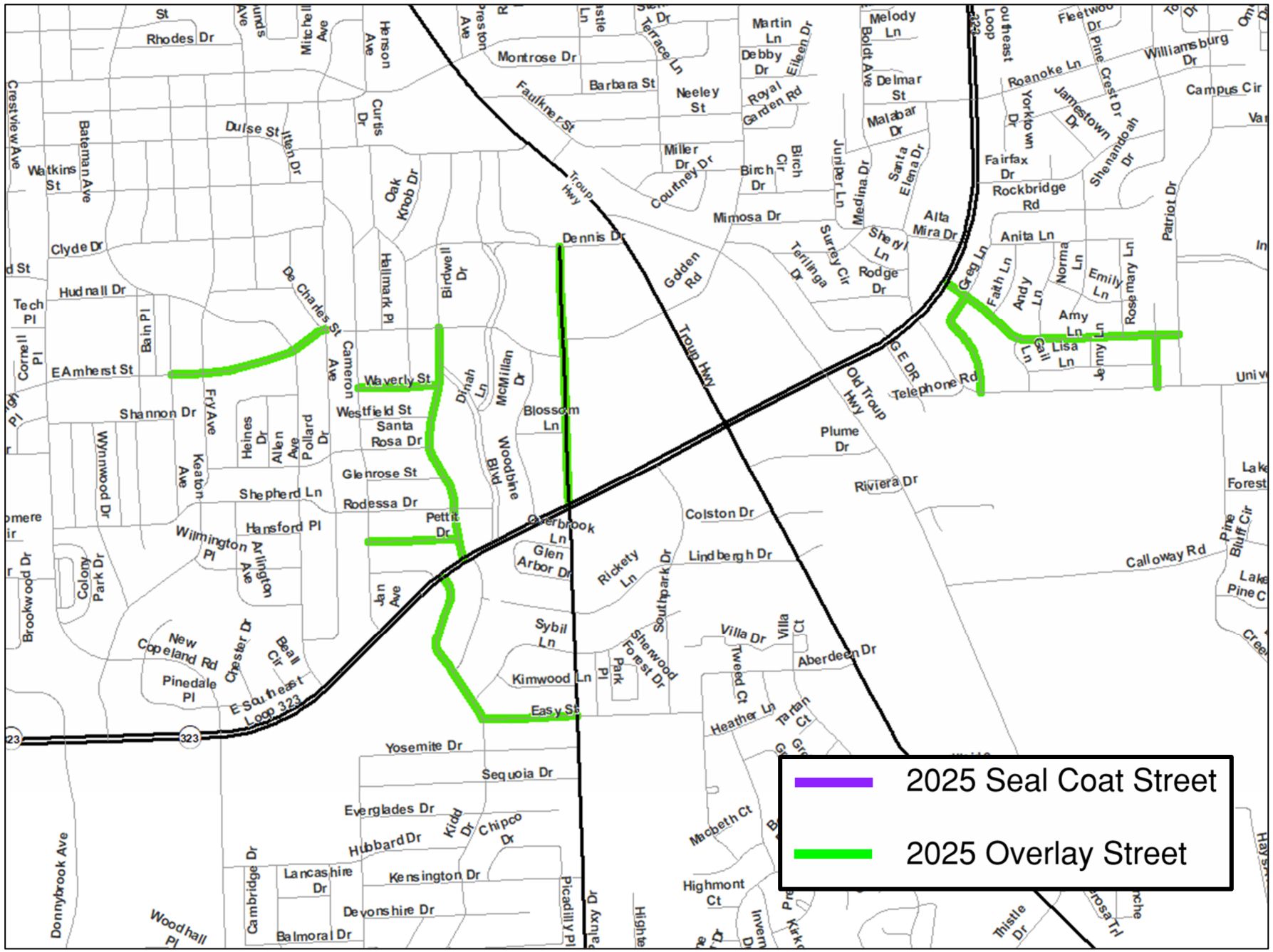
Central West Tyler



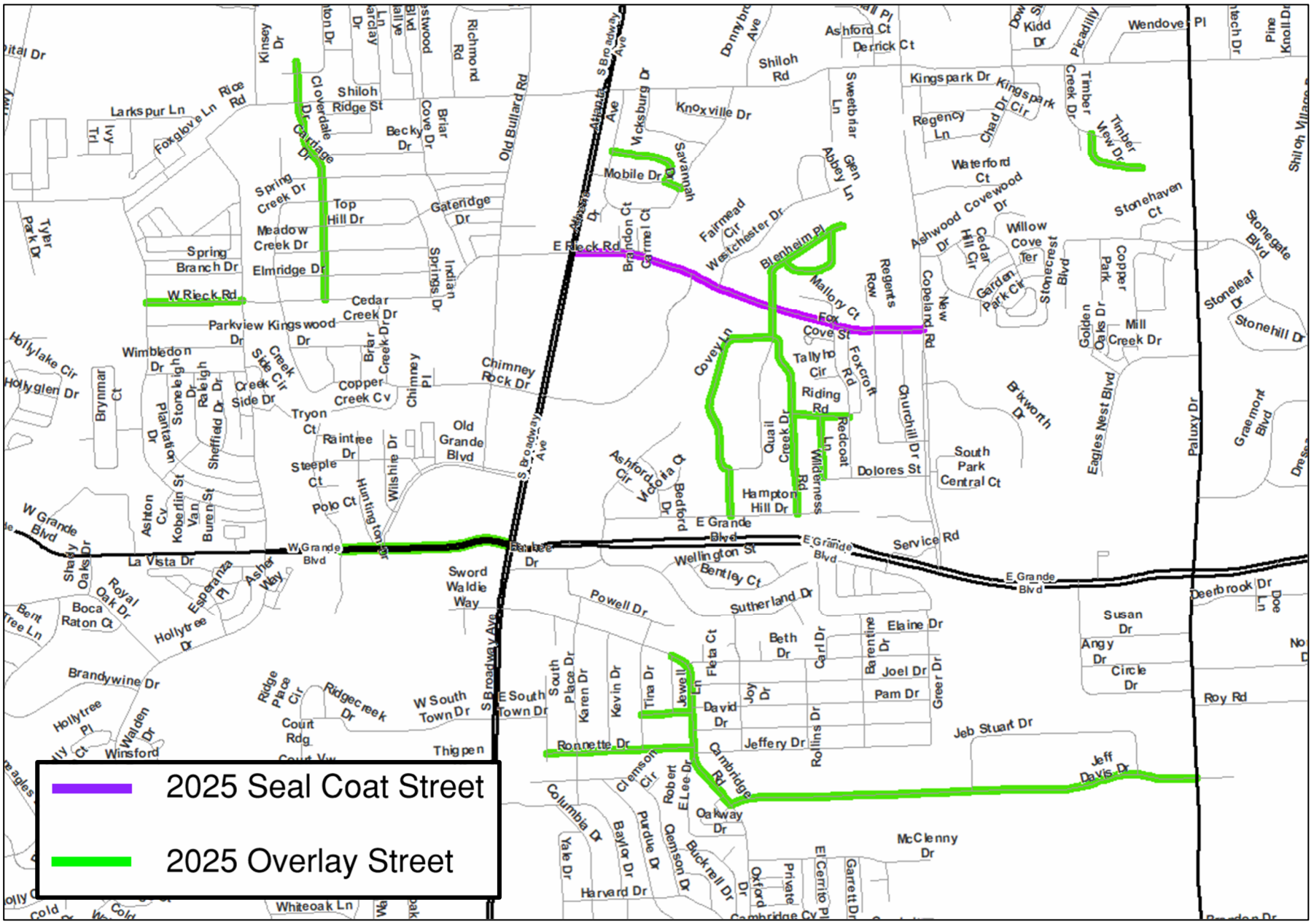
Southwest Tyler (Inside Loop)



Southeast Tyler



South Tyler (Outside Loop)



CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-12

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to approve a Reconciliation change order in the amount of $143,660.20 and approve the release retainage in the amount of $86,966.51 to Fritcher Construction Services for the completion of the Stagecoach Drive Drainage Improvements Project.

Item Reference: **City Council Agenda M-5 January 11, 2023**

On January 11, 2023, the City Council authorized the award of the Stagecoach Drive Drainage Improvements Project to Fritcher Construction Services in the amount of $1,882,990.50. The construction has been successfully completed and the total cost of the project is $1,739,330.30 which is $143,660.20 lower than the original contract amount. This decreased amount is due in part to pavement design changes to increase road base thickness and reduce the asphalt pavement thickness while also including full roadway width construction. This project also included a contingency budget of $165,000 with minimal field orders needed.

Approval for reconciliation and release of retainage was approved by the Half Cent Sales Tax Board on November 12, 2024.

FUNDING: Half Cent Sales Tax Fund

RECOMMENDATION:

It is recommended that the City Council approve a Reconciliation change order in the amount of $143,660.20 and approve the release retainage in the amount of $86,966.51 to Fritcher Construction Services for the completion of the Stagecoach Drive Drainage Improvements Project.

Attachments:
Stagecoach Location map.jpg
Fritcher - Stagecoach Drive Pay App #14 (Retainage)
RCO

Drafted/Recommended By:
Department Leader Darin Jennings, P.E., City Engineer

Edited/Submitted By:
City Manager


Stagecoach Drive drainage project
12/29/2022 3:46:33 PM
AdditionalPoints
Additional Accounts
Tax Parcels
Web AppBuilder for ArcGIS

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

TO OWNER/CONTRACTOR:
City of Tyler
511 West Locust Street
Tyler, TX 75702

PROJECT:
Stagecoach Drive
Drainage Improvements
Tyler, TX

APPLICATION NO: 14

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐
☐

PERIOD TO: Retainage

FROM SUBCONTRACTOR:
Fritcher Construction Services
14394 FM 2868
Flint, TX 75762

VIA ARCHITECT:
Langan Engineering
1101 E SE Loop 323
Tyler, TX 75701

PROJECT NOS: 23-014

CONTRACT FOR:

CONTRACT DATE 1/14/2023

SUBCONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM		$ 1,882,990.50
2. Net change by Change Orders		$ (37,110.20)
3. CONTRACT SUM TO DATE (Line 1 ± 2)		$ 1,845,880.30
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)		$ 1,739,330.30
5. RETAINAGE:		
a. 0 % of Completed Work (Column D + E on G703)	$ 0.00	
b. 0 % of Stored Material (Column F on G703)	$ 0.00	
Total Retainage (Lines 5a + 5b or Total in Column I of G703)		$ 0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)		$ 1,739,330.30
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)		$ 1,652,363.79
8. CURRENT PAYMENT DUE		$ 86,966.51 ✓
9. BALANCE TO FINISH, INCLUDING RETAI (Line 3 less Line 6)		$ 106,550.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	$89,239.30	($126,349.50)
Total approved this Month	0.00	0.00
TOTALS	89,239.30	(126,349.50)
NET CHANGES by Change Order	($37,110.20)	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Fritcher Construction Services

By: [signature] Date: 10/2/2024

State of Texas County of: Smith
Subscribed and sworn to before me this 10-2-2024
Notary Public: [signature]
My Commission expires: 10-12-2025

Project

This invoice is for payment of the contractor's work and/or material and is for direct payment by the owner.

Carter Delleney — 10-2-24
Langan Eng & Env Svcs., Inc. — **Date**

X **No Exceptions** ____ **Revise and Resubmit** ____

____ **Exceptions Noted** ____ **Rejected**

AIA DOCUMENT G702 · APPLICATION AND CERTIFICATION FOR PAYMENT · 1992 EDITION · AIA · ©1992 THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., N.W., WASHINGTON, DC 20006-5292
Users may obtain validation of this document by requesting a completed AIA Document D401 - Certification of Document's Authenticity from the Licensee.

FELISHA HARRIS
Notary Public, State of Texas
Comm. Expires 10-12-2025
Notary ID 125262507

Drainage Improvements

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing
Contractor's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 14
APPLICATION DATE: 10/2/2024
PERIOD TO: Retainage
ARCHITECT'S PROJECT NO: 23-014

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
	CONTRACT FOR:								
	Fritcher Construction Services								
				14					
1	Bonds	$54,000.00	$54,000.00	$0.00	$0.00	$54,000.00	100.00%	$0.00	$0.00
2	Construction Staking	4,500.00	4,500.00	0.00	0.00	4,500.00	100.00%	0.00	0.00
3	Preparing Right of Way	17,500.00	17,500.00	0.00	0.00	17,500.00	100.00%	0.00	0.00
4	Preparing Right of Way (Tree) (0"-12")	750.00	750.00	0.00	0.00	750.00	100.00%	0.00	0.00
5	Removing Concrete Curb & Gutter	4,432.00	4,432.00	0.00	0.00	4,432.00	100.00%	0.00	0.00
6	Removing Concrete Sidewalks	1,125.00	1,125.00	0.00	0.00	1,125.00	100.00%	0.00	0.00
7	Removing Concrete Driveways	4,104.00	4,104.00	0.00	0.00	4,104.00	100.00%	0.00	0.00
8	Remove Stab Base & Asphalt Pavement	32,550.00	32,550.00	0.00	0.00	32,550.00	100.00%	0.00	0.00
9	Embankment	6,426.00	6,426.00	0.00	0.00	6,426.00	100.00%	0.00	0.00
10	Block Sodding	11,520.00	3,352.00	0.00	0.00	3,352.00	29.10%	8,168.00	0.00
11	Straw Or Hay Mulch	2,080.00	0.00	0.00	0.00	0.00	0.00%	2,080.00	0.00
12	Vegetative Watering	4,500.00	4,500.00	0.00	0.00	4,500.00	100.00%	0.00	0.00
13	Hot-Mix Asphalt Pavement	126,349.50	126,349.50	0.00	0.00	126,349.50	100.00%	0.00	0.00
14	Hot-Mix Asphalt Pavement Type D	112,612.50	112,612.50	0.00	0.00	112,612.50	100.00%	0.00	0.00
15	Plane Asph Conc Pav (3in)	7,856.50	7,856.50	0.00	0.00	7,856.50	100.00%	0.00	0.00
16	Trench Excavation Protection	5,135.00	5,135.00	0.00	0.00	5,135.00	100.00%	0.00	0.00
17	Riprap (6")	5,400.00	5,400.00	0.00	0.00	5,400.00	100.00%	0.00	0.00
18	Riprap (12")	69,020.00	69,020.00	0.00	0.00	69,020.00	100.00%	0.00	0.00
19	Concrete Box Culv (5'x2')	650,719.00	650,719.00	0.00	0.00	650,719.00	100.00%	0.00	0.00
20	RC Pipe (CL III) (54")	142,785.00	142,785.00	0.00	0.00	142,785.00	100.00%	0.00	0.00
21	Standard 10' Curb Inlet	9,699.00	9,699.00	0.00	0.00	9,699.00	100.00%	0.00	0.00
22	JCT Box 6'X13'	13,179.00	13,179.00	0.00	0.00	13,179.00	100.00%	0.00	0.00
23	JCT Box 6'X10'	13,115.00	13,115.00	0.00	0.00	13,115.00	100.00%	0.00	0.00
24	JCT Box 6'X6'	11,350.00	11,350.00	0.00	0.00	11,350.00	100.00%	0.00	0.00
25	Wingwall (FW-S)(HW=3FT)	20,404.00	20,404.00	0.00	0.00	20,404.00	100.00%	0.00	0.00
26	Pipe (PVC) (SCH 40) (8 IN)	960.00	960.00	0.00	0.00	960.00	100.00%	0.00	0.00
27	Remove STR (Box Culvert)	5,200.00	5,200.00	0.00	0.00	5,200.00	100.00%	0.00	0.00
28	Remove Str (Inlet)	2,200.00	2,200.00	0.00	0.00	2,200.00	100.00%	0.00	0.00
29	Barricades Signs & Traffic Handling	36,000.00	36,000.00	0.00	0.00	36,000.00	100.00%	0.00	0.00
30	Temp Sedmt Cont Fence (Install/Maintain)	1,384.00	0.00	0.00	0.00	0.00	0.00%	1,384.00	0.00
31	Temp Sedmt Cont Fence (Remove)	519.00	0.00	0.00	0.00	0.00	0.00%	519.00	0.00
32	Rock Filter Dams (Install/Maintain)	3,150.00	0.00	0.00	0.00	0.00	0.00%	3,150.00	0.00
33	Rock Filter Dams (Remove)	700.00	0.00	0.00	0.00	0.00	0.00%	700.00	0.00
34	Biodeg Erosion Control Logs (Install)	1,950.00	0.00	0.00	0.00	0.00	0.00%	1,950.00	0.00
35	Biodeg Erosion Control Logs (Remove)	234.00	0.00	0.00	0.00	0.00	0.00%	234.00	0.00
36	Concrete Curb & Gutter	25,830.00	40,860.00	0.00	0.00	40,860.00	158.19%	(15,030.00)	0.00
37	Integral Curb	1,188.00	1,188.00	0.00	0.00	1,188.00	100.00%	0.00	0.00
38	Concrete Sidewalks (4")	16,900.00	16,900.00	0.00	0.00	16,900.00	100.00%	0.00	0.00
39	Driveway (Concrete Major)	29,252.00	29,252.00	0.00	0.00	29,252.00	100.00%	0.00	0.00
40	Driveway (Concrete Minor)	37,582.00	45,448.00	0.00	0.00	45,448.00	120.93%	(7,866.00)	0.00
41	Modified Curb Inlet	26,874.00	26,874.00	0.00	0.00	26,874.00	100.00%	0.00	0.00
42	Modified Y-Inlet	9,450.00	9,450.00	0.00	0.00	9,450.00	100.00%	0.00	0.00
43	54" RCP Concrete Collar	1,250.00	1,250.00	0.00	0.00	1,250.00	100.00%	0.00	0.00
44	Remove 6" Water Line And Appurtenances	560.00	560.00	0.00	0.00	560.00	100.00%	0.00	0.00
45	Remove 6" Sanitary Sewer	10,548.00	10,548.00	0.00	0.00	10,548.00	100.00%	0.00	0.00
46	Install 36" Water Line Cap	630.00	630.00	0.00	0.00	630.00	100.00%	0.00	0.00
47	Install 36" RCP Storm Sewer Plug	1,750.00	1,750.00	0.00	0.00	1,750.00	100.00%	0.00	0.00
48	Concrete Integral Sawtooth Curb	2,444.00	2,444.00	0.00	0.00	2,444.00	100.00%	0.00	0.00
49	6" Dip Sanitary Sewer Line	8,217.00	8,217.00	0.00	0.00	8,217.00	100.00%	0.00	0.00
50	5'X2' RCB Repair (Conflict With San SWR)	7,750.00	7,750.00	0.00	0.00	7,750.00	100.00%	0.00	0.00
51	6" Water Line Gate Valves	11,256.00	13,132.00	0.00	0.00	13,132.00	116.67%	0.00	0.00
52	6" Water Line (Open Cut)	27,757.00	27,757.00	0.00	0.00	27,757.00	100.00%	0.00	0.00
53	6" Water Line Bore	29,340.00	29,340.00	0.00	0.00	29,340.00	100.00%	0.00	0.00
54	6" 45 Deg Bend	9,684.00	9,684.00	0.00	0.00	9,684.00	100.00%	0.00	0.00
55	6"X6" Tee	1,822.00	1,822.00	0.00	0.00	1,822.00	100.00%	0.00	0.00
56	6" Tapping Sleeve And Valve	3,891.00	3,891.00	0.00	0.00	3,891.00	100.00%	0.00	0.00
57	Relocate Existing Water Meter	6,000.00	6,000.00	0.00	0.00	6,000.00	100.00%	0.00	0.00
58	Reconnect Existing Water Service Line	16,944.00	16,944.00	0.00	0.00	16,944.00	100.00%	0.00	0.00
59	Point Repair - Opencut - 6"	29,100.00	29,100.00	0.00	0.00	29,100.00	100.00%	0.00	0.00
60	Triangular Filter Dike (Inlet Protection)	525.00	0.00	0.00	0.00	0.00	0.00%	525.00	0.00
61	Triangular Filter Dike (Inlet Protection) (Remc	350.00	0.00	0.00	0.00	0.00	0.00%	350.00	0.00
62	Relocate/Replace Existing Mailbox	7,000.00	1,750.00	0.00	0.00	1,750.00	25.00%	5,250.00	0.00
63	Inspection, Cleaning, Post CCTV	3,688.00	3,688.00	0.00	0.00	3,688.00	100.00%	0.00	0.00
64	Landscape & Irrigation Repair/ Replace	7,000.00	7,000.00	0.00	0.00	7,000.00	100.00%	0.00	0.00
65	Contingency	165,000.00	57,988.00	0.00	0.00	57,988.00	35.14%	107,012.00	0.00
66	CP#3 - Export	4,962.00	4,962.00	0.00	0.00	4,962.00	100.00%	0.00	0.00
67	CP#3 - Flexbase	81,687.04	81,687.04	0.00	0.00	81,687.04	100.00%	0.00	0.00
68	CP#3 - Prime Coat	2,590.26	2,590.26	0.00	0.00	2,590.26	100.00%	0.00	0.00
69	CP#3 - HMAC Credit	(126,349.50)	(126,349.50)	0.00	0.00	(126,349.50)	100.00%	0.00	0.00
	GRAND TOTALS	$1,845,880.30	$1,739,330.30	$0.00	$0.00	$1,739,330.30	94.23%	$108,426.00	$0.00

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

FROM: Fritcher Construction Services
14394 FM 2868
Flint, TX 75762

CHANGE ORDER NO.: RCO
DATE: 10/02/24
PROJECT NO.: 23-014
LOCATION: CITY OF TYLER
JOB DESCRIPTION: STAGECOACH DRIVE DRAINAGE IMPROVEMENTS

TO: CITY OF TYLER

FOR: INSTALL 6" OF FLEX BASE INSTEAD OF 6" OF HMAC; QUANTITY UNDERRUNS TOTAL CONTRACT PRICE: $1,882,990.50

You are hereby requested to comply with the following changes from the contract plans and specifications:

ITEM	DESCRIPTION OF REVISION	QTY	U/M	UNIT COST	DECREASE IN COST	INCREASE IN COST
	EXPORT	1654	SY	$ 3.00		$4,962.00
	FLEX BASE	3754	CY	$ 21.76		$81,687.04
	PRIME COAT	3754	CY	$ 0.69		$2,590.26
13	HMAC TYPE B (6")	786	CY	$ 160.75	$126,349.50	
	QUANTITY UNDERRUNS				$106,550.00	
	Change in price due to this Change Order:					
	Total (Decreases) Increases:				$232,899.50	$89,239.30
	Net ___ Increase X Decrease:					($143,660.20)

The total contract price changed. $1,739,330.30

The time provided for construction completion in the contract is unchanged.

This document shall become an amendment to the contract and all provisions of the contract documents will apply hereto.

RECOMMENDED BY (Engineer): _____ 10-24-24
Date

ACCEPTED BY (Contractor): _____
Date

APPROVED BY (Owner): _____
Date

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-13

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute and add Work Order #02 to the Master Services Agreement with The C.T. Brannon Corporation for the design and construction phase services, as they relate to the 2025 Structure Flooding project for $210,100.00.

Item Reference:

The scope of this Capital Improvement Project (CIP) is to find the best solutions to prevent future flooding of residential homes and a commercial business. The problem areas include:

1. 614 Golden Road (Black Fork Creek and Golden Road Drainage Improvements) (one (1) home flooded). One (1) of the box culverts under Golden Road was completely silted in, reducing the capacity by 25%. The creek upstream and downstream will need to be cleaned up to prevent this from happening again.

2. Princedale (one (1) home; Comprehensive Stormwater Master Plan, Capital Improvement Project). The stormwater outfall for this area is too small; the inlet box locations may also not work to collect flows fast enough. Stormwater overtops the curb and flows into 7338 Princedale.

3. Kensington Drive (one (1) home flooded). The stormwater system is not in an easement and is located in back yards. We plan to evaluate the existing system and determine how best to get the water that overtops the curb into the system to prevent flooding of 2505 Kensington.

4. Persimmon Drive (two (2) homes flooded). Two (2) 36-inch reinforced concrete pipes (RCP) are directed at a catch basin and inlet with a 30-inch RCP exiting, but at a much steeper slope. TxDOT plans to move these culverts when Rhones Quarter Road is widened in 2030, estimated, so an expensive project is not fiscally responsible. However, allowing 5811 and 5815 Persimmon Drive to flood from the back door to the front door is not acceptable either.

5. Haverhill Drive (one (1) home flooded multiple times). Drainage improvements are needed above and below the home to prevent flooding of 2112 Haverhill Drive.

6. West 9th Street (one (1) business flooded multiple times). Drainage improvements are needed above and below the business.

7. Downing Street and Kidd Drive Preliminary Engineering Study/First Stage Design (three (3) homes flooded multiple times). This is a long-time problem. The solution proposed stuck with the existing routing which would require demolition of structures built over a stormwater main because there is no easement. A solution to add an inlet and secondary stormwater main will be confirmed prior to moving forward.

8. Glenhaven Circle Preliminary Engineering Study/First Stage Design (one (1) home flooded multiple times). This is a long-time problem. A solution that adds capacity and improves a smaller section of the channel will be proven viable prior to moving forward.

Many of these locations are long-time problems but have not been addressed due to the scope of the project, a lack of easements, accessibility issues, and other factors making the proposed project large and expensive. Working with The C.T. Brannon Corporation, the City of Tyler believes that solutions can be derived that protect property more economically.

The first six (6) locations will result in two (2) projects that include bid phase and construction phase work. The last two (2) locations include a Preliminary Engineering Report and "first stage design" and are intended to confirm the proposed solution. Bidding and construction phase services will come at a future date.

Funding source: Stormwater Capital Outlay Budget.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to execute and add Work Order #02 to the Master Services Agreement with The C.T. Brannon Corporation for the design and construction phase services, as they relate to the 2025 Structure Flooding project for $210,100.00.

Attachments:
Tyler - 2025 Structure Flooding
Kensington
Persimmon 01
Glenhaven 01
Glenhaven 02
Haverhill 01
Haverhill 02

Drafted/Recommended By:
Department Leader Paul Neuhaus, P.E., M.S. - Stormwater Management and Environmental Compliance Engineer

Edited/Submitted By:
City Manager

Exhibit A

Drainage Improvements
Multiple Locations

Scope of Services

Phase 1 – Black Fork Creek at Golden Road Drainage Improvements

Project Description:
Black Fork Creek at Golden Road Drainage Improvements
Prepare construction plans and specifications for erosion control and drainage improvements including, surveying, bid documents, bidding, contract administration & RPR services.

Basic Services per Section 1

DESIGN PHASE

1. Coordinate topographic and boundary surveying
2. Coordinate with Oncor, CenterPoint, Suddenlink & AT&T regarding relocations of facilities if needed.
3. Perform site visit to verify topographic survey
4. Prepare construction plans using AutoCAD Civil 3D
5. Review existing HEC-RAS models of creek
6. Prepare plan/profile drawings of the proposed improvements
7. Provide 1 copy of construction plans for review at 75% & 95% completion.
8. Plan and profile sheets will be drafted at 1"=20' scale with 1"=5' vertical scale on 22"x34" paper. This will allow ½ sized sheets on 11x17 to be at 1"=40' scale.
9. Prepare preliminary Engineer's Opinion of Probable Construction Cost
10. Meetings with City on various items and coordination
11. Prepare bid documents, bid proposal, technical specifications and special specifications
12. Provide pdf copies of plans and specifications to City & Bidders

Payment for the **Design Phase** for the project will be a lump sum payment not to exceed: **Seventeen Thousand Dollars ($17,000.00)**

ADDITIONAL SERVICES per Section 2

The following subconsultants will be used for this project to perform the following tasks. Payment for these services shall be as shown in Section 5.1 of the contract. **An additional 10% will be added to all subconsultants bills.**

Boundary and Topographic Surveying: K.L. Kilgore and Associates, Inc
Tyler, TX

1. Prepare topographic surveying of project - $4,200 (lump sum)

Phase 2 – Downing Street and Kidd Drive Drainage Improvements

Project Description:
Downing Street and Kidd Drive Drainage Improvements
Using the topographic surveying provided by Summit Surveying, we will evaluate alternative drainage improvements including alternative routing of storm drain improvements for the project.

Basic Services per Section 1

P.E.R. Phase

1. Determine drainage area limits, calculate runoff.

2. Provide alternate drainage improvements to collect the runoff.
3. Provide alternate storm drain routing through the neighborhood to Shiloh Rd.
4. Prepare Plan/profile drawings of the routing and calculate hydraulic grade lines for the storm drain and provide copies of the plan/profiles drawings to the City (pdf format).
5. Identify drainage easements
6. Prepare a Preliminary Engineer's Opinion of Cost for the project.

Payment for the **Design Phase** for the project will be a lump sum payment not to exceed: **Ten Thousand Five Hundred Dollars ($10,500.00)**

ADDITIONAL SERVICES per Section 2

No sub-consultants will be used at this point on this project. If easements are needed, field notes can be provided by our surveyor on a per tract basis.

Phase 3 – Princedale Drainage Study and Improvements

Project Description:
Princedale Drainage Study and Improvements
Prepare construction plans and specifications for drainage improvements including, surveying, bid documents, bidding, contract administration & RPR services.

Basic Services per Section 1

DESIGN PHASE

1. Coordinate topographic and boundary surveying
2. Coordinate with Oncor, CenterPoint, Suddenlink & AT&T regarding relocations of facilities if needed.
3. Perform site visit to verify topographic survey
4. Prepare construction plans using AutoCAD Civil 3D
5. Determine drainage areas and runoff calculations
6. Review construction plans of subdivision
7. Size storm drain pipes and curb inlets
8. Prepare plan/profile drawings of the proposed improvements
9. Provide 1 copy of construction plans for review at 75% & 95% completion.
10. Plan and profile sheets will be drafted at 1"=20' scale with 1"=5' vertical scale on 22"x34" paper. This will allow ½ sized sheets on 11x17 to be at 1"=40' scale.
11. Prepare preliminary Engineer's Opinion of Probable Construction Cost
12. Attend meetings with City on various items and coordination
13. Prepare bid documents, bid proposal, technical specifications and special specifications
14. Provide pdf copies of plans and specifications to City & Bidders

Payment for the **Design Phase** for the project will be a lump sum payment not to exceed: **Twelve Thousand Five Hundred Dollars ($12,500.00)**

ADDITIONAL SERVICES per Section 2

The following subconsultants will be used for this project to perform the following tasks. Payment for these services shall be as shown in Section 5.1 of the contract. **An additional 10% will be added to all subconsultants bills.**

Boundary and Topographic Surveying: K.L. Kilgore and Associates, Inc
Tyler, TX

1. Prepare topographic surveying of project - $2,400 (lump sum)

Phase 4 – Kensington Drainage Study and Improvements

Project Description:
Kensington Drainage Study and Improvements
Prepare construction plans and specifications for drainage improvements including, surveying, bid documents, bidding, contract administration & RPR services.

Basic Services per Section 1

DESIGN PHASE

1. Coordinate topographic and boundary surveying
2. Coordinate with Oncor, CenterPoint, Suddenlink & AT&T regarding relocations of facilities if needed.
3. Perform site visit to verify topographic survey
4. Prepare construction plans using AutoCAD Civil 3D
5. Determine drainage areas and runoff calculations
6. Size storm drain pipes and curb inlets
7. Prepare plan/profile drawings of the proposed improvements
8. Determine the need for drainage easements from property owners.
9. Provide 1 copy of construction plans for review at 75% & 95% completion.
10. Plan and profile sheets will be drafted at 1"=20' scale with 1"=5' vertical scale on 22"x34" paper. This will allow ½ sized sheets on 11x17 to be at 1"=40' scale.
11. Prepare preliminary Engineer's Opinion of Probable Construction Cost
12. Attend meetings with City on various items and coordination
13. Prepare bid documents, bid proposal, technical specifications and special specifications
14. Provide pdf copies of plans and specifications to City & Bidders

Payment for the **Design Phase** for the project will be a lump sum payment not to exceed: **Seventeen Thousand Five Hundred Dollars ($17,500.00)**

ADDITIONAL SERVICES per Section 2

The following subconsultants will be used for this project to perform the following tasks. Payment for these services shall be as shown in Section 5.1 of the contract. **An additional 10% will be added to all subconsultants bills.**

Boundary and Topographic Surveying: K.L. Kilgore and Associates, Inc
Tyler, TX

1. Prepare topographic surveying of project - $4,200 (lump sum)

Phase 5 – Persimmon Drainage Study and Improvements

Project Description:
Persimmon Drainage Study and Improvements
Prepare construction plans and specifications for drainage improvements including, surveying, bid documents, bidding, contract administration & RPR services.

Basic Services per Section 1

DESIGN PHASE

1. Coordinate topographic and boundary surveying

2. Coordinate with Oncor, CenterPoint, Suddenlink & AT&T regarding relocations of facilities if needed.
3. Perform site visit to verify topographic survey
4. Prepare construction plans using AutoCAD Civil 3D
5. Determine drainage areas and runoff calculations
6. Verify size of existing detention pond for The Havens neighborhood
7. Size storm drain pipes and curb inlets
8. Calculate hydraulic grade line for the storm drain system.
9. Prepare plan/profile drawings of the proposed improvements
10. Provide 1 copy of construction plans for review at 75% & 95% completion.
11. Plan and profile sheets will be drafted at 1"=20' scale with 1"=5' vertical scale on 22"x34" paper. This will allow ½ sized sheets on 11x17 to be at 1"=40' scale.
12. Prepare preliminary Engineer's Opinion of Probable Construction Cost
13. Attend meetings with City on various items and coordination
14. Prepare bid documents, bid proposal, technical specifications and special specifications
15. Provide pdf copies of plans and specifications to City & Bidders

Payment for the **Design Phase** for the project will be a lump sum payment not to exceed: **Twenty Thousand Five Hundred Dollars ($20,500.00)**

ADDITIONAL SERVICES per Section 2

The following subconsultants will be used for this project to perform the following tasks. Payment for these services shall be as shown in Section 5.1 of the contract. **An additional 10% will be added to all subconsultants bills.**

Boundary and Topographic Surveying: K.L. Kilgore and Associates, Inc
Tyler, TX

1. Prepare topographic surveying of project - $3,200 (lump sum)

Phase 6 – W. 9th Street Drainage Study and Improvements

Project Description:
W. 9th Street Drainage Study and Improvements
Prepare construction plans and specifications for erosion control and drainage improvements including, surveying, bid documents, bidding, contract administration & RPR services.

Basic Services per Section 1

DESIGN PHASE

1. Coordinate topographic and boundary surveying
2. Coordinate with Oncor, CenterPoint, Suddenlink & AT&T regarding relocations of facilities if needed.
3. Perform site visit to verify topographic survey
4. Prepare construction plans using AutoCAD Civil 3D
5. Determine drainage areas and runoff calculations
6. Size storm drain pipes and curb inlets
7. Prepare plan/profile drawings of the proposed improvements
8. Provide 1 copy of construction plans for review at 75% & 95% completion.
9. Plan and profile sheets will be drafted at 1"=20' scale with 1"=5' vertical scale on 22"x34" paper. This will allow ½ sized sheets on 11x17 to be at 1"=40' scale.
10. Prepare preliminary Engineer's Opinion of Probable Construction Cost
11. Attend meetings with City on various items and coordination
12. Prepare bid documents, bid proposal, technical specifications and special specifications
13. Provide pdf copies of plans and specifications to City & Bidders

Payment for the **Design Phase** for the project will be a lump sum payment not to exceed**: Five Thousand Dollars ($5,000.00)**

ADDITIONAL SERVICES per Section 2

The following subconsultants will be used for this project to perform the following tasks. Payment for these services shall be as shown in Section 5.1 of the contract. **An additional 10% will be added to all subconsultants bills.**

Boundary and Topographic Surveying: K.L. Kilgore and Associates, Inc
Tyler, TX

1. Prepare topographic surveying of project - $2,400 (lump sum)

Phase 7 – Haverhill Drive Drainage Study and Improvements

Project Description:
Haverhill Drive Drainage Study and Improvements
Prepare construction plans and specifications for erosion control and drainage improvements including, surveying, bid documents, bidding, contract administration & RPR services.

Basic Services per Section 1

DESIGN PHASE

1. Coordinate topographic and boundary surveying
2. Coordinate with Oncor, CenterPoint, Suddenlink & AT&T regarding relocations of facilities if needed.
3. Perform site visit to verify topographic survey
4. Prepare construction plans using AutoCAD Civil 3D
5. Determine drainage areas and runoff calculations
6. Size storm drain pipes and curb inlets
7. Prepare plan/profile drawings of the proposed improvements
8. Provide 1 copy of construction plans for review at 75% & 95% completion.
9. Plan and profile sheets will be drafted at 1”=20’ scale with 1”=5’ vertical scale on 22”x34” paper. This will allow ½ sized sheets on 11x17 to be at 1”=40’ scale.
10. Prepare preliminary Engineer’s Opinion of Probable Construction Cost
11. Attend meetings with City on various items and coordination
12. Prepare bid documents, bid proposal, technical specifications and special specifications
13. Provide pdf copies of plans and specifications to City & Bidders

Payment for the **Design Phase** for the project will be a lump sum payment not to exceed: **Fourteen Thousand Five Hundred Dollars ($14,500.00)**
ADDITIONAL SERVICES per Section 2

The following subconsultants will be used for this project to perform the following tasks. Payment for these services shall be as shown in Section 5.1 of the contract. **An additional 10% will be added to all subconsultants bills.**

Boundary and Topographic Surveying: K.L. Kilgore and Associates, Inc
Tyler, TX

1. Prepare topographic surveying of project - $4,200 (lump sum)

Phase 8 – WMC Trib C-2 at Glenhaven Cir. Drainage Improvements

Project Description:
West Mud Creek Trib C-2 at Glenhaven Circle Drainage Improvements
Prepare a Preliminary Engineering Report for an improved channel from S. Broadway Ave to the existing concrete channel north of Fair Lane that will carry the 100-year storm.

Basic Services per Section 1

P.E.R. Phase

1. Using the existing HecRas model of this tributary from the City's Master Drainage Study, we will add additional cross sections downstream of S. Broadway Ave. to the model.
2. Using the flows shown in the model and the topographic surveying of the area, we will design an improved concrete channel for the area.
3. Add the improved channel to the model to determine the calculated water surface after the improvements and confirm that the flows are contained in the new channel.
4. Prepare Plan/profile drawings of the routing for the improved channel and provide copies of the plan/profile drawings to the City for review (pdf format).
5. Identify drainage easements needed for the project.
6. Prepare a Preliminary Engineer's Opinion of Cost for the project.

Payment for the **Design Phase** for the project will be a lump sum payment not to exceed: **Twelve Thousand Five Hundred Dollars ($12,500.00)**

ADDITIONAL SERVICES per Section 2

The following subconsultants will be used for this project to perform the following tasks. Payment for these services shall be as shown in Section 5.1 of the contract. **An additional 10% will be added to all subconsultants bills.**

Boundary and Topographic Surveying: K.L. Kilgore and Associates, Inc
Tyler, TX

1. Prepare topographic surveying of project - $9,200 (lump sum)

Phases 1-7

BIDDING PHASE

1. Coordinate bid advertisement with Purchasing Dept.
2. Coordinate and attend pre-bid meeting
3. Prepare bid addenda as necessary
4. Attend the bid opening, tabulate bids, and make recommendation for award
5. Prepare contract documents using City of Tyler standard contract for Public Works.
6. Attend bid award at ½ Sales Tax meeting and City Council meeting.

Payment for the **Bidding Phase** will be a lump sum payment not to exceed: **Six Thousand Dollars ($6,000.00).**

CONTRACT ADMINISTRATION PHASE

1. Coordinate and attend pre-construction conference
2. Review monthly pay requests and make recommendation to City for payment
3. Attend meetings on site with Contractor and/or Utility Companies
4. Periodic site visits to check progress of construction
5. Review submittals & Answer RFI questions regarding construction plans & specifications

6. Coordinate construction staking
7. Prepare punch list at end of construction
8. Coordinate final walk through with City and make recommendation for final acceptance.

Payment for the **Contract Administration Phase** will be a lump sum payment not to exceed: **Fifteen Thousand Dollars ($15,000.00). ($5,000 for Phase 1 & $10,000 for Phases 3-7)**

ADDITIONAL SERVICES per Section 2
The following subconsultants will be used for this project to perform the following tasks. Payment for these services shall be as shown in Section 5.1 of the contract. **An additional 10% will be added to all subconsultants bills.**

Boundary and Topographic Surveying: K.L. Kilgore and Associates, Inc
Tyler, TX

1. Overall Surveying Project Management - $1,200
2. Boundary survey and easement preparation - $2,000 per parcel if required. At this time, a budget for **Ten Thousand Dollars ($10,000)** has been added.

Resident Project Representative (RPR)
We will provide RPR services per Section 3 of the contract at an hourly rate based on the attached rate sheet. At this time, estimate these services to total **Twenty Five Thousand Dollars ($25,000)**. This work will be provided on an hourly basis with expenses based on the attached rate sheet. This amount will not be exceeded without approval by Owner.

Summary (Including 10% override on subconsultants)

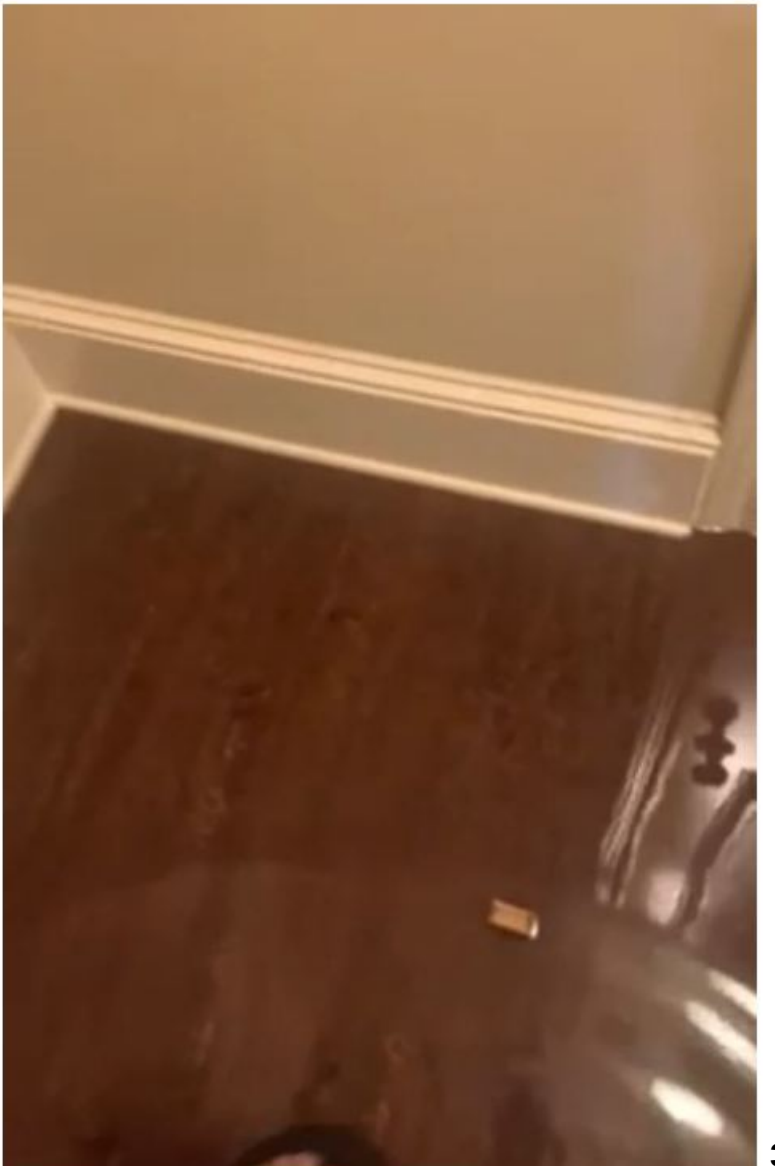
Phase 1 – Black Fork Creek at Golden Road Drainage Improvements		
Design Phase	$ 17,000	(lump sum not to exceed)
Topographic Surveying	$ 4,620	(lump sum not to exceed)
Phase 2 – Downing Street and Kidd Drive Drainage Improvements		
P.E.R. Phase	$ 10,500	(lump sum not to exceed)
Phase 3 – Princedale Drainage Study and Improvements		
Design Phase	$ 12,500	(lump sum not to exceed)
Topographic Surveying	$ 2,640	(lump sum not to exceed)
Phase 4 – Kensington Drainage Study and Improvements		
Design Phase	$ 17,500	(lump sum not to exceed)
Topographic Surveying	$ 4,620	(lump sum not to exceed)
Phase 5 – Persimmon Drainage Study and Improvements		
Design Phase	$ 20,500	(lump sum not to exceed)
Topographic Surveying	$ 3,520	(lump sum not to exceed)
Phase 6 – W. 9th Street Drainage Study and Improvements		
Design Phase	$ 5,000	(lump sum not to exceed)
Topographic Surveying	$ 2,640	(lump sum not to exceed)
Phase 7 – Haverhill Drive Drainage Study and Improvements		
Design Phase	$ 14,500	(lump sum not to exceed)
Topographic Surveying	$ 4,620	(lump sum not to exceed)
Phase 8 – WMC Trib C-2 at Glenhaven Circle Drainage Study		
P.E.R.Phase	$12,500	(lump sum not to exceed)
Topographic Surveying	$10,120	(lump sum not to exceed)
Design Subtotal	**$142,780**	
Bidding Phase	$ 6,000	(lump sum not to exceed)
Contract Administration	$15,000	(lump sum not to exceed)
Overall Surveying Project Management	$ 1,320	(lump sum not to exceed)
Boundary Survey and Easements	$10,000	(hourly if required)
Resident Project Representative	$25,000	(hourly not to exceed without approval)
Contingency	$10,000	(hourly not to exceed)
Subtotal	**$ 67,320**	
Total Contract Amount	**$210,100**	






210





340

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-14

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to ratify a reconciliation change order that will decrease the contract amount by $210,626.58 and the release of final retainage payment in the amount of $30,105.16 to A.E. Shull and Company for the construction of the John Soules Food Waterline Extension Project.

Item Reference: **City Council Agenda M-3, 8/23/17; M-2, 8/22/18; M-5, 2/12/20; C-A-1, 6/14/21 - Agenda Item M-2, September 27, 2023; Agenda Item M-1, April 27, 2022; Section 19-16, City of Tyler Code of Ordinances,**

On September 27, 2023, the City Council awarded a construction contract to A.E. Shull and Company for the construction of the John Soules Food Waterline Extension Project. The project was needed to extend approximately 14,700 linear feet of 16" water main to the John Soules Food Processing Plant located on Highway 14.

The initial project cost was $3,470,533.50. The project has been completed at $3,259,906.92 with savings reflected from open cutting the parking lot at John Soules Food that reduced the total cost by $210,626.58 (6.07%).

This project was funded utilizing ARPA funds.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to ratify a reconciliation change order that will decrease the contract amount by $210,626.58 and the release of final retainage payment in the amount of $30,105.16 to A.E. Shull and Company for the construction of the John Soules Food Waterline Extension Project.

Attachments:
Reconciliation Change Order
Pay Request #11

Drafted/Recommended By:
Department Leader Nikki Ingram, Project Engineer/Kate Dietz, P.E., Director of Utilties

Edited/Submitted By:

City Manager

RECONCILIATION DOCUMENT
CITY OF TYLER
CAPITAL IMPROVEMENTS PROJECT
John Soules 16" Water Line Extension
TBC No. 23-038

Item No.	Description of Work	Original Quantities			In Place			Reconcilliation Amount
		Quantity	Unit Price	Price Amount	Quantity	Unit Price	Price Amount	
	John Soules 16" Water Line Extension							
W-1	100% Performance, Payment, & Maintenance Bonds	1 LS	43,200.00	43,200.00	1.00 LS	43,200.00	43,200.00	0.00
W-2	Insurance	1 LS	1,500.00	1,500.00	1.00 LS	1,500.00	1,500.00	0.00
W-3	Clear Easements and temporary work easements as needed for installation of water improvements	1 LS	206,731.00	206,731.00	1.00 LS	206,731.00	206,731.00	0.00
W-4	Furnish and install 16-inch water line	14,700 LF	94.00	1,381,800.00	14,477.00 LF	94.00	1,360,838.00	-20,962.00
W-5	Furnish and install 8-inch water line	65 LF	58.00	3,770.00	40.00 LF	58.00	2,320.00	-1,450.00
W-6	Furnish and install 6-inch water line	504 LF	43.00	21,672.00	252.00 LF	43.00	10,836.00	-10,836.00
W-7	Provide trench safety protection per OSHA requirements for trenches greater than 5 ft. in depth	15,269 LF	2.00	30,538.00	14,769.00 LF	2.00	29,538.00	-1,000.00
W-8	Furnish and install ductile iron fittings	27,140 LBS	7.50	203,550.00	27,140.00 LBS	7.50	203,550.00	0.00
W-9	Furnish and install 8-inch Watts LF709 Double Check Valve Assembly with O,S, and Y valves for fire line	1 EA	16,600.00	16,600.00	1.00 EA	16,600.00	16,600.00	0.00
W-10	Furnish and install precast concrete vault for DDCV assembly with lid	1 EA	17,600.00	17,600.00	1.00 EA	17,600.00	17,600.00	0.00
W-11	Install 8-inch compound meter assembly with 4-inch bypass (meter must be picked up from City of Tyler)	1 EA	2,600.00	2,600.00	1.00 EA	2,600.00	2,600.00	0.00
W-12	Furnish and install precast concrete vault for water meter assembly with lid	1 EA	18,300.00	18,300.00	1.00 EA	18,300.00	18,300.00	0.00
W-13	Furnish and install 8-inch Reduced Pressure Zone assembly	1 EA	18,600.00	18,600.00	1.00 EA	18,600.00	18,600.00	0.00
W-14	Furnish and install precast concrete vault for RPZ assembly with lid	1 EA	18,800.00	18,800.00	1.00 EA	18,800.00	18,800.00	0.00
W-15	Furnish and install select backfill in water line trench as required	15,000 CY	2.15	32,250.00	0.00 CY	2.15	0.00	-32,250.00
W-16	Furnish and install crushed stone embedment in water line trench as required	200 CY	70.00	14,000.00	0.00 CY	69.00	0.00	-14,000.00
W-17	Furnish and install 16-inch AWWA C-509 resilient seated gate valves and boxes	11 EA	11,900.00	130,900.00	13.00 LF	11,900.00	154,700.00	23,800.00
W-18	Furnish and install 8-inch AWWA C-509 resilient seated gate valves and boxes	5 EA	2,755.00	13,775.00	5.00 LF	2,755.00	13,775.00	0.00
W-19	Furnish and install 6-inch AWWA C-609 resilient seated gates valves and boxes	34 EA	1,990.00	67,660.00	34.00 LF	1,990.00	67,660.00	0.00
W-20	Furnish and install standard 3-way fire hydrant assembly	34 EA	4,265.00	145,010.00	34.00 EA	4,265.00	145,010.00	0.00

RECONCILIATION DOCUMENT
CITY OF TYLER
CAPITAL IMPROVEMENTS PROJECT
John Soules 16" Water Line Extension
TBC No. 23-038

Item No.	Description of Work	Original Quantities			In Place			Reconcilliation Amount
		Quantity	Unit Price	Price Amount	Quantity	Unit Price	Price Amount	
W-21	Furnish and install 3-inch combination air/vacuum release valve in precast concrete manhole	5 EA	5,000.00	25,000.00	6.00 EA	5,000.00	30,000.00	5,000.00
W-22	Furnish and install 24-inch stell casing by dry bore with casing spacers	1,050 LF	407.00	427,350.00	573.00 LF	407.00	233,211.00	-194,139.00
W-23	Furnish and install 6-inch thick HMAC pavement repair Type B or D for ditch lines in streets and driveways	545 TON	161.50	88,017.50	545.00 TON	161.50	88,017.50	0.00
W-24	Furnish and install 2-inch HMAC Type D surface overlay including tack coat	835 TON	159.00	132,765.00	944.88 TON	159.00	150,235.92	17,470.92
W-25	Provide construction staking for project by RPLS	1 LS	43,000.00	43,000.00	1.00 LS	43,000.00	43,000.00	0.00
W-26	Provide traffic control as needed along project length	1 LS	13,000.00	13,000.00	1.00 LS	13,000.00	13,000.00	0.00
W-27	Comply with SWPPP	1 LS	1,685.00	1,685.00	1.00 LS	1,685.00	1,685.00	0.00
W-28	Install hydromulch seeding with fertilizer	48,900 SY	0.65	31,785.00	58,580.00 SY	0.65	38,077.00	6,292.00
W-29	Furnish, install, maintain, and remove silt fencing	15,000 LF	3.75	56,250.00	1,490.00 LF	3.75	5,587.50	-50,662.50
W-30	Furnish and install 8-inch blow-off assemblies with 15' x 15' concrete pad	1 EA	8,975.00	8,975.00	2.00 EA	8,975.00	17,950.00	8,975.00
W-31	Furnish, install, and maintain Project Sign for project	1 EA	1,100.00	1,100.00	1.00 EA	1,100.00	1,100.00	0.00
W-32	Furnish and install standard 1-inch poly water service with tapping saddle and curb stop, at locations determined by engineer	6 EA	1,400.00	8,400.00	10.00 EA	1,400.00	14,000.00	5,600.00
W-33	Furnish and install standard 2-inch poly water service with tapping saddle and curb stop, at locations determined by engineer	2 EA	2,175.00	4,350.00	1.00 EA	2,175.00	2,175.00	-2,175.00
W-34	Contingency Item	1 LS	150,000.00	150,000.00	0.00 LS	150,000.00	0.00	-150,000.00
W-35	Furnish and install 6-inch thick gravel parking lot (TxDOT 247 Flexbase Grade 1 or 2) on compacted subgrade	5,000 SY	18.00	90,000.00	5,000.00 LF	18.00	90,000.00	0.00
W-36	Concrete Pavement Removal	320 SY	50.00	16,000.00	827.00 SY	50.00	41,350.00	25,350.00
W-37	Concrete Pavement Installation	320 SY	180.00	57,600.00	827.00 SY	180.00	148,860.00	91,260.00
W-38	Flowable Fill	20 CY	300.00	6,000.00	20.00 CY	300.00	6,000.00	0.00
W-39	Remobilization for additional work	1 LS	3,500.00	3,500.00	1.00 LS	3,500.00	3,500.00	0.00

RECONCILIATION DOCUMENT
CITY OF TYLER
CAPITAL IMPROVEMENTS PROJECT
John Soules 16" Water Line Extension
TBC No. 23-038

Item No.	Description of Work	Original Quantities			In Place			Reconcilliation Amount
		Quantity	Unit Price	Price Amount	Quantity	Unit Price	Price Amount	

Original Contract Amount: **$3,470,533.50**

Total Amount of Work In Place: **$3,259,906.92**

Underrun Amount: **-$210,626.58**

Reconciliation Document East Grande SS.xls

Recommended by: The C. T. Brannon Corporation

Robert A. Breedlove, P.E. — Date: 10-15-24

Accepted By: A.E. Shull and Company

Date: 10/16/24

Approved By: City of Tyler

Date:

THE C.T. BRANNON CORPORATION
AQUATIC CONSULTANTS | CIVIL ENGINEERS | AIRPORT CONSULTANTS

October 9, 2024

Nikki Ingram, P.E.
Project Engineer
Tyler Water Utilities
511 West Locust Street
Tyler, TX 75702

RE: Pay Request No. 11 Final
A.E. Shull and Co.
John Soules Foods 16" Water Line Extension Improvements
COT Bid # 23-038

Dear Nikki:

Please find enclosed A.E. Shull and Co.'s Pay Request #11.

It is my opinion that the improvements on the project have progressed to the point indicated by the pay request and that the Contractor has earned the **$30,105.16** shown thereon. Also attached are Contractor's Letter of Completion and Affidavit of Bills Paid.

Accumulated retainage owed to the Contractor but retained by you until the end of the job is now **$0.00**

Shown below is a cost accounting of the project:

Original Contract Amount:	$3,470,533.50
Completed Contract Amount:	$3,259,906.92
Net Underrun:	$ 210,626.58

Sincerely,

Robert A. Breedlove, P.E.
Principal/ Vice President
The C. T. Brannon Corporation
TX Firm Registration # F-242

xc: Bob Gallaher, A.E. Shull
File# 22071

Attachment

A. E. Shull & Company
P. O. BOX 130365
TYLER, TEXAS 75713

Payment No.: Eleven - Final
Name of Owner: City of Tyler, Texas
Owners Address: P.O. Box 2039 Tyler, Texas 75710
Name of Contractor: A.E. Shull & Co., Inc.
Contractor's Address: P.O. Box 130365, Tyler Texas 75713
Project Name: John Soules Foods 16" Water Line Extension
Project No:
A.E.S. No: 239

Original
Contract Price: $3,470,533.50

Date: 1-Oct-24
To: 31-Oct-24

Item No.	DESCRIPTION OF ITEM	Quantity Original Estimate	UNIT MEASURE	Unit Price	Contract Total	Quantity Complete Oct-24	Amount Earned This Period Oct.	Total Quantity To Date	Total Amount Earned To Date	Percent Complete To Date
W-1	100% Performance, Payment, & Maintenance Bonds	1.00	LS	$43,200.00	$43,200.00	0.00	$0.00	1.00	$43,200.00	100.00%
W-2	Insurance	1.00	LS	$1,500.00	$1,500.00	0.00	$0.00	1.00	$1,500.00	100.00%
W-3	Clear easements and temporary work areas as needed	1.00	LS	$206,731.00	$206,731.00	0.00	$0.00	1.00	$206,731.00	100.00%
W-4	16-inch AWWA C900 DR 14 PVC Water Lines	14,700.00	LF	$94.00	$1,381,800.00	0.00	$0.00	14477.00	$1,360,838.00	98.48%
W-5	8-inch AWWA C900 DR 14 PVC Water Lines	65.00	LF	$58.00	$3,770.00	0.00	$0.00	40.00	$2,320.00	61.54%
W-6	6-inch AWWA C900 DR 14 PVC Water Lines	504.00	LF	$43.00	$21,672.00	0.00	$0.00	252.00	$10,836.00	50.00%
W-7	Trench Safety	15,269.00	LF	$2.00	$30,538.00	0.00	$0.00	14769.00	$29,538.00	96.73%
W-8	Ductile Iron Fittings	27,140.00	LBS	$7.50	$203,550.00	0.00	$0.00	27140.00	$203,550.00	100.00%
W-9	8-inch Watts LF709 Double Check Valve w/OS&Y valve	1.00	EA	$16,600.00	$16,600.00	0.00	$0.00	1.00	$16,600.00	100.00%
W-10	Precast concrete vault for DDCV assembly	1.00	EA	$17,600.00	$17,600.00	0.00	$0.00	1.00	$17,600.00	100.00%
W-11	8-inch Compound meter assembly w/4" bypass	1.00	EA	$2,600.00	$2,600.00	0.00	$0.00	1.00	$2,600.00	100.00%
W-12	Precast concrete vault for water meter assembly	1.00	EA	$18,300.00	$18,300.00	0.00	$0.00	1.00	$18,300.00	100.00%
W-13	8-inch Reduced Pressure Zone assembly (Watts LF909	1.00	EA	$18,600.00	$18,600.00	0.00	$0.00	1.00	$18,600.00	100.00%
W-14	Precast concrete vault for RPZ assembly	1.00	EA	$18,800.00	$18,800.00	0.00	$0.00	1.00	$18,800.00	100.00%
W-15	Select backfill	15,000.00	CY	$2.15	$32,250.00	0.00	$0.00	0.00	$0.00	0.00%
W-16	Crushed stone embedment	200.00	CY	$70.00	$14,000.00	0.00	$0.00	0.00	$0.00	0.00%
W-17	16-inch AWWA C-509 gate valves	11.00	EA	$11,900.00	$130,900.00	0.00	$0.00	13.00	$154,700.00	118.18%
W-18	8-inch AWWA C-509 gate valves	5.00	EA	$2,755.00	$13,775.00	0.00	$0.00	5.00	$13,775.00	100.00%
W-19	6-inch AWWA C-509 gate valves	34.00	EA	$1,990.00	$67,660.00	0.00	$0.00	34.00	$67,660.00	100.00%
W-20	3-way fire hydrant assembly	34.00	EA	$4,265.00	$145,010.00	0.00	$0.00	34.00	$145,010.00	100.00%

W-21	3-inch combination air/vacuum release valve	5.00	EA	$5,000.00	$25,000.00	0.00	$0.00	6.00	$30,000.00	120.00%
W-22	24-inch steel casing by dry bore	1,050.00	LF	$407.00	$427,350.00	0.00	$0.00	573.00	$233,211.00	54.57%
W-23	6-inch HMAC pavement repair Ty B or D	545.00	TON	$161.50	$88,017.50	0.00	$0.00	545.00	$88,017.50	100.00%
W-24	2-inch HMAC Ty D surface overlay	835.00	TON	$159.00	$132,765.00	0.00	$0.00	944.88	$150,235.92	113.16%
W-25	Construction Staking	1.00	LS	$43,000.00	$43,000.00	0.00	$0.00	1.00	$43,000.00	100.00%
W-26	Traffic control	1.00	LS	$13,000.00	$13,000.00	0.00	$0.00	1.00	$13,000.00	100.00%
W-27	Comply with Storm Water Pollution Prevention Plan	1.00	LS	$1,685.00	$1,685.00	0.00	$0.00	1.00	$1,685.00	100.00%
W-28	Hydromulch seeding with fertilizer	48,900.00	SY	$0.65	$31,785.00	0.00	$0.00	58580.00	$38,077.00	119.80%
W-29	Silt fencing	15,000.00	LF	$3.75	$56,250.00	0.00	$0.00	1490.00	$5,587.50	9.93%
W-30	8-inch blow-off assemblies	1.00	EA	$8,975.00	$8,975.00	1.00	$8,975.00	2.00	$17,950.00	200.00%
W-31	Project sign	1.00	EA	$1,100.00	$1,100.00	0.00	$0.00	1.00	$1,100.00	100.00%
W-32	1-inch poly water service	6.00	EA	$1,400.00	$8,400.00	1.00	$1,400.00	10.00	$14,000.00	166.67%
W-33	2-inch poly water service	2.00	EA	$2,175.00	$4,350.00	0.00	$0.00	1.00	$2,175.00	50.00%
W-34	Contingency Item	1.00	LS	$150,000.00	$150,000.00	0.00	$0.00	0.00	$0.00	0.00%
W-35	6-inch thick crushed rock gravel parking lot (Flexbase)	5,000.00	SY	$18.00	$90,000.00	0.00	$0.00	5000.00	$90,000.00	100.00%
W-36	Concrete Pavement Removal	320.00	SY	$50.00	$16,000.00	0.00	$0.00	827.00	$41,350.00	258.44%
W-37	Concrete Pavement Installation	320.00	SY	$180.00	$57,600.00	0.00	$0.00	827.00	$148,860.00	258.44%
W-38	Flowable Fill	20.00	CY	$300.00	$6,000.00	0.00	$0.00	20.00	$6,000.00	100.00%
W-39	Remobilization for Extra Work	1.00	LS	$3,500.00	$3,500.00	1.00	$3,500.00	1.00	$3,500.00	100.00%
					$3,553,633.50		$13,875.00		$3,259,906.92	91.73%

Total Value of Original Contract Performed	$3,259,906.92
Materials on Hand ----------US Steel & Ferguson----------	$0.00
Extra Work - Total Thru Last Estimate	$0.00
Extra Work Since Last Estimate	$0.00
Total Value of Work To Date	$3,259,906.92
Less: Amount Retained (0%)	$0.00
Total Amount To Be Paid To Date	$3,259,906.92
Less: Amount of Previous Payment	$3,229,801.76
BALANCE DUE THIS ESTIMATE	$30,105.16

Prepared by
A.E. SHULL & COMPANY

By: Bob Gallagher Date: 9-Oct-24

A. E. Shull & Company

P. O. Box 130365
Tyler, Texas 75713
903-561-5061
Fax 903-534-8946

October 9, 2024

Mr. Bob Breedlove, P.E.
Brannon Corp
1321 S. Broadway
Tyler, Texas 75701

Re: City of Tyler
Capital Improvements Project
John Soules Foods 16" Water Line Extension
City of Tyler Bid Number 23-038

Mr. Breedlove:

This letter is to inform you that all, including extra, 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 9TH day of OCTOBER, 2024.

Brenda Melton
Notary Public

BRENDA MELTON
Notary Public, State of Texas
My Commission Expires
May 05, 2027
NOTARY ID 1160640-0

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. Shull & Company *[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	23-038
Project Name	John Soules Foods 16' Water Line Extension

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 9TH day of OCTOBER, 20 24.

BRENDA MELTON
Notary Public, State of Texas
My Commission Expires
May 05, 2027
NOTARY ID 1160640-0

Brenda Melton
Notary Public In and For The State of Texas

My Commission Expires: 5-5-2027

BRENDA MELTON
Notary's Printed Name

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: 23-038

Project Name: JOHN SOULES FOODS 16" WATER LINE EXTENSION

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 WATER SYSTEM *[Location]* to the following extent: 23-038 JOHN SOULES FOODS 16" WATER LINE EXTENSION *[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 10/9/24

A.E. SHULL & CO (Company name)

By BOB BROUSSARD (Signature)

PROJECT MANAGER (Title)

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-15

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a contract for the 2024 Pedestrian Access project, Tyler Bid Number: 24-038, totaling $272,220.00 to Cross Plus Construction, LLC.

Item Reference: **2024 Half Cent Sales Tax Work Plan**

The City of Tyler MPO completed a Pedestrian Access Study and Active Tyler Transportation Plan that studied and recommended additional sidewalk projects to improve pedestrian access across the city. Additionally, the City of Tyler Engineering Department regularly receives and tracks citizen input for sidewalk improvements and repair.

The 2024 Half Cent Sales Tax Work Plan proposes a recurring annual program to continue work on pedestrian access improvements. Design services began in the summer of 2024 with MHS Design and Planning. Engineering worked with Transit and narrowed the project down to nine (9) areas that were included in this project and fit within the 2024 annual budget. The proposed 2024 Pedestrian Access Project targets better access for various transit stops and safer pedestrian access to parks.

On October 8, 2024, the City of Tyler advertised for bids with seven bids received. Cross Plus Construction LLC. submitted the low bid at $272,220.00, including an additive alternate bid for a Rectangular Rapid Flashing Beacon at the proposed pedestrian crossing at Hillside Park.

Bid Summary:

Base Bid: $256,220.00
Add. Alternate: $16,000.00
Total: $272,000.00

MHS Planning and Design checked references and qualification documents for Cross Plus Construction. Based on their results, Cross Plus Construction was determined to be a qualified bidder.

On November 12, 2024, the Half Cent Sales Tax Board approved funding for the project totaling $272,200.00.

Funding Source: Half Cent Sales Tax

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to execute a contract for the 2024 Pedestrian Access project, Tyler Bid Number: 24-038, totaling $272,220.00 to Cross Plus Construction, LLC.

Attachments:

Letter of Recommendation - Tyler Pedestrian Access Project
Bid Analysis - Tyler Pedestrian Access
2025 Ped Access Location Map

Drafted/Recommended By:
Department Leader Davis Dickson/Darin Jennings

Edited/Submitted By:
City Manager

MHS
PLANNING & DESIGN, LLC

October 28th, 2024

Mr. Darin Jennings
City Engineer
511 W Locust St.
Tyler, TX 75702

RE: City of Tyler Pedestrian Access - Letter of Recommendation

Dear Darin,

On October 8th, 2024, the City of Tyler received four bid proposals for City of Tyler Pedestrian Access. The following bid results were read on Tuesday, 2:00 PM October 8th, 2024, and are listed below:

• Cross Plus Construction	$256,220.00
• Reynolds and Kay	$463,841.00
• Crown Civil Construction	$304,294.00
• Cam-Crete Contracting	$390,917.00
• AT Construction	$312,074.00
• Tegrity Contractors	$387,777.00
• Texas Chile Inc.	$351,787.00

The City of Tyler Pedestrian Access bid form also included one applicable alternate which is briefly described below:

Add Alternate 1: Rectangular Rapid Flashing Beacon (RRFB), including but not limited to delivery and installation, complete and in place per the plans and specifications.

• Cross Plus Construction	$16,000.00
• Reynolds and Kay	$33,000.00
• Crown Civil Construction	$10,000.00
• Cam-Crete Contracting	$20,000.00
• AT Construction	$20,000.00
• Tegrity Contractors	$17,777.00
• Texas Chile Inc.	$6,000.00

On 10-21-24, Cross Plus submitted a Confidential Application for Contractor Approval to the City of Tyler, followed by the submission of an executed Qualification Statement on 10-22-24 and a Bond Ability Letter on 10-22-24, as these documents were not originally included with the bid proposal.

Cross Plus Construction, LLC. is a General Contractor based out of Tyler, TX that has done previous pedestrian work with TxDOT. After reviewing the bid packet and based on previous experience between Cross Plus Construction, LLC and TxDOT, we believe that Cross Plus Construction, LLC. has the skill set needed to deliver a quality project.

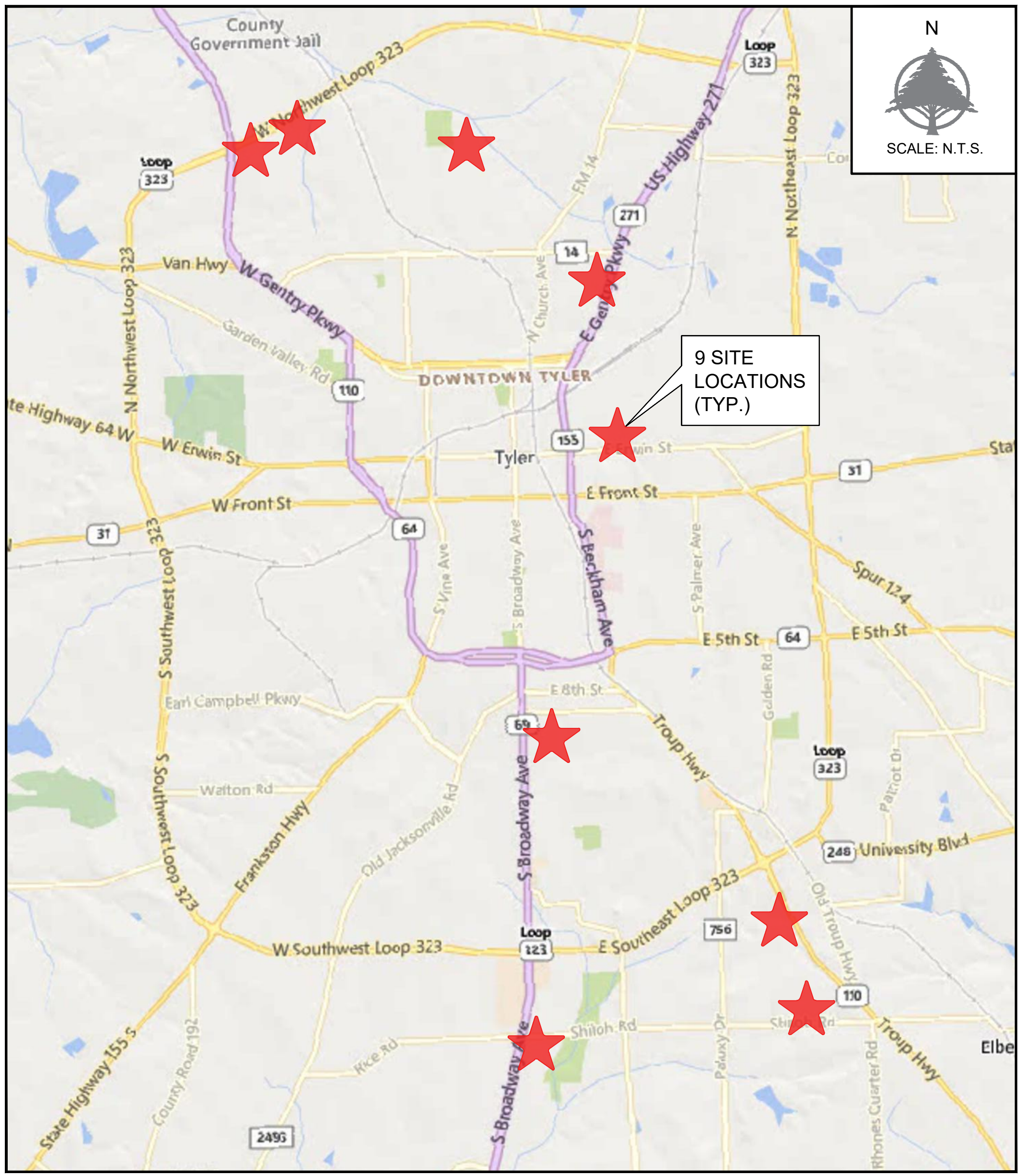
Based on the foregoing, I recommend that the City of Tyler award a construction contract to Cross Plus Construction, LLC. in the amount of $272,220.00. This award amount is based on the base bid and alternate bid provided.

Sincerely,

William Spencer, P.E.
MHS Planning & Design

Client: City of Tyler - Project: City of Tyler Pedestrian Access				A T Construction		Cam-Crete Contracting Inc		Cross Plus Construction LLC		Crown Civil Construction Corp		Reynolds & Kay, LTD		Tegrity Contractors, Inc.		TexasChile, Inc.	
Item #	**Quantity**	**Unit**	**Item Description & Written Price**	**Unit Price**	**Total**	**Unit Price**	**Total**	**Unit Price**	**Total**	**Unit Price**	**Total**	**Unit Price**	**Total**	**Unit Price**	**Total**	**Unit Price**	**Total**
1	1	LS	Mobilization/Demobilization for the Project, including but not limited to project start-up and delivery of equipment _____ Dollars _____ Cents	$15,000.00	$15,000.00	$30,000.00	$30,000.00	$20,000.00	$20,000.00	$16,000.00	$16,000.00	$55,000.00	$55,000.00	$33,750.00	$33,750.00	$14,000.00	$14,000.00
2	1	LS	General Conditions, including but not limited to project management, supervision, administration , bonds, insurance, and overhead _____ Dollars _____ Cents	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$1,000.00	$1,000.00	$55,000.00	$55,000.00	$80,170.63	$80,170.63	$12,000.00	$12,000.00
3	1	LS	Storm Water Pollution Prevention Plan, including but not limited to site preparation, erosion control, and maintenance, complete and in place per the plans and specifications _____ Dollars _____ Cents	$10,000.00	$10,000.00	$6,500.00	$6,500.00	$5,000.00	$5,000.00	$100.00	$100.00	$2,000.00	$2,000.00	$2,970.00	$2,970.00	$5,000.00	$5,000.00
4	15	EA	Inlet Protection, including but not limited to materials, installation, maintenance, and cleaning, complete and in place per the plans and specifications _____ Dollars _____ Cents	$350.00	$5,250.00	$750.00	$11,250.00	$200.00	$3,000.00	$26.00	$390.00	$170.00	$2,550.00	$243.10	$3,646.50	$150.00	$2,250.00
5	2026	LF	Silt Fence, including but not limited to materials, installation, maintenance, and cleaning, complete and in place per the plans and specifications _____ Dollars _____ Cents	$8.00	$16,208.00	$7.00	$14,182.00	$6.00	$12,156.00	$1.00	$2,026.00	$4.50	$9,117.00	$4.24	$8,590.24	$4.00	$8,104.00
6	3	EA	Tree Protection, including but not limited to materials, installation, maintenance, and cleaning, complete and in place per the plans and specifications _____ Dollars _____ Cents	$300.00	$900.00	$920.00	$2,760.00	$500.00	$1,500.00	$300.00	$900.00	$500.00	$1,500.00	$577.50	$1,732.50	$300.00	$900.00
7	1	LS	Traffic Control, including but not limited to signage, cones, barrels, delineators, barriers, and flaggers, complete and in place per the plans and specifications _____ Dollars _____ Cents	$10,000.00	$10,000.00	$15,000.00	$15,000.00	$5,000.00	$5,000.00	$45,000.00	$45,000.00	$10,000.00	$10,000.00	$28,500.00	$28,500.00	$6,000.00	$6,000.00
8	7,520	SF	Remove & Dispose of Existing Pavement, including but not limited to the removal and disposal of existing sidewalk pavement and asphalt pavement. Complete and in place per the plans and specifications _____ Dollars _____ Cents	$5.00	$37,600.00	$3.00	$22,560.00	$1.00	$7,520.00	$2.00	$15,040.00	$5.00	$37,600.00	$4.95	$37,224.00	$5.00	$37,600.00
9	44	LF	Remove & Dispose of Existing Curb and Gutter, including but not limited to the removal and disposal of curb and gutter. Complete and in place per the plans and specifications _____ Dollars _____ Cents	$10.00	$440.00	$15.00	$660.00	$40.00	$1,760.00	$47.00	$2,068.00	$15.00	$660.00	$13.00	$572.00	$15.00	$660.00
10	1	LS	Site Grading, including but not limited to excavation and backfill, complete and in place per the plans and specifications _____ Dollars _____ Cents	$15,000.00	$15,000.00	$6,500.00	$6,500.00	$5,000.00	$5,000.00	$10,000.00	$10,000.00	$20,000.00	$20,000.00	$9,900.00	$9,900.00	$41,250.00	$41,250.00
11	8351	SF	4" Concrete Sidewalk, including but not limited to subgrade preparation, reinforcing steel, concrete, saw joints, longitudinal butt joints, and expansion joints, complete and in place per the plans and specifications _____ Dollars _____ Cents	$11.00	$91,861.00	$15.00	$125,265.00	$8.00	$66,808.00	$15.00	$125,265.00	$17.00	$141,967.00	$9.68	$80,837.68	$14.00	$116,914.00

Client: City of Tyler - Project: City of Tyler Pedestrian Access				A T Construction		Cam-Crete Contracting Inc		Cross Plus Construction LLC		Crown Civil Construction Corp		Reynolds & Kay, LTD		Tegrity Contractors, Inc.		TexasChile, Inc.	
Item #	**Quantity**	**Unit**	**Item Description & Written Price**	**Unit Price**	**Total**	**Unit Price**	**Total**	**Unit Price**	**Total**	**Unit Price**	**Total**	**Unit Price**	**Total**	**Unit Price**	**Total**	**Unit Price**	**Total**
12	1280	SF	6" Concrete Sidewalk, including but not limited to subgrade preparation, reinforcing steel, concrete, saw joints, longitudinal butt joints, and expansion joints, complete and in place per the plans and specifications _____ Dollars _____ Cents	$14.00	$17,920.00	$16.00	$20,480.00	$12.00	$15,360.00	$18.00	$23,040.00	$18.00	$23,040.00	$10.07	$12,889.60	$16.00	$20,480.00
13	750	SF	6" Concrete Bus Stop Pad, including but not limited to subgrade preparation, reinforcing steel, concrete, saw joints, longitudinal butt joints, and expansion joints, complete and in place per the plans and specifications _____ Dollars _____ Cents	$14.00	$10,500.00	$25.00	$18,750.00	$22.00	$16,500.00	$14.00	$10,500.00	$22.00	$16,500.00	$12.32	$9,240.00	$20.00	$15,000.00
14	1053	SF	6" Asphalt Paving, including but not limited to saw-cutting, removal of ex. pavement, subgrade preparation, asphalt, compaction, butt joint, complete and in place per the plans and specifications _____ Dollars _____ Cents	$15.00	$15,795.00	$20.00	$21,060.00	$12.00	$12,636.00	$15.00	$15,795.00	$14.00	$14,742.00	$25.43	$26,777.79	$16.00	$16,848.00
15	2	EA	Curbed Barrier Free Ramps, including but not limited to excavation, subgrade preparation, reinforcing steel, concrete, saw joints, longitudinal butt joints, and expansion joints, complete and in place per the plans and specifications, complete and in place per the plans and specifications _____ Dollars _____ Cents	$2,500.00	$5,000.00	$4,850.00	$9,700.00	$3,000.00	$6,000.00	$3,000.00	$6,000.00	$4,500.00	$9,000.00	$2,640.00	$5,280.00	$6,000.00	$12,000.00
16	4	EA	Flared Barrier Free Ramps, including but not limited to excavation, subgrade preparation, reinforcing steel, concrete, saw joints, longitudinal butt joints, and expansion joints, complete and in place per the plans and specifications, complete and in place per the plans and specifications _____ Dollars _____ Cents	$2,750.00	$11,000.00	$4,850.00	$19,400.00	$3,000.00	$12,000.00	$3,000.00	$12,000.00	$4,000.00	$16,000.00	$2,640.00	$10,560.00	$6,000.00	$24,000.00
17	13510	SF	SOD to match existing site SOD, including but not limited to finished grade, purchase, delivery, planting, watering, establishment, and warranty in accordance with the plans and specifications _____ Dollars _____ Cents	$2.00	$27,020.00	$3.00	$40,530.00	$3.00	$40,530.00	$0.60	$8,106.00	$2.50	$33,775.00	$1.54	$20,805.40	$1.50	$20,265.00
18	58	LF	Pedestrian Crosswalk Striping, including but not limited to delivery and installation, complete and in place per the plans and specifications _____ Dollars _____ Cents	$10.00	$580.00	$40.00	$2,320.00	$25.00	$1,450.00	$8.00	$464.00	$55.00	$3,190.00	$27.50	$1,595.00	$2.00	$116.00
19	200	SF	Parking Striping, including but not limited to delivery and installation, complete and in place per the plans and specifications _____ Dollars _____ Cents	$10.00	$2,000.00	$20.00	$4,000.00	$20.00	$4,000.00	$3.00	$600.00	$11.00	$2,200.00	$13.75	$2,750.00	$2.00	$400.00
20	1	AL	Construction Allowance _____ Dollars _____ Cents	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00
1(ALT)	2	EA	Rectangular Rapid Flashing Beacon (RRFB), including but not limited to materials, delivery, and installation, complete and in place per the plans and specifications _____ Dollars _____ Cents	$10,000.00	$20,000.00	$10,000.00	$20,000.00	$8,000.00	$16,000.00	$5,000.00	$10,000.00	$16,500.00	$33,000.00	$8,888.50	$17,777.00	$3,000.00	$6,000.00
				Base Total	$312,074.00	Base Total	$410,917.00	Base Total	$256,220.00	Base Total	$304,294.00	Base Total	$463,841.00	Base Total	$387,791.34	Base Total	$363,787.00
				Add Alt. Total	$20,000.00	Add Alt. Total	$20,000.00	Add Alt. Total	$16,000.00	Add Alt. Total	$10,000.00	Add Alt. Total	$33,000.00	Add Alt. Total	$17,777.00	Add Alt. Total	$6,000.00
				Ult. Total	$332,074.00	Ult. Total	$430,917.00	Ult. Total	$272,220.00	Ult. Total	$314,294.00	Ult. Total	$496,841.00	Ult. Total	$405,568.34	Ult. Total	$369,787.00


N
SCALE: N.T.S.
9 SITE LOCATIONS (TYP.)
DOWNTOWN TYLER
Tyler
W Gentry Pkwy
E Gentry Pkwy
US Highway 271
N Northwest Loop 323
W Southwest Loop 323
E Southeast Loop 323
S Broadway Ave
Troup Hwy
W Erwin St
E Front St
W Front St
E 5th St
E 8th St
Earl Campbell Pkwy
Van Hwy
Garden Valley Rd
Walton Rd
Shiloh Rd
Rice Rd
University Blvd
Spur 124
Loop 323
271
14
110
155
64
31
69
756
248
2495

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-16

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a contract amendment for the Greenbriar Sliplining engineering agreement with KSA Engineers, Inc. in the amount of $40,000 for additional Right-of-Way Agent services.

Item Reference:

Originally this project budgeted $30,000 for Right of Way Agent services based on information that was available to staff but have found that more thorough efforts are going to be required to complete the landowner notification and easement/workspace acquisition processes necessary for this project. There will be approximately ten (10) pits excavated along the alignment to set up insertion and winching pits for the ten (10) separate slipline pulls. ROW agent will need to obtain temporary workspace agreements with landowners adjacent to these pits as we anticipate work extending into frontage of private tracts. There are three (3) fusing pits proposed on private property (encompass approx. 16 different tracts) on the west side of Greenbriar Road for Contractor to lay pipe down and extend out while fusing joints prior to sliplining insertions. ROW agent will need to obtain temporary workspace agreements with landowners in these areas. KSA has coordinated these efforts and details with Dixon Services and proposed a $40,000 increase in ROW Agent services phase to $70,000.

RECOMMENDATION:

Recommend that the City Council consider authorizing the City Manager to execute a contract amendment for the Greenbriar Sliplining engineering agreement with KSA Engineers, Inc. in the amount of $40,000 for additional Right-of-Way Agent services.

Attachments:
2024-10-17 103378 Engineering Agreement Amendment 1 Letter
08.06.2024 - 103378 Greenbriar Force Main Sliplining Agreement (Executed)

Drafted/Recommended By:
Department Leader Jacob Yanker, Project Engineer/ Kate Dietz PE, Director of Utilities

Edited/Submitted By:
City Manager

6781 Oak Hill Boulevard
Tyler, TX 75703
903.581.8141

October 17, 2024

Mr. Jacob Yanker
Project Engineer
City of Tyler
511 W. Locust St.
Tyler, TX 75702

via email

RE: ***City of Tyler***
Greenbriar Force Main Sliplining
KSA Project No. 103378
Engineering Agreement Amendment 1

Dear Mr. Yanker:

The purpose of this letter is to propose an amendment to the Engineering Agreement (between KSA Engineers, Inc. and City of Tyler, effective date of August 5, 2024) for the referenced project to perform additional services that are not currently contracted.

The Engineering Agreement contracted "Right-of-Way Agent" services related to facilitating discussions, negotiations, and acquisitions of easements and workspaces from private property owners associated with the project. As outlined in Exhibit C of the Engineering Agreement, the contracted Right-of-Way services were based on an assumed fifteen (15) tracts being affected by the project. Detailed design efforts revealed the necessity to send notifications to property owners of forty (40) tracts, obtain temporary workspace access from ten (10) properties to facilitate excavation of pits for sliplining operations, and obtain temporary workspace access from sixteen (16) properties to lay down pipe and complete joint fusing operations.

As a result, Amendment 1 is proposing the following revisions to the Engineering Agreement:

- Modify Exhibit B to increase Design Phase contract days from 60 calendar days to 90 calendar days.
- Modify Exhibit C to increase Right-of-Way Agent services contract amount from $30,000.00 to $70,000.00.

Thank you for the continued opportunity to provide services related to this project. Please feel free to call or respond with any questions, comments, or concerns.

Sincerely,

KSA Engineers, Inc.

Blake W Bogenschutz

Blake Bogenschutz, P.E.
Project Manager

Accepted:

City of Tyler

_____

Edward Broussard
City Manager

Exhibit B
ENGINEER'S Project Schedule
Greenbriar Force Main Sliplining
Amendment 1
KSA Contract No. 103378

PROJECT SCHEDULE

ENGINEER shall complete its services within the following time specific time periods upon OWNER's notice to proceed:

A. Complete Design Phase: 90 calendar days.
B. Complete Bidding/Procurement Phase: Within the time designated by the Owner based upon an approved schedule developed following receipt of Owner's comments on submitted final design documents.
C. Complete Construction Phase: 180 calendar days following issuance of notice to proceed from Contractor.

Exhibit C
ENGINEER'S Fee Summary
Greenbriar Force Main Sliplining
Amendment 1
KSA Contract No. 103378

FEE SUMMARY

Engineering Fees: The fees for the scope of services described above is as follows:

Phase	Original Contract	Amendment 1	Total Contract Amount	Payment Basis
Design Phase	$ 386,400.00		$ 386,400.00	Lump Sum
Bidding Phase	$ 10,000.00		$ 10,000.00	Lump Sum
Construction Administration	$ 45,000.00		$ 45,000.00	Lump Sum[4]
Resident Project Representative	$ 128,300.00		$ 128,300.00	Hourly and Reimbursable[4,5]
Property Owner Coordination	$ 15,000.00		$ 15,000.00	Hourly and Reimbursable
Right-of-Way Agent	$ 30,000.00	$ 40,000.00	$ 70,000.00	Hourly and Reimbursable
TxDOT Coordination	$ 7,500.00		$ 7,500.00	Hourly and Reimbursable[2]
UPRR Coordination	$ 10,000.00		$ 10,000.00	Hourly and Reimbursable[3]
Reimbursable Expenses	$ 2,500.00		$ 2,500.00	Reimbursable
Total	**$ 634,700.00**	**$ 40,000.00**	**$ 674,700.00**	

Notes:

1. Compensation shall be billed monthly for Engineer's services based on time charged by each category at the hourly rates listed on the attached schedule.
2. TxDOT Permitting & Coordination services assume one (1) utility crossing.
3. UPRR Permitting & Coordination services assume one (1) utility crossing.
4. Construction Administration and RPR Construction Services assume a construction period of 180 calendar days. ENGINEER's work on these phases beyond the construction period established will be billed at hourly rates listed on the attached schedule.
5. RPR Construction Services assume 40 hours per week for the duration of the construction period established.

STATE OF TEXAS §

COUNTY OF SMITH §

STANDARD FORM OF AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This AGREEMENT is entered into, with an Effective Date of August 5, 2024 [*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 **KSA Engineers, Inc.** (ENGINEER or ARCHITECT), hereinafter referred to as "E/A," for the purpose of acquiring all professional engineering and/or architectural services required for the project known as **"Greenbriar Force Main Sliplining"** (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 = $ 441,400
- Hourly/Reimbursable Expenses = $ 193,300
- **Total Contract Price = $ 634,700**

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:
KSA Engineers, Inc.
Attn: Christopher Aylor, P.E.
6781 Oak Hill Blvd
Tyler, Texas

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 08/05/24 **By:** Cassandra Brager

City Manager — Date — City Clerk

Edward Broussard — Cassandra Brager

Printed Name — Printed Name

City Council Approved 7/24/24

CITY OF TYLER SEAL TEXAS

APPROVED: **RECOMMENDED:**

By: Steven M. Ken 8/4/24 **By:** Katie D. Dietz 8/1/24

City Attorney's Office — Date — Department Leader — Date

Steven M. Ken — Katie D. Dietz, PE

Printed Name — Printed Name

CITY COUNCIL APPROVAL:

AGENDA ITEM NUMBER: M-2

DATE APPROVED: 7/24/24

FOR THE E/A:

By: _____ 7/12/2024
Director of Client Services Date

Joncie H. Young, P.E.
Printed Name

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared JONCIE YOUNG, 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 12TH day of JULY, 2024.

SHAKEMIA M ROBERTS
Notary ID #125995450
My Commission Expires
February 20, 2027

Shakemia M. Roberts
Notary Public In and For The State of Texas

My Commission Expires: 2.20.27

SHAKEMIA M. ROBERTS
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

Exhibit A
ENGINEER'S Scope of Service
Greenbriar Force Main Sliplining
KSA Contract No. 103378

This Agreement constitutes authorization by the City of Tyler (OWNER) for KSA Engineers, Inc. (ENGINEER) to provide engineering services for the **Greenbriar Force Main Sliplining** (hereinafter called the Project).

PROJECT DESCRIPTION

Project consists of the sliplining the City of Tyler's Greenbriar Lift Station force main by installation of an approximate 10,400-ft long, 14-in diameter fusible PVC pressure pipeline within the existing 18-inch force main asbestos-cement pipeline.

The scope of services is based on the design of one (1) construction project with a pre-design opinion of probable construction cost of $5,500,000.

SCOPE OF SERVICES

The scope of services for this part of the work is as follows:

Basic Services of ENGINEER: The ENGINEER is hereby authorized to perform the following basic services:

A. Study and Report Phase: Not used.
B. Preliminary Design Phase: Provide services as stated in Section 1.3 of the Agreement.
C. Final Design Phase: Provide services as stated in Section 1.4 of the Agreement.
D. Bidding or Negotiating Phase: Provide services as stated in Section 1.5 of the Agreement.
E. Construction Phase: Provide services as stated in Section 1.6 of the Agreement.
F. Operational Phase: Not used.

Additional Services of ENGINEER: The ENGINEER is hereby authorized to perform the following additional services:

A. Deed Research/Property Owner Coordination.
B. ROW Agent.
C. TxDOT Permit Application and Coordination.
D. UPRR Permit Application and Coordination.
E. Full-Time Project Representative.
F. Reimbursable Expenses (Printing, Postage, Mileage, etc.).

ENGINEER's Exclusions:

A. Study and Report Preparation.
B. Design/Easement/Construction Surveying.
C. Plat/Description Preparation.
D. Geotechnical Investigation.
E. Construction Materials Testing.
F. Hydraulic studies.
G. Hydraulic modeling of contributing gravity sewer lines (upstream of proposed gravity sewer network).
H. Hydrological studies.
I. Design and/or analysis of receiving lift station volume, capacity, operations, etc.
J. Subsurface utility engineering and utility potholing.
K. Relocation of conflicting utilities.
L. Historical, wetland, archeological, and environmental investigations and/or reporting.
M. Categorical exclusions and nationwide permitting.

N. Coordination, application, or permitting with any and all local, State, and/or Federal agencies other than TCEQ and TxDOT.
O. Coordination and/or application with any and all funding agencies.
P. Traffic control plans.
Q. Landscape architect.
R. Stormwater pollution prevention plans, applications, and/or permitting.
S. CCTV and/or pipe inspections.
T. Legal services.

OWNER's Responsibilities: The OWNER's responsibilities shall be as described in SECTION 3 of the ENGINEERING CONTRACT in addition to the following responsibilities:

A. None

Exhibit B - E/A's Project Schedule

Exhibit B
ENGINEER'S Project Schedule
Greenbriar Force Main Sliplining
KSA Contract No. 103378

PROJECT SCHEDULE

ENGINEER shall complete its services within the following time specific time periods upon OWNER's notice to proceed:

A. Complete Design Phase: 60 calendar days.
B. Complete Bidding/Procurement Phase: Within the time designated by the Owner based upon an approved schedule developed following receipt of Owner's comments on submitted final design documents.
C. Complete Construction Phase: 180 calendar days following issuance of notice to proceed from Contractor.

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

Exhibit C
ENGINEER'S Fee Summary
Greenbriar Force Main Sliplining
KSA Contract No. 103378

FEE SUMMARY

Engineering Fees: The fees for the scope of services described above is as follows:

1.	Design Phase:	$386,400	Lump Sum
2.	Bidding Phase	$10,000	Lump Sum
3.	Construction Administration:	$45,000	Lump Sum[4]
4.	Resident Project Representative[5]:	$128,300	Hourly and reimbursable[4,5]
5.	Property Owner Coordination:	$15,000	Hourly and reimbursable
6.	Right-of-Way Agent (15 Tracts Estimated):	$30,000	Hourly and reimbursable
7.	TxDOT Coordination:	$7,500	Hourly and reimbursable[2]
8.	UPRR Coordination:	$10,000	Hourly and reimbursable[3]
9.	Reimbursable Expenses:	$2,500	Reimbursable
	Total Budget:	**$634,700**	

Notes:
1. Compensation shall be billed monthly for Engineer's services based on time charged by each category at the hourly rates listed on the attached schedule.
2. TxDOT Permitting & Coordination services assume one (1) utility crossing.
3. UPRR Permitting & Coordination services assume one (1) utility crossing.
4. Construction Administration and RPR Construction Services assume a construction period of 180 calendar days. ENGINEER's work on these phases beyond the construction period established will be billed at hourly rates listed on the attached schedule.
5. RPR Construction Services assume 40 hours per week for the duration of the construction period established.

Exhibit D - Certificates of Insurance and Endorsements

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

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 07/12/2024

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: Tracy Langford	
GANS & SMITH INSURANCE AGENCY INC P O Box 2869 Longview TX 75606	PHONE (A/C, No, Ext): (903) 757-4601	FAX (A/C, No): (903) 753-0782
	E-MAIL ADDRESS: tlangford@gans-smith.com	

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A :	Transportation Ins Co (CNA)	20494C
INSURER B :	Continental Casualty Co (CNA)	20443C
INSURER C :	Continental Insurance Company	35289C
INSURER D :	Texas Mutual Ins Co	
INSURER E :		
INSURER F :		

INSURED
KSA ENGINEERS INC
140 E TYLER ST
STE 600
LONGVIEW TX 75601

COVERAGES **CERTIFICATE NUMBER:** CL2453010176 **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 [ ] LOC [ ] OTHER			4015529054	05/29/2024	05/29/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG Employee Benefits	$ 1,000,000 $ 100,000 $ 15,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $ 1,000,000
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] HIRED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] NON-OWNED AUTOS ONLY			4015529135	05/29/2024	05/29/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) PIP-Basic	$ 1,000,000 $ $ $ $ 2,500
C	[X] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000			4015529099	05/29/2024	05/29/2025	EACH OCCURRENCE AGGREGATE	$ 10,000,000 $
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		0002047822	05/29/2024	05/29/2025	[ ] 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

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: Greenbriar Force Main Sliplining. The general liability, automobile, & workers compensation policies includes a blanket automatic additional insured endorsement provision that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status .The general liability, automobiles policies & workers compensation includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. The general liability, automobiles policies & workers compensation contains "Primary and noncontributory" wording. The general liability, automobiles policies & workers compensation have 30 days notice of cancellation. Umbrella is follow form.

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

David McWhorter

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Additional Named Insureds

Other Named Insureds	
Bloc Design-Build LLC	Other, Insured Multiple Names
KSA Engineers, Inc.	Other, Insured Multiple Names
Legacy Bear Properties LLC	Limited Liability Company, Insured Multiple Names

COPYRIGHT 2007, AMS SERVICES INC

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
City of Tyler	Greenbriar Force Main Sliplining and it's located in Smith County, TX
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

© Insurance Services Office, Inc., 2018

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
City of Tyler	Greenbriar Force Main Sliplining and it's located in Smith County, TX
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/16/2024

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
Risk Strategies
12801 North Central Expy. Suite 1725
Dallas, TX 75243

CONTACT NAME: Brian R Hadar
PHONE (A/C, No, Ext): (214) 323-4602 **FAX (A/C, No):**
E-MAIL ADDRESS: RSCcertrequest@risk-strategies.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : QBE Insurance Corporation	39217
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
KSA Engineers, Inc. and BLOC Design Build LLC
140 E. Tyler St.
Suite 600
Longview TX 75601

COVERAGES **CERTIFICATE NUMBER:** 79534805 **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 ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							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:							$
	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)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						☐ PER STATUTE ☐ OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Professional Liability		✓	ANE64284-00	4/11/2024	4/11/2025	Per Claim/Annual Aggregate	$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The claims made professional liability coverage is the total aggregate limit for all claims presented within the annual policy period and is subject to a deductible. Thirty (30) day notice of cancellation in favor of certificate holder on all policies.
Deductible $25,000
Retro Date: 1/1/1978

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
Brian Hadar
Brian R. Hadar

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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]

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

1 of 1

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:
2024-1186767

Date Filed:
07/12/2024

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

KSA Engineers, Inc.
Longview, 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, Texas

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.

103378
Professional engineering services in connection with the Greenbriar Force Main Sliplining project

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Fortner, Mitchell	Longview, TX United States	X	
Phipps, Craig	Sugar Land, TX United States	X	
Buck, Lanny	Longview, TX United States	X	
Aylor, Christopher	Tyler, TX United States	X	
Barry, Chris	Longview, TX United States	X	
Reidy , John	McKinney, TX United States	X	

5 Check only if there is NO Interested Party. ☐

6 UNSWORN DECLARATION

My name is Mitchell L. Fortner, and my date of birth is 4/17/1962.

My address is 140 E. Tyler Street, Suite 600 (street), Longview (city), TX (state), 75601 (zip code), USA (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Gregg County, State of Texas, on the 12th day of July (month), 2024 (year).

Mitchell L. Fortner

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:
2024-1186767

Date Filed:
07/12/2024

Date Acknowledged:
07/15/2024

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

KSA Engineers, Inc.
Longview, 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, Texas

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.

103378
Professional engineering services in connection with the Greenbriar Force Main Sliplining project

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Fortner, Mitchell	Longview, TX United States	X	
Phipps, Craig	Sugar Land, TX United States	X	
Buck, Lanny	Longview, TX United States	X	
Aylor, Christopher	Tyler, TX United States	X	
Barry, Chris	Longview, TX United States	X	
Reidy , John	McKinney, TX United States	X	

5 Check only if there is NO Interested Party. ☐

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)

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.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-17

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to purchase playground equipment for two of the parks through the Buy Board Purchasing Cooperative from Kraftsman Commercial Playgrounds & Water Parks in the amount of $110,400.

Item Reference:

The playground equipment will provide new site amenities according to the current Tyler Parks and Recreation Master Plan. The results of the Master Plan Survey and the Stewart Park Public Meeting will determine what exact park these two sets of equipment will be placed. In addition, this equipment was found at the Texas Municipal League Conference in October 2024. Kraftsman Commercial Playgrounds & Water Parks offered a significant discount, as the equipment was on display at the Conference. The purchase comes to the amount of $110,400 for the playground equipment.

RECOMMENDATION:

Request that the City Council consider authorizing the City Manager to purchase playground equipment for two of the parks through the Buy Board Purchasing Cooperative from Kraftsman Commercial Playgrounds & Water Parks in the amount of $110,400.

Attachments:
Kraftsman Quote Q82728 Project 32138 City of Tyler TML Equipment
Kraftsman Quote Q82736 Project 32138 City of Tyler TML Equipment

Drafted/Recommended By:
Department Leader Leanne Robinette, Director of Parks and Recreation

Edited/Submitted By:
City Manager

Kraftsman

COMMERCIAL PLAYGROUNDS & WATER PARKS
19535 Haude Road
Spring, TX 77388
Phone: (281) 353-9599 Fax: (281) 353-2265

QUOTE #Q82728
Date: 10/18/2024
Project: 32138
Created By: Ryan Slott
Quote Name: TML2024 (Tower and Caterpillar)

BILL TO

Tyler, City of
903-531-1370
Ms. Leanne Robinette
City of Tyler - TML Equipment
PO Box 2039
Tyler, TX 75710

SHIP TO

City of Tyler - TML Equipment
1718 W Houston St.
Tyler, TX 75702

Terms:
Net 30 days

QTY	Code	Description	Size	Weight	Color
		TML 2024 Ascend Thrill Tower			
1	RC-1702T-SR-KP	Ascend Thrill Tower with Slide by Superior Playgrounds			
		TML 2024 Caterpillar Music			
1	LOT152	Kraftsman Stock Item 152 - CATR-PM-SRP Caterpillar musical instrument by Superior Playgrounds. Sold As Is - No Warranty			
		*Installation is Not Included on equipment			

Total: $61,400.00

Initials _____

Kraftsman
COMMERCIAL PLAYGROUNDS &
WATER PARKS
19535 Haude Road
Spring, TX 77388
Phone: (281) 353-9599 Fax: (281) 353-2265

Special Terms and Conditions

Items Not Included:
Installation is not included in proposal.

Ship to Address:
Items are to be delivered directly to the shipping address listed on this quotation. Please check “ship to” address on this quote for accuracy. If “ship to” address is incorrect, please contact your sales representative with correct “ship to” address. Changes to the shipment delivery address after the shipment has left the factory will incur additional charges from the freight carrier.

Sales Tax Exempt:
Sales tax is not included in prices quoted. Customer is to supply Sales Tax Exemption or Sales Tax Resale certificate at time of acceptance of proposal, or sales tax will be added to final contract and invoicing for the project.

Credit Card Terms:
If paying by American Express, there is a 6% processing fee charge. If paying by Visa or Master Card, there is a 4% processing fee charge.

Initials _____

Kraftsman
COMMERCIAL PLAYGROUNDS & WATER PARKS
19535 Haude Road
Spring, TX 77388
Phone: (281) 353-9599 Fax: (281) 353-2265

QUOTE #Q82728
Date: 10/18/2024
Project: 32138
Created By: Ryan Slott
Quote Name: TML2024 (Tower and Caterpillar)

General Terms and Conditions

Bill To:
Tyler, City of

Ship To:

Terms:
Net 30 days

CONDITIONS OF SALE

1. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the contract.
2. No returns of merchandise will be accepted unless previously authorized in writing by Kraftsman. All returns are subject to restocking fee of 25% plus freight charges incurred for return to original shipment origination.
3. Title for all equipment is reserved by Kraftsman Commercial Playgrounds and Water Parks until payment in full is received. The right to enter the property and repossess said equipment is hereby granted to Kraftsman Commercial Playgrounds and Water Parks if payment is not rendered in accordance with the terms above. All payments made prior to repossession under this contract shall be forfeited to Kraftsman Commercial Playgrounds and Water Parks as cost incurred to recover the equipment. Repossession of product does not waive any damages or costs due as awarded by the court.
4. All collections or litigation concerning this contract shall be governed by the laws of the State of Texas, with venue in Harris County.
5. Kraftsman warranties the merchandise on this proposal to be up to the manufacturers published standards as to material and workmanship. See catalogs or attached drawings for specific layouts, warranties, and specifications.
6. Kraftsman reserves the right to review contract for final acceptance by management and to make corrections of clerical errors.
7. A service charge of 1.5% per month will be assessed on all past due amounts.
8. Payments to Kraftsman by credit card will incur a processing fee of 4% for Visa and MasterCard, and 6% for American Express
9. Installation services include all labor, equipment required to complete the job, and insurance coverage's as required by law. Extra installation charges will incur for abnormal sub surfaces, ie. rock, landfill, etc. Price quoted includes Kraftsman's standard insurance coverages of $2 million in General Liability & Completed operations, $1 million in Automobile Liability, $1 million per occurrence/$2 aggregate in Workman's Compensation. Any charges by Kraftsman's insurance carrier or agents for adding General Contractor or Owner as additional insured, waivers of subrogation, or changes to standard coverage shall be added to contract charges. No performance bond or labor and material payment bonds shall be provided by Kraftsman, unless listed as individual line item in proposal.
10. Kraftsman Commercial Playgrounds and Water Parks is not liable for damages to underground utilities, and irrigations systems during installation. It is the customers responsibility to locate all underground utilities.
11. Building permits required by local or state authorities & municipalities are not included and are the responsibility of the owner of the property, unless specifically included as a line item in the proposal. If you want Kraftsman to handle required permitting please contact our office and we will provide a quote if not included as a line item within this proposal.
12. This proposal may be withdrawn by Kraftsman if not accepted within thirty (30) days.

Respectfully Submitted _____ *Date* October 18, 2024

Ryan Slott

Acceptance of Proposal:
The prices, specification and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. If contract is placed with an attorney for suit or collection through probate, bankruptcy or other legal proceedings, customer agrees to pay all expenses and reasonable attorney fees incurred. Any verbal instructions, agreements, or promises are not valid unless written as part of this contract.

Authorized Signature _____ *PO#:* _____

Printed Name & Title _____ *Date of Acceptance* _____

Authorized Signature _____

Printed Name & Title _____

WE STRONGLY RECOMMEND A RESILIENT FALL SURFACE BE INSTALLED UNDER ALL PLAY & FITNESS EQUIPMENT

Thank You! We Appreciate Your Business!

Kraftsman

COMMERCIAL PLAYGROUNDS & WATER PARKS
19535 Haude Road
Spring, TX 77388
Phone: (281) 353-9599 Fax: (281) 353-2265

QUOTE #Q82736
Date: 10/18/2024
Project: 32138
Created By: Ryan Slott
Quote Name: TML2024 (Sona Arch)

BILL TO

Tyler, City of
903-531-1370
Ms. Leanne Robinette
City of Tyler - TML Equipment
PO Box 2039
Tyler, TX 75710

SHIP TO

City of Tyler - TML Equipment
1718 W Houston St.
Tyler, TX 75702

Terms:
Net 30 days

QTY	Code	Description	Size	Weight	Color
		TML 2024 Sona Arch			
1	LOT153	Kraftsman Stock Item 153 - YA3500 Sona Arch with Funky Floor by Lappset. SOLD AS IS - No Warranty *Installation is Not Included on equipment			orange

Total: $49,000.00

Initials _____

Kraftsman
COMMERCIAL PLAYGROUNDS & WATER PARKS
19535 Haude Road
Spring, TX 77388
Phone: (281) 353-9599 Fax: (281) 353-2265

Special Terms and Conditions

Items Not Included:
Installation is not included in proposal.

Ship to Address:
Items are to be delivered directly to the shipping address listed on this quotation. Please check “ship to” address on this quote for accuracy. If “ship to” address is incorrect, please contact your sales representative with correct “ship to” address. Changes to the shipment delivery address after the shipment has left the factory will incur additional charges from the freight carrier.

Sales Tax Exempt:
Sales tax is not included in prices quoted. Customer is to supply Sales Tax Exemption or Sales Tax Resale certificate at time of acceptance of proposal, or sales tax will be added to final contract and invoicing for the project.

Credit Card Terms:
If paying by American Express, there is a 6% processing fee charge. If paying by Visa or Master Card, there is a 4% processing fee charge.

Initials _____

Kraftsman
COMMERCIAL PLAYGROUNDS & WATER PARKS
19535 Haude Road
Spring, TX 77388
Phone: (281) 353-9599 Fax: (281) 353-2265

QUOTE #Q82736
Date: 10/18/2024
Project: 32138
Created By: Ryan Slott
Quote Name: TML2024 (Sona Arch)

General Terms and Conditions

Bill To:
Tyler, City of

Ship To:

Terms:
Net 30 days

CONDITIONS OF SALE

1. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the contract.
2. No returns of merchandise will be accepted unless previously authorized in writing by Kraftsman. All returns are subject to restocking fee of 25% plus freight charges incurred for return to original shipment origination.
3. Title for all equipment is reserved by Kraftsman Commercial Playgrounds and Water Parks until payment in full is received. The right to enter the property and repossess said equipment is hereby granted to Kraftsman Commercial Playgrounds and Water Parks if payment is not rendered in accordance with the terms above. All payments made prior to repossession under this contract shall be forfeited to Kraftsman Commercial Playgrounds and Water Parks as cost incurred to recover the equipment. Repossession of product does not waive any damages or costs due as awarded by the court.
4. All collections or litigation concerning this contract shall be governed by the laws of the State of Texas, with venue in Harris County.
5. Kraftsman warranties the merchandise on this proposal to be up to the manufacturers published standards as to material and workmanship. See catalogs or attached drawings for specific layouts, warranties, and specifications.
6. Kraftsman reserves the right to review contract for final acceptance by management and to make corrections of clerical errors.
7. A service charge of 1.5% per month will be assessed on all past due amounts.
8. Payments to Kraftsman by credit card will incur a processing fee of 4% for Visa and MasterCard, and 6% for American Express
9. Installation services include all labor, equipment required to complete the job, and insurance coverage's as required by law. Extra installation charges will incur for abnormal sub surfaces, ie. rock, landfill, etc. Price quoted includes Kraftsman's standard insurance coverages of $2 million in General Liability & Completed operations, $1 million in Automobile Liability, $1 million per occurrence/$2 aggregate in Workman's Compensation. Any charges by Kraftsman's insurance carrier or agents for adding General Contractor or Owner as additional insured, waivers of subrogation, or changes to standard coverage shall be added to contract charges. No performance bond or labor and material payment bonds shall be provided by Kraftsman, unless listed as individual line item in proposal.
10. Kraftsman Commercial Playgrounds and Water Parks is not liable for damages to underground utilities, and irrigations systems during installation. It is the customers responsibility to locate all underground utilities.
11. Building permits required by local or state authorities & municipalities are not included and are the responsibility of the owner of the property, unless specifically included as a line item in the proposal. If you want Kraftsman to handle required permitting please contact our office and we will provide a quote if not included as a line item within this proposal.
12. This proposal may be withdrawn by Kraftsman if not accepted within thirty (30) days.

Respectfully Submitted _____ *Date* October 18, 2024

Ryan Slott

Acceptance of Proposal:
The prices, specification and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. If contract is placed with an attorney for suit or collection through probate, bankruptcy or other legal proceedings, customer agrees to pay all expenses and reasonable attorney fees incurred. Any verbal instructions, agreements, or promises are not valid unless written as part of this contract.

Authorized Signature _____ *PO#:* _____

Printed Name & Title _____ *Date of Acceptance* _____

Authorized Signature _____

Printed Name & Title _____

WE STRONGLY RECOMMEND A RESILIENT FALL SURFACE BE INSTALLED UNDER ALL PLAY & FITNESS EQUIPMENT

Thank You! We Appreciate Your Business!

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-18

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to approve Preferred On Site repair service as the primary vendor for welding services, Burns Welding and Fabrication as a secondary vendor for welding service, and award Platinum Auto Glass as the primary vendor for auto glass installation for sealed bid 25-001.

Item Reference:

On October 22, 2024, Sealed bid 25-001 was opened at 2:00 pm in the City Council Chambers. The bid is for providing repairs and services for the City's fleet in 4 categories. These services are on an as needed basis there are no guaranteed repair quantities. Firm prices on service and repairs with locked in parts and labor prices. A one (1) year contract with an extension clause of three (2) one (1) year periods, with price adjustment percentage not to exceed the Consumer Price Index. Highlights of the bid format include:

1. Welding and Fabrication - Award local vendor Preferred On Site repair service as primary vendor and Burns Welding and Fabrication of Beckville as secondary vendor.
2. Auto Glass Repair and Replacement - Award Platinum Auto Glass as the primary vendor.
3. Window Tint - no bidders.
4. Heavy Duty Collision - no bidders.

See attached documents for bidder info.

RECOMMENDATION:

Recommend that the City Council consider authorizing the City Manager to approve Preferred On Site repair service as the primary vendor for welding services, Burns Welding and Fabrication as a secondary vendor for welding service, and award Platinum Auto Glass as the primary vendor for auto glass installation for sealed bid 25-001.

Attachments:
Sealed bid 25-001 results

Drafted/Recommended By:
Department Leader Stan Stoffregen Fleet Manager

Edited/Submitted By:
City Manager

Purchasing Department
Bid "As Read Results"

City of Tyler Bid No. / Description: 25-001 Labor for glass repair, replacement automotive, window tint, heavy duty collision repair, welding services – VES/ D. Schreck

Date Opened: Oct 22, 2024

	Vendor	Vendor	Vendor	Vendor	Vendor
	Burns Welding	Preferred On Site Fleet	Platinum Auto Glass		
Straight Unit Cost	115.00 hr.		75.00 p/Hr		
Daily Field Total	100.00	99.77 hr			
OT Bid Bond	172.00 hr				
Discount Addenda			35%		
Base Bid			TBD		
Alternate 1					
Alternate 2					
Alternate 3					
Base Bid + Alternates					

Purchasing Personnel in attendance:

Sherry Pettit, Purchasing Manager

Signature: _____

Gary Durham or Gina Elzea, Purchasing Agent

Signature: _____

Form #	Work Instruction # Form #	Originating Date	Revision Date	Revision #
PURF003	PURWI001	6/1/2012		

Preferred On Site Fleet
9965 Hwy 31 East
Tyler, TX 75705

City of Tyler
Purchasing Dept.
304 N. Bonner
Tyler, TX.
75702

RECEIVED
OCT 21 2024
CITY OF TYLER
FINANCE DEPT.
12:57

PRICE, DATA, AND SPECIFICATION SHEET

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

Telephone: (903) 531-1232

DATE: 10/03/2024

BID # / PROPOSAL: 25-001

CLOSING TIME: 2:00 pm
CLOSING DATE: 10/22/2024

PROPOSERS MUST COMPLETE THIS SECTION

ITEM NO.	QUANTITY	DESCRIPTION	BRAND	UNIT PRICE	TOTAL NET PRICE
		See attached Groups Service Below.			
1		**Glass Replacement Automotive, Light & Heavy-Duty Vehicles**			
2		**vehicle upfit window tint**			
3		**Collision Repair & Service Heavy Duty Trucks and Vans**			
4	Per hour	**Welding Repair & Service**		99.77	
5					
			TOTAL:		99.77

CITY OF TYLER
SPECIFICATIONS FOR ANNUAL PRICE AGREEMENTS
FOR AUTOMOTIVE / LIGHT AND HEAVY TRUCK / LIGHT AND HEAVY EQUIPMENT

SERVICE

SCOPE:

The purpose of this specification is to establish annual price *Agreements* with private partners for repair work on:

> Approximately 800 City of Tyler sedans, light-duty pickups, trucks, vans, light-duty equipment, heavy-duty trucks, vans, and equipment.

These partnerships are to assist the City of Tyler Vehicle Services Department during heavy workloads or in areas of comparative disadvantage.

There are no guaranteed dollar amounts and/or no guaranteed vehicle repair or parts quantities. This partnership will still allow the City to utilize vendors through the First-Choice Cooperative vendors that have already bid accordingly.

QUALIFICATION OF BIDDER:

Bids will be considered only from bidders who have been established in the business for five (5) or more years of expertise in area of bid made. If requested, bidders must provide references to provide proof of five (5) or more years of business. For a bidder to qualify for each service group, they must not sub-contract more than 25% of the work in that group. Preventive Maintenance will not be allowed to be sub-contracted.

PRICE AGREEMENT PERIOD AND RENEWAL OPTION:

The price *Agreements* shall be for a term of one (1) year, beginning upon the date of City Council approval. The City and contractor may, upon mutual consent, extend this price *Agreement* for three (3), one (1) year periods, upon written request of the contractor, presented not later than forty-five (45) days prior to the expiration of the price *Agreement*. The rates can be adjusted at the time of renewal, upward or downward, in a percentage not to exceed the effective change in the Consumer Price Index for the previous twelve (12) month period. If agreement cannot be reached, the price *Agreement* is terminated at the end of the current period and the next lowest original bidder will be contacted in accordance with their original bid.

CANCELLATION:

The City reserves the right to cancel the price *Agreement* upon thirty (30) days written notice. The vendor also has this right. In the event of poor service, the City reserves the right to cancel and move on to the next lowest bidder, as primary vendor, in accordance with the thirty (30) day written notice.

PRICING:

The prices quoted shall be firm for the entire term of the price *Agreement*.

PRODUCTS AND PARTS:

All products used by the vendor must meet or exceed O.E.M. specifications for each vehicle.

REPORTING PROCEDURES:

All problems identified by the vendor on a vehicle, beyond the initial requested repair, shall be reported to the City of Tyler Vehicle Services contact person, by telephone or email **prior to any work being done**. **Before repairs are authorized and before the work is completed a Purchase Order (PO) number must be obtained.**

City of Tyler - Vehicle Services (VES)
Contact – Stan Stoffregen sstoffregen@tylertexas.com Or Deb Schreck dschreck@tylertexas.com
Or office staff of VES (903) 531-1321

SERVICE TIMES FOR SERVICE VENDORS:

The awarded service vendor's place of business shall be open to the City at least from 8:00 a.m. to 5:00 p.m., Monday through Friday (official City of Tyler holidays excluded). Vendors located more than two miles outside the City of Tyler City Limits will be under evaluation for the feasibility of being utilized in comparison to those located no further than two miles.

The service vendor must be able to begin work on City equipment no later than one (1) working day from the time it is brought to them, **unless otherwise noted in the group instructions**.

*For Fire and Police emergency response vehicles, the service vendor must be able to begin work no later than four (4) hours from the time the unit is brought to the service vendor.

*For any vehicle that is determined by the City representative to be treated as urgent, the service vendor must be able to begin work no later than six (6) hours from the time the unit is brought to the service vendor.

All scheduled **Preventive Maintenance** appointments must be started at the mutual time specified by both service vendor and the City representative. All **Light Duty Preventive Maintenance** service, that has not been scheduled, will begin service within the first twenty (20) minutes from the time said City vehicle drives up for service. This allows for the driver to stay with the vehicle until service is complete. Continued failure to deliver services within the specified response time frame may result in the cancellation of this Service *Agreement* and the City will exercise its right to move to the next lowest bidder as primary vendor.

PREVENTIVE MAINTENANCE SERVICE:

Bidders will follow the guidelines of the **Products and Parts** O.E.M. specifications. Oils and lubricants must be approved by the Vehicle Services representative prior to start of service so as to meet or exceed Vehicle Services standards. For the sake of the continuity of our fleet, Preventive Maintenance service will not be allowed to be sub-contracted out.

VENDOR INVOICING:

1. Invoicing must be accomplished on an individual vehicle repair basis.
2. Invoices must be ready and signed by City personnel at the time the vehicle is ready for pickup or delivery.
3. Invoices must be itemized by individual vehicle work orders and shall specify the City **vehicle unit number and the City PO number issued.**
4. Invoices must also show itemized labor and parts charges.
5. Invoices must be prepared and submitted to the following email addresses:

Deb Schreck – dschreck@tylertexas.com
Stan Stoffregen – sstoffregen@tylertexas.com

Or mailed to: Vehicle Services
City of Tyler
410 W. Oakwood
Tyler, TX 75702

REPAIR AND PARTS WARRANTY:

Warranty on vendor-supplied parts will be whatever is offered by the manufacture as well as provided by vendor. Warranty for labor will be specified per the *Vendor Agreement*.

SERVICE VENDORS OVERWHELMED BY CITY VEHICLES:

In the event the **Primary Service Vendor** has a high number of City vehicles at their location for service that may prevent them from following the specified time frame of service, the City reserves the right to move to the **Secondary Service Vendor.** Vendors that are overwhelmed with City vehicles will not be considered for cancellation unless they are not following the City specified guidelines for service.

SERVICE BID AWARD:

Bidders are not required to bid all groups on this *Agreement*. Bidders must submit bids on each individual group they wish to bid on. Discounts in each price group will be reviewed individually.

The most responsible overall bidder in each group, making the lowest and best bid, will be awarded the **Primary Service** for the service price *Agreement* for that group. The second lowest and best bid will be awarded the **Secondary Service Vendor** for the service price *Agreement* for that group.

In the event that the awarded **Primary Service Vendor** cannot provide service on a particular vehicle, within the specified service time frame, or is overwhelmed with City vehicles, the City reserves the right to purchase the service from the awarded **Secondary Service Vendor**.

It is expressly understood and agreed that in case the City of Tyler should need any item(s) or service not available within the time frame needed from the successful vendor(s) during the term of this *Agreement*, the City of Tyler reserves the right to purchase these items or services from a vendor other than the successful vendor(s) and shall not be in violation of any terms or conditions of said *Agreement*. Furthermore, the City of Tyler reserves the right to seek another vendor if, at any time, the vendor's prices do not conform to the public pricing.

PARTS PROVISION:

The City reserves the right to provide all necessary parts for the vendor. If requested by the City, when vehicle parts lists are formulated, they are to be sent to the City of Tyler VES Parts Room staff via email dschreck@tylertexas.com or fax (903-531-1291). They will have the necessary parts delivered to the vendor. Upon City approval, the vendor may be authorized to provide vehicle parts themselves.

PARTS PRICE AUDIT:

Parts supplied by vendor will be subject to random audits. Continued price quality discrepancies or deviations from the *Bid Agreement* could result in the cancellation of this *Agreement*.

PARTS QUALITY:

All parts quoted must be new and premium grades. Brands quoted must be first - line products only; no second – line, re-boxed, or non-branded parts will be accepted for this bid. All parts quoted must meet or exceed O.E.M. requirements and documentation may be required to prove compliance.

PARTS RETURN:

The City may return any aftermarket parts, regardless of when or where purchased, provided they are in their original packaging, are the same brand being supplied under this agreement, and are unused and listed in the current manufacturer's price list.

SERVICE VOLUME DISCOUNT REBATE:

Volume Discount Rebate is the indication of how much the City would receive back in rebate form. This would be dependent upon the dollar amount that is purchased by the City for Service and/or Parts based upon accumulative purchases over each year of service. As each benchmark is reached in purchasing, the percentage bid would go into effect at the end of each period. Periods will be set up in quarterly basis. **Refer to page 23 for indication of Volume Rebate.**

VOLUME DISCOUNT REBATE EXAMPLE:

City purchases Parts and/or Service at $100,000.00 or more: 3% rebate = $3,000.00
City purchases Parts and/or Service at $200,000.00 or more: 4% rebate = $8,000.00
City purchases Parts and/or Service at $300,000.00 or more: 5% rebate = $15,000.00

Rebates would be paid to City of Tyler Vehicle Services at the end of each quarter. Vendors do not have to participate with discount rebate in order to receive bid but will be reviewed in regards to the final decision of awarding primary and secondary vendors.

PRE-BID MEETING:

Pre-Bid meeting will be held by appointment only, at the Vehicle Services Department. Appointment can be made by email to dschreck@tylertexas.com or sstoffregen@tylertexas.com or by calling 903-531-1323.

INSURANCE REQUIREMENTS FOR WORK PERFORMED ON CITY OF TYLER PROPERTY:

Any Vendor that performs work on City of Tyler property shall obtain, at vendor's expense, the minimum insurance coverage as set forth below:

Insurance against liability for personal and bodily injury and property damage in the amount of $1,000,000 for each individual and $2,000,000 in the aggregate (liability) and $500,000 (property).

WORKERS' COMPENSATION REQUIREMENTS FOR WORK PERFORMED ON CITY OF TYLER PROPERTY:

Any Vendor that performs work on City of Tyler property shall obtain, at its expense, at the minimum Workers' Compensation coverage as set forth below:

Workers' Compensation insurance that covers all of its employees employed upon the premises. The Vendor shall agree to comply at all times with the provisions of the State of Texas Workers' Compensation laws and Employee's Liability Insurance with minimum limits of $100,000.

SUBMITTAL REQUIREMENTS:

All bids must be received on or before 10/22/2024 by 2:00 pm Central Time. Any bids that are received after the deadline will not be considered.

Bids need to be sealed and the envelope must be addressed as listed below:

BID #:	25-001
Description:	Annual Price Agreement for Services
Closing Date:	10/22/2024
Bidder's Name:	

Proposals need to be delivered or mailed to:

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

CERTIFICATE OF INTERESTED PARTIES:

The successful bidder will be required to file Form 1295 electronically on the Texas Ethics Commission website.

In accordance with House Bill 1295, for certain contracts entered into on or after January 1, 2016, the successful bidder must submit a *Certificate of Interested Parties* (Form 1295) at the time the signed contract is submitted to the CITY. The law applies (with a few exceptions) only to a City contract between a business entity and a governmental entity or state agency that either (1) requires an action or vote by the City Council before the contract may be signed or (2) has a value of at least $1 million.

DETAILED PRICE PROPOSAL FOR SERVICE

BIDDING NOTES:

1. The **labor rate** should be calculated to recover all direct and indirect labor costs, supervision costs, as well as all associated overhead and miscellaneous costs.
2. The **overtime rate**, which must be authorized by the City before the work begins, is charged for work done after normal shop business hours.
3. **Markup** should recover all direct and indirect labor, supervision, and overhead costs associated with shop operation.
4. **Special Requirements** will be listed underneath each Group number.

Group 1 – Glass Replacement / repair Automotive, Light & Heavy-Duty Vehicles

Fully Burdened Hourly Labor Rate	$
Overtime Hourly Labor Rate	$
Parts and Materials Handling Markup Under Manufacture List price	$
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	$
Sub-Contracted Vendor Service Markup	$
Warranty Information:	

Group 2 – Vehicle upfit window tint

Fully Burdened Hourly Labor Rate	$
Overtime Hourly Labor Rate	$
Parts and Materials Handling Markup Under Manufacture List price	
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	
Sub-Contracted Vendor Service Markup	
Warranty Information:	

Group 3 – Collision Repair & Service Heavy Duty Trucks and Vans

Fully Burdened Hourly Labor Rate	$
Overtime Hourly Labor Rate	$
Parts and Materials Handling Markup Under Manufacture List price	$
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	$
Sub-Contracted Vendor Service Markup	$
Warranty Information:	

Group 4 – Welding Repair & Service

Fully Burdened Hourly Labor Rate	$ 99.77
Overtime Hourly Labor Rate	$ 99.77
Parts and Materials Handling Markup Under Manufacture List price	$ 0
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	$ 0
Sub-Contracted Vendor Service Markup	$ 0
Warranty Information:	

Burns Welding and Fabrication LLC
Owner – Cody Burns
Address – 2426 FM 124 E Beckville, TX 75631
Phone – 903-930-7585
Email – burnsweldingandfabllc@gmaail.com

Tank you City of Tyler,

It is a pleasure to have the opportunity to present this bid/proposal to you. As a native east Texan, I strive to provide services that bring great value to the surrounding communities and people. I look forward to hearing from you when the decision is made on a vendor to provide welding services to your organization. Please fill free to reach out to me with any questions you may have.

Sincerely
Cody Burns

Cody Burns

Burns Welding and Fabrication LLC
2426 FM124 E
Beckville, Tx 75631

SHREVEPORT LA 710
4 OCT 2024 PM 2 L

As in past elections,
USPS
If you chi
please ma



RECEIVED
OCT - 7 2024
CITY OF TYLER
FINANCE DEPT.
MV 10:59am

BID # 25-001
Annual Price Agreement for Services
Closing date: 10/22/2024
Burns Welding and Fabrication LLC

City of Tyler
Purchasing Department
304 North Border
Tyler, Texas 75702

75702-562304

PRICE, DATA, AND SPECIFICATION SHEET

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

Telephone: (903) 531-1232

DATE: 10/03/2024

BID # / PROPOSAL: 25-001

CLOSING TIME: 2:00 pm

CLOSING DATE: 10/22/2024

PROPOSERS MUST COMPLETE THIS SECTION

ITEM NO.	QUANTITY	DESCRIPTION	BRAND	UNIT PRICE	TOTAL NET PRICE
		See attached Groups Service Below.			
1		Glass Replacement Automotive, Light & Heavy-Duty Vehicles			
2		vehicle upfit window tint			
3		Collision Repair & Service Heavy Duty Trucks and Vans			
4		Welding Repair & Service – Labor Strait time	Burns Welding and Fabrication LLC	Hourly	$115
4		Welding Repair & Service – Daily fuel Charge	Burns Welding and Fabrication LLC	Daily	$100
4		Welding Repair & Service – After Business hours overtime rate	Burns Welding and Fabrication LLC	Hourly	$172
			TOTAL:		$387

CITY OF TYLER
SPECIFICATIONS FOR ANNUAL PRICE AGREEMENTS
FOR AUTOMOTIVE / LIGHT AND HEAVY TRUCK / LIGHT AND HEAVY EQUIPMENT SERVICE

SCOPE:

The purpose of this specification is to establish annual price *Agreements* with private partners for repair work on:

Group 1 – Glass Replacement / repair Automotive, Light & Heavy-Duty Vehicles

Fully Burdened Hourly Labor Rate	$
Overtime Hourly Labor Rate	$
Parts and Materials Handling Markup Under Manufacture List price	$
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	$
Sub-Contracted Vendor Service Markup	$
Warranty Information:	

Group 2 – Vehicle upfit window tint

Fully Burdened Hourly Labor Rate	$
Overtime Hourly Labor Rate	$
Parts and Materials Handling Markup Under Manufacture List price	
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	
Sub-Contracted Vendor Service Markup	
Warranty Information:	

Group 3 – Collision Repair & Service Heavy Duty Trucks and Vans

Fully Burdened Hourly Labor Rate	$
Overtime Hourly Labor Rate	$
Parts and Materials Handling Markup Under Manufacture List price	$
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	$
Sub-Contracted Vendor Service Markup	$
Warranty Information:	

Group 4 – Welding Repair & Service

Fully Burdened Hourly Labor Rate	$115
Overtime Hourly Labor Rate	$172
Daily Full Charge	$100
Parts and Materials Handling Markup Under Manufacture List price	$0
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	$0
Sub-Contracted Vendor Service Markup	$0
Warranty Information: 30 days from completion of service	
Welding Supplies: Will be invoice at cost to City of Tyler	
Minimum Hours: 4 Hour minimum will be invoiced	
Business Hours: 9:00 AM – 5:00 PM Monday - Friday	
Overtime: Over 40 hours per week, Emergency Calls outside of business hours	
Contact: Burns Welding and Fabrication LLC, Cody Burns, 903-930-7585, burnsweldingandfabllc@gmail.com	
Address: 2426 FM 124 E, Beckville, TX 75631	

Approximately 800 City of Tyler sedans, light-duty pickups, trucks, vans, light-duty equipment, heavy-duty trucks, vans, and equipment.

These partnerships are to assist the City of Tyler Vehicle Services Department during heavy workloads or in areas of comparative disadvantage.

There are no guaranteed dollar amounts and/or no guaranteed vehicle repair or parts quantities. This partnership will still allow the City to utilize vendors through the First-Choice Cooperative vendors that have already bid accordingly.

QUALIFICATION OF BIDDER:

Bids will be considered only from bidders who have been established in the business for five (5) or more years of expertise in area of bid made. If requested, bidders must provide references to provide proof of five (5) or more years of business. For a bidder to qualify for each service group, they must not sub-contract more than 25% of the work in that group. Preventive Maintenance will not be allowed to be sub-contracted.

PRICE AGREEMENT PERIOD AND RENEWAL OPTION:

The price *Agreements* shall be for a term of one (1) year, beginning upon the date of City Council approval. The City and contractor may, upon mutual consent, extend this price *Agreement* for three (3), one (1) year periods, upon written request of the contractor, presented not later than forty-five (45) days prior to the expiration of the price *Agreement*. The rates can be adjusted at the time of renewal, upward or downward, in a percentage not to exceed the effective change in the Consumer Price Index for the previous twelve (12) month period. If agreement cannot be reached, the price *Agreement* is terminated at the end of the current period and the next lowest original bidder will be contacted in accordance with their original bid.

CANCELLATION:

The City reserves the right to cancel the price *Agreement* upon thirty (30) days written notice. The vendor also has this right. In the event of poor service, the City reserves the right to cancel and move on to the next lowest bidder, as primary vendor, in accordance with the thirty (30) day written notice.

PRICING:

The prices quoted shall be firm for the entire term of the price *Agreement*.

PRODUCTS AND PARTS:

All products used by the vendor must meet or exceed O.E.M. specifications for each vehicle.

REPORTING PROCEDURES:

All problems identified by the vendor on a vehicle, beyond the initial requested repair, shall be reported to the City of Tyler Vehicle Services contact person, by telephone or email **prior to any work being done**. **Before repairs are authorized and before the work is completed a Purchase Order (PO) number must be obtained.**

City of Tyler - Vehicle Services (VES)
Contact – Stan Stoffregen sstoffregen@tylertexas.com Or Deb Schreck dschreck@tylertexas.com
Or office staff of VES (903) 531-1321

SERVICE TIMES FOR SERVICE VENDORS:

The awarded service vendor's place of business shall be open to the City at least from 8:00 a.m. to 5:00 p.m., Monday through Friday (official City of Tyler holidays excluded). Vendors located more than two miles outside the City of Tyler City Limits will be under evaluation for the feasibility of being utilized in comparison to those located no further than two miles.

The service vendor must be able to begin work on City equipment no later than one (1) working day from the time it is brought to them, **unless otherwise noted in the group instructions**.

*For Fire and Police emergency response vehicles, the service vendor must be able to begin work no later than four (4) hours from the time the unit is brought to the service vendor.

*For any vehicle that is determined by the City representative to be treated as urgent, the service vendor must be able to begin work no later than six (6) hours from the time the unit is brought to the service vendor.

All scheduled **Preventive Maintenance** appointments must be started at the mutual time specified by both service vendor and the City representative. All **Light Duty Preventive Maintenance** service, that has not been scheduled, will begin service within the first twenty (20) minutes from the time said City vehicle drives up for service. This allows for the driver to stay with the vehicle until service is complete. Continued failure to deliver services within the specified response time frame may result in the cancellation of this Service *Agreement* and the City will exercise its right to move to the next lowest bidder as primary vendor.

PREVENTIVE MAINTENANCE SERVICE:

Bidders will follow the guidelines of the **Products and Parts** O.E.M. specifications. Oils and lubricants must be approved by the Vehicle Services representative prior to start of service so as to meet or exceed Vehicle Services standards. For the sake of the continuity of our fleet, Preventive Maintenance service will not be allowed to be sub-contracted out.

VENDOR INVOICING:

1. Invoicing must be accomplished on an individual vehicle repair basis.
2. Invoices must be ready and signed by City personnel at the time the vehicle is ready for pickup or delivery.
3. Invoices must be itemized by individual vehicle work orders and shall specify the City **vehicle unit number and the City PO number issued.**
4. Invoices must also show itemized labor and parts charges.
5. Invoices must be prepared and submitted to the following email addresses:

Deb Schreck – dschreck@tylertexas.com
Stan Stoffregen – sstoffregen@tylertexas.com

Or mailed to: Vehicle Services
City of Tyler
410 W. Oakwood
Tyler, TX 75702

REPAIR AND PARTS WARRANTY:

Warranty on vendor-supplied parts will be whatever is offered by the manufacture as well as provided by vendor. Warranty for labor will be specified per the *Vendor Agreement*.

SERVICE VENDORS OVERWHELMED BY CITY VEHICLES:

In the event the **Primary Service Vendor** has a high number of City vehicles at their location for service that may prevent them from following the specified time frame of service, the City reserves the right to move to the **Secondary Service Vendor.** Vendors that are overwhelmed with City vehicles will not be considered for cancellation unless they are not following the City specified guidelines for service.

SERVICE BID AWARD:

Bidders are not required to bid all groups on this *Agreement*. Bidders must submit bids on each individual group they wish to bid on. Discounts in each price group will be reviewed individually.

The most responsible overall bidder in each group, making the lowest and best bid, will be awarded the **Primary Service** for the service price *Agreement* for that group. The second lowest and best bid will be awarded the **Secondary Service Vendor** for the service price *Agreement* for that group.

In the event that the awarded **Primary Service Vendor** cannot provide service on a particular vehicle, within the specified service time frame, or is overwhelmed with City vehicles, the City reserves the right to purchase the service from the awarded **Secondary Service Vendor**.

It is expressly understood and agreed that in case the City of Tyler should need any item(s) or service not available within the time frame needed from the successful vendor(s) during the term of this *Agreement*, the City of Tyler reserves the right to purchase these items or services from a vendor other than the successful vendor(s) and shall not be in violation of any terms or conditions of said *Agreement*. Furthermore, the City of Tyler reserves the right to seek another vendor if, at any time, the vendor's prices do not conform to the public pricing.

PARTS PROVISION:

The City reserves the right to provide all necessary parts for the vendor. If requested by the City, when vehicle parts lists are formulated, they are to be sent to the City of Tyler VES Parts Room staff via email dschreck@tylertexas.com or fax (903-531-1291). They will have the necessary parts delivered to the vendor. Upon City approval, the vendor may be authorized to provide vehicle parts themselves.

PARTS PRICE AUDIT:

Parts supplied by vendor will be subject to random audits. Continued price quality discrepancies or deviations from the *Bid Agreement* could result in the cancellation of this *Agreement.*

PARTS QUALITY:

All parts quoted must be new and premium grades. Brands quoted must be first - line products only; no second – line, re-boxed, or non-branded parts will be accepted for this bid. All parts quoted must meet or exceed O.E.M. requirements and documentation may be required to prove compliance.

PARTS RETURN:

The City may return any aftermarket parts, regardless of when or where purchased, provided they are in their original packaging, are the same brand being supplied under this agreement, and are unused and listed in the current manufacturer's price list.

SERVICE VOLUME DISCOUNT REBATE:

Volume Discount Rebate is the indication of how much the City would receive back in rebate form. This would be dependent upon the dollar amount that is purchased by the City for Service and/or Parts based upon accumulative purchases over each year of service. As each benchmark is reached in purchasing, the percentage bid would go into effect at the end of each period. Periods will be set up in quarterly basis. **Refer to page 23 for indication of Volume Rebate.**

VOLUME DISCOUNT REBATE EXAMPLE:

City purchases Parts and/or Service at $100,000.00 or more: 3% rebate = $3,000.00

City purchases Parts and/or Service at $200,000.00 or more: 4% rebate = $8,000.00

City purchases Parts and/or Service at $300,000.00 or more: 5% rebate = $15,000.00

Rebates would be paid to City of Tyler Vehicle Services at the end of each quarter. Vendors do not have to participate with discount rebate in order to receive bid but will be reviewed in regards to the final decision of awarding primary and secondary vendors.

PRE-BID MEETING:

Pre-Bid meeting will be held by appointment only, at the Vehicle Services Department. Appointment can be made by email to dschreck@tylertexas.com or sstoffregen@tylertexas.com or by calling 903-531-1323.

INSURANCE REQUIREMENTS FOR WORK PERFORMED ON CITY OF TYLER PROPERTY:

Any Vendor that performs work on City of Tyler property shall obtain, at vendor's expense, the minimum insurance coverage as set forth below:

Insurance against liability for personal and bodily injury and property damage in the amount of $1,000,000 for each individual and $2,000,000 in the aggregate (liability) and $500,000 (property).

WORKERS' COMPENSATION REQUIREMENTS FOR WORK PERFORMED ON CITY OF TYLER PROPERTY:

Any Vendor that performs work on City of Tyler property shall obtain, at its expense, at the minimum Workers' Compensation coverage as set forth below:

Workers' Compensation insurance that covers all of its employees employed upon the premises. The Vendor shall agree to comply at all times with the provisions of the State of Texas Workers' Compensation laws and Employee's Liability Insurance with minimum limits of $100,000.

SUBMITTAL REQUIREMENTS:

All bids must be received on or before 10/22/2024 by 2:00 pm Central Time. Any bids that are received after the deadline will not be considered.

Bids need to be sealed and the envelope must be addressed as listed below:

BID #:	25-001
Description:	Annual Price Agreement for Services
Closing Date:	10/22/2024
Bidder's Name:	

Proposals need to be delivered or mailed to:

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

CERTIFICATE OF INTERESTED PARTIES:

The successful bidder will be required to file Form 1295 electronically on the Texas Ethics Commission website.

In accordance with House Bill 1295, for certain contracts entered into on or after January 1, 2016, the successful bidder must submit a *Certificate of Interested Parties* (Form 1295) at the time the signed contract is submitted to the CITY. The law applies (with a few exceptions) only to a City contract between a business entity and a governmental entity or state agency that either (1) requires an action or vote by the City Council before the contract may be signed or (2) has a value of at least $1 million.

DETAILED PRICE PROPOSAL FOR SERVICE

BIDDING NOTES:

1. The **labor rate** should be calculated to recover all direct and indirect labor costs, supervision costs, as well as all associated overhead and miscellaneous costs.
2. The **overtime rate**, which must be authorized by the City before the work begins, is charged for work done after normal shop business hours.
3. **Markup** should recover all direct and indirect labor, supervision, and overhead costs associated with shop operation.
4. **Special Requirements** will be listed underneath each Group number.

REQUEST FOR QUOTATION

THIS IS NOT AN ORDER

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

Telephone: (903) 531-1232

10/03/2024
10/15/2024
DATE MAILED

Quote No:25-001
(Number must appear on ALL correspondence)

Closing Time: 2:00pm

Closing Date:10/22/2024

Addressed To:

INSTRUCTIONS:
1. Keep duplicate copy of proposal for your files.
2. Federal Excise Taxes are exempted, also Federal Transportation Tax, State Tax, and City Sales Tax.
3. Return this form at once if unable to quote.
4. Specify Trade name or brand in space.

Please quote as per instructions indicated below for the articles described. Quotes must be submitted on City of Tyler forms to be considered. All items or services called for must be in strict accordance with all of the requirements and specifications attached hereto or furnished upon request.

Purchasing Manager

Sealed quotes to furnish the following will be received in the Purchasing Office @ 304 North Border, Tyler, Texas 75702, Attn: Sherry Pettit until October 22, 2024, and opened by City Staff in the City Council Chambers @ 212 North Bonner, City Hall, 2nd Floor @ 2:00 PM on October 22, 2024.

Bid number 25-001 ANNUAL PRICE AGREEMENT FOR automotive glass repair or replacement, heavy duty vehicle collision repair, Welding services, window tint vehicles.

QUOTE IDENTIFICATION:
Quote number, closing time, date, and item requested must appear on outside of envelope in lower left-hand corner.

DATA SHEETS:
All bidders must complete each specification data sheet in spaces provided on each item that is bid as well as all information requested on the price data sheet. Said price, data and specifications sheet is hereby made a part of this quotation.

DELIVERY:
Delivery must be stated in your quote on the data sheet as the number of calendar days from date of order.

The City of Tyler reserves the right to reject any and/or all bids and to waive any and/or all formalities and to award purchase total amount, partial amount or individual item basis.

In submitting the above, the vendor agrees that acceptance by the City of Tyler within a reasonable period constitutes a binding agreement.

In submitting the above request and attached bid to the City of Tyler, I hereby certify that we have not participated in nor been a party to any collusion, price fixing or any other agreements with any company, firm, or person concerning the pricing of the enclosed quotation.

Net 30
INVOICING TERMS

Platinum Auto Glass
COMPANY NAME

10/15/2024
DATE

Hung Ngo
AUTHORIZED REPRESENTATIVE (print)

SIGNATURE

See other side for TERMS AND CONDITIONS

* All Quotes Must Be Signed

TERMS AND CONDITIONS

Quotations are requested for furnishing the items described herein in accordance with the terms set forth. **ALL QUOTATIONS MUST BE F.O.B. DESTINATION** and include the cost of boxing and cartage to the delivery point as stated on this form.

In the case of default, the City of Tyler, Texas reserves the right to hold the original bidder or contractor liable for any and all resultant increased costs.

Samples, if requested by the City of Tyler, must be furnished at the bidder's expense, and if not destroyed in testing or retained as a standard, will be returned on the same terms, if requested by the bidder.

Quotes may be withdrawn on written or telegraphic request received from bidders prior to the time set for opening. Negligence on the part of the responder in preparing the proposal confers no right for the withdrawal of the proposal after the hour fixed for the opening.

Any oral statement by any representative of the City, modifying or changing any conditions of this contract, is an expression of opinion only and confers no right upon the seller.

All discounts, if applicable, shall be shown in discount amount space provided on data sheets - **EXCEPT IN TERMS FOR PROMPT PAYMENT.**

For proper identification; proposal number, closing time, date, and item requested must appear on outside of envelope in lower left hand corner.

If delay in delivery as specified on the purchase order is foreseen, supplier shall give written notice to Purchasing Office immediately. The City has the right to extend the delivery date if reasons appear valid. Supplier must keep the City advised at all times of the status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes the City of Tyler to purchase material elsewhere and charge full increase in cost and handling to the defaulting supplier and could also be reason for cancellation of the Purchase Order (at no expense to the City if the City of Tyler deems it necessary).

Any quote submitted on a public works project shall comply with the additional requirements and conditions attached hereto as well as the terms and conditions stated herein.

Certificate of Interested Parties:
In accordance with Texas Government Code Sec. 2252.908, for certain contracts entered into on or after January 1, 2016, the successful bidder must submit a ***Certificate of Interested Parties*** (Form 1295) at the time the signed contract is submitted to the CITY The law applies (with a few exceptions) only to a City contract between a business entity and a governmental entity or state agency that either (1) requires an action or vote by the City Council before the contract may be signed or (2) has a value of at least $1 million.

The ***Certificate of Interested Parties*** (Form 1295) must be filed electronically with the Texas Ethics Commission using the online filing application located at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

If you need additional information about the Certificate of Interested Parties Form 1295 Procedure, contact Purchasing at (903) 531-1232.

PRICE, DATA, AND SPECIFICATION SHEET

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

Telephone: (903) 531-1232

DATE: 10/03/2024

BID # / PROPOSAL: 25-001

CLOSING TIME: 2:00 pm
CLOSING DATE: 10/22/2024

PROPOSERS MUST COMPLETE THIS SECTION

ITEM NO.	QUANTITY	DESCRIPTION	BRAND	UNIT PRICE	TOTAL NET PRICE
		See attached Groups Service Below.			
1	X	Glass Replacement Automotive, Light & Heavy-Duty Vehicles	OEM/ OEM quality	35% off list	TBD (different pricing for different vehicles.)
2	N/A	vehicle upfit window tint			
3	N/A	Collision Repair & Service Heavy Duty Trucks and Vans			
4	N/A	Welding Repair & Service			
5					
			TOTAL:		**TBD**

CITY OF TYLER
SPECIFICATIONS FOR ANNUAL PRICE AGREEMENTS
FOR AUTOMOTIVE / LIGHT AND HEAVY TRUCK / LIGHT AND HEAVY EQUIPMENT
SERVICE

SCOPE:

The purpose of this specification is to establish annual price *Agreements* with private partners for repair work on:

> Approximately 800 City of Tyler sedans, light-duty pickups, trucks, vans, light-duty equipment, heavy-duty trucks, vans, and equipment.

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City of Tyler - Vehicle Services (VES)
Contact – Stan Stoffregen sstoffregen@tylertexas.com Or Deb Schreck dschreck@tylertexas.com
Or office staff of VES (903) 531-1321

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It is expressly understood and agreed that in case the City of Tyler should need any item(s) or service not available within the time frame needed from the successful vendor(s) during the term of this *Agreement*, the City of Tyler reserves the right to purchase these items or services from a vendor other than the successful vendor(s) and shall not be in violation of any terms or conditions of said *Agreement*. Furthermore, the City of Tyler reserves the right to seek another vendor if, at any time, the vendor's prices do not conform to the public pricing.

PARTS PROVISION:

The City reserves the right to provide all necessary parts for the vendor. If requested by the City, when vehicle parts lists are formulated, they are to be sent to the City of Tyler VES Parts Room staff via email dschreck@tylertexas.com or fax (903-531-1291). They will have the necessary parts delivered to the vendor. Upon City approval, the vendor may be authorized to provide vehicle parts themselves.

PARTS PRICE AUDIT:

Parts supplied by vendor will be subject to random audits. Continued price quality discrepancies or deviations from the *Bid Agreement* could result in the cancellation of this *Agreement*.

PARTS QUALITY:

All parts quoted must be new and premium grades. Brands quoted must be first - line products only; no second – line, re-boxed, or non-branded parts will be accepted for this bid. All parts quoted must meet or exceed O.E.M. requirements and documentation may be required to prove compliance.

PARTS RETURN:

The City may return any aftermarket parts, regardless of when or where purchased, provided they are in their original packaging, are the same brand being supplied under this agreement, and are unused and listed in the current manufacturer's price list.

SERVICE VOLUME DISCOUNT REBATE:

Volume Discount Rebate is the indication of how much the City would receive back in rebate form. This would be dependent upon the dollar amount that is purchased by the City for Service and/or Parts based upon accumulative purchases over each year of service. As each benchmark is reached in purchasing, the percentage bid would go into effect at the end of each period. Periods will be set up in quarterly basis. **Refer to page 23 for indication of Volume Rebate.**

VOLUME DISCOUNT REBATE EXAMPLE:

City purchases Parts and/or Service at $100,000.00 or more: 3% rebate = $3,000.00
City purchases Parts and/or Service at $200,000.00 or more: 4% rebate = $8,000.00
City purchases Parts and/or Service at $300,000.00 or more: 5% rebate = $15,000.00

Rebates would be paid to City of Tyler Vehicle Services at the end of each quarter. Vendors do not have to participate with discount rebate in order to receive bid but will be reviewed in regards to the final decision of awarding primary and secondary vendors.

PRE-BID MEETING:

Pre-Bid meeting will be held by appointment only, at the Vehicle Services Department. Appointment can be made by email to dschreck@tylertexas.com or sstoffregen@tylertexas.com or by calling 903-531-1323.

INSURANCE REQUIREMENTS FOR WORK PERFORMED ON CITY OF TYLER PROPERTY:

Any Vendor that performs work on City of Tyler property shall obtain, at vendor's expense, the minimum insurance coverage as set forth below:

Insurance against liability for personal and bodily injury and property damage in the amount of $1,000,000 for each individual and $2,000,000 in the aggregate (liability) and $500,000 (property).

WORKERS' COMPENSATION REQUIREMENTS FOR WORK PERFORMED ON CITY OF TYLER PROPERTY:

Any Vendor that performs work on City of Tyler property shall obtain, at its expense, at the minimum Workers' Compensation coverage as set forth below:

Workers' Compensation insurance that covers all of its employees employed upon the premises. The Vendor shall agree to comply at all times with the provisions of the State of Texas Workers' Compensation laws and Employee's Liability Insurance with minimum limits of $100,000.

SUBMITTAL REQUIREMENTS:

All bids must be received on or before 10/22/2024 by 2:00 pm Central Time. Any bids that are received after the deadline will not be considered.

Bids need to be sealed and the envelope must be addressed as listed below:

BID#: 25-001
Description: Annual Price Agreement for Services
Closing Date: 10/22/2024
Bidder's Name:

Proposals need to be delivered or mailed to:

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

CERTIFICATE OF INTERESTED PARTIES:

The successful bidder will be required to file Form 1295 electronically on the Texas Ethics Commission website.

In accordance with House Bill 1295, for certain contracts entered into on or after January 1, 2016, the successful bidder must submit a *Certificate of Interested Parties* (Form 1295) at the time the signed contract is submitted to the CITY. The law applies (with a few exceptions) only to a City contract between a business entity and a governmental entity or state agency that either (1) requires an action or vote by the City Council before the contract may be signed or (2) has a value of at least $1 million.

DETAILED PRICE PROPOSAL FOR SERVICE

BIDDING NOTES:

1. The **labor rate** should be calculated to recover all direct and indirect labor costs, supervision costs, as well as all associated overhead and miscellaneous costs.
2. The **overtime rate**, which must be authorized by the City before the work begins, is charged for work done after normal shop business hours.
3. **Markup** should recover all direct and indirect labor, supervision, and overhead costs associated with shop operation.
4. **Special Requirements** will be listed underneath each Group number.

Group 1 – Glass Replacement / repair Automotive, Light & Heavy-Duty Vehicles

Fully Burdened Hourly Labor Rate	**$75 flat rate**
Overtime Hourly Labor Rate	N/A
Parts and Materials Handling Markup Under Manufacture List price	**35% Discount off list price**

Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	75%
Sub-Contracted Vendor Service Markup	0% We do not intend to sub-contract any work.
Warranty Information: **Lifetime on parts and workmanship**	

Group 2 – Vehicle upfit window tint

Fully Burdened Hourly Labor Rate	N/A
Overtime Hourly Labor Rate	N/A
Parts and Materials Handling Markup Under Manufacture List price	N/A
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	N/A
Sub-Contracted Vendor Service Markup	N/A
Warranty Information: N/A	

Group 3 – Collision Repair & Service Heavy Duty Trucks and Vans

Fully Burdened Hourly Labor Rate	N/A
Overtime Hourly Labor Rate	N/A
Parts and Materials Handling Markup Under Manufacture List price	N/A
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	N/A
Sub-Contracted Vendor Service Markup	N/A
Warranty Information: N/A	

Group 4 – Welding Repair & Service

Fully Burdened Hourly Labor Rate	N/A
Overtime Hourly Labor Rate	N/A
Parts and Materials Handling Markup Under Manufacture List price	N/A
Parts and Materials Handling Percentage Over Cost if no Manufacture List Price	N/A
Sub-Contracted Vendor Service Markup	N/A
Warranty Information: N/A	

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:
2024-1223317

Date Filed:
10/07/2024

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
Platinum Auto Glass
Nacogdoches, 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.
The 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.
25-001
Automotive glass repair and replacement. (Not exclusive to, sedans, light-duty pickups, trucks, vans, light-duty equipment, heavy-duty trucks, vans, and equipment.)

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
The City of Tyler	Tyler, TX United States	X	

5 Check only if there is NO Interested Party. ☐

6 UNSWORN DECLARATION

My name is Hung Ngo, and my date of birth is 07/20/1982.

My address is 2415 FM 698 (street), Nacogdoches (city), TX (state), 75964 (zip code), USA (country).

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Nacogdoches County, State of Texas, on the 17th day of October (month), 2024 (year).

Signature of authorized agent of contracting business entity
(Declarant)

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-19

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to award Crow Towing as the primary vendor for towing services for Vehicle Services per bid 25-002 Annual Price Agreement for Wrecker Services.

Item Reference:

On October 22, 2024, bid 25-002 for towing services was opened at the City Council Chambers. Only one vendor responded. The contract will be a one-year contract with (2) two additional one-year renewals. VES recommends the City Manager award Crow Towing of Tyler as the sole vendor for towing services for the city fleet.

See attached documents

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to award Crow Towing as the primary vendor for towing services for Vehicle Services per bid 25-002 Annual Price Agreement for Wrecker Services.

Attachments:
Bid 25-002 wrecker service

Drafted/Recommended By:
Department Leader Stan Stoffregen Fleet Manager

Edited/Submitted By:
City Manager

Purchasing Department
Bid "As Read Results"

City of Tyler Bid No. / Description: 25-002 Labor for Wrecker services – VES/ D. Schreck

Date Opened: Oct 22, 2024

	Vendor	Vendor	Vendor	Vendor	Vendor
	Crow Towing Service				
Unit Cost	TB Evaluated				
Total					
Bid Bond					
Addenda					
Base Bid					
Alternate 1					
Alternate 2					
Alternate 3					
Base Bid + Alternates					

Purchasing Personnel in attendance:

Sherry Pettit, Purchasing Manager

Signature: _____

Gary Durham or Gina Elzea, Purchasing Agent

Signature: _____

REQUEST FOR QUOTATION

THIS IS NOT AN ORDER

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

Telephone: (903) 531-1232

10/03/2024
10/9/24
DATE MAILED

Quote No:25-002
(Number must appear on ALL correspondence)

Closing Time: 2:00pm

Closing Date:10/22/2024

Addressed To:

INSTRUCTIONS:
1. Keep duplicate copy of proposal for your files.
2. Federal Excise Taxes are exempted, also Federal Transportation Tax, State Tax, and City Sales Tax.
3. Return this form at once if unable to quote.
4. Specify Trade name or brand in space.

Please quote as per instructions indicated below for the articles described. Quotes must be submitted on City of Tyler forms to be considered. All items or services called for must be in strict accordance with all of the requirements and specifications attached hereto or furnished upon request.

Purchasing Manager

Sealed quotes to furnish the following will be received in the Purchasing Office @ 304 North Border, Tyler, Texas 75702, Attn: Sherry Pettit until October 22,2024 and opened by City Staff in the City Council Chambers @ 212 North Bonner, City Hall, 2nd Floor @ 2:00 PM on October 22,2024.

Bid number 25-002 ANNUAL PRICE AGREEMENT FOR WRECKER SERVICE

QUOTE IDENTIFICATION:
Quote number, closing time, date, and item requested must appear on outside of envelope in lower left hand corner.

DATA SHEETS:
All bidders must complete each specification data sheet in spaces provided on each item that is bid as well as all information requested on the price data sheet. Said price, data and specifications sheet is hereby made a part of this quotation.

DELIVERY:
Delivery must be stated in your quote on the data sheet as the number of calendar days from date of order.

The City of Tyler reserves the right to reject any and/or all bids and to waive any and/or all formalities and to award purchase total amount, partial amount or individual item basis.

In submitting the above, the vendor agrees that acceptance by the City of Tyler within a reasonable period constitutes a binding agreement.

In submitting the above request and attached bid to the City of Tyler, I hereby certify that we have not participated in nor been a party to any collusion, price fixing or any other agreements with any company, firm, or person concerning the pricing of the enclosed quotation.

Net 30
INVOICING TERMS

10/8/24
DATE

Crow Towing Service
COMPANY NAME

Matt Stiles
AUTHORIZED REPRESENTATIVE (print)

SIGNATURE

See other side for TERMS AND CONDITIONS

* All Quotes Must Be Signed

PRICE, DATA, AND SPECIFICATION SHEET

Annual price agreement for Wrecker Service

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

Telephone: (903) 531-1232

DATE: 10/03/2024

BID # 25-002

CLOSING TIME:2:00 pm

CLOSING DATE:10/22/2024

PROPOSERS MUST COMPLETE THIS SECTION

ITEM NO.	QUANTITY	DESCRIPTION	BRAND	UNIT PRICE	TOTAL NET PRICE
1		Annual price agreement to provide wrecker service for the City of Tyler Fleet and Vehicle Services Department.			
			TOTAL:		

Annual price agreement for Wrecker Service

Group 1 – Wrecker Service – Automotive (up to 1 ½ ton)

Towing Charge	$ 50.00/hr
Clean up fee	$ 50.00/hr
Mileage Charge (if outside City Limits)	$ 2.50 per mile
Driveline or Axle Removal charge (If Any)	$ 50.00/hr
Trailer charge (if any)	$ 50.00/hr
Winch Fee (if any)	$ 100.00/hr
Working time/waiting (per hour)	$ 100.00/hr per hr
Fuel Surcharge(if any)	$
Outside charges(if any)	$
Other:	

Group 2 – Wrecker Service – Motorcycle

Towing Charge	$ 100.00/hr
Clean up fee	$ 50.00/hr
Mileage Charge (if outside City Limits)	$ 2.50 per mile
Driveline or Axle Removal charge (If Any)	$ N/A
Trailer charge (if any)	$ 50.00/hr
Winch Fee (if any)	$ 100.00/hr
Working time/waiting (per hour)	$ 100.00/hr per hr
Fuel Surcharge(if any)	$
Outside charges(if any)	$
Other:	

Group 3 – Wrecker Service – Heavy Duty truck/buses/equipment (2 ton and up)

Towing Charge	$ 300.00/hr
Clean up fee	$ 150.00/hr
Mileage Charge (if outside City Limits)	$ 3.50 per mile
Driveline or Axle Removal charge (If Any)	$ 50.00 - Per Axle
Trailer charge (if any)	$ 300.00
Winch Fee (if any)	$ 250.00
Working time/waiting (per hour)	$ 200.00 per hr
Fuel Surcharge(if any)	$
Outside charges(if any)	$
Other:	

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-20

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the capital expenditure of $57,070.00 to Pump Solutions, Inc. New Caney, Texas, for replacement of one (1) 107 HP submersible pump at Shackleford Creek sanitary sewer lift station.

Item Reference: **FY 2023-24 Water Utilities Capital Improvement Budget**

Shackleford Creek wastewater lift station is located off East Cumberland Road on Cherokee Trail. It was placed into service in 2001 to pump wastewater from the annexed Shackleford Creek area of southeast Tyler to the Southside Wastewater Treatment Plant. Since then, the area has continued to grow in residential and commercial development, making this lift station one of the largest in service.

The two KSB 107 HP pumps are critical, as they elevate the wastewater to a level at which it will gravity flow to the Southside Treatment Plant. After many hours of operation, one of the pumps failed and needed to be replaced quickly. The new pump will ensure adequate pumping capacity for the lift station and minimize the risk of non-compliance with State requirements. The KSB 107 HP submersible pump directly matches the pump being replaced. The single source vendor is Pumps Solutions, Inc. of New Caney, Texas.

RECOMMENDATION:

It is recommended that the City Council ratify the capital expenditure of $57,070.00 to Pump Solutions, Inc., New Caney, Texas, for the replacement of one (1) submersible pump at Shackleford Creek sewer lift station.

Attachments:
Shackleford Lift Station Pump Replacement 2024

Drafted/Recommended By:
Department Leader Mike Norris / Manager Wastewater Treatment Systems

Edited/Submitted By:
City Manager

CITY OF TYLER
PURCHASING DEPARTMENT
ATTN: SHERRY PETTIT
304 NORTH BORDER
TYLER, TEXAS 75702
903-531-1232

COPY

PURCHASE ORDER
284755

PAGE: 1
P.O. NO.: 284755
DATE: 01/31/24
CHANGE #:
DATE CHANGE:

ISSUED TO: PUMP SOLUTIONS INC
18594 US HIGHWAY 59
NEW CANEY, TX 77357

SHIP TO: City of Tyler
620 WEST CUMBERLAND RD.
TYLER, TX 75703

VENDOR NO.
14528

DELIVER BY	SHIP VIA	F.O.B.	TERMS
01/29/24			NET

CONFIRM BY	CONFIRM TO	REQUISITIONED BY
	GARY DURHAM	MNORRIS

FREIGHT	CONTRACT NO	ACCOUNT NO	PROJECT	REQ. NO.	REQ DATE
		503-0746-746.25-01	LSSHCK	182844	01/29/24

LINE NO.	QUANTITY	UOM	ITEM NO. AND DESCRIPTION	UNIT COST	EXTENDED COST
1	1.0	EA	KSB MODEL K100-400/804XNG 107HP PUMP	57070.0000	57070.00

SUB-TOTAL	57070.00
TOTAL	57070.00

SIGNED BY: Gary Durham

GARY DURHAM, PURCHASING AGENT

Important Instructions and Conditions on Reverse Side

Pump Solutions, Inc.
18594 U.S. Highway 59
New Caney, TX 77357

Invoice

BILL TO

City of Tyler
Attn: Accounts Payable
P.O. Box 2039
Tyler, TX 75710

DATE	INVOICE #
6/13/2024	2024-0661

P.O. NO.	TERMS	REP	DUE DATE
284755	Net 30	SHOPD	7/13/2024

QTY	ITEM	DESCRIPTION	PRICE	AMOUNT
1	KRT K100-400	REPAIR BY REPLACE. KSB MODEL K100-400/804XNG WITH SN: 0500493949/001000 WAS BROUGHT IN FOR REPAIR BUT HAS MAJOR DAMAGE AND IS NOT ECONOMICALLY REPAIRABLE NEW: KSB MODEL KRT K100-400/804XNG, 107 HP, 460 VOLT, 3 PHASE, EXPLOSION PROOF, ELECTRIC SUBMERSIBLE PUMP WITH 50' POWER CABLE.	57,070.00	57,070.00
		PSI JOB 2525		

Subtotal	$57,070.00
Sales Tax ()	$0.00
Total	$57,070.00
Payments/Credits	$0.00
Balance Due	$57,070.00

Thank you for your business.

Remit To:
Pump Solutions, Inc.
18594 U.S. Highway 59
New Caney, TX 77357

Contact Accounts Receivable:
P: 281-399-9400 email: sandy@pumpsolutions.net

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-21

Date: November 13, 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 $121,525.28 and the release of final retainage payment in the amount of $227,493.04 to King Solution Services, LLC for Consent Decree Group 5 Pipeburst Rehabilitation, Bid 23-016

Item Reference: **Item M-1 Council Meeting 2/08/23; 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. As a part of this Consent Decree, condition assessments are being performed on the sanitary sewer collection system. The assessments began in 2017; staff has elected to consolidate the inspections of the gravity mainlines from the allotted eight (8) year period to a seven (7) year period, and inspections of the manholes are spread out over a five (5) year period.

This project work consisted of approximately 45,000 LF of sanitary sewer rehabilitation via pipebursting as well as some manholes, and appurtenances.

On February 8, 2023, the City Council authorized the award of the Consent Decree Group 5 Pipeburst Rehabilitation, Bid 23-016. The original award amount was $4,671,386.00. The rehabilitation work has been successfully completed at a total cost of $4,549,860.72, resulting in the project being $121,525.28 under the original contract amount.

Original Project Cost: $4,671,386.00
Final Project Cost: $4,549,860.72 (~3% 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 $121,525.28 and the release of final retainage payment in the amount of $227,493.04 to King Solution Services, LLC for Consent Decree Group 5 Pipeburst Rehabilitation, Bid 23-016

Attachments:
B100963 RCO - Signed

B100963 - Contractor's Affidavit of Bills Paid

Drafted/Recommended By:
Department Leader Tiffany Currie, PE / Kate Dietz, PE, Director of Utilities

Edited/Submitted By:
City Manager

KSA 6781 Oak Hill Blvd. Tyler, TX 75703 **RECONCILIATORY CHANGE ORDER**	Date October 22, 2024 Project No. B100963 Location Tyler, TX
To (Contractor) King Solution Services, LLC 13221 Chrisman Rd. Houston, TX 77039	Job Description Consent Decree Group 5 - Remedial Measures Pipeline by Pipeburst Total Contract Price: Original $4,671,386.00 Previous CO / WO $0.00 Current $4,671,386.00

You are hereby requested to comply with the following changes from the contract plans and specifications:

Item No. (1)	Description of changes – quantities, units, Unit price, change in completion schedule, etc. (2)	Decrease in Contract price (3)	Increase in Contract price (4)
CO 1.1	Modify Item 2.01 - Pre-installation CCTV & Post Construction CCTV Inspection: Decrease quantity by 500 LF to 44,713 LF (45,213 LF - 500 LF = 44,713 LF)	$2,500.00	$0.00
CO 1.2	Modify Item 2.02 - 6-in Pipe Burst to 8-in: Decrease quantity by 531 LF to 40,268 LF (40,799 LF - 531 LF = 40,268 LF)	$26,019.00	$0.00
CO 1.3	Modify Item 2.03 - 8-in Pipe Burst to 8-in: Decrease quantity by 174 LF to 2,188 LF (2,362 LF - 174 LF = 2,188 LF)	$9,744.00	$0.00
CO 1.4	Modify Item 2.04 - 8-in Pipe Burst to 10-in: Decrease quantity by 7 LF to 750 LF (757 LF - 7 LF = 750 LF)	$392.00	$0.00
CO 1.5	Modify Item 2.05 - 10-in Pipe Burst to 10-in: Decrease quantity by 242 LF to 402 LF (644 LF - 242 LF = 402 LF)	$16,940.00	$0.00
CO 1.6	Modify Item 2.06 - 12-in Pipe Burst to 12-in: Increase in quantity by 403 LF to 1,054 LF (651 LF + 403 LF = 1,054 LF)	$0.00	$34,255.00
CO 1.7	Modify Item 2.07 - Service Line Reconnections: Increase in quantity by 273 EA to 620 EA (347 EA + 273 EA = 620 EA)	$0.00	$338,520.00
CO 1.8	Modify Item 2.09 - Construct Wastewater Access Chamber Assembly at End of Line: Decrease in quantity by 1 EA to 8 EA (9 EA - 1 EA = 8 EA)	$3,500.00	$0.00
CO 1.9	Modify Item 2.10 - Remove Existing Cleanout and Construct Manhole: Decrease in quantity by 1 EA to1 EA (2 EA - 1 EA = 1 EA)	$9,600.00	$0.00
CO 1.10	Modify Item 2.11 - Foundation Material for Unsuitable Soil: Decrease in quantity by 16 CY to 411 CY (427 CY - 16 CY = 411 CY)	$672.00	$0.00
CO 1.11	Modify Item 3.01 - Pre-Installation CCTV & Post Construction CCTV Inspection: Decrease quantity by 300 LF to 0 LF (300 LF - 300 LF = 0 LF)	$1,800.00	$0.00
CO 1.12	Modify Item 3.02 - Remove Existing Sewer Line and Install New 8" Sanitary Sewer: Decrease quantity by 175 LF to 5 LF (180 LF - 175 LF = 5 LF)	$26,250.00	$0.00
CO 1.13	Modify Item 3.03 - 6-in Point Repair: Increase quantity by 1 EA to 7 EA (6 EA + 1 EA = 7 EA)	$0.00	$2,500.00
CO 1.14	Modify Item 3.04 - Service Line Reconnections: Decrease quantity by 2 EA to 0 EA (2 EA - 2 EA = 0 EA)	$3,000.00	$0.00
CO 1.15	Modify Item 3.05 - Foundation Material for Unsuitable Soil: Decrease quantity by 5 CY to 22 CY (27 CY - 5 CY = 22 CY)	$225.00	$0.00
CO 1.16	Modify Item 4.01 - Sawcut and Repair Asphalt Pavement: Decrease quantity by 13.43 SY to 2,949.57 SY (2,963 SY - 13.43 SY = 2,949.57 SY)	$1,289.28	$0.00

Item No. (1)	Description of changes – quantities, units, Unit price, change in completion schedule, etc. (2)	Decrease in Contract price (3)	Increase in Contract price (4)
CO 1.17	Modify Item 4.02 - Brick Pavement Repair: Decrease quantity by 10 SY to 0 SY (10 SY - 10 SY = 0 SY)	$1,500.00	$0.00
CO 1.18	Modify Item 4.03 - Sawcut and Repair Concrete Pavement: Decrease quantity by 1 SY to 52 SY (53 SY - 1 SY = 52 SY)	$175.00	$0.00
CO 1.19	Modify Item 4.05 - Sawcut and Repair Concrete Curb and Gutter: Decrease quantity by 6 LF to 42 LF (48 LF - 6 LF = 42 LF)	$108.00	$0.00
CO 1.20	Modify Item 4.06 - Unpaved Groundcover Repair: Decrease quantity by 11 SY to 452 SY (463 SY - 11 SY = 452 SY)	$495.00	$0.00
CO 1.21	Add Item 4.07 - Material Leveling: Add quantity of one (1) with a lump sum price of $7,409.00. Increase in contract price by $7,409.00 (1 LS x $7,409.00 = $7,409.00)	$0.00	$7,409.00
CO 1.22	Modify Item 1.09 - Allowance for Miscellaneous Work: Decrease allowance by $400,000.00	$400,000.00	$0.00
	Change in contract price due to this Change Order:		
	Total Decrease	$504,209.28	
	Total Increase		$382,684.00
	Difference between Columns (3) and (4)	$121,525.28	

The sum of **$121,525.28** is hereby ~~(unchanged) (added to)~~ (deducted from) the total contract price, and the total adjusted contract price to date thereby is **$4,549,860.72**

The time provided for completion in the contract is ~~(unchanged)~~ (increased by) ~~(decreased by)~~ **28** additional calendar days added to the contract time for a total adjusted contract time of **388** calendar days for substantial completion. This document shall become an amendment to the contract and all provisions of the contract will apply hereto.

Recommended by (Engineer)	Taylor Kaye KSA	10/22/2024 Date
Accepted by (Contractor)	King Solution Services, LLC	10.22.2024 Date
Approved by (Owner)	City of Tyler	Date

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, Mario Jaimes *[Name of Affiant]*, do solemnly swear or affirm that I am the legal representative of King Solution Services, 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	23-016
Project Name	Consent Decree Group 5 – Remedial Measures Pipeline by Pipeburst

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 2nd day of October, 2024.

LORA GOLLER NOTARY PUBLIC STATE OF TEXAS ID 124781 EXP. 02-17-2027

Lora Goller
Notary Public In and For The State of Texas

My Commission Expires: 02-17-2024

Lora Goller
Notary's Printed Name

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-22

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to ratify an expenditure in the amount of $56,650.00 to Walker Process Equipment for the purchase of a new primary clarifier gear drive unit at the Westside Wastewater Treatment Plant.

Item Reference: **FY 2023-24 Water Utilities Operating Budget**

The Westside Wastewater Treatment Plant treats an average of nine million gallons of wastewater per day to meet State and Federal discharge standards for water quality. One of the first steps in the treatment process is the removal of heavy solids. This is accomplished by utilizing a 150' diameter primary clarifier with rake arms that rotate around the unit. The rake arms are attached to the gear drive unit, which operates continuously. After many years of service, one of the gear drives failed, and a new replacement was the only viable option. Walker Process Equipment manufactures the gear drive and is the single source vendor providing replacement parts and service.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to ratify an expenditure in the amount of $56,650.00 to Walker Process Equipment for the purchase of one new primary clarifier gear drive unit at the Westside Wastewater Treatment Plant.

Attachments:
Westside PC Gear Drive PO & Invoice

Drafted/Recommended By:
Department Leader Mike Norris / Manager Wastewater Treatment Systems

Edited/Submitted By:
City Manager

CITY OF TYLER
PURCHASING DEPARTMENT
ATTN: SHERRY PETTIT
304 NORTH BORDER
TYLER, TEXAS 75702
903-531-1232

PURCHASE ORDER
288149

P.O. NO.: 288149
DATE: 05/07/24
CHANGE #: 1
DATE CHANGE: 05/15/24

ISSUED TO: WALKER PROCESS EQUIP.
840 NORTH RUSSELL AVENUE
AURORA, IL 60506

SHIP TO: City of Tyler
TREATMENT PLANT
14939 CR 46
TYLER, TX 75704

VENDOR NO.
3950

DELIVER BY	SHIP VIA	F.O.B.	TERMS
05/03/24			NET

CONFIRM BY	CONFIRM TO	REQUISITIONED BY
	GARY DURHAM	MNORRIS

FREIGHT	CONTRACT NO	ACCOUNT NO	PROJECT	REQ. NO.	REQ DATE
		502-0746-746.08-22	WSWWTP	186376	05/03/24

LINE NO.	QUANTITY	UOM	ITEM NO. AND DESCRIPTION	UNIT COST	EXTENDED COST
			* * * CHANGE ORDER * * * **********		
1	1.0	EA	REBUILD WALKER S60N16 SPUR GEAR DRIVE INCLUDES: DISASSEMBLY, INSPECTION, CLEAN/SANDBLAST, REASSEMBLE WITH NEW GASKETS, BEARINGS, SHIMS, SEALS, WORM GEAR, WORM SHAFT, PINION SHAFT, WALKER TORQUE INDICATOR. FINISH PAINT (GRAY) AND FREIGHT TO WALKER PROCESS AND RETURN FREIGHT TO THE JOBSITE ARE ALSO INCLUDED. REMARKS: c/o req by m.norris add 2150.00 5/15/24 gdurh	56650.0000	56650.00
				SUB-TOTAL	**56650.00**
				TOTAL	**56650.00**

SIGNED BY: Gary Durham

Important Instructions and Conditions on Reverse Side

GARY DURHAM, PURCHASING AGENT

Walker Process Equipment
840 N. Russell Ave
Aurora, IL 60506
(630)892-7921
Fax: (630) 892-7951
FEIN # 31-0884304
A Division of McNish
Corporation

Invoice Number INV026235
Invoice Date 7/9/2024
Order Number 34-8112

Bill To: 4R-TYL001

TYLER TX
KENETH JOHNSON
CITY OF TYLER
ACCOUNTING DEPARTMENT
P.O. BOX 2039
TYLER, TX 75710
Phone: (903) 245-4293
Fax: (903) 531-0223

Ship To:

TYLER TX
CITY OF TYLER TREATMENT PLANT
ATTN: RYAN PEDEN
14939 COUNTY ROAD 46
TYLER, TX 75704
Phone: (903) 592-5391 Fax: (903) 531-0223

PO Number	Proposal	Sales Rep	Ship Method	Payment Terms
288149	25877 P40712	-	SEE NOTES	N15

Consulting Engineer	Job Name	Sales Mgr
		BRIAN FREEMAN

Qty	U of M	Item	Description	Unit Price	Extended Price
1	EA	REPAIR	1-N16 WORM GEAR TOWER ASSEMBLY COMPLETE	$56,650.00	$56,650.00

Please REMIT TO:
WALKER PROCESS EQUIPMENT
840 N. RUSSELL AVE.
AURORA, IL 60506

Subtotal	$56,650.00
Tax	$0.00
Total	$56,650.00

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-23

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to enter into an agreement with Northchase Development LLC to reimburse costs (not to exceed $1,000,000) associated with East Maple Estates Unit 1 infrastructure improvements in conjunction with the adopted TIRZ #3 Project and Financing Plan.

Item Reference: **Tax Increment Financing Act Chapter 311**

The Developer is requesting that the City use Tax Increment Reinvestment Zone (TIRZ) #3 as a financing method for costs associated with the construction of the Maple East Estates Unit 1 infrastructure. The proposed development is located within the boundaries of TIRZ #3 and meets the financing requirements outlined in the amended TIRZ #3 Project Plan and Financing Plan.

On September 12, 2024, the TIRZ #3 Board amended the TIRZ #3 Project Plan and Financing Plan based on the updated feasibility study which included the East Maple Estates project.

NorthChase Development LLC plans to develop an approximately 90-acre tract known as East Maple Estates, located at the southwest corner of North Broadway and Northwest Loop 323. The proposed development includes a mix of land uses including a shopping plaza, strip retail plaza, small office buildings, multifamily housing (low-rise), and single-family housing. In 2023, the project received approvals for Zoning (see Exhibit A) and the Preliminary Plat (see Exhibit B). The development envisions adding two new streets, Maple East Drive and Melontree Drive, alongside necessary utility infrastructure.

The northwest corner adjacent to Loop 323 and Broadway is proposed as a shopping plaza totaling approximately 49,000 sf of commercial retail floor space. To the east of the proposed shopping plaza, the site plan provides three three-story buildings with approximately 9,400 sf per floor adjacent to Loop 323. The ground floor will be developed into small office and retail spaces, while the second and third floors will be developed into multifamily housing. It is anticipated that the three buildings will have 18.8 GFA for small office space, 9.4 GLA of strip retail plaza, and 36 dwelling units. The remaining acreage is proposed for single-family detached housing, for 224 dwelling units.

The proposed development is consistent with the Tyler 1st Comprehensive Plan, North End Revitalization Goals which identify the following:

1. Add 3,000 more households to North Tyler and downtown in the next 20 years to create mixed-

income neighborhoods.

2. Ã¢â‚¬â€¹As needed, target public investments, regulations and incentives to attract new households without pushing out existing households.

3. Focus commercial development around targeted mixed-use intersections.

NorthChase is seeking a development agreement using TIRZ 3 fund reimbursement for infrastructure costs not to exceed $1,000,000. The agreement requires NorthChase Development to apply for the final plat approval of Unit 1 (see Exhibit C) where most of the reimbursable infrastructure is located. There are also reimbursable costs for a deceleration lane (off North Broadway) required for the development.

NorthChase Development LLC requested that the City participate in the cost of infrastructure improvements associated with Maple East Estates Unit 1. The Engineer's Opinion of Probable Cost (EOPC) totals $1,477,127.09 and is detailed within the attached EOPC.

RECOMMENDATION:

Request that the City Council consider authorizing the City Manager to enter into an agreement with Northchase Development LLC to reimburse costs (not to exceed $1,000,000) associated with East Maple Estates Unit 1 infrastructure improvements in conjunction with the adopted Tax Increment Reinvestment Zone #3 Project and Financing Plan.

Attachments:
EOPC East Maple Estates, Phase 1-A - Complete Estimate
Exhibit B P23-009 East Maple Estates Preliminary Plat
Exhibit A East Maple Estates Zoning Map
Exhibit C East Maple Estates Unit 1
2024-09-12_TYL_TIRZ#3_A&R PFP_final
DRAFT East Maple Estates Development Agreement
East Maple Estates Development Agreement9.19

Drafted/Recommended By:
Department Leader Heather Nick, AICP, MPA, Assistant City Manager

Edited/Submitted By:
City Manager

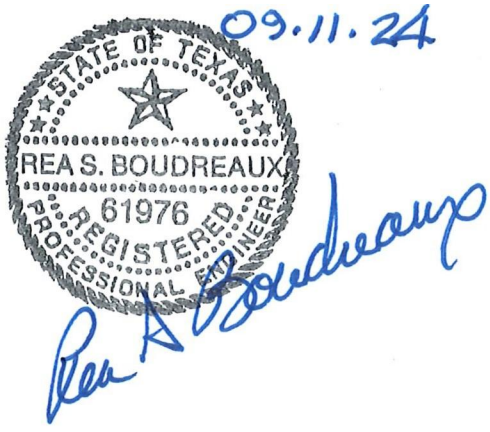
EAST MAPLE ESTATES, PHASE 1-A
NORTHCHASE DEVELOPMENT, LLC.
ENGINEER'S OPINION OF PROBABLE COST

Summary of Proposed Improvements
The Brannon Corporation 22117

SUMMARY SHEET

TOTAL EARTHWORK IMPROVEMENTS: PART 'A'	$147,089.80
TOTAL WATER IMPROVEMENTS: PART 'B'	$166,223.79
TOTAL SANITARY SEWER IMPROVEMENTS: PART 'C'	$77,977.00
TOTAL DRAINAGE IMPROVEMENTS: PART 'D'	$256,694.00
TOTAL PAVING IMPROVEMENTS: PART 'E'	$679,933.00
TOTAL LOOP 323 DECEL LANE AND N. BROADWAY LEFT TURN LANE - PAVING IMPROVEMENTS: PART 'F'	$149,209.50
TOTAL IMPROVEMENTS	**$1,477,127.09**

The above opinion of probable total project construction cost is based upon the Engineer's experience and qualifications, taking into consideration preliminary design and the best information available. The Engineer has no control over the cost of labor and materials, changes in governmental policy , or over competitive bidding and market conditions; therefore, the Engineer does not guarantee the accuracy of such opinions of probable project cost as compared to the contractor's bid. In addition, no allowance has been made for the time value of money as it pertains to the phasing of the subject project.



EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part A - Earthwork Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'A': Earthwork Improvements				
3	Provide required **insurance**, including Liability Insurance, with the Owner and Engineer named as additional insured, complete for Dollars and Cents per lump sum	1 LS	$ 2,301.00	$ 2,301.00
5.9.3	Provide **construction staking** by RPLS, complete, for Dollars and Cents per lump sum	1 LS	$ 1,890.00	$ 1,890.00
100	Furnish all labor, tools, equipment, supervision, and any other requisite necessary for **preparing right of way** for street right of way and utility easements, including, but not limited to, removal of clearing and grubbing of trees, bushes, undergrowth, stumps, and other vegetation or debris, in accordance with plans and specifications complete and in place, for Dollars and Cents per acre	3.86 AC	$ 9,000.00	$ 34,740.00
110	Furnish all labor, tools, equipment, supervision and any other requisite necessary to perform **excavation** for the site including new streets, drainage ditches, right of ways, and easements, unclassified excavation, (density control), complete and in place, for Dollars and Cents per	19,390 CY	$ 3.23	$ 62,629.70
132	Furnish all labor, tools, equipment, supervision and any other requisite necessary to perform **embankment** for the site including new streets, right of ways, and easements, unclassified excavation, (density control), complete and in place, for Dollars and Cents per	8,694 CY	Non-Bid Item	Non-Bid Item
164	Furnish and install **hydromulch seeding and fertilizer** on disturbed slopes, complete and in place, for Dollars and Cents per square yard	11,500 SY	$ 1.56	$ 17,940.00

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part A - Earthwork Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'A': Earthwork Improvements				
506-A	Comply with the **Storm Water Pollution Prevention Plan** for construction activities by installing, maintaining, monitoring, and inspecting erosion control devices and providing the necessary documentation and record keeping for the SWPPP, complete and in place for Dollars and Cents per lump sum	1 LS	$ 1,800.00	$ 1,800.00
506-B	Furnish, install, and maintain **stabilized construction entrance** for erosion control, in place and complete, for Dollars and Cents per each	1 EA	$ 5,616.00	$ 5,616.00
506-C	Furnish, install, and maintain **silt fence** for erosion control, in place and complete, for Dollars and Cents per linear foot	3,070 LF	$ 3.83	$ 11,758.10
506-D	Furnish, install, and maintain **soil retention blankets** for erosion control, in place and complete, for Dollars and Cents per square yard	500 SY	$ 16.83	$ 8,415.00

TOTAL EARTHWORK IMPROVEMENTS: $ 147,089.80

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part B - Water Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'B': Water Improvements				
3	Provide a **100% Performance, Payment, and Maintenance Bonds** for water improvements, in approved format, to The City of Tyler, complete for Dollars and Cents per lump sum	1 LS	$ 5,300.00	$ 5,300.00
4	Provide required **insurance**, including Liability Insurance, with the Owner and Engineer named as additional insured, complete for Dollars and Cents per lump sum	1 LS	$ 1,000.00	$ 1,000.00
W-1	Furnish and install **ductile iron fittings**, complete and in place, for Dollars and Cents per pound	957 LB	$ 6.50	$ 6,220.50
W-2	Furnish and install **8-inch AWWA C 900 DR14 PVC water lines**, with tracer wire and standard pipe embedment, complete and in place, for Dollars and Cents per linear foot	1,828 LF	$ 44.90	$ 82,077.20
W-3	Furnish and install **select backfill** in water line trench using on-site material, as required, complete and in place, for Dollars and Cents per linear foot	1,828 LF	$ 2.25	$ 4,113.00
W-4	**Locate and remove existing 8-inch plug, and connect** to existing City of Tyler 8-inch water line in Melontree Drive, complete and in place for Dollars and Cents per lump sum	1 LS	$ 1,400.00	$ 1,400.00
W-5	Furnish and install **8-inch AWWA C-509 resilient seated gate valves and boxes**, complete and in place, for Dollars and Cents per each	3 EA	$ 3,619.00	$ 10,857.00
W-6	Furnish and install standard **3-way fire hydrant**, with 8-inch x 8-inch x 6-inch ductile iron tee, anchor couplings, 6-inch fire hydrant lead, and 6-inch C-509 resilient seated gate valve and box, complete and in place, for Dollars and Cents per each	3 EA	$ 8,191.25	$ 24,573.75
W-7	Furnish and install **12-inch x 8-inch tapping sleeve and valve**, complete and in place, for Dollars and Cents per each	1 EA	$ 5,417.54	$ 5,417.54

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part B - Water Improvements

The Brannon Corporation 22117

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	Engineer's Estimate UNIT PRICE	TOTAL PRICE
Part 'B': Water Improvements				
W-8	Furnish and install **12-inch steel casing with spacers by horizontal dry directional bore under Broadway Avenue**, complete and in place, for Dollars and Cents per linear foot	60 LF	$ 283.98	$ 17,038.80
W-9	Provide **trench safety** protection per OSHA requirements for trenches greater than 5 ft. in depth, complete and in place, for Dollars and Cents per linear foot	1,828 LF	$ 4.50	$ 8,226.00
	TOTAL WATER IMPROVEMENTS:			$ 166,223.79

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part C - Sanitary Sewer Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'C': Sanitary Sewer Improvements				
SS-1	Furnish and install **8-inch SDR-26 PVC** (ASTM D3034) sanitary sewer with crushed rock embedment (6 to 8 ft depth), complete and in place, for Dollars and Cents per linear foot	263 LF	$ 35.00	$ 9,205.00
SS-2	Furnish and install **8-inch SDR-26 PVC** (ASTM D3034) sanitary sewer with crushed rock embedment (8 to 10-ft depth), complete and in place, for Dollars and Cents per linear foot	149 LF	$ 45.00	$ 6,705.00
SS-3	Furnish and install **8-inch SDR-26 PVC** (ASTM D3034) sanitary sewer with crushed rock embedment (10 to 12-ft depth), complete and in place, for Dollars and Cents per linear foot	149 LF	$ 55.00	$ 8,195.00
SS-4	Furnish and install **10-inch SDR-26 PVC** (ASTM D3034) sanitary sewer with crushed rock embedment (6 to 8-ft depth), complete and in place, for Dollars and Cents per linear foot	92 LF	$ 55.00	$ 5,060.00
SS-5	Furnish and install **10-inch SDR-26 PVC** (ASTM D3034) sanitary sewer with crushed rock embedment (8 to 10-ft depth), complete and in place, for Dollars and Cents per linear foot	92 LF	$ 65.00	$ 5,980.00
SS-6	Provide **trench safety** protection per OSHA requirements for gravity sanitary sewer trenches greater than 5 ft. in depth, for Dollars and Cents per linear foot	744 LF	$ 1.00	$ 744.00

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part C - Sanitary Sewer Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'C': Sanitary Sewer Improvements				
SS-7	Furnish and install **select backfill** from on-site for sanitary sewer trenches, as required, complete and in place, for Dollars and Cents per linear foot	744 LF	$ 2.00	$ 1,488.00
SS-8	Furnish and install **additional crushed stone embedment** for sanitary sewer, as required, complete Dollars and Cents per cubic yard	100 CY	$ 75.00	$ 7,500.00
SS-9	Furnish and install standard **4-foot diameter pre-cast concrete manholes** (0 to 6-ft depth), complete and in place, for Dollars and Cents per each	4 EA	$ 4,600.00	$ 18,400.00
SS-10	Furnish and install standard **4-foot diameter precast concrete drop manhole**, complete and in place, for Dollars and Cents per each	1 EA	$ 6,500.00	$ 6,500.00
SS-11	Furnish and install extra **vertical height** for 4-foot diameter precast concrete manholes, complete and in place, for Dollars and Cents per vertical foot	12 VF	$ 250.00	$ 3,000.00
SS-12	**Remove existing concrete manhole** and **184 LF of existing 10" sanitary line**, for Dollars and Cents per lump sum	1 LS	$ 5,200.00	$ 5,200.00

TOTAL SEWER IMPROVEMENTS: $ 77,977.00

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENTS, LLC.

Part D - Drainage Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'D': Drainage Improvements				
400-A	Furnish and install **select backfill** for storm sewer using on-site material, as required, complete and in place, for Dollars and Cents per linear foot	1,398 LF	$ 2.00	$ 2,796.00
400-B	Furnish and install **crushed stone bedding** for storm sewer, as required, (quantity based on (1.5 x length x (pipe O.D.+24-inch) x 12-inch depth) / 27), complete and in place, for Dollars and Cents per cubic yard	347 CY	$ 75.00	$ 26,025.00
402	Provide **trench safety** protection per OSHA requirements for trenches greater than 5-foot in depth, complete and in place, for Dollars and Cents per linear foot	1,398 LF	$ 1.00	$ 1,398.00
464-A	Furnish and install **18-inch Class III** Reinforced Concrete Pipe, complete and in place, for Dollars and Cents per linear foot	566 LF	$ 80.00	$ 45,280.00
464-B	Furnish and install **24-inch Class III** Reinforced Concrete Pipe, complete and in place, for Dollars and Cents per linear foot	436 LF	$ 100.00	$ 43,600.00
464-C	Furnish and install **30-inch Class III** Reinforced Concrete Pipe, complete and in place, for Dollars and Cents per linear foot	329 LF	$ 105.00	$ 34,545.00
464-D	Furnish and install **36-inch Class III** Reinforced Concrete Pipe, complete and in place, for Dollars and Cents per linear foot	67 LF	$ 150.00	$ 10,050.00

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENTS, LLC.

Part D - Drainage Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE

Part 'D': Drainage Improvements

465-A	Furnish and install standard **5-foot concrete curb inlet (5-foot x3-foot I.D.)**, complete and in place, for Dollars and Cents per each	3 EA	$ 7,500.00	$ 22,500.00
465-B	Furnish and install standard **10-foot concrete curb inlet (10-foot x3-foot I.D.)**, complete and in place, for Dollars and Cents per each	3 EA	$ 10,000.00	$ 30,000.00
465-C	Furnish and install standard **4-foot x 4-foot reinforced concrete type-y inlet with 2-foot reinforced concrete pad (4-foot x4-foot I.D.)**, complete and in place, for Dollars and Cents per each	4 EA	$ 6,750.00	$ 27,000.00
466-A	Furnish and install standard **4-foot x 3-foot reinforced concrete junction box with 24-inch riser (4-foot x3-foot I.D.)**, complete and in place, for Dollars and Cents per each	1 EA	$ 3,500.00	$ 3,500.00
466-B	Furnish and install standard **4-foot x 4-foot reinforced concrete junction box with 24-inch riser (4-foot x4-foot I.D.)**, complete and in place, for Dollars and Cents per each	2 EA	$ 5,000.00	$ 10,000.00

TOTAL DRAINAGE IMPROVEMENTS: $ 256,694.00

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part E - Paving Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'E': Paving Improvements				
3	Provide a **100% Performance, Payment, and Mainenance Bonds** for paving improvements, in approved format, to The City of Tyler, complete for Dollars and Cents per lump sum	1 LS	$ 35,000.00	$ 35,000.00
4	Provide required **insurance**, including Liability Insurance, with the Owner and Engineer named as additional insured, complete for Dollars and Cents per lump sum	1 LS	$ 15,000.00	$ 15,000.00
5.9.3	Provide **construction staking** by RPLS, complete, for Dollars and Cents per lump sum	1 LS	$ 15,000.00	$ 15,000.00
251	Re-grade, excavate and **prepare subgrade** as required, after storm sewer and utilities installation, complete and in place, for Dollars and Cents per square yard	7,739 SY	$ 4.00	$ 30,956.00
275-A	Furnish and apply **cement treatment** (application rate=27lbs/sy) (quantity calcuated on 7,739 sy), complete and in place, for Dollars and Cents per ton	105 TN	$ 300.00	$ 31,500.00
275-B	Install **cement treatment** and compact subgrade to 95% standard proctor for streets (8-inches deep) (6-inches from edge of pavement), complete and in place, for Dollars and Cents per square yard	7,739 SY	$ 4.00	$ 30,956.00
334-A	Furnish and install 2-inch compacted thickness **HMAC Type "D" surface course**, (quantity calculation on 6,521 sy + 10%), complete and in place, for Dollars and Cents per ton	790 TON	$ 155.00	$ 122,450.00

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part E - Paving Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'E': Paving Improvements				
334-B	Furnish and install 4-inch compacted thickness **HMAC Type "B" base course**, (quantity calculated on 6,521 sy +10%), complete and in place, for Dollars and Cents per ton	1,579 TN	$ 155.00	$ 244,745.00
479	Adjust **water valves to grade** once subgrade treatment is completed, completed and in place, for Dollars and Cents per each	7 EA	$ 300.00	$ 2,100.00
531	Furnish and install standard 4-inch thick reinforced **concrete sidewalk ramps** and sidewalk, with 6-inch curbs, and detectable warning, complete and in place, for Dollars and Cents per square yard	102 SY	$ 78.00	$ 7,956.00
529-A	Construct reinforced **concrete valley gutter** complete and in place, for Dollars and Cents per square yard	190 SY	$ 80.00	$ 15,200.00
529-B	Furnish and install standard City of Tyler **6.5-inch reinforced concrete curb and gutter**, excluding curb transitions at inlets complete and in place, for Dollars and Cents per linear foot	2,969 LF	$ 30.00	$ 89,070.00
1000	**Contingency** Dollars and Cents per lump sum	1 LS	$ 40,000.00	$ 40,000.00

TOTAL PAVING IMPROVEMENTS: $ 679,933.00

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part F - Loop 323 Decel Lane and N. Broadway Left Turn Lane - Paving Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'F': Turn Lane-Paving Improvements				
105	Furnish all labor, tools, equipment, supervision, and any other requisite necessary for **milling existing shoulder 2-inch depth (Loop 323)**, complete for Dollars and Cents per lump sum	1.00 LS	$ 6,500.00	$ 6,500.00
132	Furnish all labor, tools, equipment, supervision and any other requisite necessary to perform **embankment** (select fill) (density control) from on site, complete and in place, for Dollars and Cents per	150 CY	$ 20.00	$ 3,000.00
164-A	Furnish and broadcast **seeding** for erosion control (seed application rate=1.5#/1000 sf, 2 applications), (application area=9,000 sf), on disturbed slopes, complete and in place, for Dollars and Cents per pound	27 LB	$ 10.00	$ 270.00
164-B	Furnish and install **hydromulch seeding and fertilizer** on disturbed slopes, complete and in place, for Dollars and Cents per square yard	1,000 SY	$ 0.50	$ 500.00
166	Furnish and apply **fertilizer** for erosion control (fertilizer application rate=15#/1000 sf), on disturbed slopes, complete and in place, for Dollars and Cents per pound	135 LB	$ 1.00	$ 135.00
275-A	Furnish and apply **cement treatment** (application rate=27lbs/sy) (quantity calcuated on 1,383 sy), complete and in place, for Dollars and Cents per ton	19 TN	$ 200.00	$ 3,800.00
275-B	Install **cement treatment** and compact subgrade to 95% standard proctor for streets (12-inches deep) (6-inches from edge of pavement) (Loop 323), complete and in place, for Dollars and Cents per square yard	640 SY	$ 4.00	$ 2,560.00

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part F - Loop 323 Decel Lane and N. Broadway Left Turn Lane - Paving Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'F': Turn Lane-Paving Improvements				
275-C	Install **cement treatment** and compact subgrade to 95% standard proctor for streets (10-inches deep) (6-inches from edge of pavement) (Broadway), complete and in place, for Dollars and Cents per square yard	743 SY	$ 4.00	$ 2,972.00
334-A	Furnish and install 2-inch compact thickness **HMAC Superpave: SP-C SAC-A PG70-22 surface course** (quantity calculated on 654 sy + 10%) (Loop 323), complete and in place, for Dollars and Cents per ton	80 TN	$ 165.00	$ 13,200.00
334-B	Furnish and install 3-inch compacted thickness **HMAC Type "C" surface course**, (quantity calculated on 695 sy +10%), complete and in place, for Dollars and Cents per ton	127 TN	$ 150.00	$ 19,050.00
334-C	Furnish and install 10-inch compacted thickness **HMAC Superpave: SP-C PG64-22 base course**, (quantity calculated on 654 sy + 10%) (Loop 323), complete and in place, for Dollars and Cents per ton	396 TN	$ 155.00	$ 61,380.00
334-D	Furnish and install 4-inch compacted thickness **HMAC Type "B" base course**, (quantity calculated on 695 sy + 10%) (Broadway), complete and in place, for Dollars and Cents per veritcal square foot	168 TN	$ 150.00	$ 25,200.00
502	Provide **traffic control** during Loop 323 and Broadway construction Dollars and Cents per month	6 MO	$ 200.00	$ 1,200.00

EAST MAPLE ESTATES, PHASE 1-A

NORTHCHASE DEVELOPMENT, LLC.

Part F - Loop 323 Decel Lane and N. Broadway Left Turn Lane - Paving Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'F': Turn Lane-Paving Improvements				
666-A	Furnish and install permanent **4-inch wide white solid retroreflectorized pavement markings**, Type I (with glass beads), complete and in place, for Dollars and Cents per linear foot	921 LF	$ 1.00	$ 921.00
666-B	Furnish and install permanent **6-inch wide white solid retroreflectorized pavement markings**, Type I (with glass beads), complete and in place, for Dollars and Cents per linear foot	1,249 LF	$ 3.00	$ 3,747.00
666-C	Furnish and install permanent **8-inch wide white solid retroreflectorized pavement markings**, Type I (with glass beads), complete and in place, for Dollars and Cents per linear foot	538 LF	$ 2.50	$ 1,345.00
666-D	Furnish and install permanent **8-inch wide white broken retroreflectorized pavement markings**, Type I (with glass beads), complete and in place, for Dollars and Cents per linear foot	50 LF	$ 2.50	$ 125.00
666-E	Furnish and install permanent **24-inch wide yellow solid retroreflectorized cross hatch**, Type I (with glass beads), complete and in place, for Dollars and Cents per linear foot	126 LF	$ 9.00	$ 1,134.00
666-F	Furnish and install permanent **prefab retroreflectorized pavement marking arrow symbol**, complete and in place, for Dollars and Cents per each	6 EA	$ 150.00	$ 900.00

EAST MAPLE ESTATES, PHASE 1-A

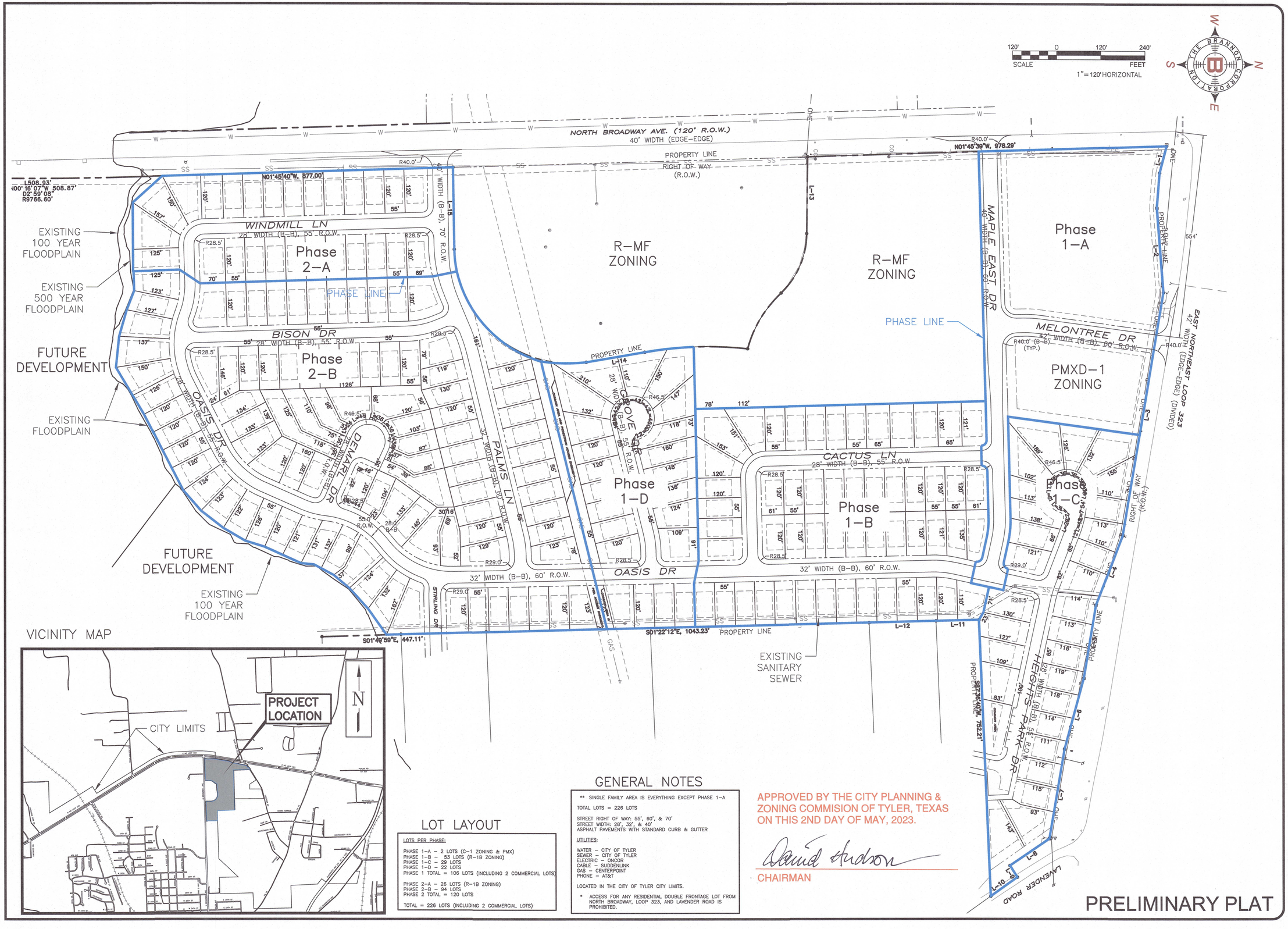
NORTHCHASE DEVELOPMENT, LLC.

Part F - Loop 323 Decel Lane and N. Broadway Left Turn Lane - Paving Improvements

The Brannon Corporation 22117

Engineer's Estimate

ITEM NO.	DESCRIPTION AND UNIT PRICE	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
Part 'F': Turn Lane-Paving Improvements				
666-G	**Eliminate existing pavement marking**, complete, for	2,541 LF	$ 0.50	$ 1,270.50
	Dollars and Cents per linear foot			
TOTAL TURN LANE-PAVING IMPROVEMENTS:				$ 149,209.50



VICINITY MAP

LOT LAYOUT

LOTS PER PHASE:

PHASE 1-A = 2 LOTS (C-1 ZONING & PMX)
PHASE 1-B = 53 LOTS (R-1B ZONING)
PHASE 1-C = 29 LOTS
PHASE 1-D = 22 LOTS
PHASE 1 TOTAL = 106 LOTS (INCLUDING 2 COMMERCIAL LOTS)

PHASE 2-A = 26 LOTS (R-1B ZONING)
PHASE 2-B = 94 LOTS
PHASE 2 TOTAL = 120 LOTS

TOTAL = 226 LOTS (INCLUDING 2 COMMERCIAL LOTS)

GENERAL NOTES

** SINGLE FAMILY AREA IS EVERYTHING EXCEPT PHASE 1-A

TOTAL LOTS = 226 LOTS

STREET RIGHT OF WAY: 55', 60', & 70'
STREET WIDTH: 28', 32', & 40'
ASPHALT PAVEMENTS WITH STANDARD CURB & GUTTER

UTILITIES:

WATER - CITY OF TYLER
SEWER - CITY OF TYLER
ELECTRIC - ONCOR
CABLE - SUDDENLINK
GAS - CENTERPOINT
PHONE - AT&T

LOCATED IN THE CITY OF TYLER CITY LIMITS.

* ACCESS FOR ANY RESIDENTIAL DOUBLE FRONTAGE LOT FROM NORTH BROADWAY, LOOP 323, AND LAVENDER ROAD IS PROHIBITED.

APPROVED BY THE CITY PLANNING & ZONING COMMISION OF TYLER, TEXAS ON THIS 2ND DAY OF MAY, 2023.

CHAIRMAN

PRELIMINARY PLAT

120' 0 120' 240'
SCALE FEET
1" = 120' HORIZONTAL

DESIGNED BY: RSB / SFI
DATE: APRIL 2023

REA S. BOUDREAUX 61976 REGISTERED PROFESSIONAL ENGINEER
STATE OF TEXAS
04.26.23

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CIVIL ENGINEERS
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TYLER, TEXAS 75701
(903) 597-2122
THE C.T. BRANNON CORPORATION
TX FIRM REGISTRATION #F-242
WWW.BRANNONCORP.COM

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FOR
EAST MAPLE ESTATES
ED THOMPSON
TYLER, SMITH COUNTY, TEXAS

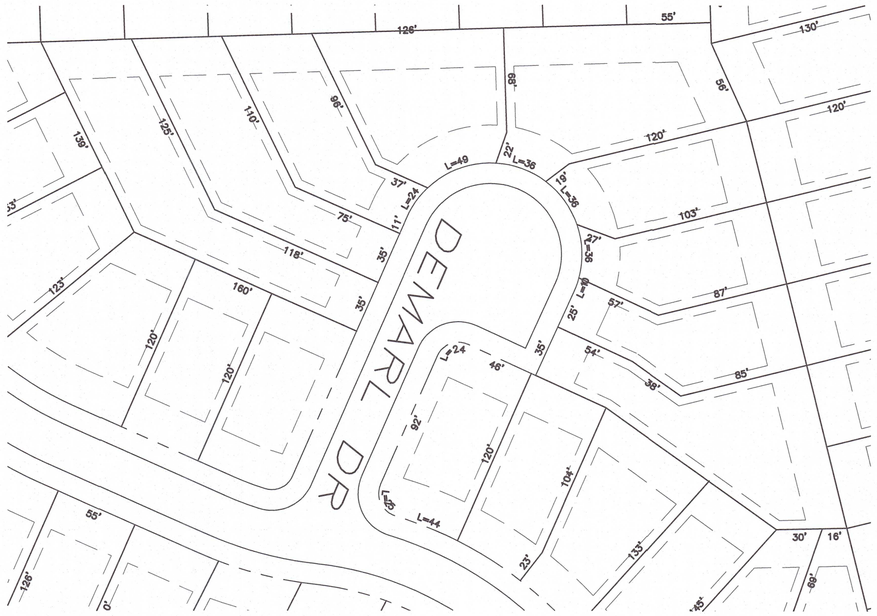
NO.	DATE	REVISIONS REMARKS

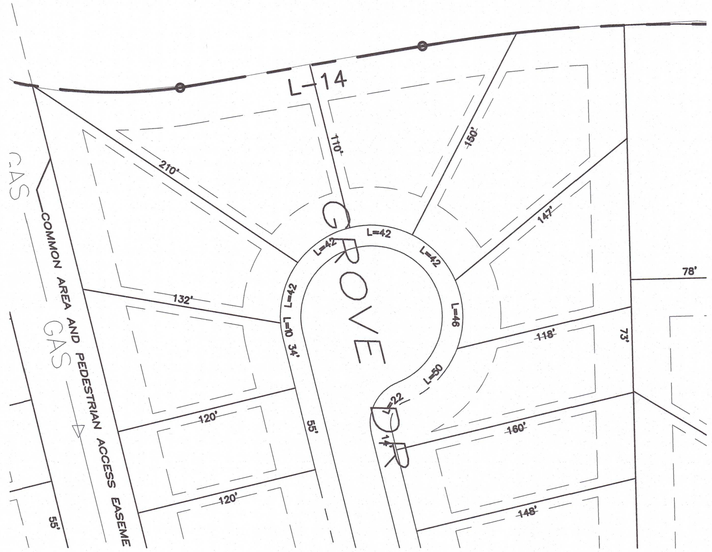
ISSUED FOR:
APPROVAL

PROJECT NO. 22117
SHEET NO. 1.0

22117-Preliminary Plat.dwg

50' 0 50' 100'
SCALE FEET
1"=50' HORIZONTAL





APPROVED BY THE CITY PLANNING & ZONING COMMISION OF TYLER, TEXAS ON THIS 2ND DAY OF MAY, 2023.

CHAIRMAN

CUL-DE-SAC LAYOUTS

DESIGNED BY: RSB / SFI
DATE: APRIL 2023

STATE OF TEXAS
REA S. BOUDREAUX
61976
REGISTERED PROFESSIONAL ENGINEER
04.24.23

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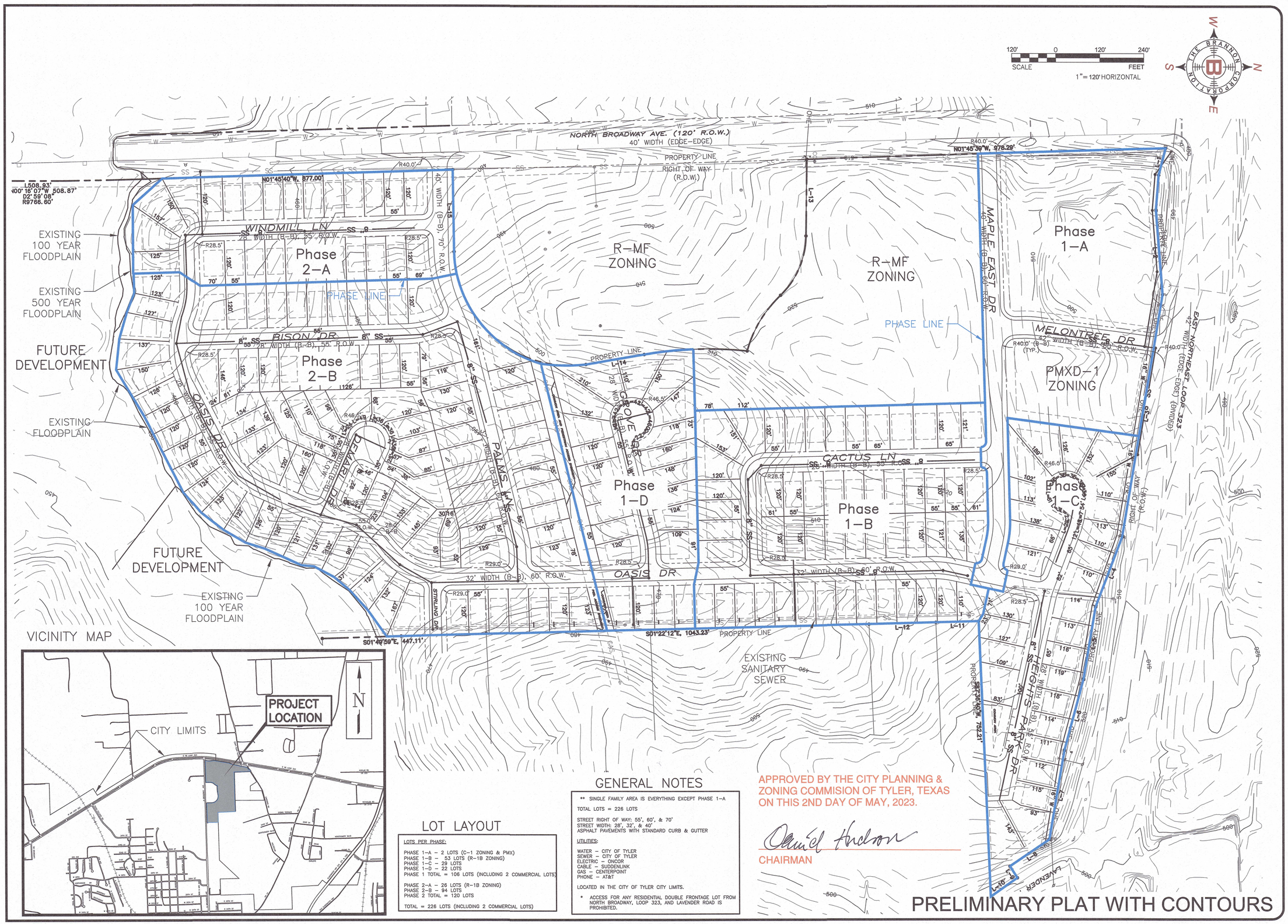
PRELIMINARY PLAT
FOR
EAST MAPLE ESTATES
ED THOMPSON
TYLER, SMITH COUNTY, TEXAS

NO	DATE	REVISIONS REMARKS

ISSUED FOR:
APPROVAL

PROJECT NO. 22117
SHEET NO. 1.1

22117-Preliminary Plat.dwg



VICINITY MAP

LOT LAYOUT

LOTS PER PHASE:

PHASE 1-A – 2 LOTS (C-1 ZONING & PMX)
PHASE 1-B – 53 LOTS (R-1B ZONING)
PHASE 1-C – 29 LOTS
PHASE 1-D – 22 LOTS
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TOTAL = 226 LOTS (INCLUDING 2 COMMERCIAL LOTS)

GENERAL NOTES

** SINGLE FAMILY AREA IS EVERYTHING EXCEPT PHASE 1-A

TOTAL LOTS = 226 LOTS

STREET RIGHT OF WAY: 55', 60', & 70'
STREET WIDTH: 28', 32', & 40'
ASPHALT PAVEMENTS WITH STANDARD CURB & GUTTER

UTILITIES:

WATER – CITY OF TYLER
SEWER – CITY OF TYLER
ELECTRIC – ONCOR
CABLE – SUDDENLINK
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PHONE – AT&T

LOCATED IN THE CITY OF TYLER CITY LIMITS.

* ACCESS FOR ANY RESIDENTIAL DOUBLE FRONTAGE LOT FROM NORTH BROADWAY, LOOP 323, AND LAVENDER ROAD IS PROHIBITED.

APPROVED BY THE CITY PLANNING & ZONING COMMISION OF TYLER, TEXAS ON THIS 2ND DAY OF MAY, 2023.

CHAIRMAN

PRELIMINARY PLAT WITH CONTOURS

DESIGNED BY: RSB / SFI
DATE: APRIL 2023

STATE OF TEXAS
REA S. BOUDREAUX
61976
REGISTERED PROFESSIONAL ENGINEER
04.26.23

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FOR
EAST MAPLE ESTATES
ED THOMPSON
TYLER, SMITH COUNTY, TEXAS

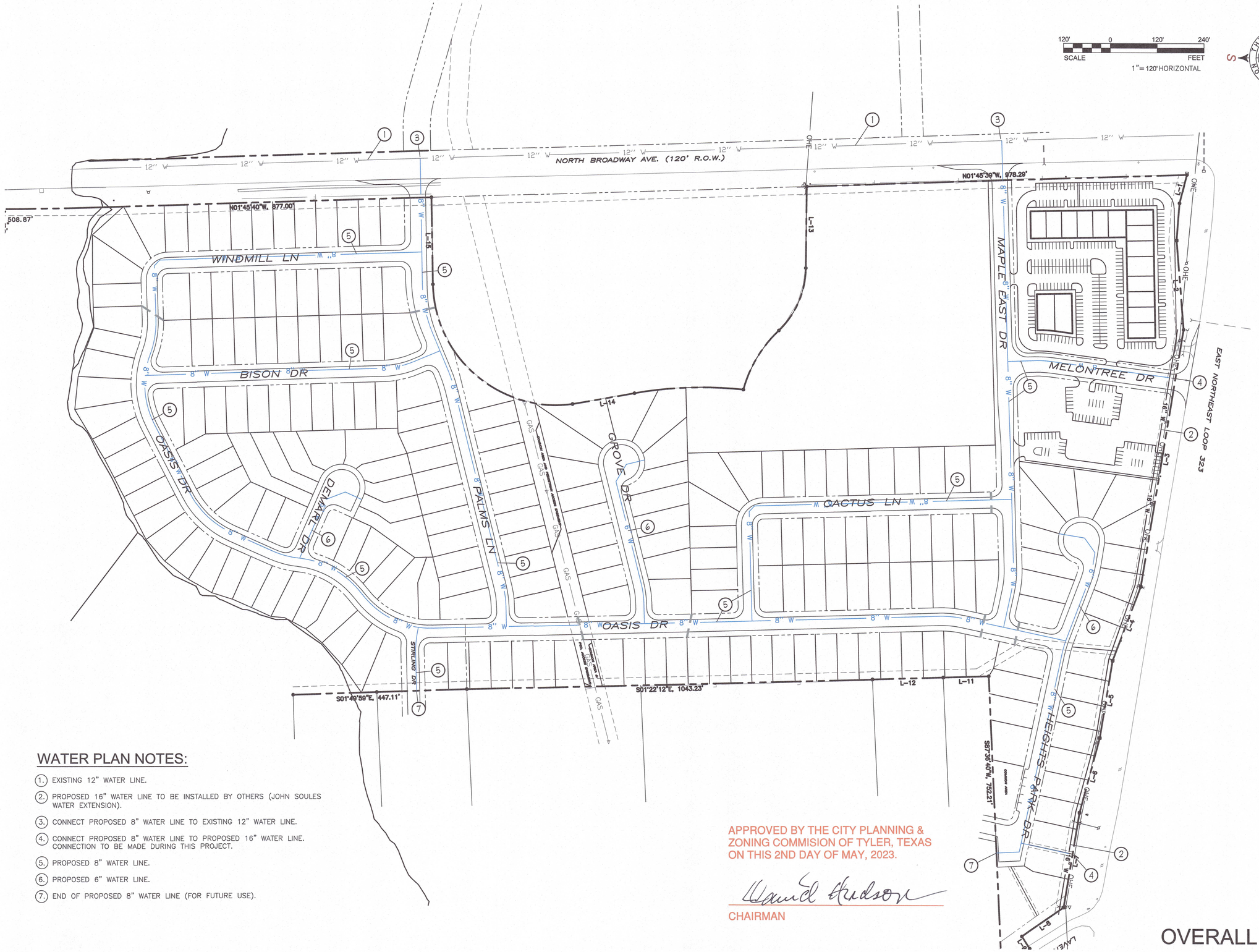
NO.	DATE	REVISIONS REMARKS

ISSUED FOR:
APPROVAL

PROJECT NO. 22117

SHEET NO. 2.0

22117-Preliminary Plat.dwg



WATER PLAN NOTES:

1. EXISTING 12" WATER LINE.
2. PROPOSED 16" WATER LINE TO BE INSTALLED BY OTHERS (JOHN SOULES WATER EXTENSION).
3. CONNECT PROPOSED 8" WATER LINE TO EXISTING 12" WATER LINE.
4. CONNECT PROPOSED 8" WATER LINE TO PROPOSED 16" WATER LINE. CONNECTION TO BE MADE DURING THIS PROJECT.
5. PROPOSED 8" WATER LINE.
6. PROPOSED 6" WATER LINE.
7. END OF PROPOSED 8" WATER LINE (FOR FUTURE USE).

APPROVED BY THE CITY PLANNING & ZONING COMMISION OF TYLER, TEXAS ON THIS 2ND DAY OF MAY, 2023.

CHAIRMAN

OVERALL WATER

DESIGNED BY: RSB / SFI

DATE: APRIL 2023

STATE OF TEXAS
REA S. BOUDREAUX
61976
REGISTERED PROFESSIONAL ENGINEER
04.24.23

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PRELIMINARY PLAT
FOR
EAST MAPLE ESTATES
ED THOMPSON
TYLER, SMITH COUNTY, TEXAS

REVISIONS		
NO.	DATE	REMARKS

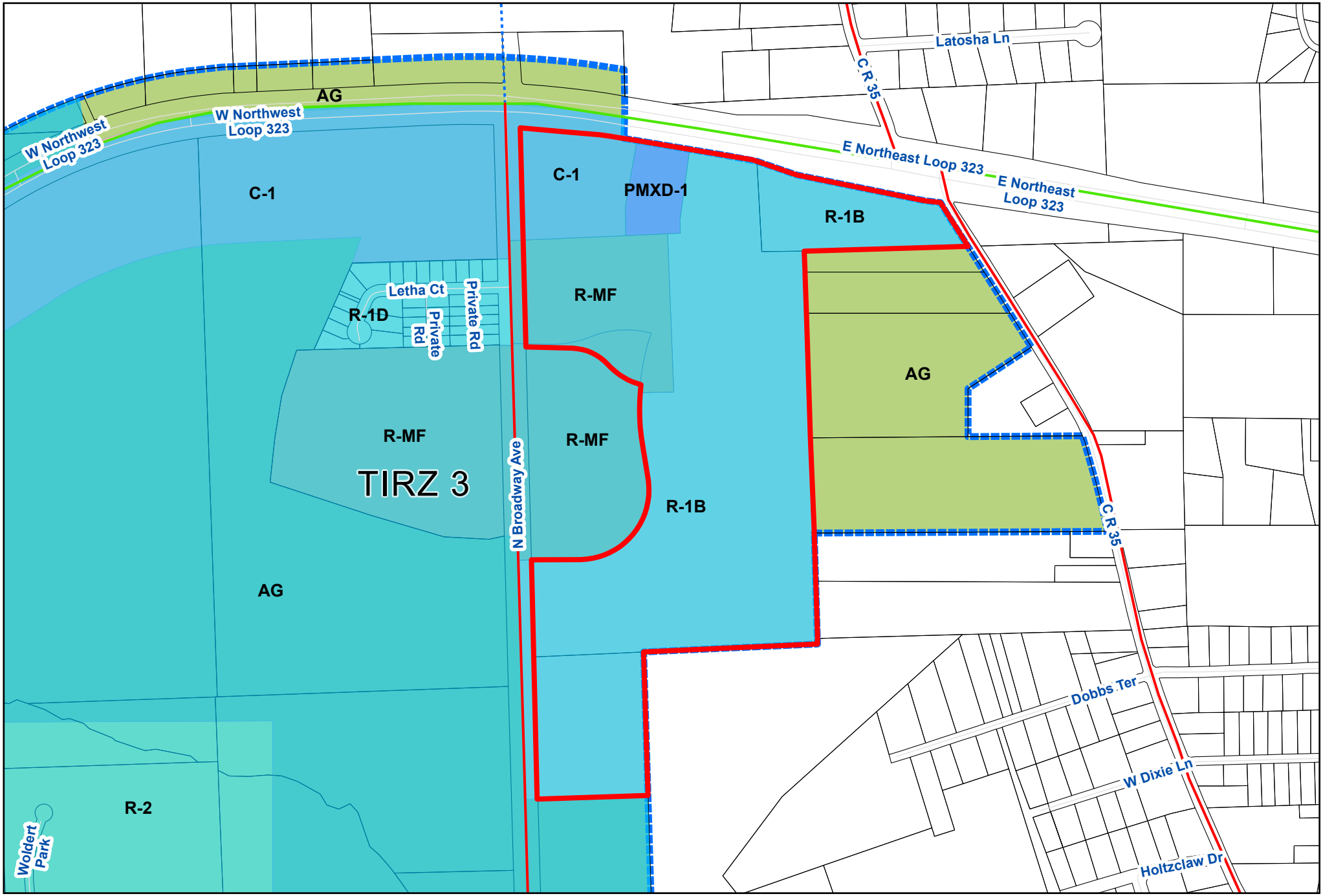
ISSUED FOR:

APPROVAL

PROJECT NO. 22117

SHEET NO. **2.1**

22117-04.0-Overall W&S.dwg



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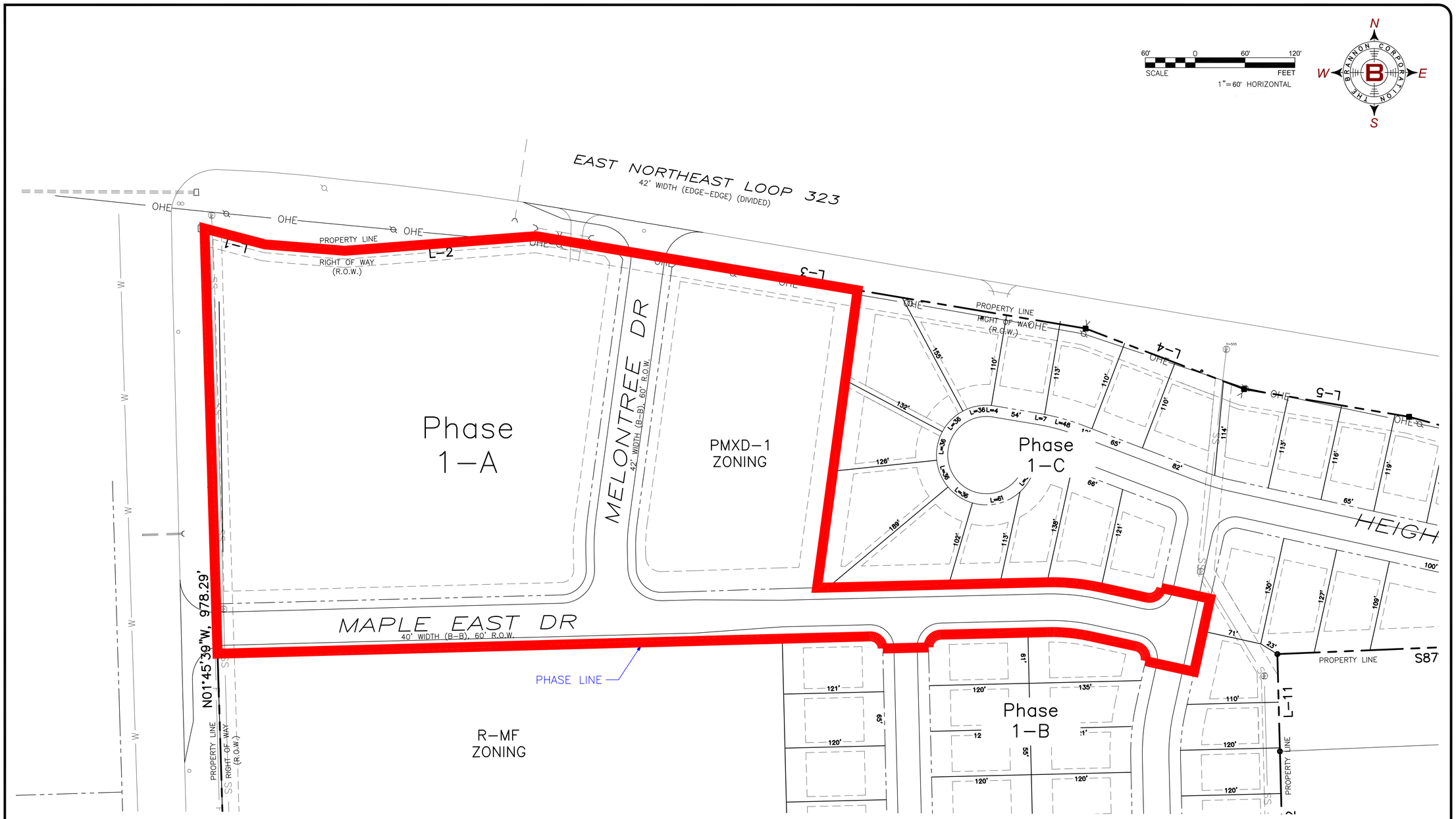
Subject Property

TIRZ 3 Boundary

City Limits

N

471



PHASE 1-A EXHIBIT

DESIGNED BY: RSB / SFI

DATE: JUNE 2023

06.01.23

REA S. BOUDREAUX
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STATE OF TEXAS

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PRELIMINARY EXHIBIT
FOR
EAST MAPLE ESTATES
ED THOMPSON
TYLER, SMITH COUNTY, TEXAS

REVISIONS		
NO.	DATE	REMARKS

ISSUED FOR:

PRELIMINARY REVIEW

PROJECT NO. 22117

SHEET NO. **EX. 1**

22117-Phase 1-A Exhibit.dwg

REINVESTMENT ZONE NUMBER THREE, CITY OF TYLER, TEXAS, AMENDED & RESTATED FINAL PROJECT AND FINANCE PLAN

SEPTEMBER 12, 2024

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SECTION 1: DEFINITIONS

Capitalized terms used in this Amended Plan shall have the meanings given to them in **Section I** below unless otherwise defined in this Amended Plan or unless the context in which a term is used clearly requires a different meaning. Unless otherwise defined, a reference to a "Section," or an "Exhibit," shall be a reference to a Section of this Amended Plan or an Exhibit attached to and made a part of this Amended Plan for all purposes.

"**Act**" means Chapter 311, Texas Tax Code, Tax Increment Financing Act, as amended.

"**Administrative Costs**" means the actual, direct costs paid or incurred by or on behalf of the City to administer the Zone, including planning, engineering, legal services, organizational costs, publicizing costs, or implementations costs paid by or on behalf of the City that are directly related to the administration of the Zone.

"**Amended Plan**" means this *Amended and Restated Reinvestment Zone Number Three, City of Tyler, Texas, Final Project and Finance Plan*.

"**Appraisal District**" means the Smith County Appraisal District.

"**Board**" means the Board of Directors for the Zone.

"**Captured Appraised Value**" means the taxable value of the Zone, on a parcel-by-parcel basis for each year during the term of the Zone, as calculated and confirmed annually by the Appraisal Districts, less the Tax Increment Base.

"**City**" means the City of Tyler, Texas.

"**City Council**" means the governing body of the City.

"**City TIRZ Increment**" means the portion of the City's ad valorem tax increment equal to one hundred percent (100%) of the ad valorem real property taxes collected and received by the City on the Captured Appraised Value in the Zone, as further described in **Section 12.1**.

"**College**" means Tyler Junior College District, Texas.

"**College TIRZ Increment**" means the portion of the College's ad valorem tax increment equal to the ad valorem real property taxes collected and received by College on the Captured Appraised Value in the Zone.

"**College Participation Agreement**" means that certain Interlocal Agreement to Participate in Reinvestment Zone Number Four, City of Tyler, Texas entered into by the City, College, and the Board on December 10, 2008, detailing the City and College's participation in the Zone.

"**County**" means Smith County, Texas.

"**County TIRZ Increment**" means the portion of the County's ad valorem tax increment equal to the ad valorem real property taxes collected and received by the County on the Captured Appraised Value in the Zone.

"**County Participation Agreement**" means that certain Interlocal Agreement to Participate in Reinvestment Zone Number Four, City of Tyler, Texas, entered into by the City, County, and the Board on November 24, 2008, detailing the City and County's participation in the Zone.

"**Creation Ordinance**" means Ordinance No. O-2008-142 adopted by the City Council on November 12, 2008, designating the creation of the Zone and the Board.

"**Feasibility Study**" means the economic feasibility study as prepared at the creation of the Preliminary Plan and updated if Plan is updated or amended, and focuses only on direct financial benefits, as further described in **Section 9**, and shown on **Exhibit E**.

"Final Plan" means the Reinvestment Zone Number Three, City of Tyler, Texas, Final Project and Finance Plan.

"**Municipal Services**" means all City services, including, but not limited to, police, fire, emergency services, streets, drainage, parks, permits, and City administration.

"**Preliminary Plan**" means the *Reinvestment Zone Number Three, City of Tyler, Texas, Preliminary Project and Finance Plan*.

"**Project Costs**" means the total actual costs for projects in the Zone, including the Public Improvements, and the Administrative Costs.

"**Property**" means 491 acres of land as depicted on **Exhibit A** and identified on **Exhibit H**.

"**Public Improvements**" means the public improvements including roads, water, sewer and related infrastructure that is provided for the development of the Property.

"**Tax Increment Base**" means total appraised value of taxable real property in the Zone at the time of creation of the Zone.

"**TIRZ No. 3 Fund**" means the tax increment fund created by the City and segregated from all other funds of the City.

"**Zone**" means Reinvestment Zone Number Three, City of Tyler, as depicted on **Exhibit A**, and identified on **Exhibit H**.

SECTION 2: INTRODUCTION

2.1 Authority and Purpose

The City created the Zone using the authority under the Act to designate a contiguous or noncontiguous geographic area within the corporate limits or extraterritorial jurisdiction of the City as a tax increment reinvestment zone to promote development or redevelopment of the area because the City Council determined that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future, that the Zone is economically feasible, and that creation of the Zone was in the best interest of the City and the property in the Zone. The purpose of the Zone is to facilitate such development or redevelopment by financing the costs of public works, public improvements, programs, and other projects benefiting the Zone, plus other costs incidental to those expenditures, all of which costs are authorized by the Act.

2.2 Eligibility Requirements

An area is eligible under the Act to be designated as a tax increment reinvestment zone if the area:

1) substantially arrests or impairs the sound growth of the municipality designating the Zone, retard the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition; or
2) is predominantly open or undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impairs or arrests the sound growth of the City; or
3) is in a federally assisted new community located in the City or in an area immediately adjacent to a federally assisted new community; or
4) is in an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the City by the owners of property constituting at least fifty percent (50%) of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

The City cannot, however, designate a zone if more than thirty percent (30%) of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes, or if the total appraised value of taxable real property in the proposed zone and in existing reinvestment zones exceeds fifty percent (50%) of the total appraised value of taxable real property in the City and in industrial districts created by the City.

2.3 The Zone

The Property within the Zone is currently located within the corporate limits of the City. The Property is underdeveloped, and substantially impairs and arrests the sound growth of the City. Due to its size, location, and physical characteristics development would not occur solely through private investment in the foreseeable future. The Property lacks public infrastructure and requires economic incentive to attract development for the purpose of providing long-term economic benefits including, but not limited to, increased real property tax base for all taxing units in the Zone. If the Public Improvements are financed as contemplated by this Amended Plan, the City envisions that the Property will be developed to take full advantage of the opportunity to bring to the City, and County, quality development.

2.4 Preliminary Plan and Hearing

Before the City Council adopted the Creation Ordinance, the City Council prepared the Preliminary Plan in accordance with the Act and held a public hearing on the creation of the Zone and its benefits to the City and to the Property, at which public hearing interested persons were given the opportunity to speak for and against the creation of the Zone, the boundaries of the Zone and the concept of tax increment financing, and at which hearing the owners of the Property were given a reasonable opportunity to protest the inclusion of their Property in the Zone. The requirement of the Act for a preliminary reinvestment zone financing plan was satisfied by the Preliminary Plan, the purpose of which was to describe, in general terms, the development of the Zone, and the economic incentive that would be undertaken by the Zone. A description of the uses of the Property is located in **Exhibit G**, and confirmed by the adoption of this Amended Plan.

2.5 Creation of the Zone

Upon the closing of the November 12, 2008 public hearing, the City Council approved the Creation Ordinance and made the following findings:

1) that development or redevelopment of the Property would not have occurred solely through private investment in the reasonably foreseeable future, and
2) that the Zone was feasible, and
3) that improvements in the Zone would significantly enhance the value of all the taxable real property in the Zone and would be of general benefit to the City, and
4) that the Zone met the eligibility requirements of the Act.

Among other provisions required by the Act, the Creation Ordinance appointed the Board.

2.6 Council Action

2.6.1 County Participation in the Zone

On November 24, 2008, the City Council and County entered into the County Participation Agreement, detailing the County's participation in the Zone.

2.6.2 College Participation in the Zone

On December 10, 2008, the City Council and College entered into the College Participation Agreement, detailing the College's participation in the Zone.

2.6.3 Amended Plan

On October 11, 2023, the Board reviewed, and recommended to the City Council this Amended Plan, which amends and restates the Final Plan in its entirety. The City Council shall consider this Amended Plan, pursuant to which the City will contribute the City TIRZ Increment into the TIRZ Fund to fund the Project Costs benefiting the Zone.

SECTION 3: DESCRIPTION AND MAPS

3.1 Existing Uses and Conditions

The Property is primarily zoned Agriculture, Single-Family Residential, Multi-Family Residential, Planned Mixed Use, Light Commercial, Light Industrial, General Industrial, and Institutional. At the time of creation of the Zone, the Property was primarily underdeveloped, and there was limited or aging public infrastructure to support development. Development requires extensive public infrastructure that: (1) the City could not provide, and (2) would not be provided solely through private investment in the foreseeable future.

3.2 Proposed Uses

The proposed uses of the Property in the City include residential, commercial, green space and mixed-use as shown on **Exhibit G**.

3.3 Parcel Identification

The parcels identified on **Exhibit H** provide sufficient detail to identify with ordinary and reasonable certainty the territory included in the Zone.

SECTION 4: PROPOSED CHANGES TO ORDINANCES, PLANS, CODES, RULES, AND REGULATIONS

The Property is wholly located in the corporate limits of the City and is subject to the City's zoning regulation. The City has exclusive jurisdiction over the subdivision and platting of the property

within the Property and the design, construction, installation, and inspection of water, sewer, drainage, roadway, and other public infrastructure. No proposed changes to zoning ordinances, comprehensive plan, building codes, subdivision rules, or other municipal ordinances are planned.

SECTION 5: RELOCATION OF DISPLACED PERSONS

No persons were displaced and in need of relocation due to the creation of the Zone or shall be due to the implementation of this Amended Plan.

SECTION 6: NON-PROJECT COSTS

Non-Project costs are costs that were spent to develop in the Zone but were not financed by the Zone, and were financed by other funds. The list of non-project costs is shown on **Exhibit B**, and were estimated to be approximately $134,780,000.

SECTION 7: PUBLIC IMPROVEMENTS

7.1 Categories of Public Improvements

All Public Improvements shall be designed and constructed in accordance with all applicable City standards and shall otherwise be inspected, approved, and accepted by the City. At the City's option, the Public Improvements may be expanded to include any other category of improvements authorized by the Act.

7.2 Location of Public Improvements

The estimated locations of the proposed Public Improvements are depicted on **Exhibit F**. These locations may be revised and refined, with the approval of the Board, from time to time without amending this Amended Plan.

SECTION 8: PROJECT COSTS

8.1 Project Costs

The total Project Costs are estimated to be $34,008,696, as shown below and detailed on **Exhibit C**. The Public Improvements are estimated to be $5,969,879; the Administrative Costs are estimated to be $561,149; and the Municipal Services are estimated to be $27,477,668.

i. Administrative Costs

The Administrative Costs are estimated to be $10,000 per year and escalating at two percent (2%) thereafter. The Administrative Costs shall be paid each year from the TIRZ Fund before any other Project Costs are paid.

ii. Municipal Services

The City shall utilize a portion of the revenue in the City TIRZ Increment, County TIRZ Increment, and College TIRZ Increment to fund Municipal Services attributed to the Zone.

iii. Public Improvements

The total Public Improvements are estimated to be $5,969,879, as shown on **Exhibit C**.

8.2 Estimated Timeline of Incurred Costs

The Project Costs will be incurred throughout the duration of the Zone, as shown on **Exhibit D**, and funded annually over the remaining term of the Zone.

SECTION 9: FEASIBILITY STUDY

The Feasibility Study, as shown on **Exhibit E**, focuses on only direct financial benefits (i.e. ad valorem tax revenues from the development of Public Improvements in the Zone). Based on the Feasibility Study, during the term of the Zone, new development (which would not have occurred but for the Zone) will generate approximately $34,897,209 in total new real property tax revenue for the participating taxing entities over the remaining term of the Zone. Approximately $34,897,209 will be deposited into the TIRZ No. 3 Fund to pay for the Project Costs over the remaining term of the Zone. The remaining real property tax revenue over that period, estimated at $0.00 shall be retained by the participating taxing entities.

The Feasibility Study shows the cumulative City TIRZ Increment is estimated to be $11,086,460, which will be available to pay a portion of the Project Costs, until the term expires or is otherwise terminated. The remainder of the new City real property tax revenue generated within the Zone and retained by the City is estimated to be $0.00 over the remaining term.

The Feasibility Study shows the cumulative County TIRZ Increment is estimated to be $15,447,936, which will be available to pay a portion of the Project Costs, until the term expires or is otherwise terminated. The remainder of the new County real property tax revenue generated within the Zone and retained by the County is estimated to be $0.00 over the remaining term.

The Feasibility Study shows the cumulative College TIRZ Increment is estimated to be $8,362,813, which will be available to pay a portion of the Project Costs, until the term expires or is otherwise terminated. The remainder of the new College real property tax revenue generated within the Zone and retained by the College is estimated to be $0.00 over the remaining term.

One-hundred percent (100%) of all taxing revenues generated for other taxing entities by the new development within the Zone will be retained by the County and the College through December 31, 2023. Following that the County and the College shall participate at 100% for the remainder of the Zone. The City shall participate at 100% for the life of the Zone. Based on the foregoing, the feasibility of the Zone has been demonstrated.

SECTION 10: ESTIMATED BONDED INDEBTEDNESS

No tax increment reinvestment zone bonds or public indebtedness by the City secured by the tax increments pursuant to the Act, is contemplated.

SECTION 11: APPRAISED VALUE

11.1 Tax Increment Base

The Tax Increment Base of the Zone at the time of creation was $6,055,487, and was confirmed by the Appraisal District. Each year, the Appraisal District shall confirm the current Captured Appraised Value. The taxable value of the Zone as of Tax Year 2022 is $29,374,574.

11.2 Estimated Captured Appraised Value

It is estimated that upon the proposed expiration of the term of the Zone, the total Captured Appraised Value of taxable real property in the Zone will be approximately $174,533,684, as shown on **Exhibit E**. The actual Captured Appraised Value, as certified by the Appraisal District, for each year, will be used to calculate the annual City TIRZ Increment, the County TIRZ Increment, and the College TIRZ Increment, pursuant to this Amended Plan, the County Participation Agreement, and the College Participation Agreement.

SECTION 12: METHOD OF FINANCING

12.1 TIRZ No. 3 Fund Contributions

This Amended Plan shall obligate the City to deposit the City TIRZ Increment into the TIRZ No. 3 Fund. For example, in FY 2023, the City's ad valorem tax rate was $0.24792 per $100 of taxable value, therefore the City would contribute $0.24792 per $100 of the Captured Appraised Value in the Zone levied and collected, into the TIRZ No. 3 Fund.

The County Participation Agreement shall obligate the County to deposit the County TIRZ Increment into the TIRZ Fund. For example, in FY 2023, the County's ad valorem tax rate was $0.347264 per $100 of taxable value, therefore the County would contribute $0.347264 per $100 of the Captured Appraised Value in the Zone levied and collected, to the TIRZ Fund from years 2039-2060.

The College Participation Agreement shall obligate the College to deposit the College TIRZ Increment into the TIRZ Fund beginning in 2023. For example, in FY 2023, the College's ad valorem tax rate was $0.187993 per $100 of taxable value, therefore the College would contribute $0.187993 per $100 of the Captured Appraised Value in the Zone levied and collected, to the TIRZ Fund from years 2039-2060.

All payments of Project Costs shall be made solely from the TIRZ Fund and from no other funds of the City, County, or College unless otherwise approved by their respective governing bodies. The TIRZ Fund shall only be used to pay the Project Costs. The City may amend this Amended Plan in compliance with the County Participation Agreement and the College Participation Agreement, including but not limited to what is considered a Project Cost.

12.2 Funding Mechanisms

All payments of Project Costs shall be made solely from the TIRZ No. 3 Fund and from no other funds of the City, County or College, unless otherwise approved by its respective governing bodies. The TIRZ No. 3 Fund shall only be used to pay the Project Costs. The City may amend this Amended Plan in compliance with the County Participation Agreement, the College Participation Agreement, and the Act, including but not limited to what is considered a Project Cost.

SECTION 13: DURATION OF THE ZONE, TERMINATION

13.1 Duration

The stated term of the Zone commenced upon the execution of the Creation Ordinance and shall continue until December 31, 2060, with the last increment being due by January 31, 2061, unless otherwise terminated or extended in accordance with the Creation Ordinance, or the Act.

13.2 Termination

The Zone shall terminate on the earlier of (i) December 31, 2060, or (ii) at such time that the Project Costs have been paid in full. If upon expiration of the stated term of the Zone, the obligations of the Zone have not been fully funded by the TIRZ No. 3 Fund, the City, County, and College shall have no obligation to pay the shortfall and the term shall not be required to be extended. Nothing in this section is intended to prevent the City, County, or College from extending the term of the Zone in accordance with the Act.

LIST OF EXHIBITS

Unless otherwise stated, all references to "Exhibits" contained in this Amended Plan shall mean and refer to the following exhibits, all of which are attached to and made a part of this Amended Plan for all purposes.

Exhibit A	Map of the Zone
Exhibit B	Non-Project Costs
Exhibit C	List of Project Costs
Exhibit D	Estimated Timeline of Incurred Project Costs
Exhibit E	Feasibility Study
Exhibit F	Map of Public Improvements
Exhibit G	Proposed Uses of the Property
Exhibit H	Parcel Identification

EXHIBIT A – MAP OF THE ZONE

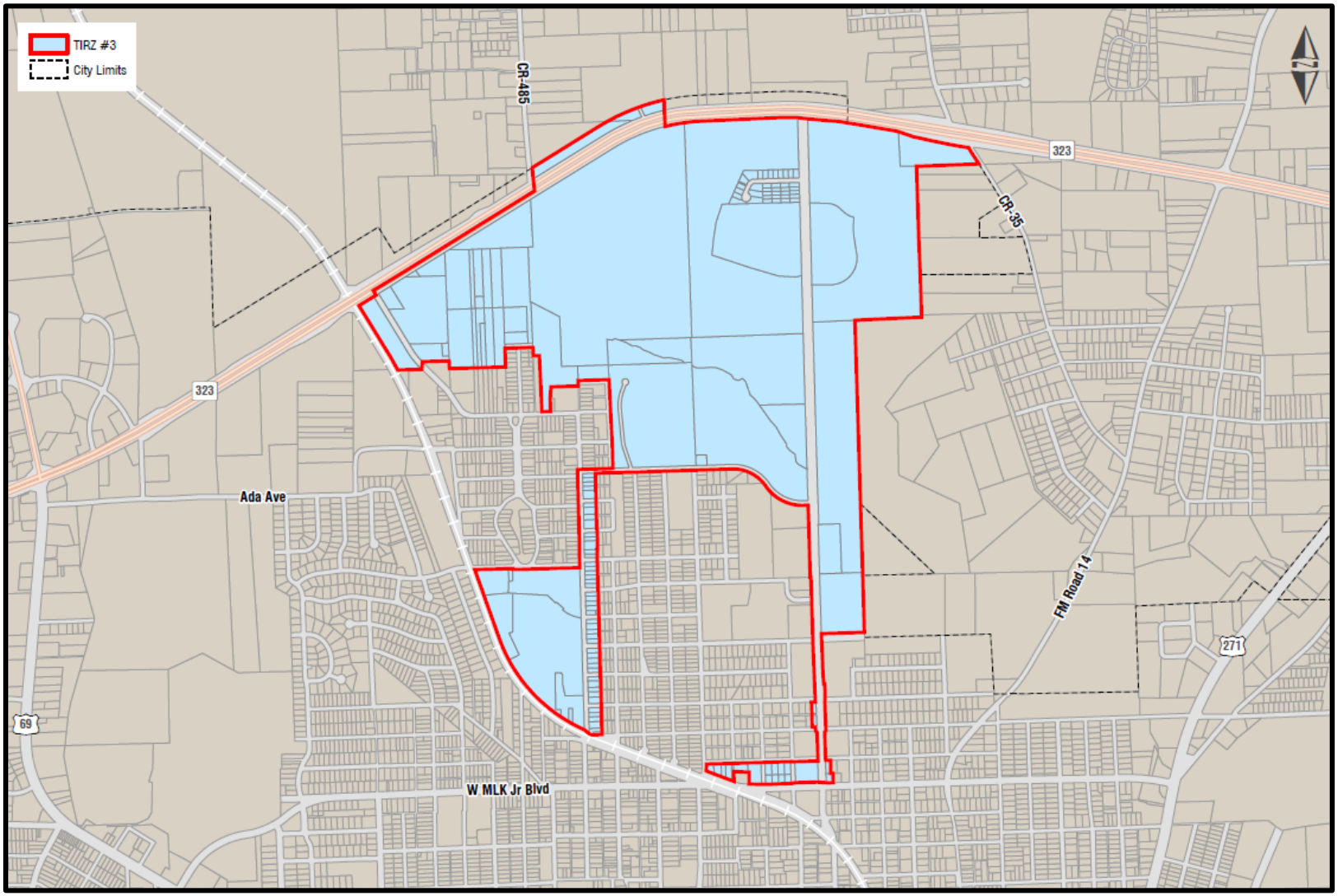


EXHIBIT B – NON-PROJECT COSTS

Reinvestment Zone Number Three, City of Tyler, Texas
Non-Project Costs

Non-Project Costs[1,2]	
2008 Base Taxable Value	$ 6,055,487
Projected 2060 Taxable Value	$ 174,533,684
Total Non-Project Costs	**$ 134,780,000**

(1) Total Non-Project Costs are estimated to be the approximate 80% of the increase in value from the Tax Increment Base to the 2023 Taxable Value.
(2) Provided for illustrative purposes only, and subject to change.

EXHIBIT C – LIST OF PROJECT COSTS

Reinvestment Zone Number Three, City of Tyler, Texas
Project Costs

Public Improvements		Total
Landscaping & Greenspace	$	1,400,000
Public Infrastructure	$	2,000,000
Street Projects	$	1,213,716
Off-Street Storm Sewer Projects	$	225,000
Soft Costs	$	1,131,163
Public Improvements Subtotal	**$**	**5,969,879**
Administrative Costs	$	561,149
Municipal Services	$	27,477,668
Total Project Costs	**$**	**34,008,696**

EXHIBIT D – ESTIMATED TIMELINE OF INCURRED PROJECT COSTS

Reinvestment Zone Number Three, City of Tyler, Texas
Estimated Timeline of Incurred Project Costs

Zone Year	Calendar Year	Administrative Costs	Municipal Services	Public Improvements	Total Project Costs[1]	
					Annual	Cumulative
15	2023	$ 10,000	$ -	$ -	$ 10,000	$ 10,000
16	2024	$ 10,200	$ -	$ 2,742,347	$ 2,752,547	$ 2,762,547
17	2025	$ 10,404	$ 145,776	$ -	$ 156,180	$ 2,918,728
18	2026	$ 10,612	$ 152,846	$ 3,227,532	$ 3,390,990	$ 6,309,718
19	2027	$ 10,824	$ 329,208	$ -	$ 340,032	$ 6,649,750
20	2028	$ 11,041	$ 345,174	$ -	$ 356,215	$ 7,005,965
21	2029	$ 11,262	$ 361,915	$ -	$ 373,177	$ 7,379,142
22	2030	$ 11,487	$ 379,468	$ -	$ 390,955	$ 7,770,097
23	2031	$ 11,717	$ 397,872	$ -	$ 409,589	$ 8,179,686
24	2032	$ 11,951	$ 417,169	$ -	$ 429,120	$ 8,608,806
25	2033	$ 12,190	$ 437,402	$ -	$ 449,592	$ 9,058,398
26	2034	$ 12,434	$ 458,616	$ -	$ 471,050	$ 9,529,447
27	2035	$ 12,682	$ 480,859	$ -	$ 493,541	$ 10,022,988
28	2036	$ 12,936	$ 504,180	$ -	$ 517,116	$ 10,540,105
29	2037	$ 13,195	$ 528,633	$ -	$ 541,828	$ 11,081,933
30	2038	$ 13,459	$ 554,272	$ -	$ 567,730	$ 11,649,663
31	2039	$ 13,728	$ 581,154	$ -	$ 594,882	$ 12,244,545
32	2040	$ 14,002	$ 609,340	$ -	$ 623,342	$ 12,867,887
33	2041	$ 14,282	$ 638,893	$ -	$ 653,175	$ 13,521,063
34	2042	$ 14,568	$ 669,879	$ -	$ 684,447	$ 14,205,510
35	2043	$ 14,859	$ 702,368	$ -	$ 717,228	$ 14,922,738
36	2044	$ 15,157	$ 736,433	$ -	$ 751,590	$ 15,674,328
37	2045	$ 15,460	$ 772,150	$ -	$ 787,610	$ 16,461,938
38	2046	$ 15,769	$ 809,600	$ -	$ 825,369	$ 17,287,307
39	2047	$ 16,084	$ 848,865	$ -	$ 864,950	$ 18,152,256
40	2048	$ 16,406	$ 890,035	$ -	$ 906,441	$ 19,058,697
41	2049	$ 16,734	$ 933,202	$ -	$ 949,936	$ 20,008,633
42	2050	$ 17,069	$ 978,462	$ -	$ 995,531	$ 21,004,164
43	2051	$ 17,410	$ 1,025,918	$ -	$ 1,043,328	$ 22,047,492
44	2052	$ 17,758	$ 1,075,675	$ -	$ 1,093,433	$ 23,140,925
45	2053	$ 18,114	$ 1,127,845	$ -	$ 1,145,958	$ 24,286,883
46	2054	$ 18,476	$ 1,182,545	$ -	$ 1,201,021	$ 25,487,904
47	2055	$ 18,845	$ 1,239,899	$ -	$ 1,258,744	$ 26,746,649
48	2056	$ 19,222	$ 1,300,034	$ -	$ 1,319,256	$ 28,065,905
49	2057	$ 19,607	$ 1,363,085	$ -	$ 1,382,692	$ 29,448,597
50	2058	$ 19,999	$ 1,429,195	$ -	$ 1,449,194	$ 30,897,791
51	2059	$ 20,399	$ 1,498,511	$ -	$ 1,518,910	$ 32,416,700
52	2060	$ 20,807	$ 1,571,189	$ -	$ 1,591,996	$ 34,008,696
Total		**$ 561,149**	**$ 27,477,668**	**$ 5,969,879**	**$ 34,008,696**	

(1) Estimate provided for illustrative purposes only.

Reinvestment Zone Number Three, City of Tyler, Texas
Feasibility Study

Zone Year	Tax Year[2]	Growth/ Year[1]	New Development: Added Development Value	New Development: New Taxable Value	New Development: Incremental Value	City TIRZ Increment: %	City TIRZ Increment: Annual	City TIRZ Increment: Cumulative	County TIRZ Increment: %	County TIRZ Increment: Annual	County TIRZ Increment: Cumulative	College TIRZ Increment[3]: %	College TIRZ Increment[3]: Annual	College TIRZ Increment[3]: Cumulative	Total TIRZ Fund Contribution: Annual	Total TIRZ Fund Contribution: Cumulative
Base	*2008*			*$ 6,055,487*												
16	2024	2%	$ -	$ 30,561,307	$ 24,505,820	100%	$ 59,269	$ 117,082	100%	$ 83,019	$ 83,019	100%	$ 44,943	$ 44,943	$ 187,231	$ 245,044
17	2025	2%	$ -	$ 31,172,533	$ 25,117,046	100%	$ 60,755	$ 177,837	100%	$ 85,100	$ 168,119	0%	$ -	$ 44,943	$ 145,855	$ 390,898
18	2026	2%	$ 35,231,639	$ 67,027,623	$ 60,972,136	100%	$ 62,270	$ 240,107	100%	$ 87,222	$ 255,341	0%	$ -	$ 44,943	$ 149,493	$ 540,391
19	2027	0.0%	$ 25,977,827	$ 93,005,450	$ 86,949,963	100%	$ 151,162	$ 391,269	100%	$ 211,734	$ 467,076	0%	$ -	$ 44,943	$ 362,896	$ 903,287
20	2028	0.0%	$ 15,060,492	$ 108,065,942	$ 102,010,455	100%	$ 215,566	$ 606,835	100%	$ 301,946	$ 769,021	0%	$ -	$ 44,943	$ 517,512	$ 1,420,800
21	2029	2%	$ 9,879,846	$ 120,107,107	$ 114,051,620	100%	$ 252,904	$ 859,740	100%	$ 354,246	$ 1,123,267	0%	$ -	$ 44,943	$ 607,150	$ 2,027,949
22	2030	2%	$ 34,237,329	$ 156,746,579	$ 150,691,092	100%	$ 282,757	$ 1,142,496	100%	$ 396,060	$ 1,519,327	0%	$ -	$ 44,943	$ 678,817	$ 2,706,766
23	2031	2%	$ -	$ 159,881,510	$ 153,826,023	100%	$ 373,593	$ 1,516,090	100%	$ 523,296	$ 2,042,623	0%	$ -	$ 44,943	$ 896,889	$ 3,603,656
24	2032	2%	$ -	$ 163,079,140	$ 157,023,653	100%	$ 381,365	$ 1,897,455	100%	$ 534,182	$ 2,576,806	0%	$ -	$ 44,943	$ 915,548	$ 4,519,204
25	2033	2%	$ -	$ 166,340,723	$ 160,285,236	100%	$ 389,293	$ 2,286,748	100%	$ 545,287	$ 3,122,092	0%	$ -	$ 44,943	$ 934,580	$ 5,453,783
26	2034	2%	$ -	$ 169,667,538	$ 163,612,051	100%	$ 397,379	$ 2,684,127	100%	$ 556,613	$ 3,678,705	0%	$ -	$ 44,943	$ 953,992	$ 6,407,775
27	2035	2%	$ -	$ 173,060,888	$ 167,005,401	100%	$ 405,627	$ 3,089,754	100%	$ 568,166	$ 4,246,871	0%	$ -	$ 44,943	$ 973,793	$ 7,381,568
28	2036	2%	$ -	$ 176,522,106	$ 170,466,619	100%	$ 414,040	$ 3,503,794	100%	$ 579,950	$ 4,826,821	0%	$ -	$ 44,943	$ 993,989	$ 8,375,557
29	2037	0.0%	$ -	$ 176,522,106	$ 170,466,619	100%	$ 422,621	$ 3,926,415	100%	$ 591,969	$ 5,418,790	0%	$ -	$ 44,943	$ 1,014,590	$ 9,390,148
30	2038	0.0%	$ -	$ 176,522,106	$ 170,466,619	100%	$ 422,621	$ 4,349,036	100%	$ 591,969	$ 6,010,759	0%	$ -	$ 44,943	$ 1,014,590	$ 10,404,738
31	2039	2%	$ -	$ 180,052,548	$ 173,997,061	100%	$ 422,621	$ 4,771,657	100%	$ 591,969	$ 6,602,728	0%	$ -	$ 44,943	$ 1,014,590	$ 11,419,328
32	2040	2%	$ -	$ 183,653,599	$ 177,598,112	100%	$ 431,374	$ 5,203,030	100%	$ 604,229	$ 7,206,957	0%	$ -	$ 44,943	$ 1,035,603	$ 12,454,930
33	2041	2%	$ -	$ 187,326,671	$ 181,271,184	100%	$ 440,301	$ 5,643,332	100%	$ 616,734	$ 7,823,692	0%	$ -	$ 44,943	$ 1,057,036	$ 13,511,966
34	2042	2%	$ -	$ 191,073,205	$ 185,017,718	100%	$ 449,408	$ 6,092,739	100%	$ 629,490	$ 8,453,181	0%	$ -	$ 44,943	$ 1,078,897	$ 14,590,863
35	2043	2%	$ -	$ 194,894,669	$ 188,839,182	100%	$ 458,696	$ 6,551,435	100%	$ 642,500	$ 9,095,681	0%	$ -	$ 44,943	$ 1,101,196	$ 15,692,059
36	2044	2%	$ -	$ 198,792,562	$ 192,737,075	100%	$ 468,170	$ 7,019,605	100%	$ 655,770	$ 9,751,452	0%	$ -	$ 44,943	$ 1,123,941	$ 16,815,999
37	2045	2%	$ -	$ 202,768,413	$ 196,712,926	100%	$ 477,834	$ 7,497,439	100%	$ 669,306	$ 10,420,758	0%	$ -	$ 44,943	$ 1,147,140	$ 17,963,140
38	2046	2%	$ -	$ 206,823,782	$ 200,768,295	100%	$ 487,691	$ 7,985,130	100%	$ 683,113	$ 11,103,871	0%	$ -	$ 44,943	$ 1,170,804	$ 19,133,943
39	2047	0.0%	$ -	$ 206,823,782	$ 200,768,295	100%	$ 497,745	$ 8,482,874	100%	$ 697,196	$ 11,801,067	0%	$ -	$ 44,943	$ 1,194,941	$ 20,328,884
40	2048	0.0%	$ -	$ 206,823,782	$ 200,768,295	100%	$ 497,745	$ 8,980,619	100%	$ 697,196	$ 12,498,263	0%	$ -	$ 44,943	$ 1,194,941	$ 21,523,825
41	2049	2%	$ -	$ 210,960,257	$ 204,904,770	100%	$ 497,745	$ 9,478,364	100%	$ 697,196	$ 13,195,459	0%	$ -	$ 44,943	$ 1,194,941	$ 22,718,766
42	2050	2%	$ -	$ 215,179,462	$ 209,123,975	100%	$ 508,000	$ 9,986,364	100%	$ 711,561	$ 13,907,020	0%	$ -	$ 44,943	$ 1,219,560	$ 23,938,326
43	2051	2%	$ -	$ 219,483,052	$ 213,427,565	100%	$ 518,460	$ 10,504,824	100%	$ 726,212	$ 14,633,232	0%	$ -	$ 44,943	$ 1,244,672	$ 25,182,999
44	2052	2%	$ -	$ 223,872,713	$ 217,817,226	100%	$ 529,130	$ 11,033,953	100%	$ 741,157	$ 15,374,389	0%	$ -	$ 44,943	$ 1,270,287	$ 26,453,285
45	2053	2%	$ -	$ 228,350,167	$ 222,294,680	100%	$ 540,012	$ 11,573,966	100%	$ 756,401	$ 16,130,790	0%	$ -	$ 44,943	$ 1,296,413	$ 27,749,699
46	2054	2%	$ -	$ 232,917,170	$ 226,861,683	100%	$ 551,113	$ 12,125,079	100%	$ 771,949	$ 16,902,739	0%	$ -	$ 44,943	$ 1,323,062	$ 29,072,761
47	2055	2%	$ -	$ 237,575,514	$ 231,520,027	100%	$ 562,435	$ 12,687,514	100%	$ 787,809	$ 17,690,548	0%	$ -	$ 44,943	$ 1,350,244	$ 30,423,005
48	2056	2%	$ -	$ 242,327,024	$ 236,271,537	100%	$ 573,984	$ 13,261,499	100%	$ 803,986	$ 18,494,534	0%	$ -	$ 44,943	$ 1,377,970	$ 31,800,976
49	2057	0.0%	$ -	$ 242,327,024	$ 236,271,537	100%	$ 585,764	$ 13,847,263	100%	$ 820,486	$ 19,315,020	0%	$ -	$ 44,943	$ 1,406,250	$ 33,207,226
50	2058	0.0%	$ -	$ 242,327,024	$ 236,271,537	100%	$ 585,764	$ 14,433,028	100%	$ 820,486	$ 20,135,506	0%	$ -	$ 44,943	$ 1,406,250	$ 34,613,476
51	2059	2%	$ -	$ 247,173,565	$ 241,118,078	100%	$ 585,764	$ 15,018,792	100%	$ 820,486	$ 20,955,992	0%	$ -	$ 44,943	$ 1,406,250	$ 36,019,727
52	2060	2%	$ -	$ 252,117,036	$ 246,061,549	100%	$ 597,780	$ 15,616,572	100%	$ 837,316	$ 21,793,308	0%	$ -	$ 44,943	$ 1,435,096	$ 37,454,823
Total			**$ 120,387,134**				**$ 15,616,572**			**$ 21,793,308**			**$ 44,943**		**$ 37,454,823**	

Assumptions	
2008 Base Taxable Value[4]	$ 6,055,487
City AV Rate	0.247920
County AV Rate	0.347264
College AV Rate	0.187993

Footnotes

1) Values increased at 2% annually with two years of no growth each decade to simulate an economic downturn.
2) Years 2039 -2060 are shown for illustrative purposes only, and are subject to Participation Agreements.
3) College Participation to end in 2024, per draft Interlocal Agreement.
4) In 2008, the Zone was created with a base value of $6,055,487.

EXHIBIT F – MAP OF PUBLIC IMPROVEMENTS



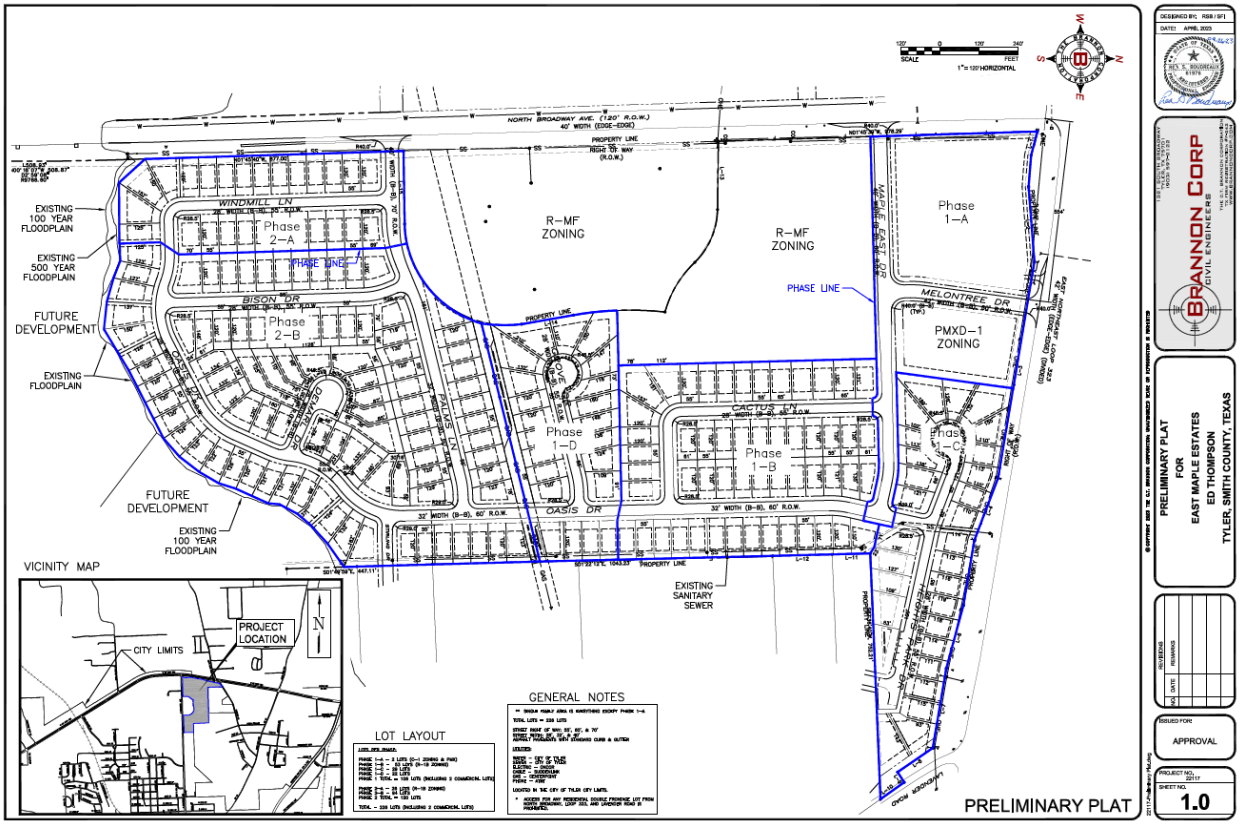

NORTH BROADWAY AVE. (120' R.O.W.)
60' WIDTH (EDGE-EDGE)
PROPERTY LINE
RIGHT OF WAY (R.O.W.)
WINDMILL LN
Phase 2-A
PHASE LINE
BISON DR
Phase 2-B
R-MF ZONING
R-MF ZONING
Phase 1-A
PHASE LINE
MELONTREE DR
PMXD-1 ZONING
Phase 1-D
Phase 1-B
Phase 1-C
CACTUS LN
OASIS DR
EXISTING 100 YEAR FLOODPLAIN
EXISTING 500 YEAR FLOODPLAIN
FUTURE DEVELOPMENT
EXISTING FLOODPLAIN
FUTURE DEVELOPMENT
EXISTING 100 YEAR FLOODPLAIN
EXISTING SANITARY SEWER
VICINITY MAP
CITY LIMITS
PROJECT LOCATION
LOT LAYOUT
GENERAL NOTES
PRELIMINARY PLAT
FOR
EAST MAPLE ESTATES
ED THOMPSON
TYLER, SMITH COUNTY, TEXAS
BRANNON CORP
CIVIL ENGINEERS
APPROVAL
1.0

EXHIBIT G – PROPOSED USES OF THE PROPERTY

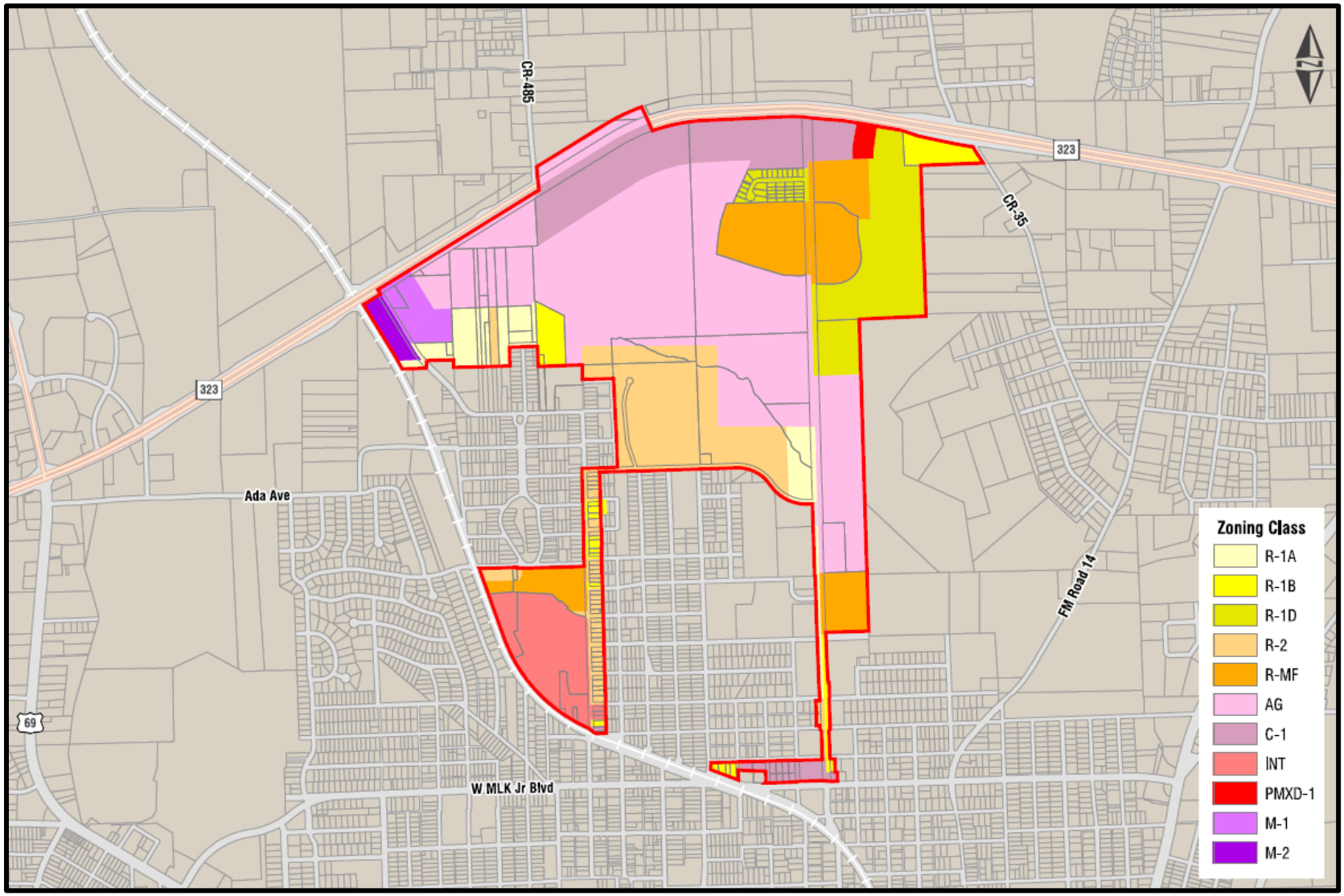


EXHIBIT H – PARCEL IDENTIFICATION

Property ID	Taxable Value
R129473	$ 23,359.00
R129473	$ 23,359.00
R129476	$ 48,167.00
R129476	$ 48,167.00
R129476	$ 48,167.00
R129476	$ 48,167.00
R129476	$ 48,167.00
R129476	$ 48,167.00
R129476	$ 48,167.00
R146717	$ -
R042281	$ 25,037.00
R042281	$ 25,037.00
R042281	$ 25,037.00
R129481	$ 538.00
R138443	$ -
R152145	$ 542.00
R042691	$ 73,706.00
R042691	$ 73,706.00
R042692	$ 3,564.00
R042700	$ 6,099.00
R042701	$ 14,401.00
R042702	$ 12,854.00
R042703	$ 17,988.00
R042704	$ 171.00
R042705	$ 10,342.00

Property ID	Taxable Value
R042706	$ 135,341.00
R042707	$ 15,643.00
R042708	$ 5,227.00
R042711	$ 2,400.00
R042712	$ 13,022.00
R042729	$ 14,050.00
R129475	$ 941.00
R126651	$ 2,580.00
R125024	$ 6,607.00
R197138	$ 1,037,464.00
R055690	$ -
R055690	$ -
R055690	$ -
R055690	$ -
R055690	$ -
R055690	$ -
R055690	$ -
R055690	$ -
R194667	$ -
R136736	$ 41,777.00
R136738	$ 45,035.00
R136740	$ 36,537.00
R136741	$ 43,018.00
R055777	$ 4,110.00
R055777	$ 4,110.00

Property ID	Taxable Value
R055779	$ 17,010.00
R055779	$ 17,010.00
R055861	$ -
R055867	$ -
R123351	$ -
R055878	$ 2,844,336.00
R152764	$ 4,468,936.00
R183307	$ 165,389.00
R183309	$ 190,858.00
R183310	$ 155,439.00
R183311	$ 161,917.00
R183312	$ 179,179.00
R183313	$ 202,529.00
R183314	$ 206,280.00
R183315	$ 218,108.00
R183318	$ 99,147.00
R183319	$ 500.00
R183320	$ 164,108.00
R183321	$ 208,901.00
R183322	$ 237,038.00
R183323	$ 99,172.00
R215256	$ 32,687.00
R215257	$ 32,687.00
R215258	$ 32,687.00
R200934	$ 28,893.00
R200935	$ 22,209.00
R200936	$ 23,503.00
R200937	$ 22,209.00

Property ID	Taxable Value
R200938	$ 26,737.00
R200939	$ 182,135.00
R200940	$ 178,722.00
R200941	$ 206,690.00
R200942	$ 181,575.00
R200943	$ 184,938.00
R200944	$ 177,259.00
R200945	$ 175,626.00
R200946	$ 211,958.00
R200947	$ 169,743.00
R200948	$ 163,857.00
R191791	$ 209,568.00
R191792	$ 164,879.00
R191793	$ 151,797.00
R191794	$ 159,696.00
R191795	$ 211,514.00
R055929	$ 112,509.00
R055929	$ 112,509.00
R055931	$ -
R055931	$ -
R055932	$ 11,077.00
R055936	$ 17,697.00
R061989	$ 82,591.00
R061990	$ 5,491.00
R061991	$ 152,962.00
R061992	$ 138,112.00
R061993	$ 118,995.00
R061999	$ 144,269.00

Property ID	Taxable Value
R061999	$ 144,269.00
R062000	$ 72,682.00
R062001	$ 60,810.00
R062002	$ 96,352.00
R062008	$ 82,234.00
R062009	$ 77,636.00
R062010	$ 61,352.00
R062011	$ 79,385.00
R062012	$ 77,552.00
R062018	$ 63,354.00
R062019	$ 24,234.00
R062020	$ 165,339.00
R216206	$ 165,339.00
R062021	$ 95,162.00
R150837	$ 229,178.00
R062028	$ 59,088.00
R062029	$ 59,578.00
R062030	$ 64,978.00
R062031	$ 29,728.00
R062032	$ 11,609.00
R062033	$ 3,382.00
R062039	$ 36,772.00
R062040	$ 280,830.00
R062041	$ 3,850,000.00

Property ID	Taxable Value
R136834	$ -
R136834	$ -
R136834	$ -
R136834	$ -
R064308	$ 82,495.00
R064309	$ 61,280.00
R064310	$ 227,730.00
R136655	$ -
R136655	$ -
R064317	$ 103,433.00
R199975	$ -
R199976	$ -
R064321	$ 135,612.00
R064328	$ -
R064329	$ -
R137717	$ 59,456.00
R064330	$ 31,856.00
R064331	$ 37,501.00
R064362	$ 34,679.00
R151664	$ 248,900.00
R064394	$ 261.00
R108964	$ 90,888.00
R152210	$ 6,805,231.00

THE STATE OF TEXAS-DRAFT

DEVELOPMENT CONTRACT BETWEEN
CITY OF TYLER AND NORTHCHASE DEVELOPMENT LLC
FOR DEVELOPMENT OF EAST MAPLE ESTATES-UNIT 1
TAX INCREMENT REINVESTMENT ZONE (TIRZ) #3

COUNTY OF SMITH

This AGREEMENT is entered into by and between **THE CITY OF TYLER, TEXAS**, a municipal corporation hereafter called "**CITY**", and **NORTHCHASE DEVELOPMENT LLC**, hereafter called "**DEVELOPER**".

PREAMBLE

DEVELOPER is in the process of developing East Maple Estates, an approximate 90-acre tract located in North Tyler, Texas, at the intersection of North Broadway and Northwest Loop 323. DEVELOPER has submitted a Zoning application to the City, which was approved in February 2023. Developer has submitted a Preliminary Plat application, which was approved in May 2023. Developer now intends to submit a Final Plat for Unit 1 of the property and construct the associated infrastructure required for the development of the property as shown on the Preliminary Plat and Land Use Zoning. The development process requires the platting and construction of two streets, Maple East Drive and Melontree Drive, with associated utilities. CITY has adopted a TIRZ #3 Project and Financing Plan to promote the installation of orderly and timely infrastructure improvements to benefit all citizens in the area and recognizes the importance and advantages of constructing infrastructure in North Tyler. Since the proposed development is located within the boundaries of TIRZ #3, and the proposed development meets the financing requirements outlined in the TIRZ #3 Project Plan and Financing Plan, Developer is requesting City use TIRZ #3 as a financing method for the construction of the Maple East Estates Unit 1 infrastructure.

AGREEMENT

Now, therefore, the Parties agree as follows:

1. Developer agrees to submit an application for final plat for Unit 1 of development, for approval by City staff.

2. Developer and City agree that Unit 1 of the development will include Phase 1-A as shown on the approved Preliminary Plat, as shown on **Exhibit "A"**, attached hereto and incorporated herein.

3. Developer agrees to dedicate to City all street right of way, utility easements, and drainage easements necessary for the construction of the new public infrastructure.

4. Developer agrees to submit construction plans for water, sanitary sewer, paving, and drainage for Unit 1 of the development for approval by City staff.

5. Developer agrees to pay for all engineering, surveying, and study costs associated with the design and construction of Unit 1 of the development.

6. Developer agrees to obtain sealed bids for the construction work of the new drainage structure.

7. Developer agrees to contract with City approved contractors for construction of all public improvements.

8. Developer agrees to require contracts to include standard CITY bonding requirements.

9. Developer agrees to construct the paving, drainage, water, and sanitary sewer improvements, as shown on the approved construction plans, for Unit 1 of the development. The cost of new infrastructure improvements is approximately **$900,000**, as shown in the Engineer's Opinion of probable Cost in **Exhibit "B"**, attached hereto and incorporated herein.

10. City agrees to use TIRZ #3 to finance the cost of the construction of the new infrastructure improvements in Unit 1, **in the amount not to exceed $900,000**.

11. City agrees City's share of the cost shall be due on completion and final acceptance by City staff of the new infrastructure construction work. Any cost overruns in the construction of the new infrastructure, above $900,000, shall be the responsibility of Developer.

12. Developer and City agree payment of City's share of the cost to be paid in two equal installments, with the first installment of **$450,000.00** due 30 days after final acceptance of the infrastructure construction. The second installment shall be due 60 days after final acceptance of the infrastructure construction.

13. Developer and City agree that building permits will be allowed to be issued in Unit 1 of the development at the time the new infrastructure improvements are substantially complete. "Substantially complete" is the point when the work has been made suitable for use or occupancy or is in a condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

14. Developer and City agree this Development Contract is effective for a period of 5 years from the date of execution to allow for fluctuations in market conditions.

15. Severability. In the event any of the provisions in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remainder of the Contract shall remain in full force and effect.

16. Controlling Law/Venue. This Contract shall be construed in accordance with the laws of the State of Texas. Proper venue of dispute resolution before the courts in Texas shall lie exclusively in Smith County, Texas.

17. Agency; Independent Contract. The parties agree and acknowledge that each party is not an agent of the other party.

18. Indemnity. To the extent permitted by law, each party agrees to release, indemnify and save harmless

the other party, the other party's officers, directors, agents representatives and employees from and against all loss of, or damage to, property, or injuries or death of any person or persons, and shall indemnify and save harmless the other party from all claims, damages, suits, costs, expenses including reasonable attorney's fees, liability, or actions of any kind or nature whatsoever, in away resulting from, or arising out of, directly or indirectly, the negligent acts, errors, omissions, or intentional acts of the indemnifying party, or indemnifying party's officers, directors, agents, representatives employees or invitees, taken pursuant to this Contract. However, neither party need release, indemnify or save harmless the other party, the other party's officers, directors, agents, employees, representatives and invitees from damages resulting from the negligence or intentional act of the other party's own officers, directors, agents, employees, representatives or invitees.

EXECUTED AND ENTERED INTO this _____ day of _____, 2024.

ATTEST:

_____

City Clerk, Cassandra Brager

CITY OF TYLER, TEXAS ("CITY")

BY: _____

City Manager, Edward Broussard

APPROVED:

_____

City Attorney, Deborah Pullum

ATTEST:

_____

Rea S. Boudreaux, P.E., M.B.A.

TITLE: **President**

The C. T. Brannon Corporation

NORTHCHASE DEVELOPMENT LLC

BY: _____

Edward Thompson

TITLE: **President/General/Partner**

THE STATE OF TEXAS

DEVELOPMENT CONTRACT BETWEEN
CITY OF TYLER AND NORTHCHASE DEVELOPMENT LLC
FOR DEVELOPMENT OF EAST MAPLE ESTATES
PHASE 1-A OF UNIT 1
TAX INCREMENT REINVESTMENT ZONE (TIRZ) #3

COUNTY OF SMITH

This AGREEMENT is entered into by and between **THE CITY OF TYLER, TEXAS**, a municipal corporation hereafter called "**CITY**", and **NORTHCHASE DEVELOPMENT LLC**, hereafter called "**DEVELOPER**".

PREAMBLE

DEVELOPER is in the process of developing East Maple Estates, an approximate 90-acre tract located in North Tyler, Texas, at the intersection of North Broadway and Northwest Loop 323. DEVELOPER has submitted a Zoning application to the City, which was approved in February 2023. Developer has submitted a Preliminary Plat application, which was approved in May 2023. Developer now intends to submit a Final Plat for Phase 1-A of Unit 1 of the property and construct the associated infrastructure required for the development of the property as shown on the Preliminary Plat and Land Use Zoning. The development process requires the platting and construction of two streets, Maple East Drive and Melontree Drive, with associated utilities. CITY has adopted a TIRZ #3 Project and Financing Plan to promote the installation of orderly and timely infrastructure improvements to benefit all citizens in the area and recognizes the importance and advantages of constructing infrastructure in North Tyler. Since the proposed development is located within the boundaries of TIRZ #3, and the proposed development meets the financing requirements outlined in the TIRZ #3 Project Plan and Financing Plan, Developer is requesting City use TIRZ #3 as a financing method

for the construction of the Maple East Estates Phase 1-A of Unit 1 infrastructure, including clearing, earthwork, water, sanitary sewer, drainage, and paving improvements.

AGREEMENT

Now, therefore, the Parties agree as follows:

1. Developer agrees to submit an application for the final plat for Phase 1-A of Unit 1 of the development, for approval by City staff.

2. Developer and City agree that the development will include Phase 1-A of Unit 1 as shown on the approved Preliminary Plat, as shown on **Exhibit "A"**, attached hereto, and incorporated herein.

3. Developer agrees to dedicate to City all street right of way, utility easements, and drainage easements necessary for the construction of the new public infrastructure.

4. Developer agrees to submit construction plans for clearing, earthwork, water, sanitary sewer, drainage, and paving improvements for Phase 1-A of Unit 1 of the development for approval by City staff.

5. Developer agrees to pay for all engineering, surveying, and study costs associated with the design and construction of the improvements for Phase 1-A of Unit 1 of the development.

6. Developer agrees to obtain sealed bids for the construction of the clearing, earthwork, water, sanitary sewer, drainage, and paving improvements for Phase 1-A of Unit 1 of the development.

7. Developer agrees to contract with City approved contractors for the construction of all public improvements for Phase 1-A of Unit 1 of the development.

8. Developer agrees to require construction contracts to include standard CITY bonding requirements.

9. Developer agrees to contract for the construction of the clearing, earthwork, water, sanitary sewer, drainage, and paving improvements, as shown on the approved construction plans, for Phase 1-A of

Unit 1 of the development. The cost of new infrastructure improvements is approximately **$1,477,127.09**, as shown in the Engineer's Opinion of Probable Cost (EOPC) in **Exhibit "B"**, attached hereto and incorporated herein. The EOPC in Exhibit "B" does include the "Left Turn Lane and Decel Lane" Paving Improvements. The cost for those improvements is shown in **Exhibit "B"-Part F** and is approximately **$149,209.50**.

10. City agrees to use TIRZ #3 to finance the cost, including the associated bonding and insurance costs, of the construction of the new infrastructure improvements in Phase 1-A of Unit 1, as shown in the EOPC, **in the amount not to exceed $1,000,000.00**.

11. City agrees City's share of the cost shall be due as the new infrastructure construction work is completed and invoiced by the Developer by providing contractor's statements of completed construction improvements. Any cost overruns in the construction of the new infrastructure, above $1,000,000.00, shall be the responsibility of Developer.

12. Developer and City agree payment of City's share of the cost to be paid in the following manner: On or before the tenth (10th) day of each month, the Developer shall submit to the City for review and approval a statement showing as completely as practicable the total value of the construction improvements done by the Contractor up to and including the last day of the preceding month. The City shall then pay the Developer within fifteen (15) business days the total amount of the approved statement. The approved statement must include an amount equal to five percent (5%) of the total value of the construction improvements done by the Contractor as retainage. If not, the city shall deduct five percent (5%) from each statement as retainage and hold until final payment. The City shall also deduct from each monthly statement all previous payments and all further sums that may be retained by the City under the terms of this Agreement. After completion of all infrastructure improvements, and submission of all required documentation, and final acceptance of the new infrastructure improvements by City Staff, City shall pay the retainage in 30 days after final

acceptance of the infrastructure improvements.

13. Developer and City agree that building permits will be allowed to be issued in Phase 1-A of Unit 1 of the development at the time the new infrastructure improvements are substantially complete. “Substantially complete” is the point when the work has been made suitable for use or occupancy or is in a condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

14. Developer and City agree this Development Contract is effective for a period of 5 years from the date of execution to allow for fluctuations in market conditions.

15. Severability. In the event any of the provisions in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the remainder of the Contract shall remain in full force and effect.

16. Controlling Law/Venue. This Contract shall be construed in accordance with the laws of the State of Texas. Proper venue of dispute resolution before the courts in Texas shall lie exclusively in Smith County, Texas.

17. Agency; Independent Contract. The parties agree and acknowledge that each party is not an agent of the other party.

18. Indemnity. To the extent permitted by law, each party agrees to release, indemnify and save harmless the other party, the other party’s officers, directors, agents representatives and employees from and against all loss of, or damage to, property, or injuries or death of any person or persons, and shall indemnify and save harmless the other party from all claims, damages, suits, costs, expenses including reasonable attorney’s fees, liability, or actions of any kind or nature whatsoever, in away resulting from, or arising out of, directly or indirectly, the negligent acts, errors, omissions, or intentional acts of the indemnifying party, or indemnifying party’s officers, directors, agents,

representatives employees or invitees, taken pursuant to this Contract. However, neither party need release, indemnify, or save harmless the other party, the other party's officers, directors, agents, employees, representatives, and invitees from damages resulting from the negligence or intentional act of the other party's own officers, directors, agents, employees, representatives, or invitees.

EXECUTED AND ENTERED INTO this _____ day of _____, 2024.

ATTEST:

_____

City Clerk, Cassandra Brager

CITY OF TYLER, TEXAS ("CITY")

BY: _____

City Manager, Edward Broussard

APPROVED: _____

City Attorney, Deborah Pullum

ATTEST:

_____

Rea S. Boudreaux, P.E., M.B.A.

TITLE: **President-The C. T. Brannon Corp**

NORTHCHASE DEVELOPMENT LLC

BY: _____

Edward Thompson

TITLE: **President/General/Partner**

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-24

Date: November 13, 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 $413,748.03 and the release of final retainage payment in the amount of $98,049.20 to Douglas Daily Construction, LLC for Consent Decree Group 4 Mainline Specialty Pipeburst, Bid 22-014.

Item Reference: **Item M-4 Council Meeting 06/08/22; 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. As a part of this Consent Decree, condition assessments are being performed on the sanitary sewer collection system. The assessments began in 2017; staff has elected to consolidate the inspections of the gravity mainlines from the allotted eight (8) year period to a seven (7) year period, and inspections of the manholes are spread out over a five (5) year period.

This project work consisted of remediation of 74 sanitary sewer gravity main asset locations using pipe bursting and has been completed.

On June 8, 2022, the City Council authorized the award of the Consent Decree Group 4 Mainline Specialty Pipeburst, Bid 22-014. The original award amount was $2,374,732.00. The rehabilitation work has been successfully completed at a total cost of $1,960,983.97, resulting in the project being $413,748.03 under the original contract amount.

Original Project Cost: $2,374,732.00
Final Project Cost: $1,960,983.97 (~17% 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 $413,748.03 and the release of final retainage payment in the amount of $98,049.20 to Douglas Daily Construction, LLC for Consent Decree Group 4 Mainline Specialty Pipeburst, Bid 22-014.

Attachments:
Final RCO

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 4 Mainline Specialty Pipebursting — DATE: 10/31/2024

CONTRACTOR: Douglas Dailey Construction — BID NUMBER: 22-014
ADDRESS:

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	1	LS	$25,000.00	$ 25,000.00	1.00	$ 25,000.00	0.00	$ -
2	TRAFFIC CONTROL	1	LS	$8,000.00	$ 8,000.00	1.00	$ 8,000.00	0.00	$ -
3	ASPHALT CEMENT STREET REPAIR	2960	SY	$105.00	$ 310,800.00	710.25	$ 74,576.25	2249.75	$ (236,223.75)
4	CONCRETE CEMENT STREET REPAIR	147	SY	$180.00	$ 26,460.00	86.22	$ 15,519.60	60.78	$ (10,940.40)
5	UNPAVED GROUND REPAIR	347	SY	$30.00	$ 10,410.00	0.00	$ -	347.00	$ (10,410.00)
6	BRICK STREET REPAIR	100	SY	$115.00	$ 11,500.00	49.00	$ 5,635.00	51.00	$ (5,865.00)
7	INSPECTION/POST-CLOSED CIRCUIT TELEVISION VIDEO (CCTV)	22031	LF	$2.00	$ 44,062.00	19,140.00	$ 38,280.00	2891.00	$ (5,782.00)
8	PIPE BURST TO 6 INCH	319	LF	$90.00	$ 28,710.00	320.00	$ 28,800.00	(1.00)	$ 90.00
9	PIPE BURST TO 8 INCH	16,032	LF	$46.00	$ 737,472.00	12,979.00	$ 597,034.00	3053.00	$ (140,438.00)
10	PIPE BURST TO 10 INCH	2,577	LF	$59.00	$ 152,043.00	2,217.00	$ 130,803.00	360.00	$ (21,240.00)
11	PIPE BURST TO 12 INCH	367	LF	$75.00	$ 27,525.00	367.00	$ 27,525.00	0.00	$ -
12	PIPE BURST TO 18 INCH	920	LF	$165.00	$ 151,800.00	921.00	$ 151,965.00	(1.00)	$ 165.00
13	PIPE BURST TO 20 INCH	1,732	LF	$185.00	$ 320,420.00	1,386.00	$ 256,410.00	346.00	$ (64,010.00)
14	SERVICE RECONNECTION	188	EA	$700.00	$ 131,600.00	194.00	$ 135,800.00	(6.00)	$ 4,200.00
15	REPLACE/NEW MANHOLE (≤6 FEET DEEP) - PAVED	2	EA	$7,500.00	$ 15,000.00	1.00	$ 7,500.00	1.00	$ (7,500.00)
16	REPLACE CLEANOUT CASTING AND COVER - PAVED	10	EA	$700.00	$ 7,000.00	0.00	$ -	10.00	$ (7,000.00)
17	TEMPORARY PLUGS AND BYPASS PUMPING	1	LS	$10,000.00	$ 10,000.00	1.00	$ 10,000.00	0.00	$ -
18	TRENCH EXCAVATION PROTECTION (≥5' DEPTH)	930	LF	$1.00	$ 930.00	930.00	$ 930.00	0.00	$ -
19	CLEARING AND GRUBBING	1	AC	$10,000.00	$ 10,000.00	1.00	$ 10,000.00	0.00	$ -
20	CONTINGENCY	1	LS	$346,000.00	$ 346,000.00	0.00	$ 437,206.12	1.00	$ 91,206.12
					$ 2,374,732.00		**$ 1,960,983.97**		**$ (413,748.03)**

Original contract price:	2,374,732.00	
Change in contract price from previous change orders:		
Change in contract price due to this change order:	(413,748.03)	
Adjusted contract price to date:	**1,960,983.97**	**-17.4%**
Original contract end date / days:		
Change in contract days from previous change orders:		
Change in contract days due to this change order:	0	
Adjusted contract days to date:		

RECOMMENDED FOR APPROVAL: Kate Dietz, P.E.
Director of Utilities
_____ Date

ACCEPTED: Douglas Dailey Construction
Contractor
_____ Date

REVIEWED:
City Attorney's Office
_____ Date

APPROVED: Edward Broussard
City Manager
_____ Date

AGENDA ITEM NUMBER: _____

DATE APPROVED BY COUNCIL: 11/13/2024

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-25

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed $371,300, with KSA Engineers, Inc. for the 2024 Sanitary Sewer Reroutes.

Item Reference: **LegalDesk 8880; Consent Decree, Civil Action No. 6:17-cv-29 and effective April 10, 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.

As a part of this Consent Decree, condition assessments are being performed on the sanitary sewer collection system and creek crossings.

Ten (10) sanitary sewer gravity lines have been identified as needing to be rerouted in order to improve the condition and protect the asset in the future. The scope of services includes preliminary design, surveying, easement acquisition, final design, bid phase services and construction phase services.

The ten (10) segments identified to be rerouted are:
Leisure Lane (SS.GM.T0002487)
Woodbridge Subdivision (SS.GM.T0003767, SS.GM.T0002031, SS.GM.T0002803)
Bellwood Point Repairs (SS.GM.T0010824 and SS.GM.T0012687)
Hogan Lift Station Influent Main (SS.GM.T0010142, SS.GM.T0010143, SS.GM.T0011085, and SS.GM.T0016319)

The full scope of services and fees are attached.

RECOMMENDATION:

It is recommended the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed $371,300, with KSA Engineers, Inc. for the 2024 Sanitary Sewer Reroutes.

Attachments:
103461 Engineering-Architect Contract (DRAFT)

Drafted/Recommended By:
Department Leader Tiffany Currie, PE

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 **KSA Engineers, Inc** (ENGINEER or ARCHITECT), hereinafter referred to as "E/A," for the purpose of acquiring all professional engineering and/or architectural services required for the project known as **"2024 Sanitary Sewer Reroutes"** (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

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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

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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

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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.

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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

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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.

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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 = $288,300.00
- Hourly/Reimbursable Expenses = $83,000.00
- **Total Contract Price = $371,300.00**

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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.

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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

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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

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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

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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

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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:
KSA Engineers, Inc.
Attn: Christopher B. Aylor, P.E.
6781 Oak Hill Blvd.
Tyler, TX 75703

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

8.8. Venue.

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

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

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

FOR THE CITY OF TYLER, TEXAS:

ATTEST:

By: _____
City Manager Date

Edward Broussard
Printed Name

By: _____
City Clerk

Cassandra Brager
Printed Name

APPROVED:

By: _____
City Attorney's Office Date

_____
Printed Name

RECOMMENDED:

By: _____
Department Leader Date

_____
Printed Name

CITY COUNCIL APPROVAL:

AGENDA ITEM NUMBER: _____
DATE APPROVED: _____

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FOR THE E/A:

By: _____

Director of Client Services Date

Joncie H. Young, P.E.

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

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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)

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Exhibit A
Scope of Service
2024 Sanitary Sewer Reroutes
KSA Contract No. 103461

This Agreement constitutes authorization by the City of Tyler (OWNER) for KSA Engineers, Inc. (ENGINEER) to provide engineering services for the **2024 Sanitary Sewer Reroutes** (hereinafter called the Project).

PROJECT DESCRIPTION

Construction of sanitary sewer gravity main reroutes of the following segments:

Leisure Lane (SS.GM.T0002487)
Woodbridge Subdivision (SS.GM.T0003767, SS.GM.T0002031, SS.GM.T0002803)
Bellwood Point Repairs (SS.GM.T0010824 and SS.GM.T0012687)
Hogan Lift Station Influent Main (SS.GM.T0010142, SS.GM.T0010143, SS.GM.T0011085, and SS.GM.T0016319)

The scope of services based on the design of one (1) construction project with a pre-design opinion of probable construction cost of $1,185,796.08.

SCOPE OF SERVICES

The scope of services for this part of the work is as follows:

Basic Services of ENGINEER: The ENGINEER is hereby authorized to perform the following basic services:

A. Study and Report Phase: Not Used.
B. Preliminary Design Phase: Provide services as stated in Section 1.3 of the Agreement.
C. Final Design Phase: Provide services as stated in Section 1.4 of the Agreement.
D. Bidding or Negotiating Phase: Provide services as stated in Section 1.5 of the Agreement.
E. Construction Phase: Provide services as stated in Section 1.6 of the Agreement.
F. Operational Phase: Not Used.

Additional Services of ENGINEER: The ENGINEER is hereby authorized to perform the following additional services:

A. Reimbursable Expenses;
B. Design Survey;
C. Easement Survey ;
D. Plat/Description Preparation;
E. Property Owner Coordination;
F. Right-of-Way Agent;
G. Part-Time Project Representative.

ENGINEER's Exclusions:

A. Construction Surveying;
B. Hydraulic modeling of gravity sewer lines;
C. Evaluation of force main and gravity sewer line pipe conditions, CCTV, and/or pipe inspections;
D. Geotechnical Investigation;
E. Construction Material Testing;

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F. Subsurface utility engineering and utility potholing;
G. Historical & archeological investigation and report;
H. Historical, Wetland, and Archeological investigations, environmental investigations, categorical exclusions, nationwide permits;
I. Coordination, application, or permitting with any and all local, State, and/or Federal agencies;
J. Stormwater pollution plans, applications, and/or permits;
K. Traffic control plans;
L. Legal services;
M. The relocation of gas, electric, communications, or other utilities;
N. Hydrologic studies;
O. Hydraulic studies.

OWNER's Responsibilities: The OWNER's responsibilities shall be as described in SECTION 3 of the ENGINEERING CONTRACT in addition to the following responsibilities: None.

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Exhibit B
Project Schedule
2024 Sanitary Sewer Reroutes
KSA Contract No. 103461

PROJECT SCHEDULE

Engineer shall complete its services with the following time specific time period upon OWNER's notice to proceed.

2024 Sanitary Sewer Reroutes:

1. Complete Preliminary Design: 120 Days
2. Complete Final Design: 60 calendar days following receipt of OWNER's comments on submitted preliminary design documents
3. Complete Bidding Phase: Within the time designated by the OWNER based upon an approved bid schedule developed following receipt of OWNER's comments on the submitted final design plans.
4. Complete Construction Phase– 270 days (9 months) following issuance of notice to proceed to Contractor.

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Exhibit C
Fee Summary
2024 Sanitary Sewer Reroutes
KSA Contract No. 103461

FEE SUMMARY

Engineering Fees: The fees for the scope of services described above is as follows:

Preliminary Design:	$81,700	Lump Sum
Final Design:	$54,500	Lump Sum
Bidding:	$10,000	Lump Sum
Construction Administration:	$45,000	Lump Sum[2]
Part-Time Resident Project Representative[3]:	$97,100	Lump Sum[2]
Reimbursable Expenses:	$2,000	Reimbursable
Design Survey:	$20,000	Hourly and Reimbursable
Easement Survey:	$10,000	Hourly and Reimbursable
Property Owner Coordination:	$5,000	Hourly and Reimbursable
Plat/Description Preparation:	$16,000	Hourly and Reimbursable
Right-Of-Way Agent:	$30,000	Hourly and Reimbursable
Total Budget:	**$371,300**	

Notes:

1. Compensation shall be billed monthly for Engineer's services based on time charged by each category at the hourly rates or subconsultant charges (if any). Hourly rates paid to the Engineer shall be adjusted annually to match the Engineer's Schedule of Hourly Fees effective at the time the Work is provided.
2. Construction Administration and Part-Time Resident Project Representative assumes a construction period of 270 consecutive calendar days. ENGINEER's work on these phases beyond the construction period will be billed at hourly rates.
3. Part-Time Resident Project Representative budget is based upon 20 hours per week for the assumed duration of the construction period.

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Exhibit D - Certificates of Insurance and Endorsements

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

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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

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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

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ENDORSEMENTS

[Endorsements Shall Be Inserted Here]

<table>
<tr><th colspan="2">* ENDORSEMENT(S) REQUIRED</th></tr>
<tr><td>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="2">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="2">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>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="2">OR</td></tr>
<tr><td>Option
2</td><td>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="2">OR</td></tr>
<tr><td>Option
3</td><td>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="2">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="2">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>

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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.

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CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-26

Date: November 13, 2024

Subject: Request that the City Council consider ratifying staff action requesting the City Manager to sign a Pipeline Crossing Agreement with the Union Pacific Railroad (UPRR) Company for constructing a sanitary sewer pipeline within Union Pacific Railroad right-of-way and payment of the License Fee in the amount of $21,460.

Item Reference: **Council Item M-6 12-14-22; LegalDesk #8844**

In December of 2022, the City Council authorized the City Manager to sign an Engineering Services Agreement with KSA Engineers for the Consent Decree Capacity Work Group 2 Implementation including preliminary and final design and construction phase services for Capacity Work Group 2. This design includes the coordination of two (2) railroad crossings.

This current agreement provides authorization for the City to place the proposed sanitary sewer line associated with Capacity Group 2 Line A improvements within the UPRR right-of-way. The license fee associated with this agreement is $21,460.

RECOMMENDATION:

It is recommended that the City Council consider ratifying staff action recommending the City Manager to sign a Pipeline Crossing Agreement with the Union Pacific Railroad (UPRR) Company for constructing sanitary sewer pipeline within Union Pacific Railroad right-of-way and payment of the License Fee in the amount of $21,460

Attachments:
0796563 City of Tyler - Corsicana Sub MP 545.83

Drafted/Recommended By:
Department Leader Tiffany Currie, P.E./Kate Dietz, P.E.

Edited/Submitted By:
City Manager

October 16, 2024
Project: 0796563

CITY OF TYLER

Re: Proposed Underground 42 Inch DIP Pipeline Crossing Encased In A 60 Inch Steel Casing For Transporting And Conveying Sanitary Sewer Pipeline Crossing of Railroad Property at Mile Post 545.83 on the Corsicana Subdivision at or near Tyler, Smith County, Texas.

Attached is an original of the agreement covering your use of the Railroad Company's right of way. **Review and return the partially executed agreement via email.**

Payment, **with Project No. 0796563 referenced,** in the amount of **Twenty One Thousand Four Hundred Sixty Dollars ($21,460.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Service's new policy regarding their Form 1099, I certify that 946001323 is this Corporation's correct Federal Taxpayer Identification Number.

Send Electronic Payments to:
Name: Bank of America, Dallas, TX
Union Pacific Account = 3752021457
- ACH Routing Number = 1110-0001-2
- Wire Routing Number = 026009593

Mail Checks to:
Union Pacific Railroad Company
12567 Collection Center Drive
Chicago, IL 60693
- **CHECKS ONLY – NO AGREEMENTS**

UP does not currently offer a credit card option for these payments.

Railroad Protective Liability Insurance (RPLI) may be obtained from any insurance company which offers such coverage. Union Pacific has also worked with a national broker, Marsh USA, to make available RPLI to you or your contractor. You can find additional information, premium quotes, and application forms at (uprr.marsh.com).

If we have not received the executed document within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

After final approval and processing, the fully-executed agreement will be returned to you via email with instructions for coordinating your work. In no event should you begin work until you have received your counterpart of the fully-executed agreement.

If you have any questions, please contact me at cobenson@up.com.

Sincerely,

Craig O Benson
Sr Mgr Real Estate - Contracts

PIPELINE CROSSING AGREEMENT

Mile Post: 545.83, Corsicana Subdivision
Location: Tyler, Smith County, Texas

THIS AGREEMENT ("Agreement") is made and entered into as of October 16, 2024, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **CITY OF TYLER**, a Texas Municipal Corporation to be addressed at 511 W Locust St, Tyler, Texas 75702 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

A. In consideration of the license fee to be paid by Licensee set forth below and in further consideration of the covenants and agreements to be performed by Licensee, Licensor hereby grants to Licensee the right to construct and thereafter, during the term hereof, maintain and operate an underground 42 inch DIP pipeline crossing encased in a 60 inch steel casing for transporting and conveying sanitary sewer only, including any appurtenances required for the operation of said pipeline (collectively, "Licensee's Facilities") across Licensor's real property, trackage, or other facilities located in Tyler, Smith County, State of Texas ("Railroad Property"). The specific specifications and limited purpose for Licensee's Facilities on, along, across and under Railroad Property are described in and shown on the Prints and Specifications dated October 15, 2024, attached hereto as **Exhibit A-1 & A-2** and made a part hereof.

B. Licensee represents and warrants that Licensee's Facilities will (i) only be used for an underground 42 inch DIP pipeline crossing encased in a 60 inch steel casing for transporting and conveying sanitary sewer, and (ii) not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

C. Licensee acknowledges that if it or its contractor provides Licensor with digital imagery depicting Licensee's Facilities ("Digital Imagery"), Licensee authorizes Licensor to use the Digital Imagery in preparing **Exhibit A**. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Licensor to use the Digital Imagery in said manner.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of Twenty One Thousand Four Hundred Sixty Dollars **($21,460.00)**.

Article 3. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as provided in the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of **Exhibit B**.

Article 4. LICENSEE'S COMPLIANCE WITH GENERAL TERMS.

Licensee represents and warrants that all work on Licensee's Facilities performed by Licensee or its contractors will strictly comply with all terms and conditions set forth herein, including the General Terms and Conditions, attached hereto as Exhibit B and made a part hereof.

Article 5. INSURANCE.

A. During the term of this Agreement, Licensee shall fully comply or cause its contractor(s) to fully comply with the insurance requirements described in **Exhibit C**, attached hereto and made a part hereof. Upon request only, Licensee shall send copies of all insurance documentation (e.g., certificates, endorsements, etc.) to Licensor at the address listed in the "NOTICES" Section of this Agreement.

B. If Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this Agreement, those statutes shall apply.

Article 6. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to Licensee will include Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority (collectively, a "Contractor"). If a Contractor is hired by Licensee to perform any work on Licensee's Facilities (including initial construction and subsequent relocation, maintenance, and/or repair work), then Licensee shall provide a copy of this Agreement to its Contractor(s) and require its Contractor(s) to comply with all terms and conditions of this Agreement, including the indemnification requirements set forth in the "INDEMNITY" Section of **Exhibit B**. Licensee shall require any Contractor to release, defend, and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend, and indemnify Licensor herein.

Article 7. ATTORNEYS' FEES, EXPENSES, AND COSTS.

If litigation or other court action or similar adjudicatory proceeding is undertaken by Licensee or Licensor to enforce its rights under this Agreement, all fees, costs, and expenses, including, without limitation, reasonable attorneys' fees and court costs, of the prevailing Party in such action, suit, or proceeding shall be reimbursed or paid by the Party against whose interest the judgment or decision is rendered. The provisions of this Article shall survive the termination of this Agreement.

Article 8. WAIVER OF BREACH.

The waiver by Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by Licensee shall in no way impair the right of Licensor to avail itself of any remedy for any subsequent breach thereof.

Article 9. ASSIGNMENT.

A. Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of Licensor, which must be requested in writing by Licensee. Any assignment or attempted transfer of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without Licensor's written consent, will be absolutely void and may result in Licensor's termination of this Agreement pursuant to the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of **Exhibit B.**

B. Upon Licensor's written consent to any assignment, this Agreement will be binding upon and inure to the benefit of the parties thereto, successors, heirs, and assigns, executors, and administrators.

Article 10. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Article 11. NOTICES.

Except Licensee's commencement of work notice(s) required under **Exhibit B**, all other notices required by this Agreement must be in writing, and (i) personally served upon the business address listed below ("Notice Address"), (ii) sent overnight via express delivery by a nationally recognized overnight delivery service such as Federal Express Corporation or United Parcel Service to the Notice Address, or (iii) by certified mail, return receipt requested to the Notice Address. Overnight express delivery notices will be deemed to be given upon receipt. Certified mail notices will be deemed to be given three (3) days after deposit with the United States Postal Service.

If to Licensor: Union Pacific Railroad Company
Attn: Analyst – Real Estate Utilities (Project No. 0796563)
1400 Douglas Street, MS 1690
Omaha, Nebraska 68179

If to Licensee: CITY OF TYLER
511 W Locust St
Tyler, Texas 75702

Article 12. AGREEMENT TO SUPERSEDE

This Agreement shall cancel and supersede the Original Agreement dated October 6, 1986 and identified as Audit No. S009797 and shall take effect as of the Effective Date first herein written. The Original Agreement shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance and repair of the pipeline crossing.

Article 13. SPECIAL PROVISION – CONSTRUCTION OBSERVATION.

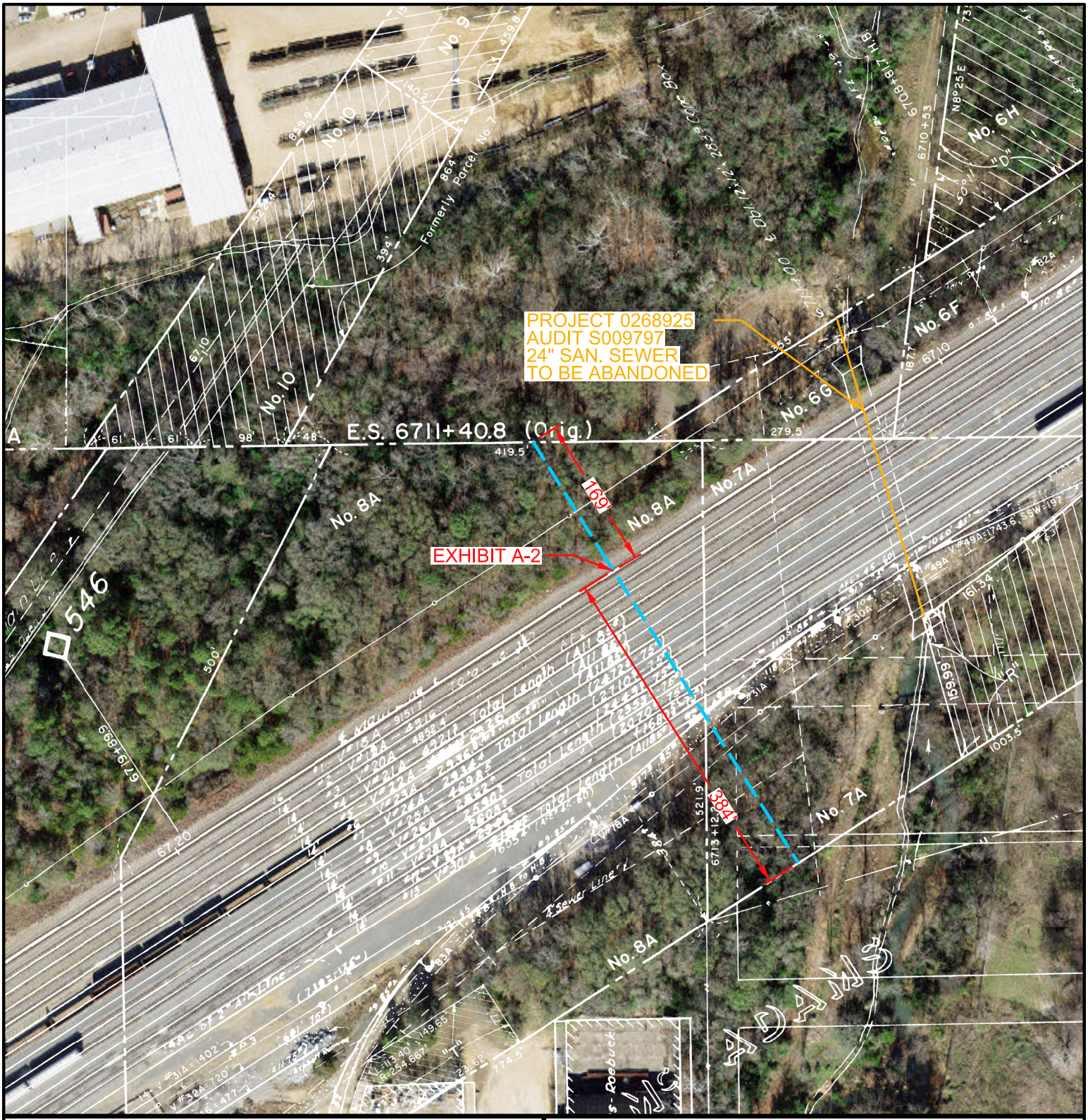
Licensor requires Licensee to provide monitoring of tracks and construction observation through Licensor approved observer named below during all construction and installation work. Licensee is to directly coordinate services with the named inspector:

Railpros Field Services
Email: RP.Utility@railpros.com
Phone (682)223-5271

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY	**CITY OF TYLER**
By: _____	By: _____
Craig O Benson *Sr Mgr Real Estate - Contracts*	Name Printed: _____ Title: _____



LEGEND:

PIPELINE CROSSING ..... — — —

UPRRCO. R/W OUTLINED ..... —·—·—·—

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A-1"

UNION PACIFIC RAILROAD COMPANY

TYLER, SMITH COUNTY, TX

M.P. 545.83 - CORSICANA SUB

CADD FILENAME	0796563.dgn
SCAN FILENAME	X

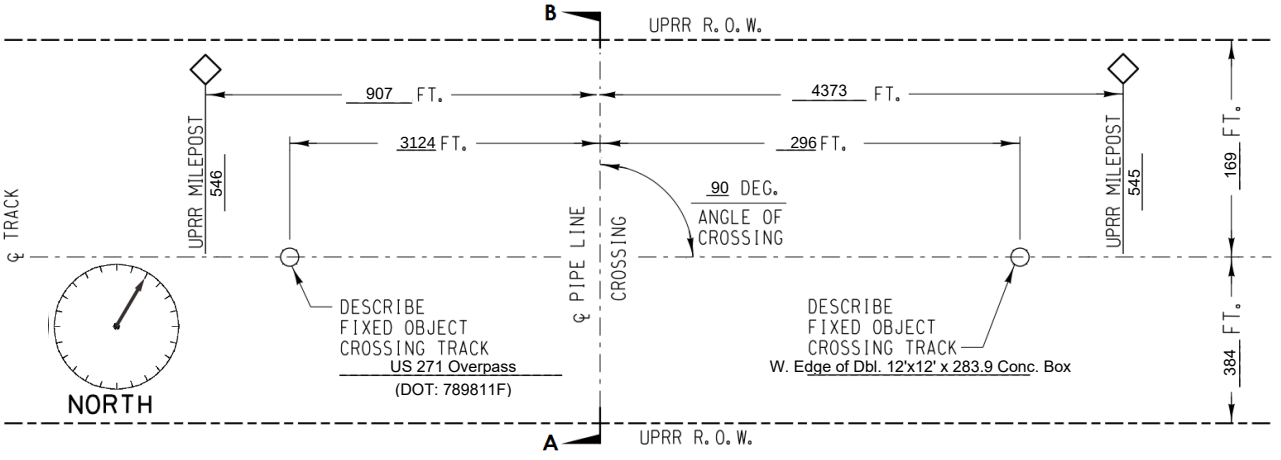
MAP SSW V-7 / S-OB
SCALE: 1" = 150'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 10/15/2024

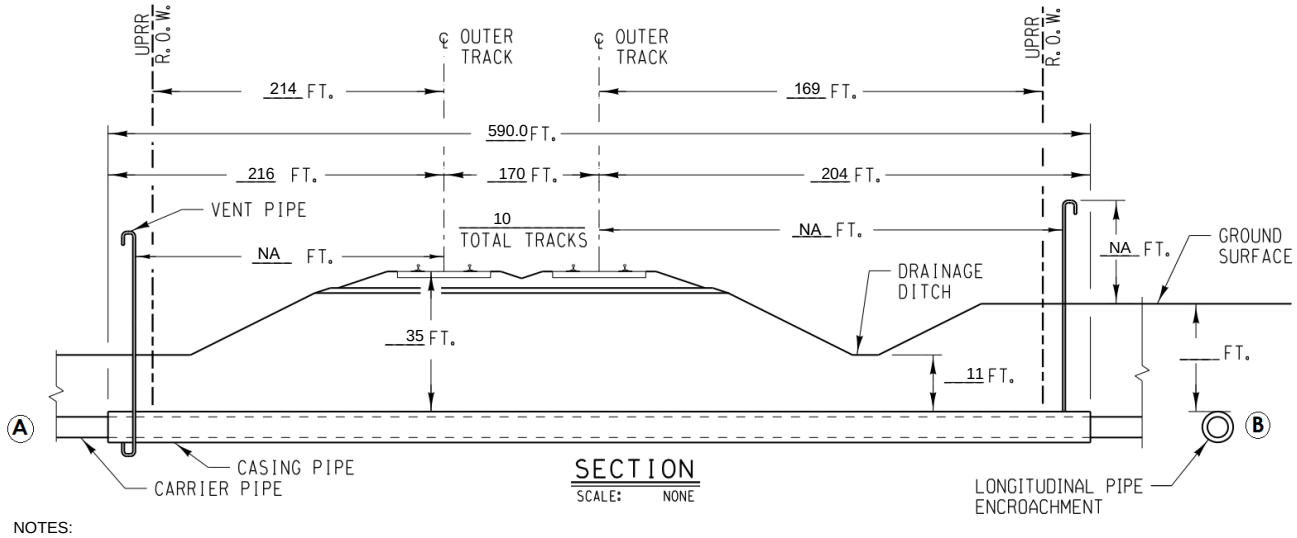
JDB FILE: 0796563

NON-FLAMMABLE LIQUID PIPELINE

☑ CROSSING
☐ ENCROACHMENT
☐ BOTH



PLAN
SCALE: NONE



SECTION
SCALE: NONE

NOTES:
1) ALL DIMENSIONS MEASURED PERPENDICULAR TO THE CENTERLINE OF TRACK
2) REFER TO AREMA VOLUME 1. CHAPTER 1. PART 5. SECTION 5.1

A) METHOD OF INSTALLATION BORED AND JACKED
B) DIST. FROM CENTERLINE OF TRACK TO PIPE ENCROACHMENT _____.
C) SIGNS PROVIDED? AT MINIMUM SIGNS WILL BE PROVIDED AS STATED ABOVE
D) CARRIER MATERIAL DIP. IF RCP, CLASS V? NA.
COMMODITY TO BE CONVEYED SANITARY SEWER.
OPERATIONAL PRESSURE 0 PSI. MAOP 0 PSI.
WALL THICKNESS (INCH)/ SCHEDULE 0.52 . DIAMETER 42 IN.
CATHODIC/COATING PROTECTION NO
E) CASING MATERIAL STEEL PIPE. IF RCP, CLASS V? NA.
TOTAL LENGTH CASING PIPE: 590 FT.
WALL THICKNESS 0.844 IN. DIAMETER 60 IN.
CATHODIC/COATING PROTECTION NA
CASING PIPE IS SEALED AT THE ENDS.
F) DISTANCE FROM CENTERLINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES 216 AND 204.

BUILDING AMERICA®

EXHIBIT "A"-2

SUBDIVISION: Corsicana Sub.	
TRACK TYPE: MAINLINE	
M.P.: 545.83	LAT.: 32.36111111
E.S.M.: 6714+31 ±	LONG.: -95.28666667
NEAREST CITY: TYLER	COUNTY: SMITH — STATE: TX
APPLICANT: CITY OF TYLER	
FILE NO.: 0796563	DATE: 10/15/2024

EXHIBIT B

GENERAL TERMS AND CONDITIONS

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

A. The foregoing grant is subject and subordinate to the prior and continuing right and obligation of Licensor to use and maintain its entire property including the right and power of Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Licensor without liability to Licensee or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad Property) and the right of Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment. It shall be Licensee's sole obligation to obtain such additional permission, license and grants necessary on account of any such existing rights.

Section 2. ENGINEERING REQUIREMENTS; PERMITS.

A. Licensee's Facilities will be designed, constructed, operated, maintained, repaired, renewed, modified, reconstructed, removed, or abandoned in place on Railroad Property by Licensee or its contractor to Licensor's satisfaction and in strict conformity with: (i) Licensor's current engineering standards and specifications, including those for shoring and cribbing to protect Licensor's railroad operations and facilities ("UP Specifications"), except for variances approved in advance in writing by Licensor's Assistant Vice President Engineering – Design or its authorized representative ("UP Engineering Representative"); (ii) such other additional safety standards as Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"); and (iii) all applicable laws, rules, and regulations, including any applicable Federal Railroad Administration and Federal Energy Regulatory Commission regulations and enactments (collectively, "Laws"). If there is any conflict between UP Specifications, UP Additional Requirements, and Laws, the most restrictive will apply.

B. Licensee shall keep the soil over Licensee's Facilities thoroughly compacted, and maintain the grade over and around Licensee's Facilities even with the surface of the adjacent ground.

C. If needed, Licensee shall secure, at Licensee's sole cost and expense, any and all necessary permits required to perform any work on Licensee's Facilities.

Section 3. NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES.

A. Licensee and its contractors are strictly prohibited from commencing any work associated with Licensee's Facilities without Licensor's written approval that the work will be in strict compliance with the "ENGINEERING REQUIREMENTS; PERMITS" Section of this Exhibit B. Upon Licensor's approval, Licensee shall contact both of Licensor's field representatives ("Licensor's Field Representatives") at least ten (10) days before commencement of any work on Licensee's Facilities.

B. Licensee shall not commence any work until: (1) Licensor has determined whether flagging or other special protective or safety measures ("Safety Measures") are required for performance of the work pursuant to the "FLAGGING" Section of this **Exhibit B** and provided Licensee written

authorization to commence work; and (2) Licensee has complied with the "PROTECTION OF FIBER OPTIC CABLE SYSTEMS" Section of this **Exhibit B**.

C. If, at any time, an emergency arises involving Licensee's Facilities, Licensee or its contractor shall immediately contact Licensor's Response Management Communications Center at (888) 877-7267.

Section 4. FLAGGING.

A. Following Licensee's notice to Licensor's Field Representatives required under the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this **Exhibit B**, Licensor shall inform Licensee if Safety Measures are required for performance of the work by Licensee or its contractor on Railroad Property. If Safety Measures are required, no work of any kind may be performed by Licensee or its contractor(s) until arrangements for the Safety Measures have been made and scheduled. If no Safety Measures are required, Licensor will give Licensee written authorization to commence work.

B. If any Safety Measures are performed or provided by Licensor, including but not limited to flagging, Licensor shall bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state, or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state, or local governmental entity. Additional information regarding the submission of such expenses by Licensor and payment thereof by Licensee can be found in the "LICENSEE'S PAYMENT OF EXPENSES" Section of this **Exhibit B**. If Licensor performs any Safety Measures, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

C. For flagging, the rate of pay per hour for each flagger will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage, and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

D. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagger is furnished, unless the flagger can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagger is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flaggers following the flaggers' assignment to work on the project for which Licensor is required to pay the flaggers and which could not reasonably be avoided by Licensor by assignment of such flaggers to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagger. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the days the flagger was scheduled, even though flagging is no longer required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.

Section 5. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of any work on Railroad Property performed by Licensee or its contractor, and takes precedence over any work on Licensee's Facilities to be performed Licensee or its contractors. Licensee shall be responsible for initiating, maintaining and supervising all safety operations and programs in connection with any work on Licensee's Facilities. Licensee and its contractor shall, at a minimum comply, with Licensor's then current safety standards located at the below web address ("Licensor's Safety Standards") to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's Safety Standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of Licensor's Safety Standards to each of its employees before they enter Railroad Property.

Union Pacific Current Safety Requirements

B. Licensee shall keep the job site on Railroad Property free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the work.

C. Licensee represents and warrants that all parts of Licensee's Facilities within and outside of the limits of Railroad Property will not interfere whatsoever with the constant, continuous, and uninterrupted use of the tracks, property, and facilities of Licensor, and nothing shall be done or suffered to be done by Licensee at any time that would in any manner impair the safety thereof.

D. Licensor's operations and work performed by Licensor's personnel may cause delays in Licensee's or its contractor's work on Licensee's Facilities. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee must coordinate any work on Railroad Property by Licensee or any third party with Licensor's Field Representatives in strict compliance with the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this **Exhibit B**.

E. Licensor shall have the right, if it so elects, to provide any support it deems necessary for the safety of Licensor's operations and trackage during Licensee's or its contractor's construction, maintenance, repair, renewal, modification, relocation, reconstruction, or removal of Licensee's Facilities. In the event Licensor provides such support, Licensor shall invoice Licensee, and Licensee shall pay Licensor as set forth in the "LICENSEE'S PAYMENT OF EXPENSES" Section of this **Exhibit B**.

F. Licensee may use unmanned aircraft systems ("UAS") to inspect Licensee's Facilities only upon the prior authorization from and under the direction of Licensor's Field Representatives. Licensee represents and warrants that its use of UAS on Railroad Property will comply with Licensor's then-current Unmanned Aerial Systems Policy and all applicable laws, rules and regulations, including any applicable Federal Aviation Administration regulations and enactments pertaining to UAS.

Section 6. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

Fiber optic cable systems may be buried on Railroad Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. In addition to the notifications required under the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this **Exhibit B**, Licensee shall visit up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad Property to be used by Licensee. If it is, Licensee shall telephone the telecommunications company(ies) involved, and arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will not commence any work on Railroad Property until all such protection or relocation has been completed.

Section 7. LICENSEE'S PAYMENT OF EXPENSES.

A. Licensee shall bear the entire cost and expense of the design, construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities.

B. Licensee shall fully pay for all materials joined, affixed to and labor performed on Railroad Property in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee. Licensee shall promptly pay or discharge all taxes, charges, and assessments levied upon, in respect to, or on account of Licensee's Facilities, to prevent the same from becoming a charge or lien upon any property of Licensor, and so that the taxes, charges, and assessments levied upon or in respect to such property shall not be increased because of the location, construction, or maintenance of Licensee's Facilities or any improvement, appliance, or fixture connected therewith placed upon such property, or on account of Licensee's interest therein. Where such tax, charge, or assessment may not be separately made or assessed to Licensee but shall be included in the assessment of the property of Licensor, then Licensee shall pay to Licensor an equitable proportion of such taxes determined by the value of Licensee's property upon property of Licensor as compared with the entire value of such property.

C. As set forth in the "FLAGGING" Section of this **Exhibit B**, Licensor shall have the right, if it so elects, to provide any Safety Measures Licensor deems necessary for the safety of Licensor's operations and trackage during Licensee's or its contractor's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, including, but not limited to supervision, inspection, and flagging services. In the event Licensor provides such Safety Measures, Licensor shall submit an itemized invoice to Licensee's notice recipient listed in the "NOTICES" Article of this Agreement. Licensee shall pay to Licensor the total amount listed on such invoice within thirty (30) days of Licensee's receipt of such invoice.

Section 8. MODIFICATIONS TO LICENSEE'S FACILITIES.

A. This grant is subject to Licensor's safe and efficient operation of its railroad, and continued use and improvement of Railroad Property (collectively, "Railroad's Use"). Accordingly, Licensee shall, at its sole cost and expense, modify, reconstruct, repair, renew, revise, relocate, or remove (individually, "Modification", or collectively, "Modifications") all or any portion of Licensee's Facilities as Licensor may designate or identify, in its sole discretion, in the furtherance of Railroad's Use.

B. Upon any Modification of all or any portion of Licensee's Facilities to another location on Railroad Property, Licensor and Licensee shall execute a Supplemental Agreement to this Pipeline Agreement to document the Modification(s) to Licensee's Facilities on Railroad Property. If the Modifications result in Licensee's Facilities moving off of Railroad Property, this Agreement will terminate upon Licensee's completion of such Modification(s) and all requirements contained within the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of this **Exhibit B**. Any such Modification(s) off of Railroad Property will not release Licensee from any liability or other obligation of Licensee arising prior to and upon completion of any such Modifications to the Licensee's Facilities.

Section 9. RESTORATION OF RAILROAD PROPERTY.

In the event Licensee, in any manner moves or disturbs any property of Licensor in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, then, Licensee shall, as soon as possible and at Licensee's sole cost

and expense, restore Licensor's property to the same condition as the same were before such property was moved or disturbed.

Section 10. INDEMNITY.

A. Definitions. As used in this Section:

1. "Licensor" includes Licensor, its affiliates, its and their officers, directors, agents and employees, and other railroad companies using Railroad Property at or near the location of Licensee's installation and their officers, directors, agents, and employees.

2. "Licensee" includes Licensee and its agents, contractors, subcontractors, sub-subcontractors, employees, officers, and directors, or any other person or entity acting on its behalf or under its control.

3. "Loss" includes claims, suits, taxes, loss, damages (including punitive damages, statutory damages, and exemplary damages), costs, charges, assessments, judgments, settlements, liens, demands, actions, causes of action, fines, penalties, interest, and expenses of any nature, including court costs, reasonable attorneys' fees and expenses, investigation costs, and appeal expenses.

B. Licensee shall release, defend, indemnify, and hold harmless Licensor from and against any and all Loss, even if groundless, fraudulent, or false, that directly or indirectly arises out of or is related to Licensee's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, removal, presence, use, or operation of Licensee's Facilities, including, but not limited to, any actual or alleged:

1. Bodily harm or personal injury (including any emotional injury or disease) to, or the death of, any person(s), including, but not limited to, Licensee, Licensor, any telecommunications company, or the agents, contractors, subcontractors, sub-subcontractors, or employees of the foregoing;

2. Damage to or the disturbance, loss, movement, or destruction of Railroad Property, including loss of use and diminution in value, including, but not limited to, any telecommunications system(s) or fiber optic cable(s) on or near Railroad Property, any property of Licensee or Licensor, or any property in the care, custody, or control of Licensee or Licensor;

3. Removal of person(s) from Railroad Property;

4. Any delays or interference with track or Railroad's Use caused by Licensee's activity(ies) on Railroad Property, including without limitation the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities or any part thereof, any activities, labor, materials, equipment, or machinery in conjunction therewith;

5. Right(s) or interest(s) granted pursuant to this Agreement;

6. Contents escaping from Licensee's Facilities, including without limitation any actual or alleged pollution, contamination, breach, or environmental Loss;

7. Licensee's breach of this Agreement or failure to comply with its provisions, including, but not limited to, any violation or breach by Licensee of any representations and warranties Licensee has made in this Agreement; and

8. Violation by Licensee of any law, statute, ordinance, governmental administrative order, rule, or regulation, including without limitation all applicable Federal Railroad Administration regulations.

C. THE FOREGOING OBLIGATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW FOR THE BENEFIT OF LICENSOR TO LOSSES CAUSED BY, ARISING FROM, RELATING TO, OR RESULTING FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LICENSOR, AND SUCH NEGLIGENCE OF LICENSOR SHALL NOT LIMIT, DIMINISH, OR PRECLUDE LICENSEE'S OBLIGATIONS TO LICENSOR IN ANY RESPECT. NOTWITHSTANDING THE FOREGOING, SUCH OBLIGATION TO INDEMNIFY LICENSOR SHALL NOT APPLY TO THE EXTENT THE LOSS IS CAUSED BY THE SOLE, ACTIVE AND DIRECT NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF LICENSOR AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION.

Section 11. TERMINATION; REMOVAL OF LICENSEE'S FACILITIES.

A. If Licensee does not use the right herein granted on Licensee's Facilities for one (1) year, or if Licensee continues in default in the performance of any provision of this Agreement for a period of thirty (30) days after written notice from Licensor to Licensee specifying such default, Licensor may, at its sole discretion, terminate this Agreement by written notice to Licensee at the address listed in the "NOTICES" Article of this Agreement. This Agreement will not terminate until Licensee complies with Paragraphs "C" and "D" of this Section found below.

B. In addition to the provisions of Paragraph "A" above, this Agreement may be terminated by written notice given by either party, without cause, upon thirty (30) days written notice to the non-terminating party at the address listed in the "NOTICES" Article of this Agreement. This Agreement will not terminate until Licensee complies with Paragraphs "C" and "D" of this Section found below.

C. Prior to the effective date of any termination described in this Section, Licensee shall submit an application to Licensor's online Utility Contracts System at this link for Licensee's removal, or if applicable, abandonment in place of Licensee's Facilities located on Railroad Property ("Removal/Abandonment Work"). Upon the UP Engineering Representative's approval of Licensee's application for the Removal/Abandonment Work, Licensor and Licensee shall execute a separate consent document that will govern Licensee's performance of the Removal/Abandonment Work from those portions of Railroad Property not occupied by roadbed and/or trackage ("Consent Document"). Licensee shall then restore the impacted Railroad Property to the same or reasonably similar condition as it was prior to Licensee's installation of Licensee's Facilities. For purposes of this Section, Licensee's (i) performance of the Removal/Abandonment Work, and (ii) restoration work will hereinafter be collectively referred to as the "Restoration Work".

D. Following Licensee's completion of the Restoration Work, Licensee shall provide a written certification letter to Licensor at the address listed in the "NOTICES" Article of this Agreement which certifies that the Restoration Work has been completed in accordance with the Consent Document. Licensee shall report to governmental authorities, as required by law, and notify Licensor immediately if any environmental contamination is discovered during Licensee's performance of the Restoration Work. Upon discovery, the Licensee shall initiate any and all removal, remedial and restoration actions that are necessary to restore the property to its original, uncontaminated condition. Licensee shall provide written certification to Licensor at the address listed in the "NOTICES" Article of this Agreement that environmental contamination has been remediated and the property has been

restored in accordance with Licensor's requirements. Upon Licensor's receipt of Licensee's restoration completion certifications, this Agreement will terminate.

E. In the event that Licensee fails to complete any of the Restoration Work, Licensor may, but is not obligated, to perform the Restoration Work. Any such work actually performed by Licensor will be at the cost and expense of Licensee. In the event that Licensor performs any of the Restoration Work, Licensee shall release Licensor from any and all Loss (defined in the "INDEMNITY" Section of this **Exhibit B**) arising out of or related to Licensor's performance of the Restoration Work.

F. Termination of this Agreement for any reason will not affect any of rights or obligations of the parties which may have accrued, or liabilities or Loss (defined in the "INDEMNITY" Section of this **Exhibit B)**, accrued or otherwise, which may have arisen prior to such termination.

EXHIBIT C

INSURANCE REQUIREMENTS

In accordance with Article 5 of this Agreement, Licensee shall (1) procure and maintain at its sole cost and expense, or (2) require its Contractor(s) to procure and maintain, at their sole cost and expense, the following insurance coverage:

A. **Commercial General Liability Insurance**. Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage Insurance**. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less $2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE:

- "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

C. **Workers' Compensation and Employers' Liability Insurance**. Coverage must include but not be limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. **Environmental Liability Insurance**. Environmental Legal Liability Insurance (ELL) applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or compliance with statute, all in connection with any loss arising from the insured's performance under this Agreement. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance must apply as if each named insured were the only named insured; and separately to the additional insured against which claim is made or suit is brought. Coverage shall be maintained in an amount of at least $2,000,000 per loss, with an annual aggregate of at least $4,000,000.

Licensee warrants that any retroactive date applicable to ELL insurance coverage under the policy is the same as or precedes the Effective Date of this Agreement, and that continuous coverage

will be maintained for a period of five (5) years beginning from the time the work under this Agreement is completed or if coverage is cancelled for any reason the policies extended discovery period, if any, will be exercised for the maximum time allowed.

E. **Railroad Protective Liability Insurance**. Licensee must maintain for the duration of work "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensor only as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this Agreement. Notwithstanding the foregoing, Licensee does not need Railroad Protective Liability Insurance after its initial construction work is complete and all excess materials have been removed from Licensor's property; PROVIDED, however, that Licensee shall procure such coverage for any subsequent maintenance, repair, renewal, modification, reconstruction, or removal work on Licensee's Facilities.

F. **Umbrella or Excess Insurance**. If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

G. All policy(ies) required above (except business automobile, workers' compensation and employers' liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26 (or substitute form(s) providing equivalent coverage). The coverage provided to Licensor as additional insured shall not be limited by Licensee's liability under the indemnity provisions of this Agreement. BOTH LICENSOR AND LICENSEE EXPECT THAT LICENSOR WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (b) all punitive damages are prohibited by all states in which this Agreement will be performed.

I. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Licensor and its agents, officers, directors and employees for damages covered by the workers' compensation and employers' liability or commercial umbrella or excess liability obtained by Licensee required in this Agreement, where permitted by law. This waiver must be stated on the certificate of insurance.

J. All insurance policies must be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

K. The fact that insurance is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor from Licensee or any third party will not be limited by the amount of the required insurance coverage.

CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number. C-A-27

Date: November 13, 2024

Subject: Request that the City Council consider authorizing the City Manager to sign a Union Pacific Rail Road permit associated with the 2024 Water Main Improvements (2-Inch Replacement) project and issue payment for $7,000 for the permit.

Item Reference:

On March 27, 2024, the City Council approved an engineering agreement with Elledge Engineering for the 2024 Water Main Improvements (2-Inch Replacement) project. This project is currently in the bidding phase and will soon enter construction. The attached Rail Road permit is a necessary step for the project to be complete the West Elm Street water main replacement.

RECOMMENDATION:

Recommend that the City Council consider authorizing the City Manager to sign a Union Pacific Rail Road permit associated with the 2024 Water Main Improvements (2-Inch Replacement) project and issue payment for $7,000 for the permit.

Attachments:
0799696 City of Tyler - Corsicana Sub MP 547.51

Drafted/Recommended By:
Department Leader Jacob Yanker, Utilities Project Engineer/ Kate Dietz, PE, Director of Utilities

Edited/Submitted By:
City Manager

October 28, 2024
Project: 0799696

CITY OF TYLER

Re: Proposed Underground 8 Inch Plastic Pipeline Encased In A 16 Inch Steel Casing For Transporting And Conveying Potable Water Pipeline Crossing of Railroad Property at Mile Post 547.51 on the Corsicana Subdivision at or near Tyler, Smith County, Texas.

Attached is an original of the agreement covering your use of the Railroad Company's right of way. **Review and return the partially executed agreement via email.**

Payment, **with Project No. 0799696 referenced,** in the amount of **Seven Thousand Dollars ($7,000.00)** is due and payable to Union Pacific Railroad Company upon your execution of the agreement. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Service's new policy regarding their Form 1099, I certify that 946001323 is this Corporation's correct Federal Taxpayer Identification Number.

Send Electronic Payments to:
Name: Bank of America, Dallas, TX
Union Pacific Account = 3752021457
- ACH Routing Number = 1110-0001-2
- Wire Routing Number = 026009593

Mail Checks to:
Union Pacific Railroad Company
12567 Collection Center Drive
Chicago, IL 60693
- **CHECKS ONLY – NO AGREEMENTS**

UP does not currently offer a credit card option for these payments.

Railroad Protective Liability Insurance (RPLI) may be obtained from any insurance company which offers such coverage. Union Pacific has also worked with a national broker, Marsh USA, to make available RPLI to you or your contractor. You can find additional information, premium quotes, and application forms at (uprr.marsh.com).

If we have not received the executed document within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

After final approval and processing, the fully-executed agreement will be returned to you via email with instructions for coordinating your work. In no event should you begin work until you have received your counterpart of the fully-executed agreement.

If you have any questions, please contact me at cobenson@up.com.

Sincerely,

Craig O Benson
Sr Mgr Real Estate - Contracts

PIPELINE CROSSING AGREEMENT

Mile Post: 547.51, Corsicana Subdivision
Location: Tyler, Smith County, Texas

THIS AGREEMENT ("Agreement") is made and entered into as of October 28, 2024, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **CITY OF TYLER**, a Texas Municipal Corporation to be addressed at 511 West Locust Street, Tyler, Texas 75702 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

A. In consideration of the license fee to be paid by Licensee set forth below and in further consideration of the covenants and agreements to be performed by Licensee, Licensor hereby grants to Licensee the right to construct and thereafter, during the term hereof, maintain and operate an underground 8 inch plastic pipeline encased in a 16 inch steel casing for transporting and conveying potable water only, including any appurtenances required for the operation of said pipeline (collectively, "Licensee's Facilities") across Licensor's real property, trackage, or other facilities located in Tyler, Smith County, State of Texas ("Railroad Property"). The specific specifications and limited purpose for Licensee's Facilities on, along, across and under Railroad Property are described in and shown on the Print and Specifications dated October 4, 2024, attached hereto as **Exhibit A** and made a part hereof.

B. Licensee represents and warrants that Licensee's Facilities will (i) only be used for an underground 8 inch plastic pipeline encased in a 16 inch steel casing for transporting and conveying potable water, and (ii) not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

C. Licensee acknowledges that if it or its contractor provides Licensor with digital imagery depicting Licensee's Facilities ("Digital Imagery"), Licensee authorizes Licensor to use the Digital Imagery in preparing **Exhibit A**. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Licensor to use the Digital Imagery in said manner.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of Seven Thousand Dollars **($7,000.00)**.

Article 3. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as provided in the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of **Exhibit B**.

Article 4. LICENSEE'S COMPLIANCE WITH GENERAL TERMS.

Licensee represents and warrants that all work on Licensee's Facilities performed by Licensee or its contractors will strictly comply with all terms and conditions set forth herein, including the General Terms and Conditions, attached hereto as Exhibit B and made a part hereof.

Article 5. INSURANCE.

A. During the term of this Agreement, Licensee shall fully comply or cause its contractor(s) to fully comply with the insurance requirements described in **Exhibit C**, attached hereto and made a part hereof. Upon request only, Licensee shall send copies of all insurance documentation (e.g., certificates, endorsements, etc.) to Licensor at the address listed in the "NOTICES" Section of this Agreement.

B. If Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this Agreement, those statutes shall apply.

Article 6. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to Licensee will include Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority (collectively, a "Contractor"). If a Contractor is hired by Licensee to perform any work on Licensee's Facilities (including initial construction and subsequent relocation, maintenance, and/or repair work), then Licensee shall provide a copy of this Agreement to its Contractor(s) and require its Contractor(s) to comply with all terms and conditions of this Agreement, including the indemnification requirements set forth in the "INDEMNITY" Section of **Exhibit B**. Licensee shall require any Contractor to release, defend, and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend, and indemnify Licensor herein.

Article 7. ATTORNEYS' FEES, EXPENSES, AND COSTS.

If litigation or other court action or similar adjudicatory proceeding is undertaken by Licensee or Licensor to enforce its rights under this Agreement, all fees, costs, and expenses, including, without limitation, reasonable attorneys' fees and court costs, of the prevailing Party in such action, suit, or proceeding shall be reimbursed or paid by the Party against whose interest the judgment or decision is rendered. The provisions of this Article shall survive the termination of this Agreement.

Article 8. WAIVER OF BREACH.

The waiver by Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by Licensee shall in no way impair the right of Licensor to avail itself of any remedy for any subsequent breach thereof.

Article 9. ASSIGNMENT.

A. Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of Licensor, which must be requested in writing by Licensee. Any assignment or attempted transfer of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without Licensor's written consent, will be absolutely void and may result in Licensor's termination of this Agreement pursuant to the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of **Exhibit B.**

B. Upon Licensor's written consent to any assignment, this Agreement will be binding upon and inure to the benefit of the parties thereto, successors, heirs, and assigns, executors, and administrators.

Article 10. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Article 11. NOTICES.

Except Licensee's commencement of work notice(s) required under **Exhibit B**, all other notices required by this Agreement must be in writing, and (i) personally served upon the business address listed below ("Notice Address"), (ii) sent overnight via express delivery by a nationally recognized overnight delivery service such as Federal Express Corporation or United Parcel Service to the Notice Address, or (iii) by certified mail, return receipt requested to the Notice Address. Overnight express delivery notices will be deemed to be given upon receipt. Certified mail notices will be deemed to be given three (3) days after deposit with the United States Postal Service.

If to Licensor: Union Pacific Railroad Company
Attn: Analyst – Real Estate Utilities (Project No. 0799696)
1400 Douglas Street, MS 1690
Omaha, Nebraska 68179

If to Licensee: CITY OF TYLER
511 West Locust Street
Tyler, Texas 75702

Article 12. SPECIAL PROVISION – CONSTRUCTION OBSERVATION.

Licensor requires Licensee to provide monitoring of tracks and construction observation through Licensor approved observer named below during all construction and installation work. Licensee is to directly coordinate services with the named inspector:

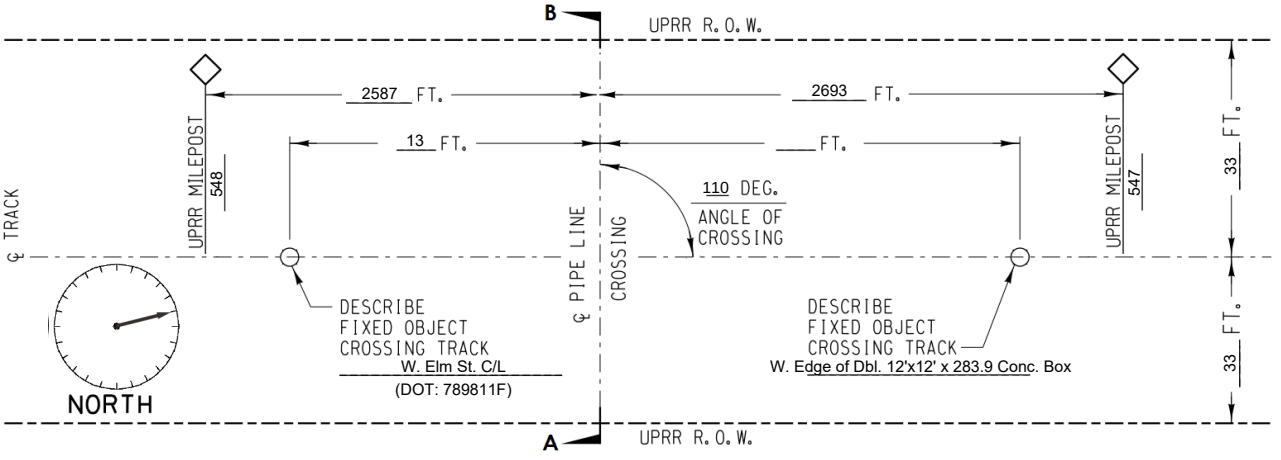
Railpros Field Services
Email: RP.Utility@railpros.com
Phone (682)223-5271

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

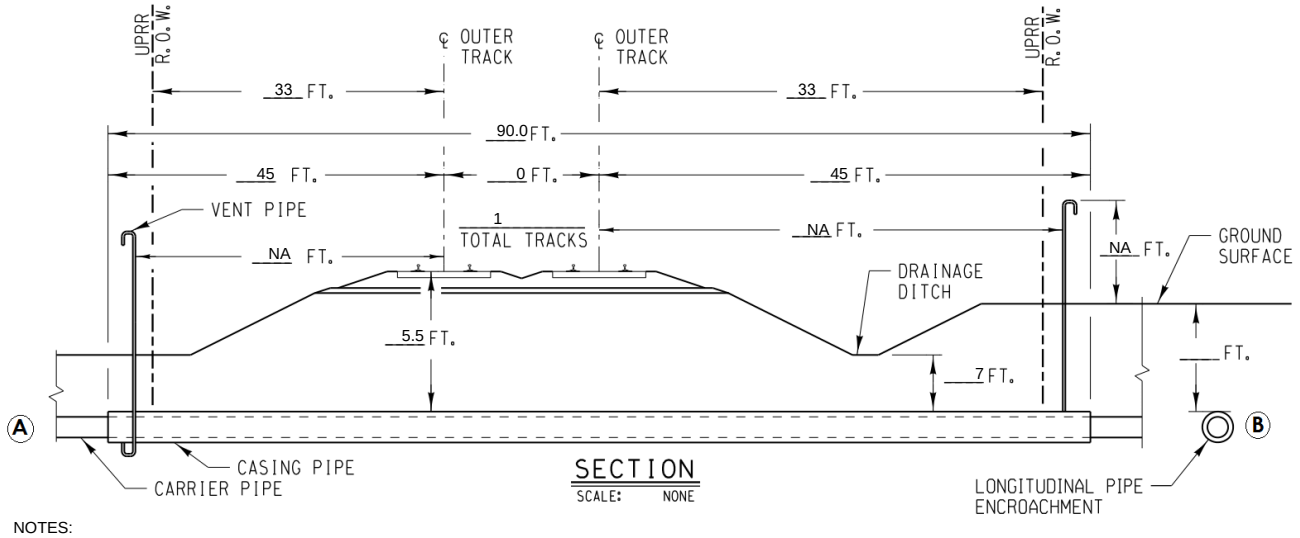
UNION PACIFIC RAILROAD COMPANY	**CITY OF TYLER**
By: _____	By: _____
Craig O Benson *Sr Mgr Real Estate - Contracts*	Name Printed: _____ Title: _____

NON-FLAMMABLE LIQUID PIPELINE

☑ CROSSING
☐ ENCROACHMENT
☐ BOTH



PLAN
SCALE: NONE



SECTION
SCALE: NONE

NOTES:
1) ALL DIMENSIONS MEASURED PERPENDICULAR TO THE CENTERLINE OF TRACK
2) REFER TO AREMA VOLUME 1. CHAPTER 1. PART 5. SECTION 5.1

A) METHOD OF INSTALLATION BORED AND JACKED
B) DIST. FROM CENTERLINE OF TRACK TO PIPE ENCROACHMENT _____.
C) SIGNS PROVIDED? AT MINIMUM SIGNS WILL BE PROVIDED AS STATED ABOVE
D) CARRIER MATERIAL PLASTIC. IF RCP, CLASS V? NA.
COMMODITY TO BE CONVEYED POTABLE WATER.
OPERATIONAL PRESSURE 70 PSI. MAOP 100 PSI.
WALL THICKNESS (INCH)/ SCHEDULE 18. DIAMETER 8 IN.
CATHODIC/COATING PROTECTION NO
E) CASING MATERIAL STEEL PIPE. IF RCP, CLASS V? NA.
TOTAL LENGTH CASING PIPE: 97 FT.
WALL THICKNESS 0.375 IN. DIAMETER 16 IN.
CATHODIC/COATING PROTECTION YES
CASING PIPE IS OPEN AT THE ENDS.
F) DISTANCE FROM CENTERLINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES 45 AND 45.

UNION PACIFIC **BUILDING AMERICA®**

EXHIBIT "A"-2

SUBDIVISION: Corsicana Sub.	
TRACK TYPE: MAINLINE	
M.P.: 547.51	LAT.: 32.34944444
E.S.M.: 6803+78 ±	LONG.: -95.31305556
NEAREST CITY: TYLER	COUNTY: SMITH — STATE: TX
APPLICANT: CITY OF TYLER	
FILE NO.: 0799696	DATE: 10/04/2024

EXHIBIT B

GENERAL TERMS AND CONDITIONS

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

A. The foregoing grant is subject and subordinate to the prior and continuing right and obligation of Licensor to use and maintain its entire property including the right and power of Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Licensor without liability to Licensee or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad Property) and the right of Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment. It shall be Licensee's sole obligation to obtain such additional permission, license and grants necessary on account of any such existing rights.

Section 2. ENGINEERING REQUIREMENTS; PERMITS.

A. Licensee's Facilities will be designed, constructed, operated, maintained, repaired, renewed, modified, reconstructed, removed, or abandoned in place on Railroad Property by Licensee or its contractor to Licensor's satisfaction and in strict conformity with: (i) Licensor's current engineering standards and specifications, including those for shoring and cribbing to protect Licensor's railroad operations and facilities ("UP Specifications"), except for variances approved in advance in writing by Licensor's Assistant Vice President Engineering – Design or its authorized representative ("UP Engineering Representative"); (ii) such other additional safety standards as Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"); and (iii) all applicable laws, rules, and regulations, including any applicable Federal Railroad Administration and Federal Energy Regulatory Commission regulations and enactments (collectively, "Laws"). If there is any conflict between UP Specifications, UP Additional Requirements, and Laws, the most restrictive will apply.

B. Licensee shall keep the soil over Licensee's Facilities thoroughly compacted, and maintain the grade over and around Licensee's Facilities even with the surface of the adjacent ground.

C. If needed, Licensee shall secure, at Licensee's sole cost and expense, any and all necessary permits required to perform any work on Licensee's Facilities.

Section 3. NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES.

A. Licensee and its contractors are strictly prohibited from commencing any work associated with Licensee's Facilities without Licensor's written approval that the work will be in strict compliance with the "ENGINEERING REQUIREMENTS; PERMITS" Section of this Exhibit B. Upon Licensor's approval, Licensee shall contact both of Licensor's field representatives ("Licensor's Field Representatives") at least ten (10) days before commencement of any work on Licensee's Facilities.

B. Licensee shall not commence any work until: (1) Licensor has determined whether flagging or other special protective or safety measures ("Safety Measures") are required for performance of the work pursuant to the "FLAGGING" Section of this **Exhibit B** and provided Licensee written

authorization to commence work; and (2) Licensee has complied with the "PROTECTION OF FIBER OPTIC CABLE SYSTEMS" Section of this **Exhibit B**.

C. If, at any time, an emergency arises involving Licensee's Facilities, Licensee or its contractor shall immediately contact Licensor's Response Management Communications Center at (888) 877-7267.

Section 4. FLAGGING.

A. Following Licensee's notice to Licensor's Field Representatives required under the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this **Exhibit B**, Licensor shall inform Licensee if Safety Measures are required for performance of the work by Licensee or its contractor on Railroad Property. If Safety Measures are required, no work of any kind may be performed by Licensee or its contractor(s) until arrangements for the Safety Measures have been made and scheduled. If no Safety Measures are required, Licensor will give Licensee written authorization to commence work.

B. If any Safety Measures are performed or provided by Licensor, including but not limited to flagging, Licensor shall bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state, or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state, or local governmental entity. Additional information regarding the submission of such expenses by Licensor and payment thereof by Licensee can be found in the "LICENSEE'S PAYMENT OF EXPENSES" Section of this **Exhibit B**. If Licensor performs any Safety Measures, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

C. For flagging, the rate of pay per hour for each flagger will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage, and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

D. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagger is furnished, unless the flagger can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagger is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flaggers following the flaggers' assignment to work on the project for which Licensor is required to pay the flaggers and which could not reasonably be avoided by Licensor by assignment of such flaggers to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagger. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the days the flagger was scheduled, even though flagging is no longer required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.

Section 5. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of any work on Railroad Property performed by Licensee or its contractor, and takes precedence over any work on Licensee's Facilities to be performed Licensee or its contractors. Licensee shall be responsible for initiating, maintaining and supervising all safety operations and programs in connection with any work on Licensee's Facilities. Licensee and its contractor shall, at a minimum comply, with Licensor's then current safety standards located at the below web address ("Licensor's Safety Standards") to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's Safety Standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of Licensor's Safety Standards to each of its employees before they enter Railroad Property.

Union Pacific Current Safety Requirements

B. Licensee shall keep the job site on Railroad Property free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the work.

C. Licensee represents and warrants that all parts of Licensee's Facilities within and outside of the limits of Railroad Property will not interfere whatsoever with the constant, continuous, and uninterrupted use of the tracks, property, and facilities of Licensor, and nothing shall be done or suffered to be done by Licensee at any time that would in any manner impair the safety thereof.

D. Licensor's operations and work performed by Licensor's personnel may cause delays in Licensee's or its contractor's work on Licensee's Facilities. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee must coordinate any work on Railroad Property by Licensee or any third party with Licensor's Field Representatives in strict compliance with the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this **Exhibit B**.

E. Licensor shall have the right, if it so elects, to provide any support it deems necessary for the safety of Licensor's operations and trackage during Licensee's or its contractor's construction, maintenance, repair, renewal, modification, relocation, reconstruction, or removal of Licensee's Facilities. In the event Licensor provides such support, Licensor shall invoice Licensee, and Licensee shall pay Licensor as set forth in the "LICENSEE'S PAYMENT OF EXPENSES" Section of this **Exhibit B**.

F. Licensee may use unmanned aircraft systems ("UAS") to inspect Licensee's Facilities only upon the prior authorization from and under the direction of Licensor's Field Representatives. Licensee represents and warrants that its use of UAS on Railroad Property will comply with Licensor's then-current Unmanned Aerial Systems Policy and all applicable laws, rules and regulations, including any applicable Federal Aviation Administration regulations and enactments pertaining to UAS.

Section 6. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

Fiber optic cable systems may be buried on Railroad Property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. In addition to the notifications required under the "NOTICE OF COMMENCEMENT OF WORK; EMERGENCIES" Section of this **Exhibit B**, Licensee shall visit up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad Property to be used by Licensee. If it is, Licensee shall telephone the telecommunications company(ies) involved, and arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will not commence any work on Railroad Property until all such protection or relocation has been completed.

Section 7. LICENSEE'S PAYMENT OF EXPENSES.

A. Licensee shall bear the entire cost and expense of the design, construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities.

B. Licensee shall fully pay for all materials joined, affixed to and labor performed on Railroad Property in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee. Licensee shall promptly pay or discharge all taxes, charges, and assessments levied upon, in respect to, or on account of Licensee's Facilities, to prevent the same from becoming a charge or lien upon any property of Licensor, and so that the taxes, charges, and assessments levied upon or in respect to such property shall not be increased because of the location, construction, or maintenance of Licensee's Facilities or any improvement, appliance, or fixture connected therewith placed upon such property, or on account of Licensee's interest therein. Where such tax, charge, or assessment may not be separately made or assessed to Licensee but shall be included in the assessment of the property of Licensor, then Licensee shall pay to Licensor an equitable proportion of such taxes determined by the value of Licensee's property upon property of Licensor as compared with the entire value of such property.

C. As set forth in the "FLAGGING" Section of this **Exhibit B**, Licensor shall have the right, if it so elects, to provide any Safety Measures Licensor deems necessary for the safety of Licensor's operations and trackage during Licensee's or its contractor's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, including, but not limited to supervision, inspection, and flagging services. In the event Licensor provides such Safety Measures, Licensor shall submit an itemized invoice to Licensee's notice recipient listed in the "NOTICES" Article of this Agreement. Licensee shall pay to Licensor the total amount listed on such invoice within thirty (30) days of Licensee's receipt of such invoice.

Section 8. MODIFICATIONS TO LICENSEE'S FACILITIES.

A. This grant is subject to Licensor's safe and efficient operation of its railroad, and continued use and improvement of Railroad Property (collectively, "Railroad's Use"). Accordingly, Licensee shall, at its sole cost and expense, modify, reconstruct, repair, renew, revise, relocate, or remove (individually, "Modification", or collectively, "Modifications") all or any portion of Licensee's Facilities as Licensor may designate or identify, in its sole discretion, in the furtherance of Railroad's Use.

B. Upon any Modification of all or any portion of Licensee's Facilities to another location on Railroad Property, Licensor and Licensee shall execute a Supplemental Agreement to this Pipeline Agreement to document the Modification(s) to Licensee's Facilities on Railroad Property. If the Modifications result in Licensee's Facilities moving off of Railroad Property, this Agreement will terminate upon Licensee's completion of such Modification(s) and all requirements contained within the "TERMINATION; REMOVAL OF LICENSEE'S FACILITIES" Section of this **Exhibit B**. Any such Modification(s) off of Railroad Property will not release Licensee from any liability or other obligation of Licensee arising prior to and upon completion of any such Modifications to the Licensee's Facilities.

Section 9. RESTORATION OF RAILROAD PROPERTY.

In the event Licensee, in any manner moves or disturbs any property of Licensor in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities, then, Licensee shall, as soon as possible and at Licensee's sole cost

and expense, restore Licensor's property to the same condition as the same were before such property was moved or disturbed.

Section 10. INDEMNITY.

A. Definitions. As used in this Section:

1. "Licensor" includes Licensor, its affiliates, its and their officers, directors, agents and employees, and other railroad companies using Railroad Property at or near the location of Licensee's installation and their officers, directors, agents, and employees.

2. "Licensee" includes Licensee and its agents, contractors, subcontractors, sub-subcontractors, employees, officers, and directors, or any other person or entity acting on its behalf or under its control.

3. "Loss" includes claims, suits, taxes, loss, damages (including punitive damages, statutory damages, and exemplary damages), costs, charges, assessments, judgments, settlements, liens, demands, actions, causes of action, fines, penalties, interest, and expenses of any nature, including court costs, reasonable attorneys' fees and expenses, investigation costs, and appeal expenses.

B. Licensee shall release, defend, indemnify, and hold harmless Licensor from and against any and all Loss, even if groundless, fraudulent, or false, that directly or indirectly arises out of or is related to Licensee's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, removal, presence, use, or operation of Licensee's Facilities, including, but not limited to, any actual or alleged:

1. Bodily harm or personal injury (including any emotional injury or disease) to, or the death of, any person(s), including, but not limited to, Licensee, Licensor, any telecommunications company, or the agents, contractors, subcontractors, sub-subcontractors, or employees of the foregoing;

2. Damage to or the disturbance, loss, movement, or destruction of Railroad Property, including loss of use and diminution in value, including, but not limited to, any telecommunications system(s) or fiber optic cable(s) on or near Railroad Property, any property of Licensee or Licensor, or any property in the care, custody, or control of Licensee or Licensor;

3. Removal of person(s) from Railroad Property;

4. Any delays or interference with track or Railroad's Use caused by Licensee's activity(ies) on Railroad Property, including without limitation the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Facilities or any part thereof, any activities, labor, materials, equipment, or machinery in conjunction therewith;

5. Right(s) or interest(s) granted pursuant to this Agreement;

6. Contents escaping from Licensee's Facilities, including without limitation any actual or alleged pollution, contamination, breach, or environmental Loss;

7. Licensee's breach of this Agreement or failure to comply with its provisions, including, but not limited to, any violation or breach by Licensee of any representations and warranties Licensee has made in this Agreement; and

8. Violation by Licensee of any law, statute, ordinance, governmental administrative order, rule, or regulation, including without limitation all applicable Federal Railroad Administration regulations.

C. THE FOREGOING OBLIGATIONS SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW FOR THE BENEFIT OF LICENSOR TO LOSSES CAUSED BY, ARISING FROM, RELATING TO, OR RESULTING FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF LICENSOR, AND SUCH NEGLIGENCE OF LICENSOR SHALL NOT LIMIT, DIMINISH, OR PRECLUDE LICENSEE'S OBLIGATIONS TO LICENSOR IN ANY RESPECT. NOTWITHSTANDING THE FOREGOING, SUCH OBLIGATION TO INDEMNIFY LICENSOR SHALL NOT APPLY TO THE EXTENT THE LOSS IS CAUSED BY THE SOLE, ACTIVE AND DIRECT NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF LICENSOR AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION.

Section 11. TERMINATION; REMOVAL OF LICENSEE'S FACILITIES.

A. If Licensee does not use the right herein granted on Licensee's Facilities for one (1) year, or if Licensee continues in default in the performance of any provision of this Agreement for a period of thirty (30) days after written notice from Licensor to Licensee specifying such default, Licensor may, at its sole discretion, terminate this Agreement by written notice to Licensee at the address listed in the "NOTICES" Article of this Agreement. This Agreement will not terminate until Licensee complies with Paragraphs "C" and "D" of this Section found below.

B. In addition to the provisions of Paragraph "A" above, this Agreement may be terminated by written notice given by either party, without cause, upon thirty (30) days written notice to the non-terminating party at the address listed in the "NOTICES" Article of this Agreement. This Agreement will not terminate until Licensee complies with Paragraphs "C" and "D" of this Section found below.

C. Prior to the effective date of any termination described in this Section, Licensee shall submit an application to Licensor's online Utility Contracts System at this link for Licensee's removal, or if applicable, abandonment in place of Licensee's Facilities located on Railroad Property ("Removal/Abandonment Work"). Upon the UP Engineering Representative's approval of Licensee's application for the Removal/Abandonment Work, Licensor and Licensee shall execute a separate consent document that will govern Licensee's performance of the Removal/Abandonment Work from those portions of Railroad Property not occupied by roadbed and/or trackage ("Consent Document"). Licensee shall then restore the impacted Railroad Property to the same or reasonably similar condition as it was prior to Licensee's installation of Licensee's Facilities. For purposes of this Section, Licensee's (i) performance of the Removal/Abandonment Work, and (ii) restoration work will hereinafter be collectively referred to as the "Restoration Work".

D. Following Licensee's completion of the Restoration Work, Licensee shall provide a written certification letter to Licensor at the address listed in the "NOTICES" Article of this Agreement which certifies that the Restoration Work has been completed in accordance with the Consent Document. Licensee shall report to governmental authorities, as required by law, and notify Licensor immediately if any environmental contamination is discovered during Licensee's performance of the Restoration Work. Upon discovery, the Licensee shall initiate any and all removal, remedial and restoration actions that are necessary to restore the property to its original, uncontaminated condition. Licensee shall provide written certification to Licensor at the address listed in the "NOTICES" Article of this Agreement that environmental contamination has been remediated and the property has been

restored in accordance with Licensor's requirements. Upon Licensor's receipt of Licensee's restoration completion certifications, this Agreement will terminate.

E. In the event that Licensee fails to complete any of the Restoration Work, Licensor may, but is not obligated, to perform the Restoration Work. Any such work actually performed by Licensor will be at the cost and expense of Licensee. In the event that Licensor performs any of the Restoration Work, Licensee shall release Licensor from any and all Loss (defined in the "INDEMNITY" Section of this **Exhibit B**) arising out of or related to Licensor's performance of the Restoration Work.

F. Termination of this Agreement for any reason will not affect any of rights or obligations of the parties which may have accrued, or liabilities or Loss (defined in the "INDEMNITY" Section of this **Exhibit B)**, accrued or otherwise, which may have arisen prior to such termination.

EXHIBIT C

INSURANCE REQUIREMENTS

In accordance with Article 5 of this Agreement, Licensee shall (1) procure and maintain at its sole cost and expense, or (2) require its Contractor(s) to procure and maintain, at their sole cost and expense, the following insurance coverage:

A. **Commercial General Liability Insurance**. Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage Insurance**. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less $2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE:

- "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

C. **Workers' Compensation and Employers' Liability Insurance**. Coverage must include but not be limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers' compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. **Environmental Liability Insurance**. Environmental Legal Liability Insurance (ELL) applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or compliance with statute, all in connection with any loss arising from the insured's performance under this Agreement. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance must apply as if each named insured were the only named insured; and separately to the additional insured against which claim is made or suit is brought. Coverage shall be maintained in an amount of at least $2,000,000 per loss, with an annual aggregate of at least $4,000,000.

Licensee warrants that any retroactive date applicable to ELL insurance coverage under the policy is the same as or precedes the Effective Date of this Agreement, and that continuous coverage

will be maintained for a period of five (5) years beginning from the time the work under this Agreement is completed or if coverage is cancelled for any reason the policies extended discovery period, if any, will be exercised for the maximum time allowed.

E. **Railroad Protective Liability Insurance**. Licensee must maintain for the duration of work "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensor only as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this Agreement. Notwithstanding the foregoing, Licensee does not need Railroad Protective Liability Insurance after its initial construction work is complete and all excess materials have been removed from Licensor's property; PROVIDED, however, that Licensee shall procure such coverage for any subsequent maintenance, repair, renewal, modification, reconstruction, or removal work on Licensee's Facilities.

F. **Umbrella or Excess Insurance**. If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

G. All policy(ies) required above (except business automobile, workers' compensation and employers' liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26 (or substitute form(s) providing equivalent coverage). The coverage provided to Licensor as additional insured shall not be limited by Licensee's liability under the indemnity provisions of this Agreement. BOTH LICENSOR AND LICENSEE EXPECT THAT LICENSOR WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement, or (b) all punitive damages are prohibited by all states in which this Agreement will be performed.

I. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Licensor and its agents, officers, directors and employees for damages covered by the workers' compensation and employers' liability or commercial umbrella or excess liability obtained by Licensee required in this Agreement, where permitted by law. This waiver must be stated on the certificate of insurance.

J. All insurance policies must be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

K. The fact that insurance is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor from Licensee or any third party will not be limited by the amount of the required insurance coverage.