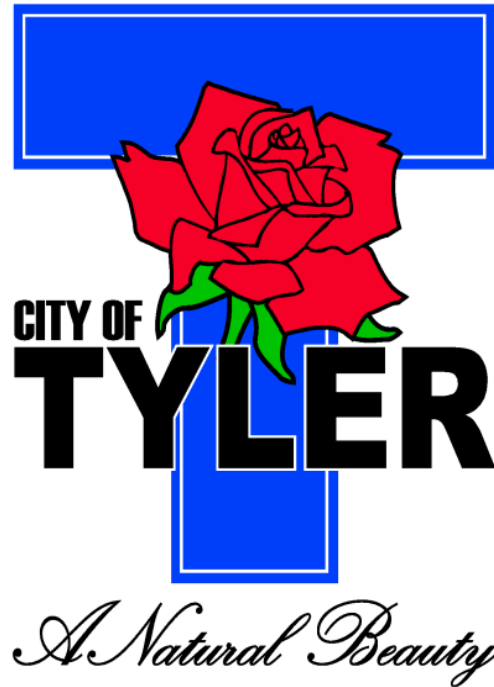


CITY COUNCIL AGENDA



Wednesday, April 30, 2025
9:00 am



CITY COUNCIL

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



CITY COUNCIL MEETING AGENDA

CITY COUNCIL CHAMBERS - CITY HALL

City Hall, City Council Chambers

212 N. Bonner Avenue, 2nd Floor

Tyler, Texas

Follow us on Facebook Live at:

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

Wednesday, April 30, 2025

9:00 am

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

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

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

AMERICANS WITH DISABILITIES ACT NOTICE

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

COURTESY RULES

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

INVOCATION

PLEDGE OF ALLEGIANCE

MINUTES

Request that the City Council consider approving the minutes of the regular called meeting of the City Council of the City of Tyler, Texas, held on March 12, 2025.

AWARDS

Request that the City Council consider recognizing the following employee for his years of service and commitment to the City of Tyler. He represents 25 years of service with the City of Tyler.

ZONING

- Z-1** C25-001 STRUCTURE DEVELOPMENT GROUP LLC (A PORTION OF ROSE STREET)
Request that the City Council consider adoption of an Ordinance approving the closure of an unimproved street right-of-way for Rose Street, adjacent to 819 Boyd Avenue.
- Z-2** Z25-004 R4U VENTURES LLC (314 EAST BERTA STREET)
Request that the City Council consider adoption of an Ordinance approving a zone change from C-1, Light Commercial District to R-1B, Single-Family Residential District.
- Z-3** Z25-007 MARIO CORNELIO (3021 CHANDLER STREET)
Request that the City Council consider adoption of an Ordinance approving a zone change from R-1B, Single-Family Residential District to R-1D, Single-Family Detached and Attached Residential District.

RESOLUTION

- R-1** Request that the City Council consider adoption of a Resolution authorizing the City Manager to execute a Local On-System Agreement with the Texas Department of Transportation (TxDOT) for the FM 2493 (Old Jacksonville Highway) and Capital Drive Traffic Signal.

CONSENT

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

- C-A-1** Request that the City Council consider authorizing the City Manager to approve invoices for the installation of acoustic panels and bass traps at the historic Mayfair Building in the amount of \$53,570 from Morris Drywall.
- C-A-2** Request that the City Council consider accepting a donation made to the City of Tyler of steel traffic signal poles and arms, valued at \$128,547.00, from the Brookshire Grocery Company for future installation at the intersection of Old

Jacksonville Highway (FM 2493) and Capital Drive.

- C-A-3** Request that the City Council consider authorizing the City Manager to purchase seven (7) Kaleidoscope Bus Shelters and Benches for Transit Department from Landscapeforms', for a total of \$175,558.57 through the approved State of Texas TXMAS-17-7802 contract.
- C-A-4** Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed \$387,000.00 with Pape-Dawson Consulting Engineers for 2025 Type D Sanitary Sewer Creek Crossing Repairs and to adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.
- C-A-5** Request that the City Council consider authorizing the City Manager to approve NETX as the successful bidder for Bid 25-017 Commercial Cardboard Recycling.
- C-A-6** Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed \$221,100.00 with Pape-Dawson Consulting Engineers for 2025 24" Sanitary Sewer Creek Crossing Replacement and to adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.
- C-A-7** Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by \$310,610.48 and release of final retainage payment in the amount of \$67,758.45 to Propipe, LLC, for Group 7 Cleaning and Closed Circuit Television (CCTV).
- C-A-8** Request that the City Council consider authorizing the City Manager to execute a mutual agreement between the City of Tyler and Lindale Rural Water Company for the purpose of clarifying the rights, obligations and regulatory fees of the Parties regarding the provision of sanitary sewer services to customers that the Parties have in common and to the extent allowed under State and Federal Law.
- C-A-9** Request that the City Council consider authorizing the City Manager to execute a construction contract in the amount of \$241,303.90 with CRS Commercial Roof Specialist Inc., for the Golden Road Water Treatment Plant Roof Replacement Project and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

CITY MANAGER'S REPORT

ADJOURNMENT

**MINUTES OF THE REGULAR CALLED MEETING OF
THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
March 12, 2025**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, March 12, 2025 at 9:00 a.m. in the City Council Chambers, 2nd floor of City Hall, Tyler, Texas, with the following present:

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

City Manager: Edward Broussard
Deputy City Manager: Stephanie Franklin
Asst. City Manager: Heather Nick
City Attorney: Deborah G. Pullum (absent)
Deputy City Attorney: Steve Kean
Senior Asst. City Attorney: Alesha Buckner
Planning Director: Kyle Kingma
Chief Information Officer: Benny Yazdanpanahi
City Fire Chief: David Coble
City Librarian: Ashley Taylor
Police Chief: Jimmy Toler
Director of Utilities: Kate Dietz
Director of Parks & Recreation: Leanne Robinette
Senior Management Analyst: Blake Cathey
Nikki Ingram: Project Engineer
City Clerk: Cassandra Brager

INVOCATION

The Invocation was given by Mayor Warren.

MINUTES

Motion by Councilmember Wynne to approve the January 22, 2025, minutes; seconded by Councilmember McKellar; motion carried 7 - 0 & approved as presented.

RESOLUTION

R-1 Request that the City Council consider adoption of a Resolution approving adoption of the updated Parks, Recreation & Open Space Master Plan and Resolution for the City of Tyler. **(R-2025-19)**

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

MISCELLANEOUS

- M-1** Request that the City Council consider authorizing the City Manager to execute a contract with Lonestar Tactical Buildings, LLC in the amount of \$ 129,712.86 for the purchase of two Fire Class A Portable Burn Structures pursuant to RFQ 25-014.

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

- M-2** Request that the City Council consider authorizing the City Manager to execute a professional services contract in the amount of \$1,085,100 with Pape Dawson Consulting Engineers, LLC, for the 2025 Golden Road Water Treatment Plant Filters and Clarifier Rehabilitation Project and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt. **(R-2025-20)**

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

CONSENT

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

- C-A-1** Request that the City Council consider authorizing the City Manager to amend the Engineering Services Agreement with KSA Engineers, Inc. for the Westside Wastewater Treatment Plant Administration Building project to increase the total contract cost by \$65,000.00 for a new total cost of \$532,700.00 for additional construction phase services that were incurred during construction.
- C-A-2** Request that the City Council consider authorizing the City Manager to purchase one (1) BraunAbility ProMaster New England Wheels van body for the Transit Department from Model 1 Commercial Vehicles, Inc., for \$215,654.85 through the State of Oklahoma contract SW0797C FY25. **(Item pulled)**
- C-A-3** Request that the City Council consider authorizing the City Manager to enter into a contract with Aire-Serv of Smith County to provide City Wide Heating, Ventilation and Air Conditioning (HVAC) Maintenance and Repairs for all City of Tyler facilities in the amount of \$650,174.00 over the next five (5) years.
- C-A-4** Request that the City Council consider authorizing the City Manager to award a contract in the amount of \$65,002.00 to CRS Commercial Roofing for roof restoration coating at the Tyler Development Services Facility at 423 W. Ferguson, Tyler TX.
- C-A-5** Request that the City Council consider authorizing the City Manager to purchase dog kennels for the Animal Services Department from Midmark for a total cost of \$51,169.57.
- C-A-6** Request that the City Council consider authorizing the City Manager to approve the reconciliation change order final payment and release of the retainage in the amount of \$59,577.33. to McInnis Brothers Construction, Inc. for the Shiloh Road Elevated Storage Tank Site Improvements Project.

- C-A-7** Request that the City Council consider moving the regularly scheduled City Council meeting from April 23, 2025, to April 30, 2025. The second regularly scheduled meeting date in April falls on the date that the City Council will be attending the Tyler Economic Development Corporation (TEDC) meeting in Huntsville, Alabama.
- C-A-8** Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will increase the contract amount by \$3,469,986.23 and the release of final retainage payment in the amount of \$442,246.50 to Insituform Technologies, LLC for 24" to 42" Sanitary Sewer Cured in Place Pipe (CIPP), Bid 21-071.

Motion by Councilmember Curtis to approve the consent items except C-A-2; seconded by Councilmember Wynne; motion carried 7 - 0 & approved as amended to not include C-A-2.

CITY MANAGER'S REPORT

1. One of the projects that was approved with this year's budget and that sometimes gets asked about is the South Glenwood Ground Storage Tank demolition project. And so, this project, which will remove the South Glenwood Ground Storage Tank that is out of service, is still on track. Bids will be open for the demolition and removal on Tuesday, March 11, with the intent to award at the Council meeting on Wednesday, April 9. Construction is estimated to begin in early June and be completed by early August.
2. Also, for our downtown improvement project, bids were due for the downtown improvement project, which will include the west side of the Square and then also the improvements to the streets and to the sidewalk portions around the Square. So, they were due on last Tuesday, March 4, but no bids were submitted. We did inquire about the bid opening previously and expected two bidders based on continued inquiries. Our Engineers at Halff and Associates have been following up with potential contractors on issues that kept them from bidding. Several issues were the difficulty of getting subcontractors for electrical work and other specialties, cost fluctuations on steel and other materials, and phasing to keep access to all businesses on the Square open. Staff is working with Fitzpatrick Architects and Halff Engineering on options for bidding quickly and also talking to Smith County about potential options related to different ways that we can kind of look at this project.
3. And then finally, Tyler Water Utilities is moving forward with the taste and odor study out of the Lake Palestine Water Treatment Plant with its pilot testing treatment technologies to improve the water quality and address taste and odor concerns. If you all may remember, this was also an item that was in this year's budget. And so that one has been an interesting, as far as a pilot study, that has been looking at ways to remove the geosmin and the taste that comes with that from Lake Palestine and really, as far as improve the quality of the water that's put out at the Lake Palestine Water Treatment Plant. So, expect further updates on that as that pilot study continues.

EXECUTIVE SESSION – City Council convened into executive session at 9:28 am

Executive Session Item Under Tex. Gov't Code Section 551.071, 'Litigation', to deliberate pending or contemplated litigation or settlement offer involving:

Luis Pabon v. City of Tyler lawsuit; Cause No. 24-0702-A.

Litigation is, by its nature, an ongoing process, and questions may arise as to trial tactics, or settlement offers which need to be explained to the City Council. Upon occasion, the City Council may need information from the City Attorney as to the status of the pending or contemplated litigation and or settlement offers related to the litigation matters listed above.

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

City Council reconvened from executive session at 9:44 am with the following action.

Motion by Councilmember Nichols to approve the settlement agreement for the lawsuit. Luis Pabon vs the City of Tyler. Cause number 24-0702-A, in the amount of 190,000.00; seconded by Councilmember Curtis; motion carried 7 - 0 & approved as presented.

ADJOURNMENT

Motion by Councilmember McKellar to adjourn the meeting at 9:45 am; seconded by Councilmember Nichols; motion carried 7 - 0 & meeting adjourned.

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

A T T E S T:

CASSANDRA BRAGER, CITY CLERK



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number. A-1

Date: April 30, 2025

Subject: Request that the City Council consider recognizing the following employee for his years of service and commitment to the City of Tyler. He represents 25 years of service with the City of Tyler.

Item Reference:

Request that the City Council consider recognizing the following employee for his years of service and commitment to the City of Tyler. He represents 25 years of service with the City of Tyler.

Clarence Anderson, Venue Attendant, 25 years of service

RECOMMENDATION:

Request that the City Council consider recognizing the following employee for his years of service and commitment to the City of Tyler. He represents 25 years of service with the City of Tyler.

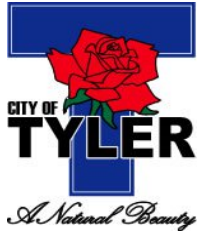
Attachments:

[April 2025 Service Award CC](#)

Drafted/Recommended By:
Department Leader

Regina Y. Moss, Director Organizational Development

Edited/Submitted By:
City Manager



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: A-1
Date: April 30, 2025
Subject: Award for April 30, 2025
Page: Page 1 of 1
Item Reference: Service Award

We would like to recognize the following employee for his years of service and commitment to the City of Tyler. At this important milestone, we express our sincere appreciation for your dedication and for the special contribution you make to our organization. He represents 25 years of service with the City of Tyler.

Service Awards

Date of Hire	First Name	Last Name	Title	Department	Years of Service
08/22/1999	Clarence	Anderson	Venue Attendant	Parks	25

Drafted/Recommended By: Department Leader

Regina Y. Moss



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. Z-1

Date: April 30, 2025

Subject: C25-001 STRUCTURE DEVELOPMENT GROUP LLC (A PORTION OF ROSE STREET) Request that the City Council consider adoption of an Ordinance approving the closure of an unimproved street right-of-way for Rose Street, adjacent to 819 Boyd Avenue.

Item Reference: Texas Transportation Code Sec. 311.007; Tyler City Code Chapter 10; Article V., Division F.

The applicant is requesting the closure to replat the right-of-way into adjacent properties. The right-of-way is located from Bennett Avenue to Boyd Avenue between NCB 852-O and 852-P.

The applicant is requesting the closure to replat the right-of-way into their adjacent property. The street that the applicant is requesting to close is unimproved and does not appear to have ever been utilized as a street. This will help facilitate the development of infill housing.

On April 8, 2025, the Planning and Zoning Commission held a public hearing for this request. There was no significant discussion. The Planning and Zoning Commission by a 6-0 vote recommended approval of the request.

As of Friday, April 25, of the 18 notices mailed, no notices were returned in favor or 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 6-0 vote recommends approval of the thoroughfare closure subject to the right-of-way being replatted within six months.

Attachments:

[Ordinance](#)
[Location Map](#)
[Future Land Use Guide](#)
[Notification Map](#)

Drafted/Recommended By:

Department Leader

Kyle Kingma, AICP, CFM, Planning Director

Edited/Submitted By:

City Manager

ORDINANCE NO. O-2025-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CLOSING THE UNIMPROVED RIGHT-OF-WAY FOR ROSE STREET. THE RIGHT-OF-WAY IS LOCATED FROM BENETT AVENUE TO BOYD AVENUE BETWEEN NCB 852-O AND 852-P. 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 the right-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 C25-001

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

Unimproved portion of Rose Street. The right-of-way is located from Bennett Avenue to Boyd Avenue between NCB 852-O and 852-P. The right-of-way to be closed is further shown in Exhibit "A", which is attached hereto and incorporated herein.

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

PART 3: That said public right-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 30th day of April A.D., 2025.

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

A T T E S T:

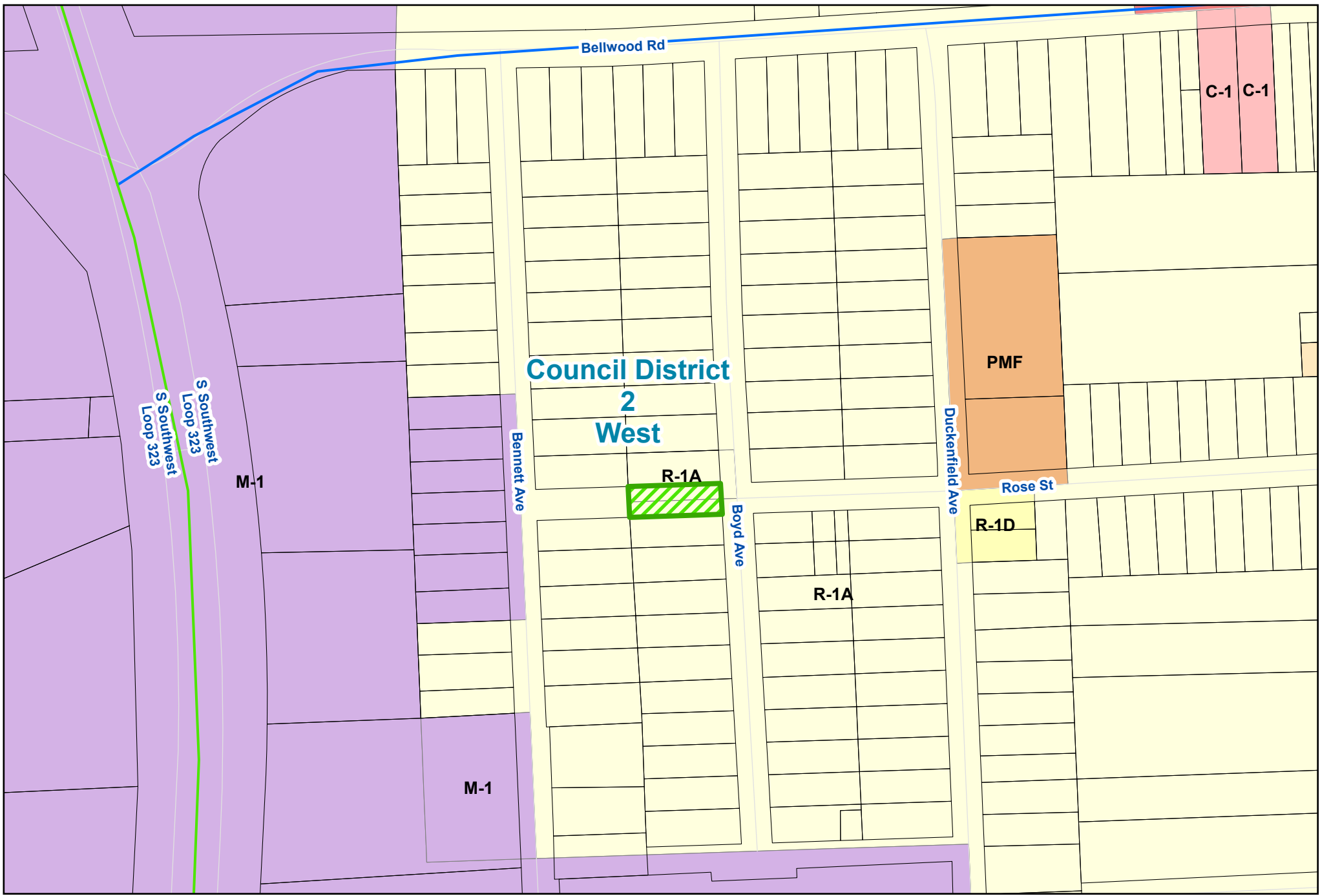
APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. O-2025-
EXHIBIT "A"
LOCATION MAP





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.

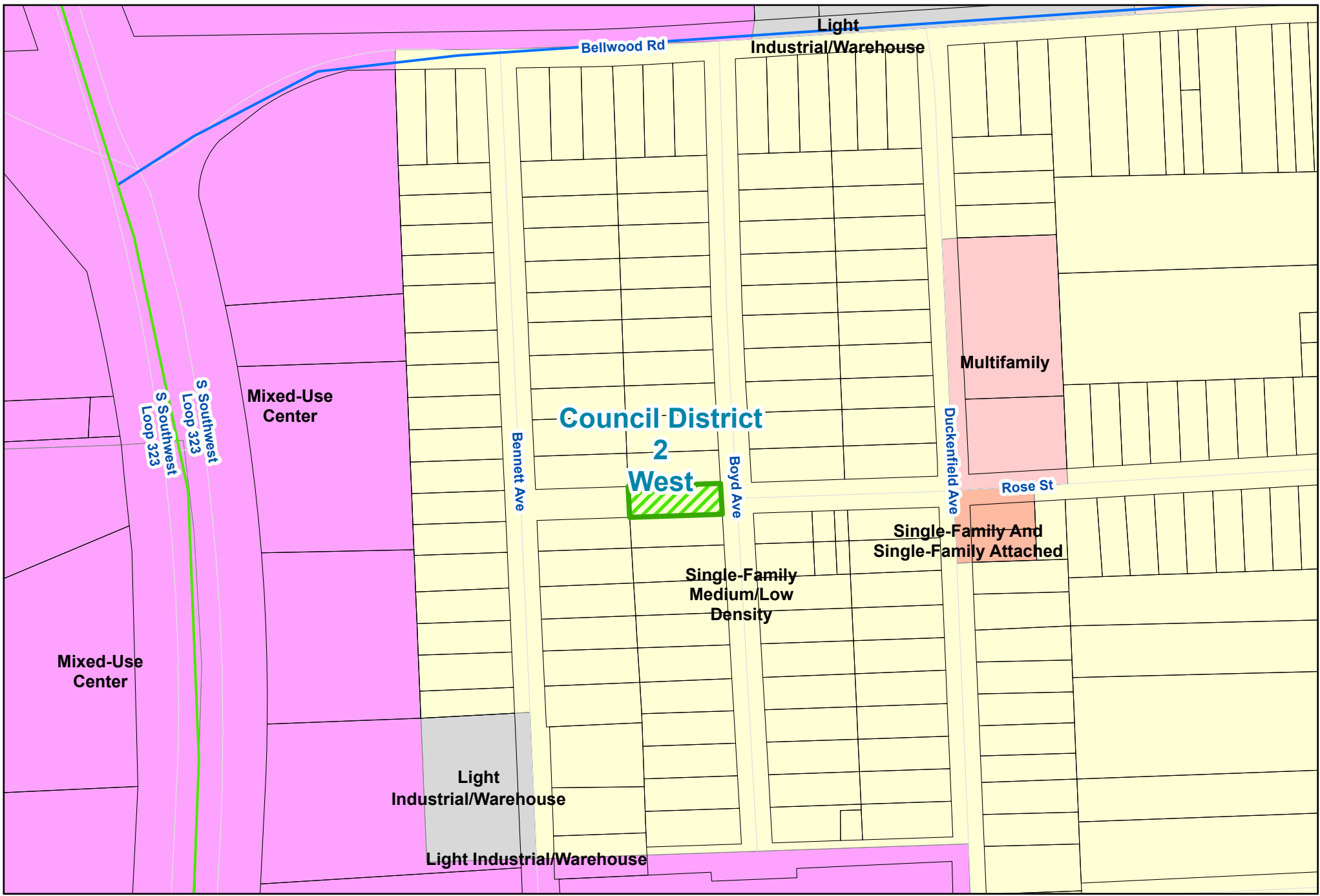


1 inch equals 200 feet

ZONING CASE
 Zoning Case #: C25-001
 THOROUGHFARE CLOSURE
 STRUCTURE DEVELOPMENT GROUP LLC



Subject Property



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1 inch equals 200 feet

ZONING CASE
 Zoning Case #: C25-001
 THOROUGHFARE CLOSURE
 STRUCTURE DEVELOPMENT GROUP LLC



Subject Property



Zoning Case #: C25-001
THOROUGHFARE CLOSURE
STRUCTURE DEVELOPMENT GROUP LLC



18



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. Z-2

Date: April 30, 2025

Subject: Z25-004 R4U VENTURES LLC (314 EAST BERTA STREET) Request that the City Council consider adoption of an Ordinance approving a zone change from C-1, Light Commercial District to R-1B, Single-Family Residential District.

Item Reference:

The applicant is requesting the zone change to build a single-family home on Lot 3 of NCB 218, one lot containing approximately 0.18 acres of land located east of the northeast intersection of East Gentry Parkway and North Fannin Avenue (314 East Berta Street).

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

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

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

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

All adjacent properties are zoned C-1, Light Commercial District and R-1B, Single-Family Residential District and are developed with single-family homes.

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

The property is currently undeveloped. The applicant is requesting the zone change to build a single-family home. Under the current R-1B zoning, this request is in keeping with the surrounding area which consists of single-family homes. The request is consistent with the Tyler 1st goal of adding more residential rooftops in the North End.

On April 8, 2025, the Planning and Zoning Commission held a public hearing for this request. There was no significant discussion. The Planning and Zoning Commission by a 6-0 vote recommended approval of the request.

As of Friday, April 25, 2025, of the 14 notices mailed, no notices were returned in favor or in opposition to the request.

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

RECOMMENDATION:

The Planning and Zoning Commission by a 6-0 vote recommends approval of the zone change from C-1, Light Commercial District to R-1B, Single-Family Residential District.

Attachments:

[Ordinance](#)

[Location Map](#)

[Future Land Use Guide Map](#)

[Notification Map/ Protest Map](#)

Drafted/Recommended By:

Department Leader

Kyle Kingma, AICP, CFM, Planning Director

Edited/Submitted By:

City Manager

ORDINANCE NO. O-2025-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM “C-1”, LIGHT COMMERCIAL DISTRICT TO “R-1B”, SINGLE-FAMILY RESIDENTIAL DISTRICT ON LOT 3 OF NCB 218, ONE LOT CONTAINING APPROXIMATELY 0.18 ACRES OF LAND LOCATED EAST OF THE NORTHEAST INTERSECTION OF EAST GENTRY PARKWAY AND NORTH FANNIN AVENUE (314 EAST BERTA STREET); DIRECTING THE AMENDMENT OF THE ZONING MAP; 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 Z25-004

That the following described property, which has heretofore been zoned “C-1”, Light Commercial District, shall hereafter bear the zoning classification of “R-1B”, Single-Family Residential District.

On Lot 3 of NCB 218, one lot containing approximately 0.18 acres of land located north of the northwest intersection of east of the northeast intersection of East Gentry Parkway and North Fannin Avenue (314 East Berta Street).

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

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

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

PASSED AND APPROVED this the 30th day of April A.D., 2025.

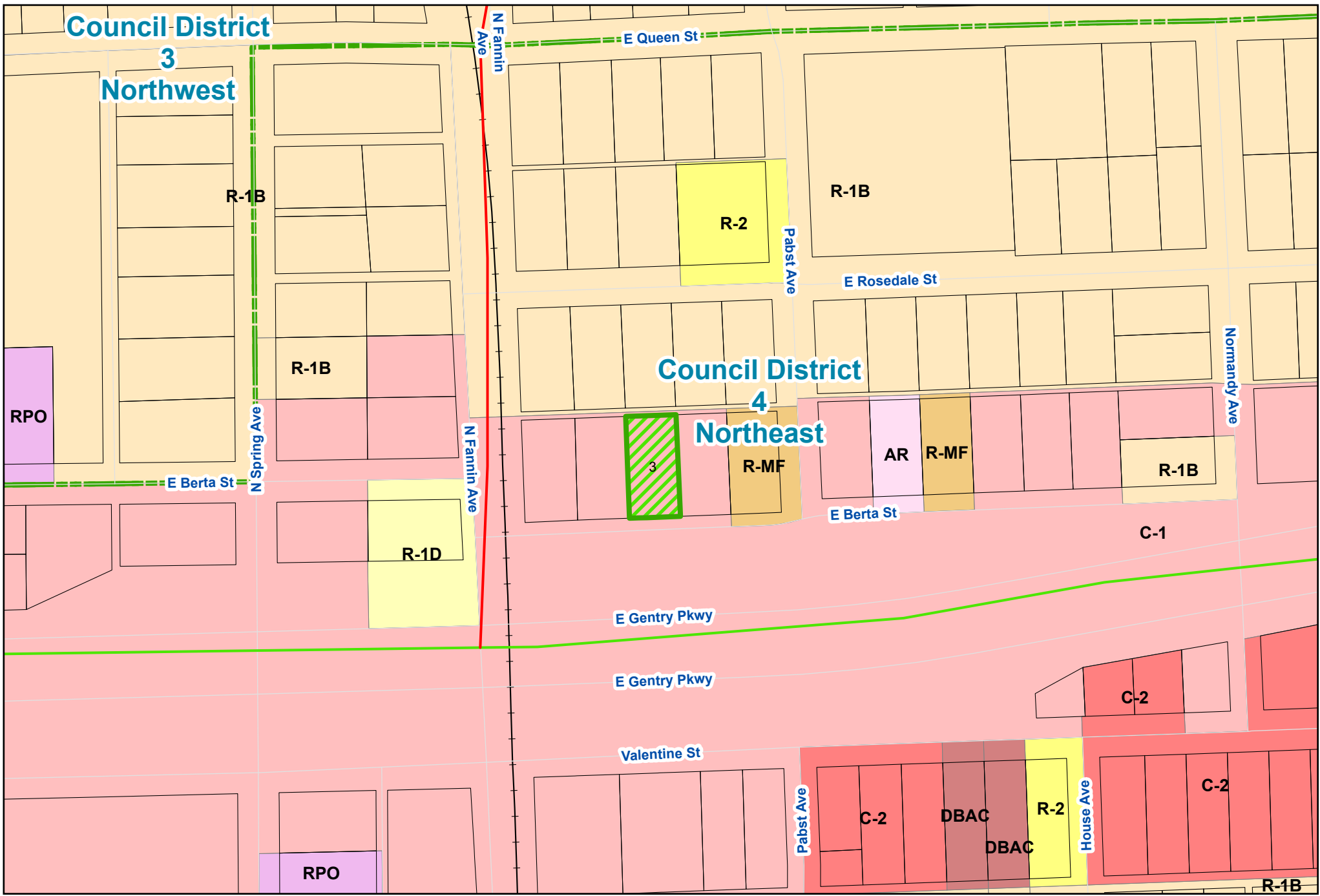
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY



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1 inch equals 150 feet

ZONING CASE

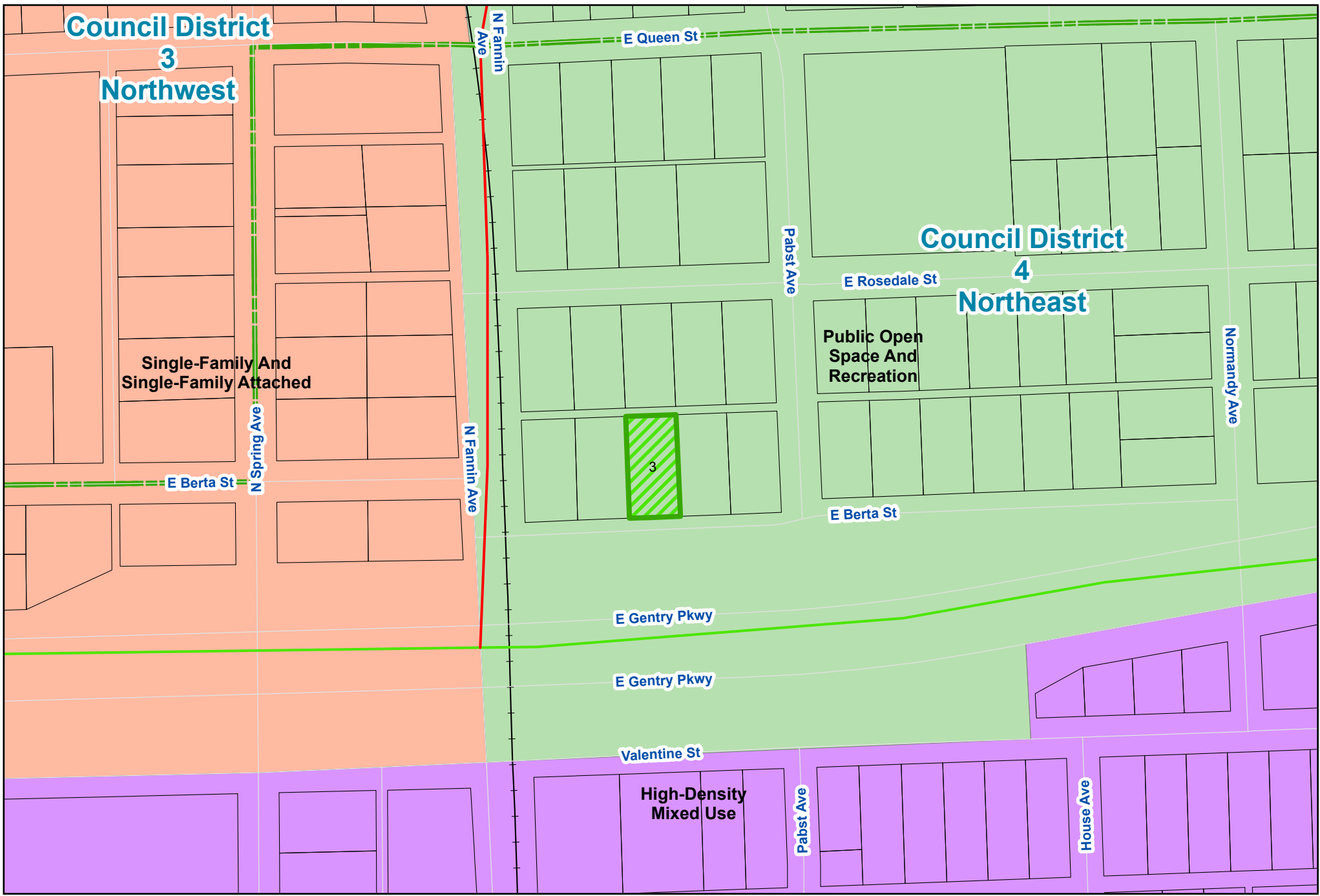
Zoning Case #: Z25-004
 Current Zoning: C-1
 Proposed Zoning: R-1B
 R4U VENTURES



Subject Property



Council District
 Boundary



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1 inch equals 150 feet

ZONING CASE

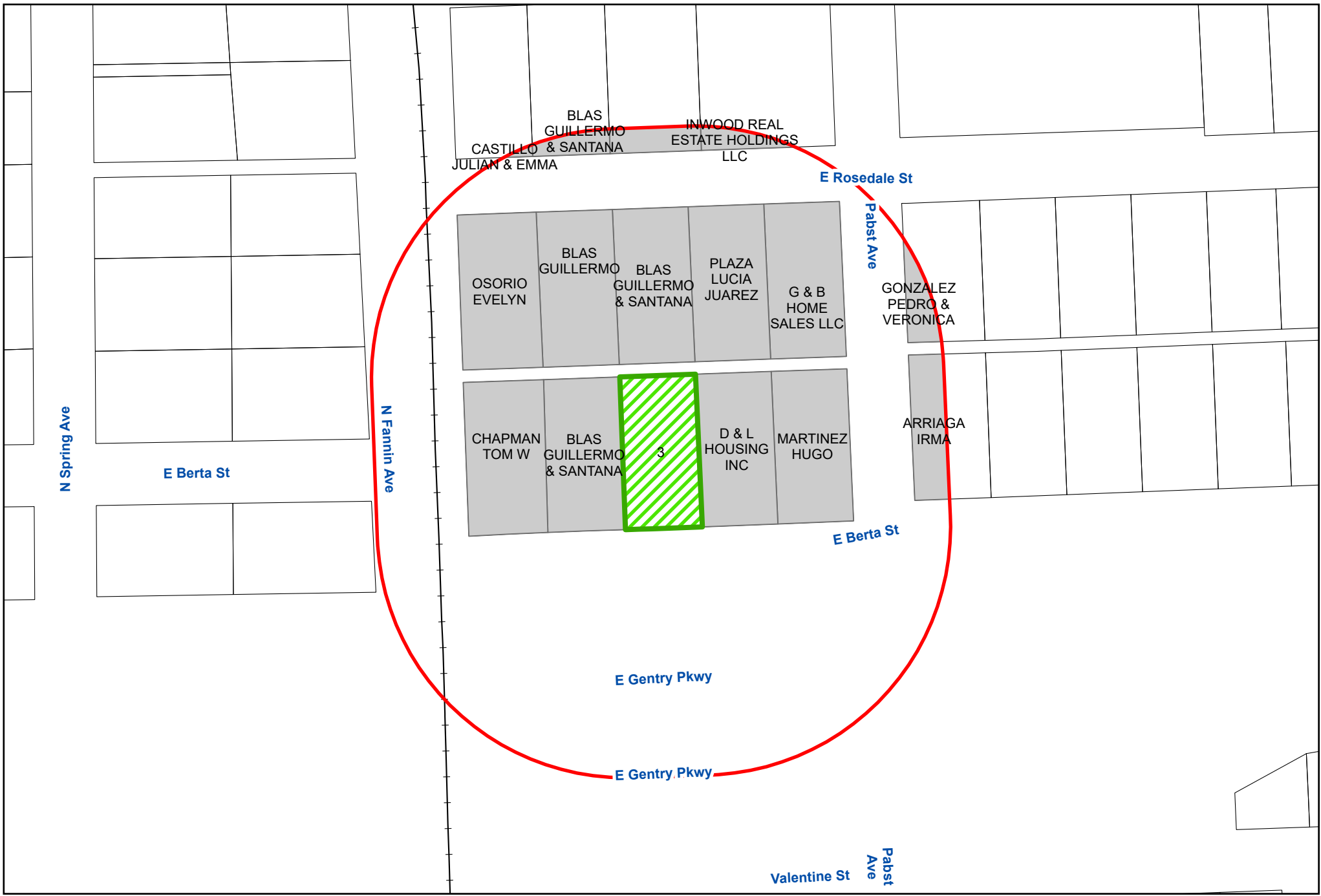
Zoning Case #: Z25-004
 Current Zoning: C-1
 Proposed Zoning: R-1B
 R4U VENTURES



Subject Property



Council District Boundary



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1 inch equals 100 feet

ZONING CASE

Zoning Case #: Z25-004

Current Zoning: C-1

Proposed Zoning: R-1B

R4U VENTURES



Subject Property



200' Mailed Notification Area



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. Z-3

Date: April 30, 2025

Subject: Z25-007 MARIO CORNELIO (3021 CHANDLER STREET) Request that the City Council consider adoption of an Ordinance approving a zone change from R-1B, Single-Family Residential District to R-1D, Single-Family Detached and Attached Residential District.

Item Reference:

The applicant is requesting the zone change to build a single-family home on Lot 7A of NCB 741, one lot containing approximately 0.12 acres of land located north of the intersection of Hillcrest Avenue and Chandler Street (3021 Chandler Street).

According to the Unified Development Code (UDC), the R-1D, Single-Family Detached and Attached Residential District is primarily intended to accommodate single-family detached and attached housing, such as townhouses and rowhouses on small 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, 15 feet in the rear, zero feet on the interior side and 12 feet on the corner side. Minimum lot size is 3,000 square feet.

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

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

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

The adjacent properties to the north, east, and west are zoned R-1B, Single-Family Residential District, and consist of single-family homes. The adjacent property to the south is zoned R-1A, Single-Family

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

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

The applicant is requesting a zone change to build a single-family home. The house that was built was damaged by fire, and the lot is irregularly shaped. The applicant wants to rebuild the home as a single-family home and take advantage of the reduced rear yard setback permissible with R-1D zoning.

On April 8, 2025, the Planning and Zoning Commission held a public hearing for this request. There was no significant discussion. The Planning and Zoning Commission by a 6-0 vote recommended approval of the request.

As of Friday, April 25, 2025, of the 23 notices mailed, no notices were returned in favor or in opposition to the request.

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

RECOMMENDATION:

The Planning and Zoning Commission by a 6-0 vote recommends approval of the zone change from R-1B, Single-Family Residential District to R-1D, Single-Family Detached and Attached Residential District.

Attachments:

[Ordinance](#)

[Location Map](#)

[Future Land Use Guide Map](#)

[Notification Map/ Protest Map](#)

Drafted/Recommended By:

Department Leader

Kyle Kingma, AICP, CFM, Planning Director

Edited/Submitted By:

City Manager

ORDINANCE NO. O-2025-

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-1B, SINGLE-FAMILY RESIDENTIAL DISTRICT R-1D, SINGLE-FAMILY DETACHED AND ATTACHED RESIDENTIAL DISTRICT ON LOT 7A OF NCB 741, ONE LOT CONTAINING APPROXIMATELY 0.12 ACRES OF LAND LOCATED NORTH OF THE INTERSECTION OF HILLCREST AVENUE AND CHANDLER STREET (3021 CHANDLER STREET); DIRECTING THE AMENDMENT OF THE ZONING MAP; DIRECTING THE AMENDMENT OF THE FUTURE LAND USE GUIDE; 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 Z25-007

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

On Lot 7A of NCB 741, one lot containing approximately 0.12 acres of land located north of the intersection of Hillcrest Avenue and Chandler Street (3021 Chandler Street).

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

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

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

PASSED AND APPROVED this the 30th day of April A.D., 2025.

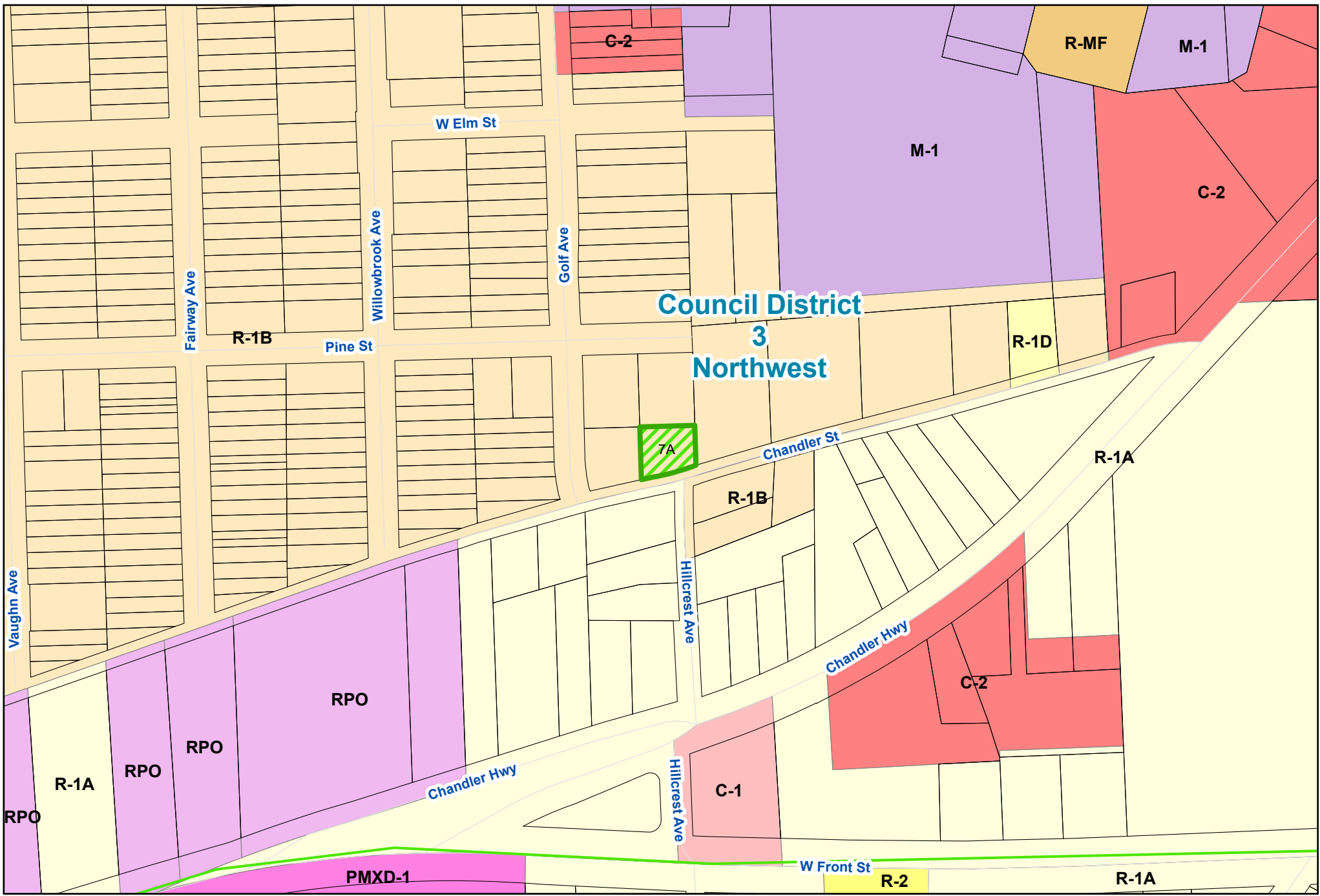
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY



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



1 inch equals 200 feet

ZONING CASE

Zoning Case #: Z25-007
 Current Zoning: R-1B
 Proposed Zoning: R-1D
 MARIO CORNELIO



Subject Property



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1 inch equals 200 feet

ZONING CASE

Zoning Case #: Z25-007
 Current Zoning: R-1B
 Proposed Zoning: R-1D
 MARIO CORNELIO



Subject Property



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 100 feet

ZONING CASE

Zoning Case #: Z25-007
Current Zoning: R-1B
Proposed Zoning: R-1D
MARIO CORNELIO



Subject Property



200' Mailed Notification Area



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. R-1

Date: April 30, 2025

Subject: Request that the City Council consider adoption of a Resolution authorizing the City Manager to execute a Local On-System Agreement with the Texas Department of Transportation (TxDOT) for the FM 2493 (Old Jacksonville Highway) and Capital Drive Traffic Signal.

Item Reference: **2024 Half-Cent Sales Tax Annual Work Plan**

The existing intersection of Capital Drive and FM 2493 (Old Jacksonville Highway) is unsignalized and serves industrial uses on the west side of FM 2493 and is the main point of access to/from FM 2493 for these industrial uses. Furthermore, the Brookshire Grocery Company (BGC) has a distribution facility on the east side of FM 2493 with its driveway for ingress/egress approximately 900 feet north of Capital Drive. BGC has expansion plans that include relocating their main driveway to be aligned with Capital Drive, those expansion plans are currently under construction.

Due to the realignment of the BGC driveway, a traffic signal was requested to be installed to facilitate the ingress/egress of large 18-wheelers and passenger vehicles into the facility. The signal also benefits the ingress/egress of industrial traffic on the west side of FM 2493.

The City conducted a traffic signal warrant in 2023 to determine if a traffic signal was appropriate. The existing traffic volumes from Capital Drive did warrant a traffic signal and the additional traffic anticipated from the BGC Distribution facility only further solidified the need for a future traffic signal.

The Texas Department of Transportation (TxDOT) has plans to widen FM 2493 to a six-lane divided facility. The plans include a traffic signal at FM 2493; however, that project is still under design and is currently not anticipated to begin construction until 2028. The need for a traffic signal to provide safer and more efficient ingress/egress for both the industrial traffic and future BGC traffic is needed sooner than the project currently under design by TxDOT.

To meet current and future needs, the City of Tyler has worked with BGC and the TxDOT to install a traffic signal at this location. BGC has funded engineering design services for a span wire traffic signal and purchased permanent steel mast arm traffic signal poles for installation with the TxDOT FM 2493 project.

The City will take ownership of the permanent steel mast arm traffic signal poles through a donation agreement with BGC and then transfer the poles to TxDOT for installation at a future date. Additionally, the City will bid, construct, operate, and maintain the span wire traffic signal pole.

Since this project is located in the TxDOT Right-of-Way (ROW), a Local On-System Agreement (LOSA) between the City of Tyler and TxDOT is required. This agreement authorizes the City to construct the proposed improvements inside the TxDOT ROW at no cost to TxDOT.

The total estimated construction cost for the traffic signal is \$443,000.00 which includes the donated permanent steel mast arm traffic signal poles which have an estimated value of \$128,547.00. Therefore, the total estimated cost to the City is \$314,453.00. The City's Half-Cent Sales Tax Program will fund the improvements.

RECOMMENDATION:

It is requested that the City Council adopt a Resolution authorizing the City Manager to execute a Local On-System Agreement (LOSA) with TXDOT for the FM 2493 (Old Jacksonville Highway) and Capital Drive Traffic Signal.

Attachments:

[Location Map](#)

[Resolution - Capital Drive Traffic Signal LOSA](#)

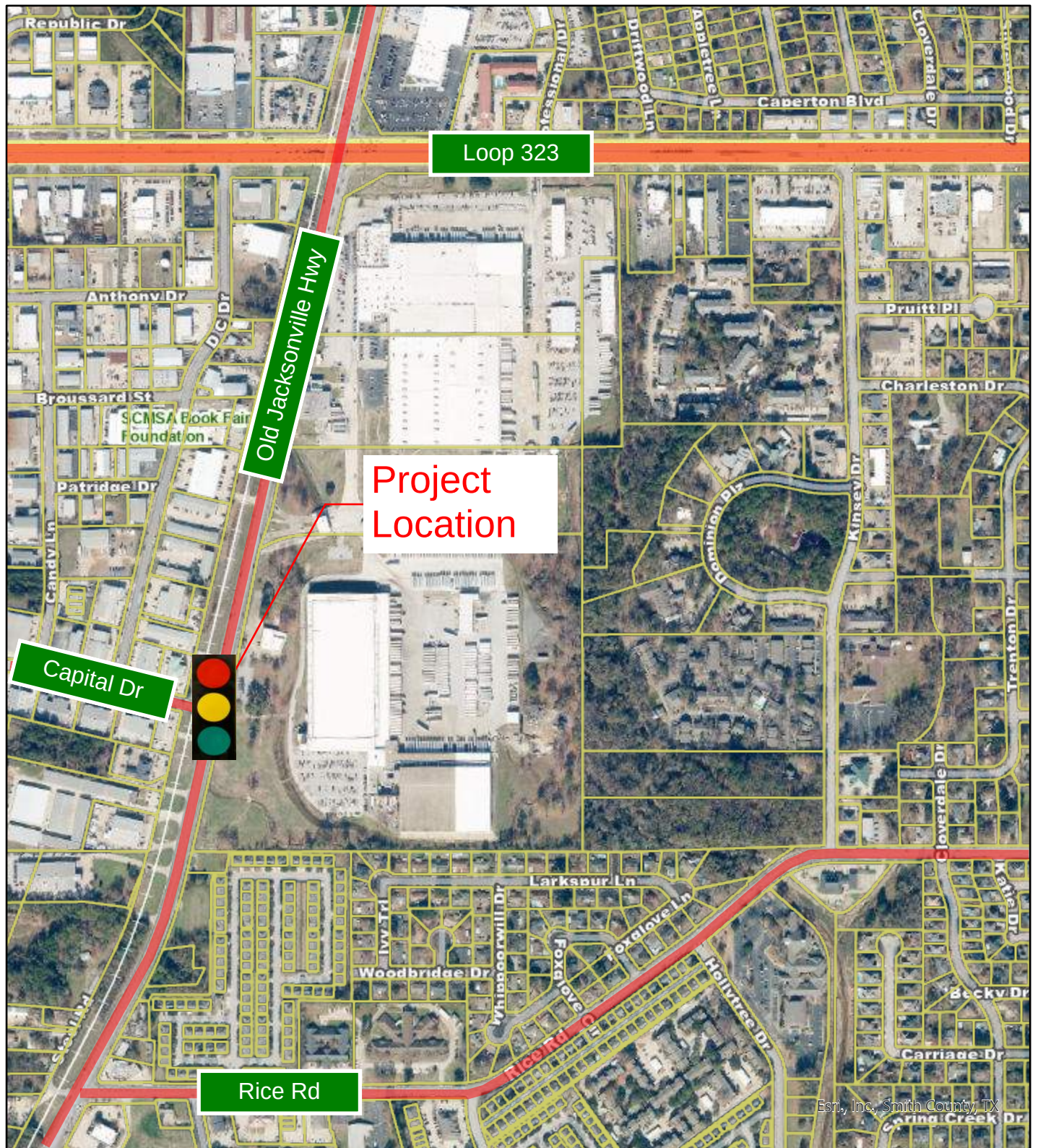
Drafted/Recommended By:

Department Leader

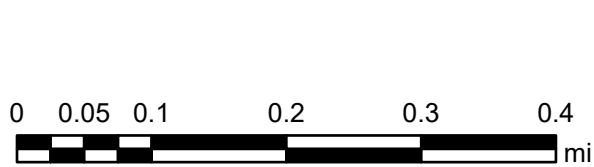
Cameron L. Williams, PE, PTOE, PTP - Traffic Engineer

Edited/Submitted By:

City Manager



Old Jacksonville Highway and Capital Drive Traffic Signal



RESOLUTION NO. R-2025-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AUTHORIZING AND DIRECTING THE CITY MANAGER OR THE CITY MANAGER’S DESIGNEE TO NEGOTIATE, FINALIZE, AND EXECUTE A LOCAL ON-SYSTEM AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION (“TXDOT”) FOR THE FM 2493 (OLD JACKSONVILLE HIGHWAY) AND CAPITAL DRIVE TRAFFIC SIGNAL, TOGETHER WITH ANY AND ALL DOCUMENTS NECESSARY OR APPROPRIATE TO EFFECTUATE THE AGREEMENT; COMMITTING THE CITY OF TYLER TO PERFORM OR CAUSE TO BE PERFORMED SAID PROJECT(S) WITH NO REQUIRED MATCH FROM TXDOT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION WAS APPROVED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; AND DECLARING AN EFFECTIVE DATE.

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

WHEREAS, Transportation Code, Chapters 201 and 221, authorize the State of Texas (the “State”) to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System and

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and,

WHEREAS, the City of Tyler has requested that the State allow the City of Tyler to participate in the improvement described as “FM 2493 (Old Jacksonville Highway) and Capital Drive Traffic Signal” (hereinafter referred to as the “Project”) by funding said improvement; and,

WHEREAS, the City of Tyler and the Texas Department of Transportation (“TxDOT”) desire to enter into a Local On-System Agreement to facilitate the implementation of certain transportation improvements within the City and,

WHEREAS, the total estimated Project cost is \$443,000.00, and the City of Tyler commits to performing or causing to be performed the Project; and,

WHEREAS, the City of Tyler shall transfer permanent steel mast arm poles to the Texas Department of Transportation for future traffic signal upgrades at this Project location associated with the planned widening of FM 2493; and

WHEREAS, TxDOT is not responsible for committing funds towards the construction of the Project; and,

WHEREAS, the City of Tyler shall be responsible for any cost overruns; and,

WHEREAS, the Tyler City Council finds it to be in the best interest of the City to enter into such Local On-System Agreement with TxDOT to promote the health, safety, and welfare of the public and to improve the transportation infrastructure of the City.

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

Section 1. That the findings set out in the preamble to this resolution are hereby in all things approved and adopted.

Section 2. That the City of Tyler shall perform or cause to be performed the Project.

Section 3. That the City Manager or the City Manager’s designee and any other official of the City as shall be required are hereby authorized and directed to negotiate, finalize,

and execute, as approved by the City Attorney's Office, a Local On-System Agreement by and between the City of Tyler and the State to carry out the Project mentioned in this resolution with no required match from TXDOT, together with any and all documents, instruments, exhibits, certifications, and other materials necessary or appropriate to carry out the Project.

Section 4. That the meeting at which this Resolution was approved was, in all things, conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

Section 5. That this Resolution shall become effective immediately upon adoption.

PASSED AND APPROVED this ____ day of _____, 2025.

**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. C-A-1

Date: April 30, 2025

Subject: Request that the City Council consider authorizing the City Manager to approve invoices for the installation of acoustic panels and bass traps at the historic Mayfair Building in the amount of \$53,570 from Morris Drywall.

Item Reference:

During the renovation of the historic Mayfair building in 2023-2024, the planned acoustic panels were removed from the initial renovation due to funding. After the grand opening in April 2024, it was decided that the acoustic panels were necessary to the success of the building as an event venue, due to the sound quality in the space. It was vital we get them installed as soon as possible as we had many events already booked to utilize the building.

The Parks Department reached out to Morris Drywall, Tommy Williams Drywall, and All Pro Painting for quotes in July 2024 at the recommendation of WRL, who were the general contractors on the project. Both Tommy Williams and All Pro could not complete the installation and offered no bid on the project. Morris Drywall bid \$42,730 for the installation of the acoustic panels and \$10,840 to install bass traps. They were approved to begin the installation on the acoustic panels in August 2024 and construction began in October 2024. The bass traps were installed in the second phase of the project in November 2024 because it was deemed they were also necessary, with the project completed in December.

Completion of this project cost \$53,570 total and has vastly improved the sound quality in the space. The building is now being rented at least once a week if not more and is projected to exceed revenue projections for the 2024-2025 fiscal year.

RECOMMENDATION:

It is recommended that City Council authorize the City manager to approve invoices for the installation of acoustic panels and bass traps at the historic Mayfair Building in the amount of \$53,570 from Morris Drywall.

Attachments:

[Morris Drywall Invoice Acoustic Panels](#)
[Morris Drywall Invoice Bass Traps](#)

Drafted/Recommended By:
Department Leader

Erin Garner, Tourism Manager/Leanne Robinette, Director of Parks
& Recreation

Edited/Submitted By:
City Manager

To(OWNER): Cash Customer

Project: Mayfair Building AWP
415 Fair Park Dr
Tyler, TX 75702

Application No: 1
Invoice No: 1312-1
Period To: 1/31/2025

From: Morris Drywall Systems, Inc.
12496 County Road 192
Tyler, TX 75703

Via(Architect):

Architect's
Project No:
Invoice Date: 1/31/2025
Contract Date:

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Approved previous months	0.00	0.00
Approved this month	0.00	0.00
TOTALS	0.00	0.00
Net change by change orders	0.00	

1. ORIGINAL CONTRACT SUM.....	\$	53,570.00
2. Net change by Change Orders.....	\$	0.00
3. CONTRACT SUM TO DATE(Line 1 +/- 2).....	\$	53,570.00
4. TOTAL COMPLETED & STORED TO DATE.....	\$	42,730.00
5. RETAINAGE.....	\$	0.00
6. TOTAL EARNED LESS RETAINAGE.....	\$	42,730.00
(Line 4 less Line 5)		
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT.....	\$	0.00
(Line 6 from prior Certificate)		
8. SALES TAX.....	\$	0.00
9. CURRENT PAYMENT DUE.....	\$	42,730.00
10. BALANCE TO FINISH, PLUS RETAINAGE.....	\$	10,840.00
(Line 3 less Line 6)		

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK BILLED		MATERIALS STORED THIS PERIOD	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% G/C	BALANCE TO FINISH (C-G)	RETAINAGE
			FROM PREV. APPLICATION (D+E+F)	THIS PERIOD					
1	Base Traps	10,840.00	0.00	0.00	0.00	0.00	0	10,840.00	0.00
2	Acoustical Wall Panels	42,730.00	0.00	42,730.00	0.00	42,730.00	100	0.00	0.00
	Totals	53,570.00	0.00	42,730.00	0.00	42,730.00	80	10,840.00	0.00

To(OWNER): Cash Customer

Project: Mayfair Building AWP
415 Fair Park Dr
Tyler, TX 75702

Application No: 2
Invoice No: 1312-2
Period To: 1/31/2025

From: Morris Drywall Systems, Inc.
12496 County Road 192
Tyler, TX 75703

Via(Architect):

Architect's
Project No:
Invoice Date: 3/26/2025
Contract Date:

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Approved previous months	0.00	0.00
Approved this month	0.00	0.00
TOTALS	0.00	0.00
Net change by change orders	0.00	

1. ORIGINAL CONTRACT SUM.....	\$	53,570.00
2. Net change by Change Orders.....	\$	0.00
3. CONTRACT SUM TO DATE(Line 1 +/- 2).....	\$	53,570.00
4. TOTAL COMPLETED & STORED TO DATE.....	\$	53,570.00
5. RETAINAGE.....	\$	0.00
6. TOTAL EARNED LESS RETAINAGE.....	\$	53,570.00
(Line 4 less Line 5)		
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT.....	\$	42,730.00
(Line 6 from prior Certificate)		
8. SALES TAX.....	\$	0.00
9. CURRENT PAYMENT DUE.....	\$	10,840.00
10. BALANCE TO FINISH, PLUS RETAINAGE.....	\$	0.00
(Line 3 less Line 6)		

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK BILLED		MATERIALS STORED THIS PERIOD	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% G/C	BALANCE TO FINISH (C-G)	RETAINAGE
			FROM PREV. APPLICATION (D+E+F)	THIS PERIOD					
1	Base Traps	10,840.00	0.00	10,840.00	0.00	10,840.00	100	0.00	0.00
2	Acoustical Wall Panels	42,730.00	42,730.00	0.00	0.00	42,730.00	100	0.00	0.00
	Totals	53,570.00	42,730.00	10,840.00	0.00	53,570.00	100	0.00	0.00



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-2

Date: April 30, 2025

Subject: Request that the City Council consider accepting a donation made to the City of Tyler of steel traffic signal poles and arms, valued at \$128,547.00, from the Brookshire Grocery Company for future installation at the intersection of Old Jacksonville Highway (FM 2493) and Capital Drive.

Item Reference:

The existing intersection of Capital Drive and FM 2493 (Old Jacksonville Highway) is unsignalized and serves industrial uses on the west side of FM 2493 and is the main point of access to/from FM 2493 for these industrial uses. Furthermore, the Brookshire Grocery Company (BGC) has a distribution facility on the east side of FM 2493 with its driveway for ingress/egress approximately 900 feet north of Capital Drive. BGC has expansion plans that include relocating their main driveway to be aligned with Capital Drive, those expansion plans are currently under construction.

Due to the realignment of the BGC driveway a traffic signal was requested to be installed to facilitate the ingress/egress of large 18-wheeler and passenger vehicles into the facility. The signal also benefits the ingress/egress of industrial traffic on the westside of FM 2493.

The City conducted a traffic signal warrant in 2023 to determine if a traffic signal was appropriate. The existing traffic volumes from Capital Drive did warrant a traffic signal and the additional traffic anticipated from the BGC Distribution facility only further solidified the need for a future traffic signal.

The Texas Department of Transportation (TxDOT) has plans to widen FM 2493 to a six-lane divided facility. The plans include a traffic signal at FM 2493; however, that project is still under design and is currently not anticipated to begin construction until 2028. The need for a traffic signal to provide safer and more efficient ingress/egress for both the industrial traffic and future BGC traffic is needed sooner than the project currently under design by TxDOT.

To provide for the current and future needs the City of Tyler has worked with BGC and the TxDOT to install a traffic signal at this location. BGC has funded engineering design services for a span wire traffic signal in addition to purchasing permanent steel mast arm traffic signal poles for installation with the TxDOT FM 2493 project.

BGC is donating the permanent steel mast arm traffic signal poles to the City of Tyler. The City will transfer ownership of the poles to TxDOT for installation at a future date. Until Old Jacksonville Highway (FM 2493) is widening and the permanent steel mast arm traffic signal poles are installed by

TxDOT, the City will bid, construct, operate, and maintain the span wire traffic signal pole.

The City of Tyler would like to express its sincere appreciation to the Brookshire Grocery Company for the partnership in this future traffic signal at Old Jacksonville Highway (FM 2493) and Capital Drive that will not only server their distribution facility but the community as a whole.

RECOMMENDATION:

Request that the City Council accept a donation made to the City of Tyler of steel traffic signal poles and arms, valued at \$128,547.00, from the Brookshire Grocery Company for future installation at the intersection of Old Jacksonville Highway (FM 2493) and Capital Drive.

Attachments:

[2025.04.10 - Donation Letter](#)

[Donation Approval - Traffic Signal Poles](#)

[Capital Drive Signal Location Map](#)

Drafted/Recommended By:

Department Leader

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

Edited/Submitted By:

City Manager

April 9, 2025

VIA EMAIL ebroussard@tylertexas.com

Mr. Edward Broussard
City Manager
City of Tyler
P. O. Box 2039
Tyler, Texas, 75710

Dear Mr. Broussard,

Brookshire Grocery Company ("BGC") is pleased to be joining with the City of Tyler and TXDOT in the development of the new 4-way signalized intersection to be installed at Old Jacksonville Hwy and Capital Drive. This construction will improve safety for area drivers, outside vendor deliveries and BGC employees entering and exiting our facilities.

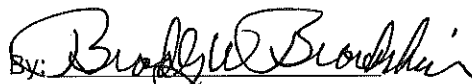
As a part of BGC's contribution to this important project, we hereby express our intent to donate to the City of Tyler, the signal poles required and purchased for use at the intersection, which will be installed upon completion of the Old Jacksonville widening project. In support of this project, BGC purchased the signal poles at our sole expense of \$128,547, also paid for the cost of the temporary span-wire signal design by Kimley-Horn, totaling \$27,000.

We are proud to partner with the City of Tyler and donate the signal poles as part of our contribution to the success of the project. We commit to satisfy all requirements or provide any additional documentation that TxDOT or the City of Tyler may require from us to complete this donation.

Thank you, and we are looking forward to the successful completion of this vital road improvement project.

Very truly yours,

Brookshire Grocery Company

By: 
Bradley W. Brookshire
Title: Chairman & CEO

Donation accepted and acknowledged this _____ day of _____ 2025

City of Tyler

By: _____
Name: _____
Title: _____



DONATION APPROVAL/APPROPRIATION REQUEST

DATE: April 8, 2025

TO: CITY MANAGER _____ (APPROVAL)

Then
CHIEF FINANCIAL OFFICER _____ Internal Auditor approval <\$ 10,000

FROM: Cameron L. Williams, PE, PTOE, PTP – Traffic Engineer

SUBJECT: REQUEST FOR APPROVAL TO RECEIVE DONATED FUNDS AND
APPROPRIATE SUCH FUNDS IN LINE ITEM BUDGET IDENTIFIED BELOW.

CHECK:

_____ \$25,000 AND UNDER (CITY MANAGER APPROVAL ONLY) (Code Section 2-7)	<u> X </u> OVER \$25,000 (REQUIRES COUNCIL APPROVAL - AGENDA SUBMISSION AND COUNCIL COMMUNICATION MUST BE ATTACHED) (CODE Section 2-7)
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(Donation and any accompanying correspondence regarding intended use should be attached
hereto pending approval)

FUNDS DONATED BY: Brookshire Grocery Company

AMOUNT OF DONATIONS: Value of Donations is \$128,547.00

APPROPRIATION ACCOUNT: N/A

PROPOSED USE OF DONATED FUNDS: The Brookshire Grocery Company is donating permanent steel traffic signal poles and mast arms for use at the future Old Jacksonville Highway (FM 2493) and Capital Drive Traffic Signal. The City of Tyler will transfer ownership of the traffic signal poles to the Texas Department of Transportation for installation when FM 2493 is widened at a future date.

The gift identified above has been received by this department and is in compliance with the City of Tyler Donation Policy in City Code Sec. 2-7. It is requested that these funds be accepted, deposited to the donation revenue account and appropriated as described above for use by this department.

Department Leader

Key Leader

Accounting Use Only

Funds appropriated by: _____ Date: _____

CAPITAL DRIVE SIGNAL LOCATION MAP





CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-3

Date: April 30, 2025

Subject: Request that the City Council consider authorizing the City Manager to purchase seven (7) Kaleidoscope Bus Shelters and Benches for Transit Department from Landscapeforms', for a total of \$175,558.57 through the approved State of Texas TXMAS-17-7802 contract.

Item Reference: 9/27/2023 C-A-5

Staff received bids from FTA state approved contracts for seven (7) Kaleidoscope Bus Shelters and Benches for Transit Department from Landscapeforms', for a total of \$175,558.57 through the approved State of Texas TXMAS-17-7802 contract.

Staff also was working a local designer, and the designer was not able to meet the required deadlines prior to the Transit Department losing the grant funds.

TxDOT recommended that we move forward with the TXMAS dealer.

Funding for these benches are from 5310 grant and no local match is required.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to purchase seven (7) Kaleidoscope Bus Shelters and Benches for the Transit Department from Landscapeforms', for a total of \$175,558.57 through the approved State of Texas TXMAS-17-7802 contract.

Attachments:

[0000435566 Quotation Bus Shelters](#)
[0000435662 Quotation Bus Shelter 2nd Portion](#)
[Shelter 1](#)
[Shelter 2](#)

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

Edited/Submitted By:
City Manager

Quote

Date: 04/07/2025
LF Quote#: 0000435566
PO#:
Project: City of Tyler | Bus Shelters | Kaleidoscope
Bill To: City of Tyler
ATTN: Accounts Payable
212 N. Bonner
Tyler, TX 75710

CORPORATE
7800 E. Michigan Avenue
Kalamazoo, MI 49048-9543
P: 800.521.2546 F: 269.381.3455
www.landscapeforms.com
Federal I.D.# 38-1897577
FSC# NC-COC-001261
Ship To: City of Tyler
ATTN: Jake Hooter
210 E. Oakwood
Tyler, TX 75701
Ship To Contact Phone:(903)595-7246
Ship Via: Common Carrier
F.O.B.: Destination

Qty	Description	Unit Price	Total Price
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CONTRACT: TXMAS-17-7802

When ordering please confirm:

- Shipping address and contact information (name and ph#)
- Billing address and contact information
- Is your firm or the project tax exempt? If so, exemption certificate must accompany order
- Delivery schedule:
 Ship immediately upon completion
 OR Ship On/After the date:

****PLEASE NOTE: The current estimated lead time of the items below is 16-18 weeks****

7	Kaleidoscope OS Posts: <i>2 Post Offset</i> Canopy Type: <i>Solid</i> Mounting: <i>Surface Mount with cover plate</i> Powdercoat Color: <i>To Be Advised</i>	\$ 13,014.83	\$ 91,103.81
6	KA9990345-01: 2 post wall layout with 3W x 2H wall frame with perf wall panels, special height post for surface mounting. With cover plates. MEETS BUY AMERICA CRITERIA. Powdercoat color:	\$ 7,758.96	\$ 46,553.76
1	Custom color upcharge	\$ 3,430.00	\$ 3,430.00
		Item Total	\$ 141,087.57
		Shipping & Handling	\$ 15,730.00
		Sub Total	\$ 156,817.57
		Estimated Tax	\$ 0.00



Quote

Date: 04/07/2025
LF Quote#: 0000435566
PO#:
Project: City of Tyler | Bus Shelters | Kaleidoscope
Bill To: City of Tyler
ATTN: Accounts Payable
212 N. Bonner
Tyler, TX 75710

CORPORATE
7800 E. Michigan Avenue
Kalamazoo, MI 49048-9543
P: 800.521.2546 F: 269.381.3455
www.landscapeforms.com
Federal I.D.# 38-1897577
FSC# NC-COC-001261
Ship To: City of Tyler
ATTN: Jake Hooter
210 E. Oakwood
Tyler, TX 75701
Ship To Contact Phone:(903)595-7246
Ship Via: Common Carrier
F.O.B.: Destination

Qty	Description	Unit Price	Total Price
Document Total			\$ 156,817.57

Payment Terms: NET 30 - PENDING CRED APPROVAL
Landscape Forms, Inc. reserves the right to change payment terms based on payment history as well as information obtained from commercial credit reporting agencies.

- Purchaser is responsible for confirming options, materials, quantities, etc., for completeness and conformity to plans and specifications.
- Changes to or cancellations of orders may incur a penalty charge of 30% or more. Special orders may not be changed or cancelled.
- Studio 431 (custom) orders cannot be cancelled once purchase order is received and approved.
- Studio 431 orders are subject to price increase after engineering/product development is complete and approved by designer, end user and purchaser. Modifications in price will be handled via Change Order.
- All orders that include a swing product must include an executed liability waiver to be accepted and entered into production.
- Only the Material Supplier Standard Limited Warranty shall apply to all product sold by Landscape Forms. No other warranties or changes to the standard warranty will be applied or accepted.
- No merchandise can be returned without authorization from Landscape Forms. Returns may be subject to a disposition fee of 30-100%.
- Prices based on quantities shown and quantity changes may affect price.
- QUOTED prices are held for 60 days. After receipt of a written ORDER, prices will be held for up to twelve months from receipt of the order. Changes in quantity or specification may affect pricing. Upfit and Scenic pricing will only be held for six months after receipt of a written order.
- Pricing includes selection from our standard color palette. Optional colors and custom color matches are available for an additional fee and will extend lead-time. Please contact our corporate office for more information.
- Fixtures for custom products are the property of Landscape Forms, Inc., and are not available for sale.
- Landscape Forms is a supplier only and ships via common carrier. Customer is responsible for offloading and installing unless otherwise indicated above.
- Handling fees alone will apply on third party and customer pick-up orders.
- Mounting hardware is only available on a limited number of products. Please consult the installation recommendations or contact our corporate office to confirm. In the event hardware is provided, it MUST be used for proper installation.

Cust #: 5E3XA
SSR: Nicole Treese
Rep: Northern Texas, Oklahoma, NTOA

Landscape Forms Customer Service

Purchaser

Seller



Quote

Date: 04/07/2025

LF Quote#: 0000435566

PO#:

Project: City of Tyler | Bus Shelters | Kaleidoscope

Bill To: City of Tyler
ATTN: Accounts Payable
212 N. Bonner
Tyler, TX 75710

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Ship To: City of Tyler
ATTN: Jake Hooter
210 E. Oakwood
Tyler, TX 75701

Ship To Contact Phone:(903)595-7246

Ship Via: Common Carrier

F.O.B.: Destination

- Refer to Care and Maintenance guidelines for more detailed information and instructions.
- All orders ship upon completion of fabrication. A one-week grace period may be available, after which storage fees will apply.
- This Agreement contains the entire understanding between the parties. All prior communications are merged into this Agreement. The terms of this Agreement shall control any conflict between documents.
- This Agreement may be signed by the parties separately and by facsimile, and together they shall be deemed one binding, original Agreement.
- Purchaser shall pay all costs and expenses paid or incurred by Landscape Forms, Inc. in collecting any amounts due for goods purchased by Purchaser, including without limitation, reasonable attorneys' fees and collection costs. Balances on invoices not paid within 30 days of date of invoice, or within an alternate period of time as determined and indicated by Landscape Forms, shall incur interest at a rate of 18% per annum. Cash discounts are not offered.
- The quoted price may include estimated tax, duties and tariffs. Actual tax, duties and tariffs shall be purchaser's responsibility and may be added to an invoice as a separate and additional charge to purchaser unless an acceptable exemption certificate is presented.
- To the extent purchaser supplies or modifies the standard specifications for any products, Landscape Forms, Inc. expressly disclaims all representations and warranties related to such products or their design whether express or implied except that the products shall be manufactured in accordance with purchaser's specifications.
- **REMITTANCE OPTIONS:** For information on paying via credit card, ACH, direct bank transfer, or wire please email us at AR@landscapeforms.com. Please note all credit card charges will be subject to a 3% surcharge. Mail payments to:

USD Checks

Landscape Forms, Inc.
Dept 78073
PO Box 78000
Detroit, MI 48278-0073
USA

CAD Cheques

Landscape Forms, Inc.
PO Box 2408
Station A
Toronto, Ontario M5W 2K6
CAN

Page: 3 of 3

Cust #: 5E3XA
SSR: Nicole Treese
Rep: Northern Texas, Oklahoma, NTOA

Landscape Forms Customer Service

Purchaser

Seller

Quote

Date: 04/07/2025
LF Quote#: 0000435662
PO#:
Project: City of Tyler | Bus Shelters | Kaleidoscope
Bill To: City of Tyler
ATTN: Accounts Payable
212 N. Bonner
Tyler, TX 75710

CORPORATE
7800 E. Michigan Avenue
Kalamazoo, MI 49048-9543
P: 800.521.2546 F: 269.381.3455
www.landscapeforms.com
Federal I.D.# 38-1897577
FSC# NC-COC-001261
Ship To: City of Tyler
ATTN: Jake Hooter
210 E. Oakwood
Tyler, TX 75701
Ship To Contact Phone:(903)595-7246
Ship Via: Common Carrier
F.O.B.: Destination

Qty	Description	Unit Price	Total Price
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CONTRACT: TXMAS-18-7801

When ordering please confirm:

- Shipping address and contact information (name and ph#)
- Billing address and contact information
- Is your firm or the project tax exempt? If so, exemption certificate must accompany order
- Delivery schedule:
 ___ Ship immediately upon completion
 OR Ship On/After the date:___

****PLEASE NOTE:** The current estimated lead time of the items below is 7-9 weeks**

7	Presidio Bench		\$ 1,733.00	\$ 12,131.00
	Style:	Backless Seats		
	Straight/Radius:	Straight		
	Number of Seats:	2 Seat Unit		
	Mounting:	Surface Mount		
	Powdercoat Color:	To Be Advised		

1	Custom color upcharge		\$ 3,430.00	\$ 3,430.00
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Item Total	\$ 15,561.00
Shipping & Handling	\$ 3,180.00
Sub Total	\$ 18,741.00
Estimated Tax	\$ 0.00
Document Total	\$ 18,741.00

Cust #: 5E3XA
SSR: Zachary Filiputti
Rep: Northern Texas, Oklahoma, NTOA

Landscape Forms Customer Service

Purchaser

Seller



Quote

Date: 04/07/2025

LF Quote#: 0000435662

PO#:

Project: City of Tyler | Bus Shelters | Kaleidoscope

Bill To: City of Tyler
ATTN: Accounts Payable
212 N. Bonner
Tyler, TX 75710

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Tyler, TX 75701

Ship To Contact Phone:(903)595-7246

Ship Via: Common Carrier

F.O.B.: Destination

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- Studio 431 orders are subject to price increase after engineering/product development is complete and approved by designer, end user and purchaser. Modifications in price will be handled via Change Order.
- All orders that include a swing product must include an executed liability waiver to be accepted and entered into production.
- Only the Material Supplier Standard Limited Warranty shall apply to all product sold by Landscape Forms. No other warranties or changes to the standard warranty will be applied or accepted.
- No merchandise can be returned without authorization from Landscape Forms. Returns may be subject to a disposition fee of 30-100%.
- Prices based on quantities shown and quantity changes may affect price.
- QUOTED prices are held for 60 days. After receipt of a written ORDER, prices will be held for up to twelve months from receipt of the order. Changes in quantity or specification may affect pricing. Upfit and Scenic pricing will only be held for six months after receipt of a written order.
- Pricing includes selection from our standard color palette. Optional colors and custom color matches are available for an additional fee and will extend lead-time. Please contact our corporate office for more information.
- Fixtures for custom products are the property of Landscape Forms, Inc., and are not available for sale.
- Landscape Forms is a supplier only and ships via common carrier. Customer is responsible for offloading and installing unless otherwise indicated above.
- Handling fees alone will apply on third party and customer pick-up orders.
- Mounting hardware is only available on a limited number of products. Please consult the installation recommendations or contact our corporate office to confirm. In the event hardware is provided, it MUST be used for proper installation.
- Refer to Care and Maintenance guidelines for more detailed information and instructions.
- All orders ship upon completion of fabrication. A one-week grace period may be available, after which storage fees will apply.
- This Agreement contains the entire understanding between the parties. All prior communications are merged into this Agreement. The terms of this Agreement shall control any conflict between documents.
- This Agreement may be signed by the parties separately and by facsimile, and together they shall be deemed one binding, original Agreement.

Page: 2 of 3

Cust #: 5E3XA
SSR: Zachary Filippetti
Rep: Northern Texas, Oklahoma, NTOA

Landscape Forms Customer Service

Purchaser

Seller

landscapeforms®

Quote

Date: 04/07/2025

LF Quote#: 0000435662

PO#:

Project: City of Tyler | Bus Shelters | Kaleidoscope

Bill To: City of Tyler
ATTN: Accounts Payable
212 N. Bonner
Tyler, TX 75710

CORPORATE

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P: 800.521.2546 F: 269.381.3455
www.landscapeforms.com
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FSC# NC-COC-001261

Ship To: City of Tyler
ATTN: Jake Hooter
210 E. Oakwood
Tyler, TX 75701

Ship To Contact Phone:(903)595-7246

Ship Via: Common Carrier

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- The quoted price may include estimated tax, duties and tariffs. Actual tax, duties and tariffs shall be purchaser's responsibility and may be added to an invoice as a separate and additional charge to purchaser unless an acceptable exemption certificate is presented.
- To the extent purchaser supplies or modifies the standard specifications for any products, Landscape Forms, Inc. expressly disclaims all representations and warranties related to such products or their design whether express or implied except that the products shall be manufactured in accordance with purchaser's specifications.
- **REMITTANCE OPTIONS:** For information on paying via credit card, ACH, direct bank transfer, or wire please email us at AR@landscapeforms.com. Please note all credit card charges will be subject to a 3% surcharge. Mail payments to:

USD Checks

Landscape Forms, Inc.
Dept 78073
PO Box 78000
Detroit, MI 48278-0073
USA

CAD Cheques

Landscape Forms, Inc.
PO Box 2408
Station A
Toronto, Ontario M5W 2K6
CAN

Page: 3 of 3

Cust #: 5E3XA
SSR: Zachary Filiputti
Rep: Northern Texas, Oklahoma, NTOA

Landscape Forms Customer Service

Purchaser

Seller

landscapeforms®







CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-4

Date: April 30, 2025

Subject: Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed \$387,000.00 with Pape-Dawson Consulting Engineers for 2025 Type D Sanitary Sewer Creek Crossing Repairs and to adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

Item Reference: **Consent Decree, Civil Action No. 6:17-cv-29 and effective April 10, 2017, LegalDesk #9987**

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 work is for creek crossings assessed as D rated including but not limited to: Bellwood Lake (SS.GM.T0010817 and SS.GM.T0010820)
Delek Refinery (SS.GM.T0007881), Royal Garden (SS.GM.T0005760, SS.GM.T0005761, and SS.GM.T0005764), Stonegate East (SS.GM.T009962, SS.GM.T0011421)

The scope of services includes engineering, survey and right of way acquisition for design phase services for the designated creek crossings and construction phase services.

Preliminary scope of services are attached for review.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed \$387,000.00 with Pape-Dawson Consulting Engineers for 2025 Type D Sanitary Sewer Creek Crossing Repairs and to adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

Attachments:

[2025 Type D Creek Crossings ESA](#)
[2025 Type D Creek Crossings Resolution](#)

Drafted/Recommended By:

Department Leader

Tiffany Currie, P.E., & Kate Dietz, P.E.

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 **Pape-Dawson Consulting Engineers, LLC** (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 **"2025 Type D Sanitary Sewer Creek Crossing Repairs"** (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,	=	<u>\$317,500.00</u>
Not-to-Exceed		
- Hourly/Reimbursable Expenses	=	<u>\$69,500.00</u>
- Total Contract Price	=	<u>\$387,000.00</u>

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, a Pape-Dawson Company
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:

RECOMMENDED:

By:

City Attorney's Office _____ Date _____

Printed Name _____

By:

Department Leader
Date

Printed Name _____

CITY COUNCIL APPROVAL:

AGENDA ITEM NUMBER:

DATE APPROVED: _____

FOR THE E/A:

By:

_____	_____
Managing Principal	Date

John G. Reidy, 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
2025 Type D Sanitary Sewer Creek Crossing Repairs
Pape Dawson Contract No. 104043

This Agreement constitutes authorization by the City of Tyler (OWNER) for Pape-Dawson Consulting Engineers, LLC (ENGINEER) to provide engineering services for the 2025 Type D Sanitary Sewer Creek Crossing Repairs (hereinafter called the Project).

PROJECT DESCRIPTION

Construction of sanitary sewer gravity main reroutes or repairs of the following segments in creek crossing areas:

- Bellwood Lake (SS.GM.T0010817 and SS.GM.T0010820)
- Delek Refinery (SS.GM.T0007881)
- Royal Garden (SS.GM.T0005760, SS.GM.T0005761, and SS.GM.T0005764)
- Stonegate East (SS.GM.T009962, SS.GM.T0011421)

The scope of services based on the design of one (1) construction project with a pre-design opinion of probable construction cost of \$1,756,829.50.

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;

- 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.

Exhibit B
Project Schedule
2025 Type D Sanitary Sewer Creek Crossing Repairs
Pape Dawson Contract No. 104043

PROJECT SCHEDULE

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

2025 Sanitary Sewer Creek Crossing Replacement:

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— 210 days (7 months) following issuance of notice to proceed to Contractor.

Exhibit C
Fee Summary
2025 Type D Sanitary Sewer Creek Crossing Repairs
Pape Dawson Contract No. 104043

FEE SUMMARY

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

Preliminary Design:	\$107,500	Lump Sum
Final Design:	\$71,700	Lump Sum
Bidding:	\$10,000	Lump Sum
Construction Administration:	\$52,500	Lump Sum ²
Part-Time Resident Project Representative ³ :	\$75,800	Lump Sum ²
Reimbursable Expenses:	\$2,000	Reimbursable
Design Survey:	\$17,500	Hourly and Reimbursable
Easement Survey:	\$5,000	Hourly and Reimbursable
Plat/Description Preparation:	\$5,000	Hourly and Reimbursable
Property Owner Coordination:	\$10,000	Hourly and Reimbursable
Right-Of-Way Agent:	\$30,000	Hourly and Reimbursable
Total Budget:		\$387,000

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 210 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.

Exhibit D - Certificates of Insurance and Endorsements

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

DRAFT

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 <i>Certificate of Liability Insurance</i> shall be attached. <i>See</i> lower right corner of certificate for <i>ex toto</i> 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 <i>[insert project name]</i> , Dated <i>[insert month and year of contract]</i> .
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: <i>[Select Option 1, Option 2 or option 3 below]</i> <i>[See Section 7.3.2 and 7.4]</i>	
Option 1	FORM: CG 20 10 10 01 <u>Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization</u> AND FORM: CG 20 37 07 04 <u>Additional Insured – Owners, Lessees, or Contractors – Completed Operations</u>
OR	
Option 2	FORM: CG 20 10 07 04 <u>Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization</u> AND FORM: CG 20 37 07 04 <u>Additional Insured – Owners, Lessees, or Contractors – Completed Operations</u>
OR	
Option 3	FORM: GA 4113 11 99 <u>Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization – Your Work</u> AND FORM: GA 233 02 07 <u>Contractors’ Commercial General Liability Broadened – with coverage for Completed Operations in conformance to specific written contract</u>
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. <i>[See Section 7.3.2 and 7.4]</i>	
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. <i>[See Section 7.3.2 and 7.4]</i>	

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.

RESOLUTION NO. R-2025-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE DEBT FOR THE ENGINEERING, DESIGN, AND CONSTRUCTION OF THE 2025 TYPE D CREEK CROSSINGS PROJECT; AND ESTABLISHING AN EFFECTIVE DATE.

STATE OF TEXAS §
COUNTY OF SMITH §
CITY OF TYLER §

WHEREAS, the City of Tyler, Texas (the "Issuer") reserves the right to issue debt for the engineering, design, and construction of the 2025 Type D Creek Crossings project (the "Project") and further intends to make certain capital expenditures with respect to the Project and currently reserves the right to reimburse the capital expenditures with proceeds of such debt; and

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

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

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

Part 1: That the City of Tyler reasonably expects to reserve the right to reimburse capital expenditures with respect to the Project with proceeds of future potential debt hereafter which may be incurred by the Issuer, and that this Resolution shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Project is \$387,000.

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

PASSED AND APPROVED, this the 26th day of March, 2025.

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

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM, CITY
ATTORNEY



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-5

Date: April 30, 2025

Subject: Request that the City Council consider authorizing the City Manager to approve NETX as the successful bidder for Bid 25-017 Commercial Cardboard Recycling.

Item Reference:

The Solid Waste Department requested sealed bids for commercial cardboard recycling. Goodwill Industries and NETX responded to the sealed bid on March 25, 2025. NETX responded with a bid to pay the City of Tyler \$10 per ton received. Goodwill Industries responded with a bid of \$350 per dump.

Staff finds the NETX bid as the most advantageous to the City of Tyler and recommends council approval.

This agreement is for a one-year term beginning upon the date of City Council approval. This agreement has a renewal option upon mutual consent to extent for up to five additional one-year periods, if the rate can be maintained or not adjusted more than the effective change in the consumer price index. Either party may terminate this agreement upon a thirty-day written notice.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to approve NETX as the successful bidder for Bid 25-017 Commercial Cardboard Recycling.

Attachments:

[Bid Documents](#)

Drafted/Recommended By:
Department Leader Leroy Sparrow/ Solid Waste Director

Edited/Submitted By:
City Manager



Purchasing Department Bid "As Read Results"

City of Tyler Bid No. / Description: 25-017 - Labor for Commercial Cardboard Recycling / Solid Waste – L. Sparrow

Date Opened: Mar 25, 2025

	Vendor	Vendor	Vendor	Vendor	Vendor
	NetX	Goodwill Industries of east Texas			
Unit Cost	^{1 yr.} \$10 / ton	\$350 / tip	(charged 350/ truck dump?)		
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: 

Form #	Work Instruction #	Form #	Originating Date	Revision Date	Revision #
PURF003	PURWI001		6/1/2012		



REQUEST FOR PROPOSAL

THIS IS NOT AN ORDER

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

February 26, 2025
DATE MAILED

Proposal No: 25-017
(Number must appear on ALL correspondence)

Closing Time: 2:00 pm

Telephone: (903) 531-1232

Closing Date: March 25, 2025

Addressed To:

Please quote as per instructions indicated below for the articles described. Proposal 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.

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.

Purchasing Manager

Sealed proposals to furnish the following will be received in the Purchasing Office @ 304 North Border, Tyler, Texas 75702, Attn: Sherry Pettit, until Tuesday, March 25, 2025, at 2 pm and opened by City Staff in the City Council Chambers @ 212 North Bonner, City Hall, 2nd Floor @ 2 pm Tuesday, March 25, 2025.

Commercial Cardboard Recycling

PROPOSAL IDENTIFICATION:

Proposal number, closing time, date, and item requested must appear on outside of envelope in lower left hand corner.

DATA SHEETS:

All responders 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 proposal.

DELIVERY:

Delivery must be stated in your proposal 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 proposals 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 proposal 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 proposal.

Net 30

INVOICING TERMS

3.24.25

DATE

NETX

COMPANY NAME

Todd Lucas

AUTHORIZED REPRESENTATIVE (print)

SIGNATURE

See other side for TERMS AND CONDITIONS

* All Proposals Must Be Signed



PRICE, DATA, AND SPECIFICATION SHEET

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

Telephone: (903) 531-1232

DATE: February 26, 2025

BID # : 25-017

CLOSING TIME: 2:00 p.m.

CLOSING DATE: March 25, 2025

PROPOSERS MUST COMPLETE THIS SECTION

ITEM NO.	DESCRIPTION	PRICE
1	Tipping fee or cost per ton for commercial cardboard recycling.	\$ 0.00

*See
Attached
Document*



City of Tyler

Purchasing Department

304 North Border

Tyler, TX 75702

Bid #: 25-017

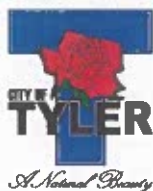
NETX will pay the City of Tyler \$10.00 per ton on all commercial cardboard loads delivered to Northeast Texas Regional MRF. 2306 BUS HWY 259 Kilgore, TX 75662. Pricing will be for 1 year based on the agreement period in the bid.

Respectfully,

Todd Lucas

General Manager

Northeast Texas Regional MRF



REQUEST FOR PROPOSAL

THIS IS NOT AN ORDER

CITY OF TYLER
Purchasing Department
304 North Border
Tyler, Texas 75702

February 26, 2025
DATE MAILED

Proposal No: 25-017
(Number must appear on ALL correspondence)

Closing Time: 2:00 pm

Closing Date: March 25, 2025

Telephone: (903) 531-1232

Addressed To:

Please quote as per instructions indicated below for the articles described. Proposal 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.

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Delivery must be stated in your proposal 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 proposals 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 proposal 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 proposal.

NET 30
INVOICING TERMS

3-13-25
DATE

Goodwill LTD OF EAST TEXAS
COMPANY NAME

TODD POTOCZAK
AUTHORIZED REPRESENTATIVE (print)

Todd Potoczak
SIGNATURE

See other side for TERMS AND CONDITIONS

* All Proposals Must Be Signed

TERMS AND CONDITIONS

Proposals are requested for furnishing the items described herein in accordance with the terms set forth. **ALL PROPOSALS 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.

Proposals 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).

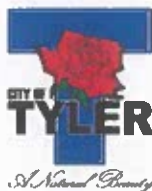
Any proposal submitted on a public works project shall comply with the additional requirements and conditions attached hereto as well as the terms and conditions stated herein.

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: February 26, 2025

BID # : 25-017

CLOSING TIME: 2:00 p.m.

CLOSING DATE: March 25, 2025

PROPOSERS MUST COMPLETE THIS SECTION

ITEM NO.	DESCRIPTION	PRICE
1	Tipping fee or cost per ton for commercial cardboard recycling.	350 ⁰⁰ Per Tip



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-6

Date: April 30, 2025

Subject: Request that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed \$221,100.00 with Pape-Dawson Consulting Engineers for 2025 24" Sanitary Sewer Creek Crossing Replacement and to adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

Item Reference: **Consent Decree, Civil Action No. 6:17-cv-29 and effective April 10, 2017, Legaldesk #9986**

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.

A 24" Sanitary Sewer Creek Crossing (SS.GM.T0011236) adjacent to the Southside Wastewater Treatment plant has been identified as needing immediate remediation.

The scope of services includes engineering, survey, and right-of-way acquisition for design phase services for the designated creek crossings and construction phase services.

The preliminary scope of services is attached for review.

RECOMMENDATION:

It is recommended that the City Council consider authorizing the City Manager to execute an Engineering Services Contract, in an amount not to exceed \$221,100.00 with Pape-Dawson Consulting Engineers for 2025 24" Sanitary Sewer Creek Crossing Replacement and to adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

Attachments:

[2025 Sanitary Sewer Creek Crossing Replacement ESA](#)
[2025 Sanitary Sewer Creek Crossing Replacement Resolution](#)

Drafted/Recommended By:
Department Leader

Tiffany Currie, P.E., & Kate Dietz, P.E.

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 **Pape-Dawson Consulting Engineers, LLC** (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 **"2025 Sanitary Sewer Creek Crossing Replacement"** (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,	=	<u>\$199,100.00</u>
Not-to-Exceed		
- Hourly/Reimbursable	=	<u>\$22,000.00</u>
Expenses		
- Total Contract Price	=	<u>\$221,100.00</u>

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, a Pape-Dawson Company
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: Pape Dawson Consulting Engineers, LLC

By:

[Signature]
Managing Principal

4/1/2025

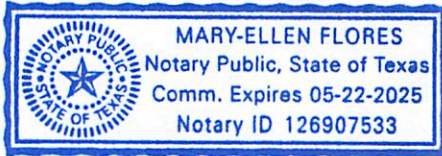
Date

John G. Reidy, P.E.

Printed Name

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared JOHN REIDY, who is known to me, or who was proved to me through PAPE DAWSON 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 1 day of APRIL, 20 25.



Mary-Elle Flores
Notary Public In and For The State of Texas

My Commission Expires:

5/22/2025

MARY-ELLEN FLORES

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
2025 Sanitary Sewer Creek Crossing Replacement
Pape Dawson Contract No. 104042

This Agreement constitutes authorization by the City of Tyler (OWNER) for Pape-Dawson Consulting Engineers, LLC (ENGINEER) to provide engineering services for the 2025 Sanitary Sewer Creek Crossing Replacement (hereinafter called the Project).

PROJECT DESCRIPTION

Repair and replacement of sanitary sewer gravity main segment: SS.GM.T0011236

The scope of services based on the design of one (1) construction project with a pre-design opinion of probable construction cost of \$935,557.50.

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. Property Owner Coordination;
- D. Right-of-Way Agent;
- E. Part-Time Project Representative.

ENGINEER's Exclusions:

- A. Easement Survey ;
- B. Construction Surveying;
- C. Plat/Description Preparation;
- D. Hydraulic modeling of gravity sewer lines;
- E. Evaluation of force main and gravity sewer line pipe conditions, CCTV, and/or pipe inspections;
- F. Geotechnical Investigation;
- G. Construction Material Testing;
- H. Subsurface utility engineering and utility potholing;
- I. Historical & archeological investigation and report;
- J. Historical, Wetland, and Archeological investigations, environmental investigations, categorical exclusions, nationwide permits;

- K. Coordination, application, or permitting with any and all local, State, and/or Federal agencies;
- L. Stormwater pollution plans, applications, and/or permits;
- M. Traffic control plans;
- N. Legal services;
- O. The relocation of gas, electric, communications, or other utilities;
- P. Hydrologic studies;
- Q. 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.

Exhibit B
Project Schedule
2025 Sanitary Sewer Creek Crossing Replacement
Pape Dawson Contract No. 104042

PROJECT SCHEDULE

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

2025 Sanitary Sewer Creek Crossing Replacement:

1. Complete Preliminary Design: 90 Days
2. Complete Final Design: 45 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– 120 days (4 months) following issuance of notice to proceed to Contractor.

Exhibit C
Fee Summary
2025 Sanitary Sewer Creek Crossing Replacement
Pape Dawson Contract No. 104042

FEE SUMMARY

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

Preliminary Design:	\$69,600	Lump Sum
Final Design:	\$46,400	Lump Sum
Bidding:	\$10,000	Lump Sum
Construction Administration:	\$30,000	Lump Sum ²
Part-Time Resident Project Representative ³ :	\$43,100	Lump Sum ²
Reimbursable Expenses:	\$2,000	Reimbursable
Design Survey:	\$10,000	Hourly and Reimbursable
Property Owner Coordination:	\$5,000	Hourly and Reimbursable
Right-Of-Way Agent (1 tract):	\$5,000	Hourly and Reimbursable
Total Budget:		\$221,100

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 120 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.

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 <i>Certificate of Liability Insurance</i> shall be attached. <i>See</i> lower right corner of certificate for <i>ex toto</i> 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 <i>[insert project name]</i>, Dated <i>[insert month and year of contract]</i>.
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 <u>Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization</u> AND FORM: CG 20 37 07 04 <u>Additional Insured – Owners, Lessees, or Contractors – Completed Operations</u>
OR	
Option 2	FORM: CG 20 10 07 04 <u>Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization</u> AND FORM: CG 20 37 07 04 <u>Additional Insured – Owners, Lessees, or Contractors – Completed Operations</u>
OR	
Option 3	FORM: GA 4113 11 99 <u>Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization – Your Work</u> AND FORM: GA 233 02 07 <u>Contractors’ Commercial General Liability Broadened – with coverage for Completed Operations in conformance to specific written contract</u>
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]	

ACORDTM**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

4/2/2025

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

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

PRODUCER USI Insurance Services NW CL1 825 NE Multnomah, Suite 1500 Portland, OR 97232 503 224-8390	CONTACT NAME: Eric Kikalo PHONE (A/C, No, Ext): 503 224-8390 FAX (A/C, No): 610 362-8130 E-MAIL ADDRESS: eric.kikalo@usi.com																					
INSURED KSA Engineers, Inc. 140 E. Tyler Street, Ste 600 Longview, TX 75601-0000	<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr> </thead> <tbody> <tr> <td colspan="2">INSURER A : National Fire Insurance Co. of Hartford</td><td>20478</td></tr> <tr> <td colspan="2">INSURER B : Illinois Union Insurance Company</td><td>27960</td></tr> <tr> <td colspan="2">INSURER C : Allied World Surplus Lines Insurance Co</td><td>24319</td></tr> <tr> <td colspan="2">INSURER D :</td><td></td></tr> <tr> <td colspan="2">INSURER E :</td><td></td></tr> <tr> <td colspan="2">INSURER F :</td><td></td></tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : National Fire Insurance Co. of Hartford		20478	INSURER B : Illinois Union Insurance Company		27960	INSURER C : Allied World Surplus Lines Insurance Co		24319	INSURER D :			INSURER E :			INSURER F :		
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INSURER E :																						
INSURER F :																						

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			7012316633	02/28/2025	02/28/2026	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY			7012296190	02/28/2025	02/28/2026	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			G48685596001	02/28/2025	02/28/2026	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ Y / ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	7012316647	02/28/2025	02/28/2026	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liability			03145815	02/28/2025	02/28/2026	\$5,000,000, Deductible \$25,000 Retro Date: 1/1/1978

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The General Liability and Automobile Liability coverages include primary non-contributory additional insured coverage when required under written contract or written agreement as per attached endorsements. General Liability and Automobile Liability waiver of subrogation coverage is included per attached endorsements. Workers Compensation coverage includes waiver of subrogation coverage when required by written contract or agreement, per attached endorsement. Umbrella follows form to General Liability, Auto (See Attached Descriptions)

CERTIFICATE HOLDER**CANCELLATION**

City of Tyler P.O. BOX 2039 Tyler, TX 75710-0000	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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DESCRIPTIONS (Continued from Page 1)

Liability and Employers Liability. 30-Day Notice of Cancellation.

NAMED INSUREDS: Arborleaf Engineering & Surveying, Inc.; D2410 Partners, LP; Pape Dawson Munoz, LLC; Pape Dawson Charitable Foundation; Pape-Dawson Consulting Engineers Holdings, LLC; PD Management Holdco, LLC; Pape Dawson Engineers Holdings, Inc. Pape-Dawson Partners, LLP; Pape-Dawson Consulting Engineers, LLC DBA: Pape Dawson Engineers, Inc.; Pape-Dawson Engineers, LLC; VRRSP Consultants, LLC; Pape-Dawson Consulting Engineers, Inc. Employee 401K Plan; Dowdey Anderson & Associates 401K Plan; Pape-Dawson Consulting Engineers, Inc.; Employee Benefits Plan Trust; Dowdey, Anderson & Associates, LLC; Costello, LLC; Costello, Inc. 401(K) Plan; Poulos & Bennett, LLC; Q. Grady Minor & Associates, P.A.; Q. Grady Minor and Associates, LLC; Maxwell Reddick & Associates, Inc.; Maxwell Reddick & Associates, LLC; Ragan-Smith Associates, Inc.; Ragan-Smith Associates, LLC; KSA Engineers, Inc.; BLOC Design-Build, LLC; Legacy Bear Properties, LLC; KSA Alliance, Inc.; Eberly & Associates, Inc.

Re: Project Name: 2025 Sanitary Sewer Creek Crossing Replacement
Thirty (30) day notice of cancellation in favor of certificate holder on all policies.

**Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:
- A.** in the performance of your ongoing operations subject to such **written contract**; or
 - B.** in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury or property damage** included in the **products-completed operations hazard**, and only if:
 - 1. the **written contract** requires you to provide the additional insured such coverage; and
 - 2. this **coverage part** provides such coverage.

II. But if the **written contract** requires:

- A.** additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
- B.** additional insured coverage with "arising out of" language; or
- C.** additional insured coverage to the greatest extent permissible by law;

then paragraph **I.** above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of **your work** that is subject to such **written contract**.

- III.** Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
- A.** coverage broader than required by the **written contract**; or
 - B.** a higher limit of insurance than required by the **written contract**.
- IV.** The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage, or personal and advertising injury** arising out of:
- A.** the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
 - 1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - 2. supervisory, inspection, architectural or engineering activities; or
 - B.** any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.
- V.** Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

CNA75079XX (10-16)

Page 1 of 2

CONTINENTAL CASUALTY COMPANY

Insured Name: Pape-Dawson Consulting Engineers, LLC

Policy No: 7012316633

Endorsement No:

Effective Date: 2/28/2025



**Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement****Primary and Noncontributory Insurance**

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph 3. does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled DEFINITIONS is amended to add the following definition:

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

- A. is currently in effect or becomes effective during the term of this policy; and
- B. was executed prior to:
 1. the **bodily injury** or **property damage**; or
 2. the offense that caused the **personal and advertising injury**;for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA75079XX (10-16)

Page 2 of 2

CONTINENTAL CASUALTY COMPANY

Insured Name: Pape-Dawson Consulting Engineers, LLC

Policy No: 7012316633

Endorsement No:

Effective Date: 2/28/2025

**Waiver of Transfer of Rights of Recovery Against
Others to the Insurer Endorsement**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE
Name Of Person Or Organization:
ANY PERSON OR ORGANIZATION WHOM THE NAMED INSURED HAS AGREED IN WRITING IN A CONTRACT OR AGREEMENT TO WAIVE SUCH RIGHTS OF RECOVERY, BUT ONLY IF SUCH CONTRACT OR AGREEMENT:
1.IS IN EFFECT OR BECOMES EFFECTIVE DURING THE TERM OF THIS COVERAGE PART; AND 2.WAS EXECUTED PRIOR TO THE BODILY INJURY, PROPERTY DAMAGE OR PERSONAL AND ADVERTISING INJURY GIVING RISE TO THE CLAIM.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, it is understood and agreed that the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

With respect to the person or organization shown in the Schedule above, the Insurer waives any right of recovery the Insurer may have against such person or organization because of payments the Insurer makes for injury or damage arising out of the **Named Insured's** ongoing operations or **your work** included in the **products-completed operations hazard**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

00020008750994450878866





DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

BUSINESS AUTO COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "**insureds**" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Pape-Dawson Consulting Engineers, LLC

Endorsement Effective Date:

SCHEDULE

Name Of Person(s) Or Organization(s):

ANY PERSON OR ORGANIZATION THAT THE NAMED INSURED IS OBLIGATED TO PROVIDE INSURANCE WHERE REQUIRED BY A WRITTEN CONTRACT OR AGREEMENT IS AN INSURED, BUT ONLY WITH RESPECT TO LEGAL RESPONSIBILITY FOR ACTS OR OMISSIONS OF A PERSON/ORGANIZATION FOR WHOM LIABILITY COVERAGE IS AFFORDED UNDER THIS POLICY

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "**insured**" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "**insured**" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** - Covered Autos Coverages of the Auto Dealers Coverage Form.

Form No: CA 20 48 10 13

Endorsement Effective Date:

Endorsement No:

Underwriting Company: National Fire Insurance Company of Hartford, 151 N Franklin St, Chicago, IL
60606

Endorsement Expiration Date:

Policy No: 7012296190

Policy Effective Date: **2/28/2025**

Policy Page:



**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

BUSINESS AUTO COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Pape-Dawson Consulting Engineers, LLC

Endorsement Effective Date:

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

ANY PERSON OR ORGANIZATION FOR WHOM OR WHICH YOU ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT TO OBTAIN THIS WAIVER FROM US. YOU MUST AGREE TO THAT REQUIREMENT PRIOR TO LOSS.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "**accident**" or the "**loss**" under a contract with that person or organization.

Form No: CA 04 44 10 13

Endorsement Effective Date:

Endorsement No:

Underwriting Company: National Fire Insurance Company of Hartford, 151 N Franklin St, Chicago, IL
60606

Endorsement Expiration Date:

Policy No: 7012296190

Policy Effective Date: **2/28/2025**

Policy Page:



TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ Specific Waiver

Name of person or organization

☒ Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: All Texas Operations

3. Premium:

The premium charge for this endorsement shall be 2% percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Refer to Schedule of Operations

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: WC 42 03 04 B (06-2014)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No:

Underwriting Company: Valley Forge Insurance Company, 151 N Franklin St, Chicago, IL 60606

Policy No: 7012316647

Policy Effective Date: 2/28/2025

Policy Page:

**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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**Architects, Engineers and Surveyors General Liability
Extension Endorsement****1. ADDITIONAL INSURED**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **I.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A.** through **I.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Engineers, Architects or Surveyors Engaged By You

An architect, engineer or surveyor engaged by the **Named Insured**, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused in whole or in part by the **Named Insured's** acts or omissions, or the acts or omissions of those acting on the **Named Insured's** behalf:

a. in connection with the **Named Insured's** premises; or

b. in the performance of the **Named Insured's** ongoing operations.

But the coverage hereby granted to such additional insureds does not apply to **bodily injury**, **property damage** or **personal and advertising injury** arising out of the rendering of or failure to render any professional services by, on behalf of, or for the **Named Insured**, including but not limited to:

**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

1. the preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. supervisory, inspection, architectural or engineering activities.

D. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury, property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

E. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury, property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

H. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or



**Architects, Engineers and Surveyors General Liability
Extension Endorsement**

2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

I. Trade Show Event Lessor

- 1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:
 - a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
- 2. The coverage granted by this paragraph does not apply to **bodily injury or property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. ADDITIONAL INSURED – EXTENDED COVERAGE

When an additional insured is added by this or any other endorsement attached to this **Coverage Part, WHO IS AN INSURED** is amended to make the following natural persons **Insureds**.

If the additional insured is:

- a. An individual, then his or her **spouse** is an **Insured**;
- b. A partnership or joint venture, then its partners, members and their **spouses** are **Insureds**;
- c. A limited liability company, then its members and managers are **Insureds**; or
- d. An organization other than a partnership, joint venture or limited liability company, then its executive officers, directors and shareholders are **Insureds**;



ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY

It is understood and agreed that this endorsement amends the **BUSINESS AUTO COVERAGE FORM** as follows:

SCHEDULE

Name of Additional Insured Person Or Organization

ANY PERSON OR ORGANIZATION THAT YOU ARE REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT TO NAME AS AN ADDITIONAL INSURED.

1. In conformance with paragraph **A.1.c.** of **Who Is An Insured** of Section **II - LIABILITY COVERAGE**, the person or organization scheduled above is an insured under this policy.
2. The insurance afforded to the additional insured under this policy will apply on a primary and non-contributory basis if you have committed it to be so in a written contract or written agreement executed prior to the date of the "**accident**" for which the additional insured seeks coverage under this policy.

All other terms and conditions of the policy remain unchanged

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

Form No: CNA71527XX (10-2012)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 13; Page: 1 of 1

Underwriting Company: National Fire Insurance Company of Hartford, 151 N Franklin St, Chicago, IL
60606

Policy No: BUA 7012296190

Policy Effective Date: **2/28/2025**

Policy Page: 85 of 289



General Aggregate Limit - Per Project Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. For each single construction or service project away from premises the **Named Insured** owns or rents, a separate Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:
 - A. all **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
 - B. all medical expenses under **Coverage C**;
that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Project General Aggregate Limit applicable to any other project.
- II. All:
 - A. **damages** under **Coverage B**, regardless of the number of locations or projects involved;
 - B. **damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
 - C. medical expenses under **Coverage C**, caused by accidents which cannot be attributed solely to ongoing operations at a single project,
will reduce the General Aggregate Limit shown in the Declarations.
- III. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular project.
- IV. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.
- V. If a single construction or service project away from premises owned by or rented to the **Named Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, such project will still be deemed to be the same project.
- VI. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Any Person or Organization on whose behalf you are required to obtain this waiver of our right to recover from under a written contract or agreement.

The premium charge for the endorsement is reflected in the Schedule of Operations.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.

Form No: WC 00 03 13 (04-1984)

Endorsement Effective Date:

Endorsement Expiration Date:

Endorsement No: 5; Page: 1 of 1

Underwriting Company: National Fire Insurance Company of Hartford, 151 N Franklin St, Chicago, IL
60606

Policy No: WC 7012316647

Policy Effective Date: 02/28/2025

Policy Page: 66 of 108

Pape-Dawson Consulting Engineers, LLC

2/28/2025-2026 General Liability – Form Schedule

FORM	ED. DATE	FORM NAME
CG0001	04/13	Commercial General Liability Coverage Form
CNA106681XX	10/23	Exclusion - Perfluoroalkyl And Polyfluoroalkyl Substances (PFAS)
CNA74858XX	01/15	Architects, Engineers and Surveyors General Liability Extension Endorsement
CNA74817XX	01/15	Boats Endorsement
CNA75061XX	01/15	General Aggregate Limit - Per Project Endorsement
CNA80839XX	04/15	Designated Unmanned Aircraft Coverage Endorsement
CG2010	12/19	Additional Insured - Owners, Lessees Or Contractors - Scheduled Person Or Organization
CG2037	12/19	Additional Insured - Owners, Lessees or Contractors -Completed Operations
CNA74745XX	01/15	Additional Insured - Designated Person or Organization Endorsement
CNA75079XX	03/22	Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement
CNA74843XX	01/15	Pollution Exclusion Amendatory Endorsement
CNA75008XX	10/16	Waiver of Transfer of Rights of Recovery Against Others to the Insurer Endorsement
CG0069	12/23	Exclusion - Violation Of Law Addressing Data Privacy
CG2106	12/23	Exclusion - Access Or Disclosure Of Confidential Or Personal Material Or Information
CG4035	12/23	Exclusion - Cyber Incident
CNA74682XX	01/15	Subsidence Exclusion (CA, CO, NV) and Subsidence Residential Exclusion (All Other States) Endorsement
CNA74708XX	01/15	Fungi / Mold / Mildew / Yeast / Microbe Exclusion Endorsement
CNA74754XX	01/15	Designated Professional Services Exclusion Endorsement
CNA74761TX	01/15	Employment-Related Practices Exclusion Endorsement - Texas
CNA74801XX	01/15	Contractors - Professional Liability Exclusion Endorsement
CNA74862XX	01/15	Residential Construction Defect Products/Completed Operations Exclusion Endorsement
CNA74863XX	01/15	Construction Wrap-Up Program Exclusion Endorsement
CNA74892XX	01/15	Exterior Finish System Products/Completed Operations Property Damage Exclusion Endorsement
CNA74980XX	01/15	Engineers, Architects or Surveyors Professional Liability Exclusion Endorsement
CNA75116XX	01/15	Amendment - Infringement of Copyright, Patent, Trademark Trade Secret or Other Intellectual Property Rights or Laws Endorsement
CNA75108XX	01/15	Broad Named Insured Endorsement
CNA62646XX	01/15	Bridge Endorsement
CNA74702XX	01/15	Changes - Notice of Cancellation or Material Restriction Endorsement
CNA74726XX	01/15	Calculation of Premium Endorsement
CNA74898TX	01/15	Experience Rating Modification Endorsement - Texas
CNA74904TX	01/15	Duties Endorsement - Texas
CNA74719XX	01/15	Asbestos Exclusion Endorsement
CNA74727XX	01/15	Nuclear Energy Liability Exclusion Endorsement (Broad Form)

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 2

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****1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Pape Dawson Consulting Engineers, LLC
San Antonio, TX United States

Certificate Number:
2025-1290976

Date Filed:
04/03/2025

Date Acknowledged:

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.

104042

Professional Services in connection with the 2025 Sanitary Sewer Creek Crossing Replacement project

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Dawson, III, Eugene H.	San Antonio, TX United States	X	
	Dawson, Jr., Eugene H.	San Antonio, TX United States	X	
	Dawson, Sam	San Antonio, TX United States	X	
	Dawson, Taylor	San Antonio, TX United States	X	
	Suire, Raymond	San Antonio, TX United States	X	
	Tackett, Cara C.	San Antonio, TX United States	X	
	Gaston, Gilmer	San Antonio, TX United States	X	
	Rion, Dennis	San Antonio, TX United States	X	
	Ramseur, Mark	Austin, TX United States	X	
	Preiss, Michael	Houston, TX United States	X	
	Wilson, Todd	San Antonio, TX United States	X	
	O'Neal, Dustin	Houston, TX United States	X	
	Davis, Steven B.	Dallas, TX United States	X	
	Weaver, Shauna	San Antonio, TX United States	X	
	Adame, Jon	San Antonio, TX United States	X	
	Carter, Tom	San Antonio, TX United States	X	
	Ruschkewicz, Thomas	San Antonio, TX United States	X	
	Shepherd, Dekecha	Houston, TX United States	X	

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

2 of 2

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

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Pape Dawson Consulting Engineers, LLC
San Antonio, TX United States

Certificate Number:
2025-1290976

Date Filed:
04/03/2025

Date Acknowledged:

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.

104042

Professional Services in connection with the 2025 Sanitary Sewer Creek Crossing Replacement project

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Blackmon, Todd	New Braunfels, 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 John G. Reidy, and my date of birth is 7/21/1966.

My address is 2000 NW Loop 410, San Antonio, TX, 78213, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Bexar County, State of Texas, on the 3rd day of April, 2025.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

RESOLUTION NO. R-2025-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE DEBT FOR THE ENGINEERING, DESIGN, AND CONSTRUCTION OF THE 2025 SANITARY SEWER CREEK CROSSING REPLACEMENT PROJECT; AND ESTABLISHING AN EFFECTIVE DATE.

STATE OF TEXAS §
COUNTY OF SMITH §
CITY OF TYLER §

WHEREAS, the City of Tyler, Texas (the "Issuer") reserves the right to issue debt for the engineering, design, and construction of the 2025 Sanitary Sewer Creek Crossing Replacement project (the "Project") and further intends to make certain capital expenditures with respect to the Project and currently reserves the right to reimburse the capital expenditures with proceeds of such debt; and

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

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

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

Part 1: That the City of Tyler reasonably expects to reserve the right to reimburse capital expenditures with respect to the Project with proceeds of future potential debt hereafter which may be incurred by the Issuer, and that this Resolution shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Project is \$221,100.

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

PASSED AND APPROVED, this the 26th day of March, 2025.

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

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM, CITY
ATTORNEY



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-7

Date: April 30, 2025

Subject: Request that the City Council consider authorizing the City Manager to approve a reconciliation change order that will reduce the contract amount by \$310,610.48 and release of final retainage payment in the amount of \$67,758.45 to Propipe, LLC, for Group 7 Cleaning and Closed Circuit Television (CCTV).

Item Reference: **April 10, 2017 Consent Decree; April 10, 2024**

Bid 23-043 was awarded on May 24, 2023 and the work is substantially complete. This contract focused on inspection and cleaning of small diameter lines (less than 18-inch) in Basin 20.

Change Order #1 consisted of miscellaneous additional Cleaning and CCTV across the City. The additional work cost is \$296,000.00.

Original Project Cost: \$1,665,779.50
CO #1: \$296,000.00
Final Project Cost: \$1,355,169.02 (~22% decrease)

The rehabilitation work has been successfully completed at a total cost of \$1,355,169.02 , resulting in the project being \$310,610.48 under the original contract amount.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to approve a reconciliation change order that will reduce the contract amount by \$310,610.48 and release of final retainage payment in the amount of \$67,758.45 to Propipe, LLC, for Group 7 Cleaning and Closed Circuit Television (CCTV).

Attachments:

[Group 7 CCTV Basin 20 RCO](#)
[Closeout Documents Combined](#)

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. #02**

PROJECT NAME: Group 7 CCTV Basin 20

DATE:

CONTRACTOR: Pro-Pipe
ADDRESS: 47 Discovery, Suite 250
Irvine, CA 92618

BID NUMBER: 22-017

Item No.	Work Items	Qty	Units	Unit Price	SOV	Amount		Difference in Bid Qty	Difference in Bid Amount
						Qty Complete to Date	Complete to Date		
1	Mobilization, Bonds, and Insurance	1	LS	\$1,861.70	\$	1,861.70	1.00	\$	1,861.70
2	Clean 6-8" Wastewater Line	228980	LF	\$1.50	\$	343,470.00	366,339.11	\$	549,508.67
3	CCTV 6-8" Wastewater Line	228980	LF	\$1.20	\$	274,776.00	369,096.57	\$	442,915.88
4	Clean 10-12" Wastewater Line	29655	LF	\$1.50	\$	44,482.50	32,111.69	\$	48,167.54
5	CCTV 10-12" Wastewater Line	29655	LF	\$1.20	\$	35,586.00	31,907.73	\$	38,289.28
6	Clean 15-18" Wastewater Line	19182	LF	\$1.50	\$	28,773.00	8,573.39	\$	12,860.09
7	CCTV 15-18" Wastewater Line	19182	LF	\$1.20	\$	23,018.40	9,146.09	\$	10,975.31
8	Cleaning Reverse Set-up (Unable to Traverse Line on Initial Set-up)	110	EA	\$106.77	\$	11,744.70	0.00	\$	-
9	CCTV Reverse Set-up (Unable to Traverse Line on Initial Set-up)	300	EA	\$78.23	\$	23,469.00	16.00	\$	1,251.68
10	Root/Grease Removal 6-8"	10000	LF	\$1.66	\$	16,600.00	0.00	\$	-
11	Root/Grease Removal 10-12"	2500	LF	\$1.66	\$	4,150.00	0.00	\$	-
12	Root/Grease Removal 15-18"	2500	LF	\$2.08	\$	5,200.00	0.00	\$	-
13	Traffic Control - Budgetary; No Bid	15000	LF	\$0.00	\$	-	0.00	\$	-
14	Fence R/R - Budgetary; No Bid	50	LF	\$0.00	\$	-	0.00	\$	-
15	Protruding Tap Removal	20	EA	\$832.41	\$	16,648.20	0.00	\$	-
16	Clean 6-18" Wastewater Line	200000	LF	\$1.50	\$	300,000.00	0.00	\$	-
17	CCTV 6-18" Wastewater Line	200000	LF	\$1.20	\$	240,000.00	0.00	\$	-
	Clean 6-18" Wastewater Line	80000	LF	\$2.00	\$	160,000.00	67,084.79	\$	134,169.58
	CCTV 6-18" Wastewater Line	80000	LF	\$1.70	\$	136,000.00	67,746.65	\$	115,169.31
					\$ 1,665,779.50		\$ 1,355,169.02		\$ (310,610.48)

Original contract price: 1,369,779.50
Change in contract price from previous change orders: 296,000.00
Change in contract price due to this change order: (310,610.48)
Adjusted contract price to date: \$ 1,355,169.02 -22.68%

Original contract end date / days:
Change in contract days from previous change orders:
Change in contract days due to this change order:
Adjusted contract days to date:

RECOMMENDED FOR APPROVAL: Kate Dietz, P.E.
Director of Utilities

_____ Date

ACCEPTED: Pro-Pipe
Contractor

_____ Date

REVIEWED: City Attorney's Office

_____ Date

APPROVED: Edward Broussard
City Manager

_____ Date

AGENDA ITEM NUMBER: _____

DATE APPROVED BY COUNCIL: 4/26/2025

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, Dean Barrett [Name of Affiant], do solemnly swear or affirm that I am the legal representative of Pro-Pipe, Inc. [Contractor's Company / Corporation Name], the City of Grand Prairie, the County of Dallas, 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
Project Name**

23-043

**Group 7 Cleaning and Closed Circuit Television (CCTV)
Recording of Wastewater Lines Basin 20**

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):

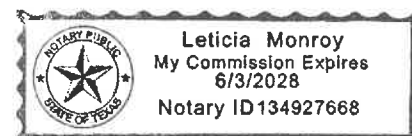
Name	Amount Owed	Telephone	Address
PayApp 5-7400008813 \$	3,302.52		
PayApp 6-7400008818 \$	3,532.16		
PayApp Final Retention\$	67,758.45		

[Signature]
Signature of Contractor

Sworn to and subscribed before me by Affiant on the 7th day of APRIL, 2025.

[Signature]
Notary Public In and For The State of Texas

My Commission Expires: 06-03-28 Leticia Monroy
Notary's Printed Name



CITY OF TYLER, TEXAS – CIP CONTRACT

REVISION DATE: 05.14.2021

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 23-043
Number

Project Name Group 7 Cleaning and Closed Circuit Television (CCTV)
Recording of Wastewater Lines Basin 20

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to Dean Barrett [Person with Whom Signer Contracted] on the property of City of Tyler [Owner] located at 304 N Border Ave [Location] to the following extent: Grp 7 Cleaning & CCTV Recording of Wastewater Lines Basin 20 [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 April 4, 2025

Pro-Pipe, Inc. (Company name)

DocuSigned by:

By Dean Barrett (Signature)

Branch Manager (Title)



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-8

Date: April 30, 2025

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

Item Reference:

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

RECOMMENDATION:

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

Attachments:

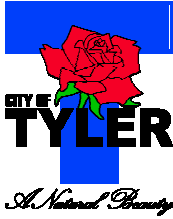
[AGREEMENT BETWEEN CITY OF TYLER AND LINDALE RURAL WATER SUPPLY](#)

Drafted/Recommended By:

Department Leader Chris Cambra

Edited/Submitted By:

City Manager



AGREEMENT BETWEEN CITY OF TYLER AND LINDALE RURAL WATER SUPPLY

Lindale Rural Water Supply Corporation (“Lindale Rural”) and the City of Tyler (“City”), for the consideration and purposes herein expressed, enter into the following Agreement pertaining to water administration services for certain sanitary sewer customers of the City of Tyler.

RECITALS

WHEREAS, Lindale Rural provides retail water service in Smith County, Texas, pursuant to the Texas Commission on Environmental Quality Certificate of Convenience and Necessity No. 10758.

WHEREAS, it is the intent of the City of Tyler to promote the public health, safety and welfare.

WHEREAS, the City of Tyler provides retail sanitary sewer service within the City limits of Tyler and outside the City limits within the boundaries of Smith County, Texas;

WHEREAS, the City recognizes that the collection of delinquent sanitary sewer customer accounts is integrally related to the provision of water services.

WHEREAS, the City of Tyler desires to charge for the services provided to its customers by providing accurate billing.

WHEREAS, Lindale Rural and the City enter into this limited Agreement regarding the administration of water services to those City of Tyler, Smith County, customers that Lindale Rural and the City have in common and to the extent as may be allowed under state and federal law or state and federal regulations.

NOW, THEREFORE, Lindale Rural and the City agree as follows:

**SECTION I: DISCONNECTION OF WATER SERVICE DUE TO
NONPAYMENT OF SEWER CHARGES**

- A. Where sewer service is provided by the City and water service is provided by Lindale Rural, Lindale Rural shall disconnect water service to a customer for unpaid undisputed sewer charges upon proper request by the City, in accordance with the procedures set forth in this Agreement.
- B. Before water service may be terminated, the City shall provide proper notice to its customers. Such notice provided by the City to its customers must be in strict conformance with the following:
1. **Notice requirements.** Proper notice shall consist of a separate written statement, which will be mailed or hand-delivered to the customer before the water service is disconnected. The notice shall include the following:
 - (a) The words **“TERMINATION NOTICE”**.
 - (b) A description of action required to avoid disconnection, such as paying all past due service charges.
 - (c) The date the required action must be completed to prevent disconnection. This date must be at least (10) days from the date the notice is provided.
 - (d) The intended date of disconnection.
 - (e) The office hours, telephone number, and address of the place payment must be made.

(f) The total past due charges; and

(g) Any and all reconnect fees that will be required to restore service if disconnected.

2. As long as this Agreement is in effect between the City and Lindale Rural, the notice shall also state:

(a) That failure to pay past due sewer charges will result in termination of water service by Lindale Rural; and

(b) That water service will not be reconnected until all past due and current sewer service charges and sewer reconnect fees are paid to the City.

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

1. Failure to pay all delinquent (past due) service charges.
2. Failure to comply with the written terms of a deferred payout agreement; or
3. Failure to comply with the deposit arrangements.

SECTION II: DISCONNECT FEE PAYABLE TO LINDALE RURAL

A. The City agrees to compensate Lindale Rural, fifty dollars (\$50.00) for each disconnection of water services performed by Lindale Rural at the request of the City. Lindale Rural shall submit an invoice at the end of each calendar month setting forth the number of disconnections performed and the total compensation due from the City. The disconnection fee includes the cost of reconnection. Lindale Rural shall not charge a separate reconnection fee. This disconnection fee includes

any costs of reconnection. The City agrees to remit payment in full of all amounts due Lindale Rural within twenty (20) days of the invoice date.

- B. Lindale Rural may not collect a disconnect fee from the City where water service was not disconnected, except in circumstances where a Lindale Rural representative arrives at a customer water service location with the intent to perform a requested water service disconnection and the customer, or its representative, by any cause or action prevents the Lindale Rural representative from disconnecting the water service.

SECTION III: DISCONNECTION FOR ILL CUSTOMERS

Service shall not be disconnected to any delinquent residential customer when it has been established that some person residing at that residence will become seriously ill or more seriously ill if service is disconnected. To avoid disconnection under these circumstances, the customer must provide a written statement from a physician to the City prior to the stated date of disconnection. Lindale Rural shall not be in violation of this section unless, prior to any disconnection, the City has provided Lindale Rural with a copy of such written statement.

SECTION IV: SERVICE RESTORATION

- A. The City's personnel shall be available during regular business hours to accept payment from customers according to their customary practice, but, in particular, on both the day of and the day after Lindale Rural disconnects water service for one of their common customers. Upon payment of its account by the customer to the satisfaction of the City, Lindale Rural will restore water service within thirty-six (36) hours, following written notification by the City of the receipt of payment, excluding weekends and holidays recognized by Lindale Rural. Without exception, Lindale Rural shall not be obligated or required to restore water service for any account of the City outside of the regular business hours of Lindale Rural.

- B. Lindale Rural, at its sole discretion, may require payment of all delinquent (past due) water service charges prior to reconnection of water service in accordance with its approved water tariff, rules, and regulations as promulgated by the Texas Commission on Environmental Quality or the rules and regulations of any Agency having jurisdiction over Lindale Rural.

SECTION V: EXCHANGE OF COMMON CUSTOMER INFORMATION AND REQUESTS FOR THE PURPOSE OF DISCONNECTION

- A. On or before the thirtieth (30th) day immediately following the effective date of this Agreement, the City shall prepare and deliver to Lindale Rural a list of all common customer accounts receiving sanitary sewer service from the City and water service from Lindale Rural. The list of accounts, prepared by the City, shall include, but not be limited to, the following information for each account:

1. City's billing account number.
2. The customer's name, as it appears on the billing statement.
3. The occupant of the consuming facility, if different from the customer named on the billing statement.
4. The billing address.
5. The physical location of the consuming facility, if different from the billing address.
6. The meter number on Lindale Rural's water meter serving the consuming facility; and

7. Any distinguishing characteristics of the consuming facility that would assist Lindale Rural in cross-referencing the City's account number to the physical location of its water meter.
- B. The City shall keep this common customer list current and update the list with new information by providing written notification to Lindale Rural of any and all new service connections, including the information set forth in Section V, within ten (10) days of the installation of same.
- C. Lindale Rural shall provide to the City a written list setting forth a cross-reference between the City's billing account numbers and Lindale Rural's billing account numbers within thirty (30) days of receipt of the common customer list of accounts required by Section V.
- D. On or before the fifth (5th) day of each calendar month, Lindale Rural shall notify the City of the specific day of that calendar month on which Lindale Rural will perform the disconnection of delinquent accounts for the City.
- E. The City accepts full and total responsibility for conformance with all notice requirements outlined in this agreement as it pertains to the disconnection of sewer services provided by the City of Tyler.
- F. By 5:00 p.m. on the day immediately preceding the disconnection as defined by Section V, City will provide to Lindale Rural written notification of the specific accounts for which the City seeks a disconnection of water service. The written notification shall include, but not be limited to, the City's billing account number and Lindale Rural's billing account number for each account for which disconnection is requested. An email notification sent to the proper contacts would suffice in place of an actual "written" notice.

G. Lindale Rural shall not be obligated or required to disconnect any water service until it has received a written request from the City requesting the disconnection of water service for a specific customer. Such written request shall include, but not be limited to, certification from the City that the customer's account is delinquent, that all required notices of delinquency and termination have been properly given, that the delinquent bill is undisputed, and that no person residing on the customer's premises is seriously ill.

SECTION VI: TRANSITION PROCEDURE

During the first sixty (60) days following the effective date of this Agreement, while Lindale Rural and the City complete the exchange of common customer account information as described in Section V, the City may seek a discontinuance of water services for specific accounts by submitting customer account information as described in Section V, to Lindale Rural for those delinquent accounts for which the City requests disconnection on or before the fifth (5th) day of each month along with a certification from the City that the customer's account is delinquent, that all required notices of delinquency and termination have been properly given, that the delinquent bill is undisputed and that no person residing on the customer's premises is seriously ill. Lindale Rural will perform the disconnection within twenty-five (25) days of receipt of this information from the City.

SECTION VII: AGREEMENT TO PROVIDE CONSUMPTION USAGE TO CITY

As part of this mutual agreement, and to provide accurate billing to customers of the City of Tyler's sewer services, Lindal Rural agrees to provide to City, on or before the 10th of every month, the actual consumption usage of the customers who are in common as defined in this agreement.

SECTION VIII: GENERAL CONDITIONS, INDEMNITY AND RELEASE OF CLAIMS

TO THE EXTENT PERMITTED BY LAW, EACH PARTY AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY, THEIR RESPECTIVE CONTRACTORS, SUBCONTRACTORS, AND THEIR OFFICERS, AGENTS,

ATTORNEYS, EMPLOYEES, AND REPRESENTATIVES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, JUDGMENTS, CAUSES OF ACTION, SUITS, INJURIES TO OR DEATH OF PERSONS, DAMAGE TO OR LOSS OF PROPERTY, AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEY'S FEES AND OTHER REASONABLE COSTS, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT, BUT ONLY PROPORTIONALLY TO THE EXTENT THAT THE HARM WAS DIRECTLY CAUSED BY THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF INDEMNIFYING PARTY, ITS CONTRACTORS, SUBCONTRACTORS, ITS OFFICERS, AGENTS, ATTORNEYS, EMPLOYEES AND REPRESENTATIVES, INCLUDING ALL CAUSES OF ACTION BASED ON COMMON, CONSTITUTIONAL, OR STATUTORY LAW. FURTHER, THE CITY, LINDALE RURAL, THEIR RESPECTIVE CONTRACTORS, AND/OR SUBCONTRACTORS ASSUME NO RESPONSIBILITY OR LIABILITY FOR HARM, INJURY, OR ANY DAMAGING EVENTS WHICH ARE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO OR DUE TO ACTS OF GOD OR GOVERNMENT, STRIKES, CIVIL DISTURBANCES, OR ANY OTHER ACTS OF FORCE MAJEURE, OR OTHER EVENTS NOT OTHERWISE WITHIN THE CITY'S CONTROL.

SECTION IX: CONTROLLING LAW/VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas and the ordinances of the City of Tyler, Texas. Venue for any action brought to enforce or interpret the agreement shall lie exclusively in a court of competent jurisdiction in Smith County, Texas for actions in state court, and in the Eastern District of Texas, Tyler Division, for actions in Federal Court.

SECTION X: SEVERABILITY

If any provisions of this Agreement is determined by any regulatory or judicial body to be invalid, in violation of any law, or to be contrary to the rules, regulations, or orders of such body, or if any party to this Agreement is ordered or required by such body not to comply with any provision of this Agreement, this Agreement automatically and

without notice terminates without penalty at the time such order becomes final and subject to appeal.

SECTION XI: TERMINATION

This agreement may be terminated by either party by any of the following:

- A. Either party to this Agreement may cancel same at any time for any reason by giving the other party thirty (30) days written notice of cancellation. Such notice may be given by hand delivery or certified mail, prepaid postage, or return receipt requested to the address shown under this Agreement's "Notices" provision in Section XV below.
- B. Any party may terminate this Agreement following a default by the other party in the performance of this Agreement and the failure to correct said default within thirty (30) days after written notice of default has been provided by the non-defaulting party.

SECTION XII: MODIFICATION

This Agreement may not be modified, altered, or amended except by written instrument duly executed by both parties. Any attempted modification, alteration, or amendment not duly executed by both parties shall be null and void, and of no effect.

SECTION XIII: ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and supersedes all other agreements or understandings, oral or written. This agreement shall be binding upon the parties hereto, their respective successors, and heirs and permitted assigns.

SECTION XIV: ACKNOWLEDGEMENT

By signing this Agreement, Lindale Rural is certifying that they have read the foregoing Agreement in its entirety and does now by the signature(s) below certify that Lindale Rural fully understands all of its terms and conditions. Lindale Rural does now execute this Agreement voluntarily and with full knowledge of its significance.

SECTION XV: NOTICES

All notices or communications ("Notices") to be given under or pursuant to this Agreement shall be in writing, addressed to the parties at their respective addresses as set forth below, and shall be delivered by personal delivery, U.S. certified mail, postage prepaid, return receipt requested, or reputable, national, pre-paid overnight delivery service.

If to the City:

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

If to Lindale Rural:

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

SECTION XVI: PURPOSE OF AGREEMENT

Nothing in this agreement creates a partnership or joint venture between the parties. The parties agree and acknowledge that each is not an agent of the other party.

SECTION XVII: EFFECTIVE DATE

It is agreed by the parties hereto the effective date of this Agreement shall be the _____ day of _____ 2025 A.D. As of the effective date hereof, this Agreement shall be considered in full force and effect.

IN WITNESS WHEREOF, the parties to this agreement have executed this agreement on this the _____ day of _____ 2025.

ATTEST:

CITY OF TYLER

CASSANDRA BRAGER
City Clerk

By: _____
EDWARD BROUSSARD
City Manager, City of Tyler, Texas

APPROVED:

CITY ATTORNEY

ATTEST:

LINDALE RURAL WATER SUPPLY

By: _____
Carlos Carreon
General Manager



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number. C-A-9

Date: April 30, 2025

Subject: Request that the City Council consider authorizing the City Manager to execute a construction contract in the amount of \$241,303.90 with CRS Commercial Roof Specialist Inc., for the Golden Road Water Treatment Plant Roof Replacement Project and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

Item Reference:

The roof at the Golden Road Water Treatment Plant is nearing the end of its useful life and has developed leaks that are affecting the facility's operations and equipment. Routine inspections and maintenance have indicated the need for a full replacement to protect the integrity of the structure and ensure continued safe operations of the plant.

The Golden Road Water Treatment Plant Roof Replacement Project was publicly advertised, and bids were opened on April 8, 2025. The following bids were received:

1. CRS Commercial Roof Specialist Inc.: \$241,303.90

The engineer and City staff have reviewed the bids and recommends that the Construction Contract, in the amount of \$241,303.90, be awarded to the lowest bidder, CRS Commercial Roof Specialist Inc. of Cedar Hill, Texas.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a construction contract in the amount of \$241,303.90 with CRS Commercial Roof Specialist Inc., for the Golden Road Water Treatment Plant Roof Replacement Project and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

Attachments:

[Resolution C-A-9](#)

[Recommendation Letter](#)

Drafted/Recommended By:

Department Leader

Nikki Ingram, P.E., Project Engineer/Kate Dietz, P.E., Director of Utilities

Edited/Submitted By:
City Manager

RESOLUTION NO. R-2025-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE DEBT FOR THE ENGINEERING, DESIGN, AND CONSTRUCTION OF THE GOLDEN ROAD WATER TREATMENT PLANT ROOF REPLACEMENT PROJECT; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Tyler, Texas (the "Issuer") reserves the right to issue debt for the engineering, design, and construction of the Golden Road Water Treatment Plant Roof Replacement Project (the "Project") and further intends to make certain capital expenditures with respect to the Project and currently reserves the right to reimburse the capital expenditures with proceeds of such debt; and

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

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

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

Part 1: That the City of Tyler reasonably expects to reserve the right to reimburse capital expenditures with respect to the Project with proceeds of future potential debt hereafter which may be incurred by the Issuer, and that this Resolution shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Project is \$241,303.90.

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

PASSED AND APPROVED, this the 30th day of April, 2025.

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

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM, CITY
ATTORNEY

WHARRY ENGINEERING

BUILDING RESTORATION & ROOFING CONSULTANTS

P O Box 550263, Dallas, TX 75355

(972) 272-4116 OFFICE (972) 272-5049 FAX

April 8, 2025

City of Tyler
Project Engineer
Tyler Water Utilities
Tyler, Texas
Nikki Ingram
Email: ningram@tylertexas.com

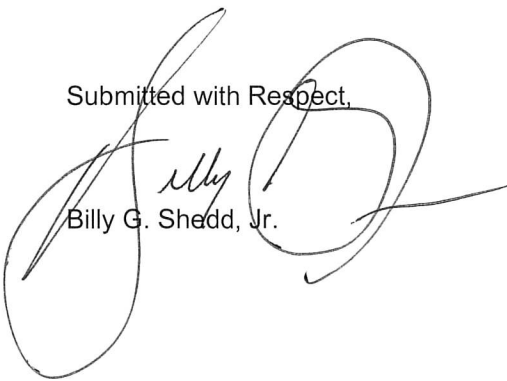
Re: Award Recommendation Letter
City of Tyler- GRWTP- Roof Replacement
2228 Golden Rd
Tyler, Texas 75702

Dear Nikki,

I am pleased to recommend CRS Roofing for the roof replacement of the Golden Road Water Treatment plant. As the owner of CRS Roofing, James Stewart and his team have consistently demonstrated exceptional skills and dedication in the field of roofing and sheet metal. I have had the pleasure over the last five (5) years of working with them on various projects.

During his tenure, James has achieved remarkable success in the field of roofing, and he and his firm have come highly recommended by other entities in the Dallas Fort-Worth area. I have no doubt that the CRS Roofing team can complete the roof replacement project successfully and efficiently.

Submitted with Respect,


Billy G. Shedd, Jr.