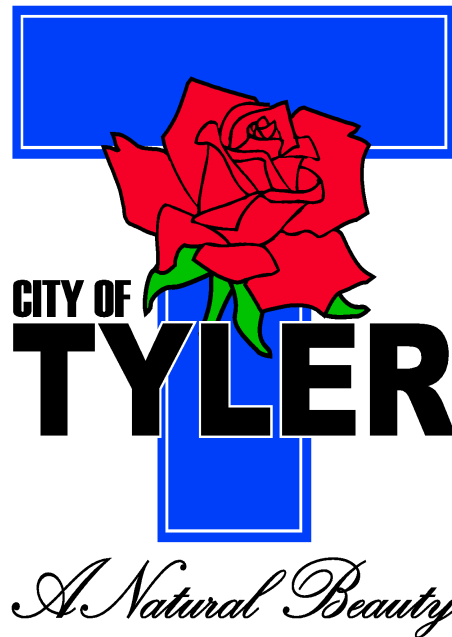


CITY COUNCIL AGENDA

Wednesday, January 24, 2024
9:00 am



CITY COUNCIL

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



CITY COUNCIL MEETING AGENDA

CITY COUNCIL CHAMBERS - CITY HALL

City Hall, City Council Chambers

212 N. Bonner Avenue, 2nd Floor

Tyler, Texas

Follow us on Facebook Live at:

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

Wednesday, January 24, 2024

9:00 am

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

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

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

AMERICANS WITH DISABILITIES ACT NOTICE

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

COURTESY RULES

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

INVOCATION

PLEDGE OF ALLEGIANCE

MINUTES

Request that the City Council consider approving the minutes of the regular meeting of the City Council of the City of Tyler, Texas held on December 13, 2023.

AWARDS

- A-1** Request that the City Council consider recognizing the following employees for their years of service and commitment to the City of Tyler. They represent 150 years of service with the City of Tyler.

Nicole Johnson, Municipal Court Administrator, 20 years of service
Stephanie Smith, Senior PS Telecommunicator II, 25 years of service
James Seaton, Fire Battalion Chief II, 25 years of service
Randy Lee, Fire Driver Engineer III, 25 years of service
Michael Cox, Public Service Officer, 25 years of service
Brent Hail, Fire Driver Engineer IV, 30 years of service

ZONING

- Z-1** ZA23-004 UNIFIED DEVELOPMENT CODE (20 YEAR CITY LIMITS)
Request that the City Council consider adoption of an Ordinance making an uncontestable finding that all territory included within the City of Tyler since December 31, 2003, is part of the City.
- Z-2** S23-009 MORALES LUIS & GUADALUPE (403, 405, 407 SOUTH VINE AVENUE AND 706, 708, 710, 712 WEST FRONT STREET)
Request that the City Council consider adoption of an Ordinance approving a Special Use Permit to allow for a major food truck park.
- Z-3** S23-010 MELANIE AND RICKEY ROBERTS (3200 GARDEN VALLEY ROAD)
Request that the City Council consider adoption of an Ordinance approving a Special Use Permit renewal for a daycare center.
- Z-4** Z23-045 GENECOV WEST MUD CREEK LLC (A 9.69 ACRE PORTION OF 8020 AND 8360 HOLLYTREE DRIVE)

Request that the City Council consider adoption of an Ordinance approving a zone change from “PMF”, Planned Multi-Family Residential District, “C-1”, Light Commercial District, and “PUR”, Planned Unit Residential District to “PMXD-1”, Planned Mixed-Use District 1 with written narrative, “PUR”, Planned Unit Residential District with written narrative, and “C-1”, Light Commercial District.

Z-5 Z23-044 DENNIS WALKER (2602 SEATON STREET)

Request that the City Council consider adoption of an Ordinance approving a zone change from “C-2”, General Commercial District, to “R-MF”, Multi-Family Residential District.

Z-6 Z23-040 JENKINS REGINALD (1520 WEST OAKWOOD STREET)

Request that the City Council consider adoption of an Ordinance approving a zone change from “R-MF”, Multi-Family Residential District to “R-2”, Two-Family Residential District.

RESOLUTION

R-1 Request that the City Council consider adoption of a Resolution authorizing the filing of an application with the Texas Parks and Wildlife Department (TPWD) for a Recreational Trails Grant and authorizing the City Manager to take all actions needed to receive and expend grant funds.

R-2 Request that the City Council consider adoption of a Resolution authorizing submission of an application by the Tyler Fire Department for and acceptance of grant funding through the Office of the Texas Governor’s (OOG) Homeland Security Grant Division (HSGD) and for grant funding through the State Homeland Security Program (SHSP), as managed by the East Texas Council of Governments, to be used to support programs and projects aimed at maintaining and/or enhancing the City of Tyler’s emergency preparedness and response capabilities.

ORDINANCE

O-1 Request that the City Council consider adoption of an Ordinance amending Tyler City Code Chapter 3, Civil Service Classification Plan by amending the Civil Service Classification Plan and number of authorized Civil Service positions for Fiscal Year 2023-2024.

MISCELLANEOUS

M-1 Request that the City Council consider authorizing the City Manager to execute a contract in the amount of \$143,100, with KSA Engineers, Inc., for the Decommissioning of Wells 2, 4, and 5 and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

M-2 Request that the City Council consider authorizing the City Manager to execute a professional services contract in the amount of \$99,910.00, with Half Associates, Inc., for the Water Conservation and Drought Contingency Plan Report project and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

CONSENT

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

- C-A-1** Request that the City Council consider authorizing the application and acceptance of grant funding from the Office of the Governor, Public Safety Office – Criminal Justice Division, in the amount not to exceed \$99,475.28, for the purchase of protective ballistic shields.
- C-A-2** Request that the City Council consider adoption of a Resolution authorizing the application and acceptance of grant funding for the Police Department from the Office of the Governor, Homeland Security Grants Division, in the amount not to exceed \$66,800, for the purchase of equipment intended to support local preparedness for law enforcement terrorism prevention activities.
- C-A-3** Request that the City Council consider authorizing the City Manager, on behalf of the Tyler Police Department, to seek funding from the Department of Justice through the Edward Byrne Memorial Justice Assistance Grant (JAG), FY2025 in the amount of \$47,925.02 to fund the purchase of PANASONIC Toughbook 55 laptops with adaptors.
- C-A-4** Request that the City Council consider authorizing the City Manager to execute the proposal with Hi-Lite Airfield Services, LLC under the Sourcewell Contract # 110122-HLA in the amount of \$63,219.50 for repainting the surface painted markings on Taxiways Foxtrot and Kilo at Tyler Pounds Regional Airport.
- C-A-5** Request that the City Council consider amending and updating Tyler City Code Chapter 12 for adjustments to the office space rental rate fee for on-site car rentals at Tyler Pounds Regional Airport.

CITY MANAGER'S REPORT

ADJOURNMENT

**MINUTES OF THE REGULAR CALLED MEETING OF
THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
December 13, 2023**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, December 13, 2023 at 9:00 a.m. in the City Council Chambers, 2nd floor of City Hall, Tyler, Texas, with the following present:

Mayor:	Don Warren
Mayor Pro Tem:	Brad Curtis
Councilmembers:	Stuart Hene
	Shirley McKellar
	Broderick McGee
	James Wynne
	Lloyd Nichols
City Manager:	Edward Broussard
Deputy City Manager:	Stephanie Franklin
Asst. City Manager:	Heather Nick
City Attorney:	Deborah G. Pullum
Senior Asst. City Attorney:	Alesha Buckner
Director of Organizational Development:	Regina Y. Moss
Interim Main Street Director:	Amber Rojas
Planning Director:	Kyle Kingma
Chief Information Officer:	Benny Yazdanpanahi
City Fire Chief:	David Coble
Police Chief:	Jimmy Toler
City Engineer:	Darin Jennings
Director of Utilities:	Kate Dietz
Director of Solid Waste, Transit:	Leroy Sparrow
Transit Manager:	Russ Jackson
Project Engineer:	Jacob Yanker
Manager, Water Business Office:	Tiffany Dunkley
City Clerk:	Cassandra Brager

INVOCATION

The Invocation was given by Councilmember McKellar.

MINUTES

Motion by Councilmember Wynne to approve the October 25, 2023 minutes; seconded by Mayor Pro Tem Curtis; motion carried 7 - 0 & approved as presented.

AWARDS

Request that the City Council consider recognizing the following employees for their years of service and commitment to the City of Tyler. They represent 130 years of service with the City of Tyler.

**Gary King, Police Officer XIV, 30 years of service
Justin Kuehn, Police Officer XIV, 30 years of service**

December 13, 2023

Jimmy Toler, Police Chief, 30 years of service
Dorothy Sanders, Parks, Clerk, 20 years of service
Nicole Johnson, Municipal Court Administrator, 20 years of service

ZONING

- Z-1 ZA23-003 UNIFIED DEVELOPMENT CODE (BIANNUAL REVIEW)**
Request that the City Council consider adoption of an ordinance amending the Unified Development Code in Tyler City Code Chapter 10 by classifying new land uses, amending use regulations related to tobacco/vape/smoke stores, auto/motorcycle repair, tire sales, self-storage facilities and bail bonds, and by revising and adding definitions. (O-2023-115)

Marty Crawford, TISD 1319 Earl Campbell Pkwy – Stated that this was something that they were dealing with within the schools and this is a good start to making sure that we have a focus in our community on this burgeoning issue.

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

- Z-2 Z23-035 VEREIT OFC TYLER TX LLC (3355 EARL CAMPBELL PARKWAY)**
Request that the City Council consider adoption of an Ordinance approving a zone change from "M-1", Light Industrial District to "C-2", General Commercial District. (O-2023-116)

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

- Z-3 C23-006 TYLER ER REALTY LLC (UNIMPROVED PORTIONS OF COMMERCIAL DRIVE AND REPUBLIC DRIVE)**
Request that the City Council consider adoption of an Ordinance approving the closure of unimproved portions of Commercial Drive and Republic Drive. (O-2023-117)

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

- Z-4 Z23-034 SEC INVESTMENTS LLC (3314 AND 3316 TROUP HIGHWAY)**
Request that the City Council consider adoption of an Ordinance approving a zone change from "PMXD-1", Planned Mixed-Use District 1 to "C-1", Light Commercial District. (O-2023-118)

Matt Schaefer, PO Box 6982, Tyler, Texas – Stated that the underlying assumption of this zoning request is that there will be a new business located at this property. I represent Tiffany Bust and is the operator of the Roost Restaurant that's in business there now. She's been in the restaurant business for 16 years, but this is her first year as a restaurant owner and operator. It is Tiffany's position that she has the legal right to maintain her lease for the next few years, and so we just want to convey to the council that there is obviously a dispute between the landlord and tenant here as to the nature of the lease. However, they are trying to work that out

December 13, 2023

informally at this time, but again, the underlying assumption of this zoning request is that there's going to be a new business, and the underlying assumption of the business that is there now is that their business will continue. We just want to bring that information to the Council for your consideration. Perhaps a pause in this process might be worthy of consideration.

Councilmember Curtis – Asked if the Council voted to change the zoning to C-1, would it affect the existing restaurant at all?

Planning Director, Kyle Kingma – Stated, “No.”

Sam Ivy, 10582 CR 246, Tyler, Texas and Matthew Marshall, 1600 Brandywine Dr, Tyler, Texas were present just for questions.

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

- Z-5 Z23-033 NTET INVESTMENTS LLC (221 SOUTH THOMPSON AVENUE)
Request that the City Council consider adoption of an Ordinance approving a zone change from “RPO”, Restricted Professional Office District to “DBAC”, Downtown Business, Arts and Culture District. (O-2023-119)**

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

- Z-6 Z23-032 CARTAGENA FRANKLIN R & NANCY M (325 WEST WILSON STREET)
Request that the City Council consider adoption of an Ordinance approving a zone change from “R-MF”, Multi-Family Residential District to “R-2”, Two-Family Residential District.
(O-2023-120)**

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

RESOLUTION

- R-1 Request that the City Council consider adoption of a Resolution authorizing the City Manager's application for and acceptance of East Texas Council of Government Local Matching Funds in the amount of \$150,000 to assist with the Transit Department's operating cost. This Resolution also accepts any amendments to increase the funding levels and reduce the local match requirements. (R-2023-47)**

David Cleveland, 3800 Stone Rd. Kilgore, Texas – Stated that from the East Texas Council of Governments perspective, this makes an awful lot of sense, and we appreciate the partnership with the City of Tyler and look forward to future collaborations like this. This is year one, and we hope to be back here next year.

December 13, 2023

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

ORDINANCE

- O-1 Request that the City Council consider adopting an Ordinance amending the Fiscal Year 2023-2024 Budget to provide funding to complete various construction projects, motor vehicle purchases, and other purchases not completed by September 30, 2023, as anticipated. (O-2023-121)**

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

MISCELLANEOUS

- M-1 Request that the City Council review and consider accepting the Revenue and Expenditure Report for the period ending Sept 30, 2023.**

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

- M-2 Request that the City Council consider authorizing the City Manager to execute a construction contract with Paragon Construction for the construction of the Tyler Water Utilities Service Center Remodel project in the amount of \$616,132.00 and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt. (R-2023-48)**

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

- M-3 Request that the City Council consider authorizing the City Manager to execute a construction contract with Capps-Capco Construction for the construction of the Charleston Lift Station Rehabilitation project in the amount of \$621,033.00 and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt. (R-2023-49)**

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

- M-4 Request that the City Council consider authorizing the City Manager to execute all necessary documents and contract/s to accomplish water meter replacement project with Core and Main of Tyler, TX, in the amount of \$3,450,000 for the purchase of Neptune water meters, register units, and accessories during Fiscal Year 2023-2024 as needed and to furnish material and labor for replacing existing water meters that have been identified for replacement with the Neptune T10 and associated infrastructure, HGAC Contract number 20-00808.**

December 13, 2023

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

- M-5 Request that the City Council consider awarding the Medical and Pharmacy Stop-Loss contract to Berkley for the calendar year starting January 1, 2024.**

Lance Pendley, McGriff Insurance Services – Gave a brief update on the Medical and Pharmacy Stop-Loss.

Motion by Councilmember Nichols; seconded by Councilmember Wynne; 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 approving the 2023 Certified Property Tax Roll.**
- C-A-2 Request that the City Council consider approving the requested landfill gate rate increase of \$4 per ton, which changes the rate from \$34 per ton to \$38 per ton.**
- C-A-3 Request that the City Council consider authorizing the City Manager to purchase a Sunset Promaster Conversion Low Floor Ram 3500 Van for the Transit Department from ABC Bus Inc., through the State of Georgia Contract for \$180,744.86.**
- C-A-4 Request that the City Council consider reviewing and accepting the Investment Report for the quarter ending September 30, 2023.**
- C-A-5 Request that the City Council consider authorizing the City Manager to ratify an expenditure in the amount of \$132,692.90 for the Mandated Annual Water Quality Assessment Fee to the Texas Commission on Environmental Quality.**
- C-A-6 Request that the City Council consider authorizing the City Manager to award multiple vendors for the Annual Price Agreement for Automotive and Equipment parts per bid 23-092.**
- C-A-7 Request that the City Council consider authorizing the City Manager to execute a contract extension with USIC Locating Services, LLC for locating and marking water, sewer, and stormwater underground facilities in a new contract amount not to exceed \$500,000, Buyboard Contract Number 632-20.**
- C-A-8 Request that the City Council consider authorizing the City Manager to release a sanitary sewer easement, in which the sewer line has been abandoned, from Copper Creek Addition Lot 11-A.**

- C-A-9 Request that the City Council consider authorizing the City Manager to purchase additional safety equipment for the already approved Sunset Promaster 3500 Conversion Low Floor Vans for Transit Department from ABC Bus, Inc., through the State of Georgia Contract for an additional \$5,234.00 for a total purchase price of \$350,489.72.**
- C-A-10 Request that the City Council consider authorizing funds for Change Order No. 1 to the construction contract with True Roads Construction, LLC., for the Numerous Drainage Improvements Project in the amount of \$85,186.00.**
- C-A-11 Request that the City Council consider authorizing the City Manager to cancel the purchase of three (3) out of the four (4) Arboc Buses for the Transit Department from Creative Bus Sales/Mobile 1.**
- C-A-12 Request that the City Council consider authorizing the City Manager to purchase two (2) Frontrunner ProMaster buses for the Transit Department from ABC Bus, Inc., for \$433,938.00 through the Georgia DOAS contract 99999-SPD-SPD0000212-0010.**
- C-A-13 Request that the City Council consider authorizing the City Manager to approve the partial release of the sewer easement on 3135 Cascade Court that has been verified as no longer needed after construction of a new line.**
- C-A-14 Request that the City Council consider authorizing the City Manager to ratify Change Order No. 1 with Hartbeat Construction for additional work as part of the Repair of Inlet Boxes - 2023 project, increasing the total amount by \$34,544.22.**
- C-A-15 Request that the City Council consider authorizing the City Manager to approve the Amendment #2 to Via Mobility, LLC, RFP 21-008, to add Micro Transit software and in person training. The additional cost will pay for three (3) vehicles to operate Micro Transit software in the amount of \$14,400.00 and the in-person training in the amount of \$7,500.00, for an added annual cost of \$21,900.00 for the first year.**
- C-A-16 Request that the City Council consider authorizing the City Manager to execute the one (1) year lease with The Braun Corporation for 81,276 square feet of the Airport Drive North Parking Lot from December 15, 2023 to December 14, 2024 at Tyler Pounds Regional Airport.**
- C-A-17 Request that the City Council consider authorizing the City Manager to execute the Work Order #3 to KSA Engineers, Inc., to provide engineering services for the Passenger Boarding Bridge Study for a total cost of \$33,254.00 at Tyler Pounds Regional Airport.**
- C-A-18 Request that the City Council consider authorizing the City Manager to purchase (1) one 72" mower to replace unit 15529 for the Parks Department from Turf and Supply Maintenance through Sourcewell contract #070821-ATZ with the option to purchase additional units as they become available under the same Sourcewell contract.**

December 13, 2023

- C-A-19 **Request that the City Council consider adopting a Resolution authorizing the Tyler Police Department to participate with other law enforcement agencies in the submission of a grant request from the Texas Motor Vehicle Crime Prevention Authority (MVCPA) for the thirtieth year of funding to participate in the East Texas Auto Theft Task Force and authorize the City Manager to enter into a working agreement regarding the same. (R-2023-50)**
- C-A-20 **Request that the City Council consider approving a re-plat of Lot 4A in the Peninsula North Subdivision, located on Lake Tyler.**
- C-A-21 **Request that the City Council consider authorizing the City Manager to execute Change Order No. 1 to the construction contract with True Roads Construction, LLC., for the Numerous Drainage Improvements Project in the amount of \$85,186.00.**
- C-A-22 **Request that the City Council consider authorizing the City Manager to execute a contract with Morton Enterprise for the construction of the 2024 Asphalt Crack Seal Project in the amount of \$491,119.00.**
- C-A-23 **Request that the City Council consider ratifying a payment to STI in the amount of \$69,855 for the replacement of a 55' signal pole damaged by a motor vehicle accident on 11/18/23.**
- C-A-24 **Request that the City Council consider authorizing the purchase of 42 sets of turnout gear in the amount of \$137,340.00 for the Tyler Fire Department.**
- C-A-25 **Request that the City Council consider authorizing the City Manager to execute an agreement with Cequel Communications dba Optimum Business (formerly Suddenlink Communications) for fiber optic connectivity.**

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

CITY MANAGER'S REPORT

1. I want to introduce our new Assistant Fire Chief Kelly Atkinson. He's been a member of the Tyler Fire Department for 27 years and interviewed for the position, went through a rigorous panel review, and they asked Kelly if he wanted the position, and he said yes. We're glad for that.
2. The next thing I want to address is yesterday we had our employee luncheon to celebrate the holidays and we talked about what a great year 2023 has been and I want to put that in perspective for the Council for the achievements you've had. You opened the new W.T. Brookshire Conference Center this year. The Cambridge Bend bid \$9 million on a major road and drainage improvement project that was multi-years, completed. The Downtown Master Plan and Implementation Schedule was agreed upon with the County. You will see construction in this upcoming calendar year. You've been able to do amazing public safety with Police and Fire, such as Tower 10. That brought in which continues our ability to keep that one I.S.O. rating. Then, the Police Department forces had amazing work and success. Recently, there was a cold case story you were able to pay attention or noticed, two rapes that

December 13, 2023

occurred in 2005. Through working with other law enforcement agencies, even though we're talking about something that was nearly 20 years ago, they were able to identify, finally, who the rapist was and arrest them. That was an incredible amount of dedication and continued diligence. That's the kind of stuff our Police Department provides every day. In the Parks Department, we had the revitalizations of P.T. Cole Park and Noble E. Young Park. Councilman McGee was quite successful in making sure his district was good. We just reopened Pollard Park this past weekend. Legacy Trail is the next phase of that which, again, is Councilman McGee's district. As far as starting construction on that one, which lengths all the way from 155 to Peete Elementary will just be an impressive trail addition to our system. The water and wastewater work, as you all know, is at every Council meeting you have. You are doing numerous improvements to our water and wastewater system all the way through. Solid Waste continues to provide exceptional service that is recognized by our citizens. Transit, of course, had some major discussions this year and partnerships have emerged there. I want to make sure we talk about the internal services from our Finance, Legal, I.T., Organization Development, and Communications Departments, the City Clerk, all these people are behind the scenes making sure all we provide for our citizens is understood and top rate and we're able to provide the resources needed with this call to serve excellence that we've continued to move forward with. This is something I want to say thank you for making this past year. It's such an incredible achievement, the work you do here twice a month helps make the direction forward so we're able to help our neighbors, our families, our loved ones have a better Tyler for tomorrow. Thank you, Council, for your work.

3. We have two new engines coming as well, with ceremonies right around the corner. There will be two of them back-to-back.

Councilmember McKellar - I want to say thank you also, and I have one question. When will the Glenwood water tower come down?

Kate Dietz, Director of Utilities – Stated that it would be in the next couple of years, but she was not sure and that she would get the answer and let Councilmember McKellar know.

4. Mayor Warren- Stated that this will be our only meeting for this month, so I'll say the same that Ed said. It's been an honor to serve with everybody in 2023. I look forward to 2024. Thank you to all the Staff, and all the citizens out there. We appreciate you all.

EXECUTIVE SESSION-City Council convened into executive session at 10:24 am

The City Council may go into Executive Session regarding any item posted on the agenda as authorized by Title 5, Chapter 551 of the Texas Government Code. Notice is hereby given that the City Council may go into Executive Session in accordance with the following provisions of the Government Code:

Executive Session Item No. 1: Under Tex. Gov't Code Section 551.071 "Litigation", deliberation regarding the following:

Pending or contemplated litigation or settlement offer involving Leland Bradlee Construction, Inc. and Lexon Insurance Company.

Litigation is, by its nature, an on-going process, and questions may arise as to trial tactics, 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 subjects listed above.

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

December 13, 2023

City Council reconvened from executive session at 10:49 am with the following action:

Motion by Mayor Pro Tem Curtis to approve the settlement agreement with Leland Bradlee Construction Inc. and Lexon Insurance Company and authorize the City Manager to execute the proposed settlement agreement which, in essence, includes the penal sum of the original C.I.P. contract be reduced from \$1,297,694.50 down to \$1,182,063.50 and that the City pay Lexon on behalf of Leland Bradley, the sum of \$87,256.20 as full and final consideration on a project to resolve the dispute. Seconded by Councilmember Hene; motion carried 7 - 0 & approved.

ADJOURNMENT

Motion by Councilmember McKellar to adjourn the meeting at 10:50 am; seconded by Councilmember McGee; motion carried 7 – 0 & meeting adjourned.

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

A T T E S T:

CASSANDRA BRAGER, CITY CLERK



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: A-1

Date: January 24, 2024

Subject: Request that the City Council consider recognizing the following employees for their years of service and commitment to the City of Tyler. They represent 150 years of service with the City of Tyler.

Nicole Johnson, Municipal Court Administrator, 20 years of service
Stephanie Smith, Senior PS Telecommunicator II, 25 years of service
James Seaton, Fire Battalion Chief II, 25 years of service
Randy Lee, Fire Driver Engineer III, 25 years of service
Michael Cox, Public Service Officer, 25 years of service
Brent Hail, Fire Driver Engineer IV, 30 years of service

Page: Page 1 of

Item Reference:

Request that the City Council consider recognizing the following employees for their years of service and commitment to the City of Tyler. They represent 150 years of service with the City of Tyler.

Nicole Johnson, Municipal Court Administrator, 20 years of service
Stephanie Smith, Senior PS Telecommunicator II, 25 years of service
James Seaton, Fire Battalion Chief II, 25 years of service
Randy Lee, Fire Driver Engineer III, 25 years of service
Michael Cox, Public Service Officer, 25 years of service
Brent Hail, Fire Driver Engineer IV, 30 years of service

RECOMMENDATION:

Requests that the City Council consider recognizing the following employees for their years of service and commitment to the City of Tyler. They represent 150 years of service with the City of Tyler.

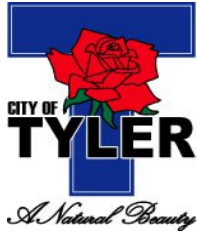
ATTACHMENTS:

[January 2024 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: January 24, 2024
Subject: Award for January 2024
Page: Page 1 of 1
Item Reference: Service Award

We would like to recognize the following employees for their 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. They represent **150** years of service with the City of Tyler.

Service Awards

Date of Hire	First Name	Last Name	Title	Department	Years of Service
12/22/2003	Nicole	Johnson	Municipal Court Administrator	Municipal Court	20
1/2/1999	Stephanie	Smith	Senior PS Telecommunicator II	Police	25
1/11/1999	James	Seaton	Fire Battalion Chief II	Fire	25
1/11/1999	Randy	Lee	Fire Driver Engineer III	Fire	25
1/27/1999	Michael	Cox	Public Service Officer	Police	25
1/13/1994	Brent	Hail	Fire Driver Engineer IV	Fire	30

Drafted/Recommended By: Department Leader

Regina Y. Moss



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-1

Date: January 24, 2024

Subject: ZA23-004 UNIFIED DEVELOPMENT CODE (20 YEAR CITY LIMITS)
Request that the City Council consider adoption of an Ordinance making an uncontestable finding that all territory included within the City of Tyler since December 31, 2003, is part of the City.

Page: Page 1 of

Item Reference: Texas Local Government Code Section 41.003; Tyler City Code Chapter 10, Article XII.

Texas Local Government Code Section 41.003 provides that if the City Council adopts an ordinance declaring an area that meets the statutory requirements to be part of the City, that finding is uncontestable.

The Local Government Code allows cities to adopt an ordinance declaring areas that have been part of the city for at least 20 years to be declared a part of the city subject to certain conditions. City staff has prepared a map of the annexations through December 31, 2003, for declaration (Exhibit A).

This benefit precludes any contest by any party following adoption of an ordinance based on the 20 year annexation map. While the City of Tyler hopes that there will be no dispute with any surrounding municipalities, the City can never be certain that such a dispute will not develop. Such situations are more apt to arise when the City seeks to annex territory, or defines its extraterritorial jurisdiction (ETJ) in a manner that may conflict with planned expansions by other cities. In the context of such controversies, flaws in old ordinances can sometimes be used to challenge the validity of newer annexations that are otherwise valid.

The adoption of this ordinance will, therefore, eliminate some potential challenges to the validity of historical annexation ordinances. The map attached to the ordinance depicts the Tyler city limits as of December 31, 2003. The area within this boundary, therefore, (1) has been treated as part of the city for at least 20 years, (2) has been receiving city services for at least that long, (3) has never been found by a court to be outside the city, and (4) is not currently challenged in any lawsuit. Under State statute, if territory meets these four criteria, a city may adopt an ordinance to create an irrefutable presumption that the territory has been part of the City for all purposes. This may, therefore, eliminate one potential avenue of attack should a challenge to Tyler annexations ever be made in the future.

On January 2, 2024, the Planning and Zoning Commission held a public hearing for this item. No one

spoke in favor or in opposition to the adoption of the ordinance.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of the ordinance.

ATTACHMENTS:

[Ordinance](#)

[Map](#)

Drafted/Recommended By:

Department Leader

Kyle Kingma, AICP, Planning Director

Edited/Submitted By:

City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, ALLOWING FOR THE INCLUSION OF AREA RECEIVING LONGSTANDING TREATMENT AS PART OF THE MUNICIPALITY PURSUANT TO SECTION 41.003 OF THE TEXAS LOCAL GOVERNMENT CODE BY MAKING AN UNCONTESTABLE FINDING THAT ALL TERRITORY INCLUDED WITHIN THE CITY OF TYLER FOR THE PRECEDING 20 YEARS IS PART OF THE CITY OF TYLER, TEXAS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Texas Local Government Code Section 41.003 provides that an irrebuttable presumption attaches to the inclusion within the city of any area that has been functionally a part of the city for 20 years; and

WHEREAS, the records of the City indicate that the area designated in the attached Exhibit “A” has been a part of the City for at least the preceding 20 years; and

WHEREAS, the City has provided municipal services, including police protection, to the area and has treated the area as part of the City during the preceding 20 years; and

WHEREAS, there has not been a final judicial determination during the preceding 20 years that the area is outside the boundaries of the City; and

WHEREAS, there is no pending lawsuit that challenges the inclusion of the area as part of the City;

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

PART 1: That the findings herein are adopted. The City Council hereby makes the following findings that on the date of adoption of this ordinance:

1. That City records indicate that the area designated in the attached Exhibit “A” has been a part of the City of Tyler for at least the preceding 20 years; and
2. That the City of Tyler has provided municipal services, including police protection, to the area designated in the attached Exhibit “A” and has treated the area as part of the city during the preceding 20 years; and
3. That there has not been a final judicial determination during the preceding 20 years that the area designated in the attached Exhibit “A” is outside the boundaries of the City of Tyler; and
4. That there is no pending lawsuit that challenges the inclusion of the area designated in the attached Exhibit “A” as part of the City of Tyler.

PART 2: That as the requirements of Texas Local Government Code Section 41.003(b) for inclusion of the area have been met, the inclusion of the area designated in Exhibit “A” is not contestable, and that the attached Exhibit “A” is hereby adopted and is incorporated as part of this ordinance.

PART 3: That Tyler City Code Chapter 10, “Tyler Unified Development Code”, Article XII., “Annexation”, “Division A.,” Boundary Extension and Annexation”, is hereby amended by amending Section 10-802 to read as follows:

Sec. 10-802. City Limits in ~~2002~~ 2003

Section 41.003 of the Texas Local Government Code provides that an irrebuttable presumption attaches to the inclusion within the city of any area that has been functionally a part of the city for 20 years. City records indicate that the area designated in the Exhibit “A” which is attached to the ordinance adopting this section has been a part of the city for at least the preceding 20 years and the city has provided municipal services, including police protection, to the area and has treated the area as part of the city during the preceding 20 years. City records also indicate that there has not been a final judicial determination during the preceding 20 years that the area is outside of the boundaries of the city, and that there is no pending lawsuit that challenges the inclusion of the area as part of the city. Therefore, the City Council finds that the requirements of state law for inclusion of the area have been met and the inclusion of the area designated in Exhibit A is not contestable. (Ord. O-2007-73, 06-19-07) (Ord. No. 0-2010-37; 4/28/10) (Ord. No. 0-2011-11, 2/9/11) (0-2011-24, 4/27/11) (Ord. 0-2011-32, 5/11/11) (Ord. 0-2011-36, 5/25/11) (Ord. No. 0-2011-62, 8/24/11) (Ord. 0-2011-63, 8/24/11) (Ord. 0-2012-12, 2/22/12) (Ord. 0-2012-16, 3/28/12) (Ord. 0-2012-43, 5/23/12) (Ord. 0-2013-15, 2/27/13) (Ord. 0-2014-9, 1/22/14) (Ord. 0-2015-18, 1/28/15) (Ord. 0-2016-9, 1/27/16) (Ord. 0-2017-14, 1/25/17) (Ord. 0-2018- 7; 1/24/18) (Ord. 0-2019-10; 1/23/19); (Ord. 0-2020-13; 1/22/20); (Ord. 0-2021-10; 1/27/21); (Ord. 0-2022-10; 1/26/22); (Ord No. 0-2023-18, 2/22/2023); (Ord. No. 0-2024- , 1/24/24)

PART 4: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 5: That this ordinance shall be in full force and effect on and after the date of its passage and approval.

PASSED AND APPROVED this the 24th day of January, A.D., 2024.

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

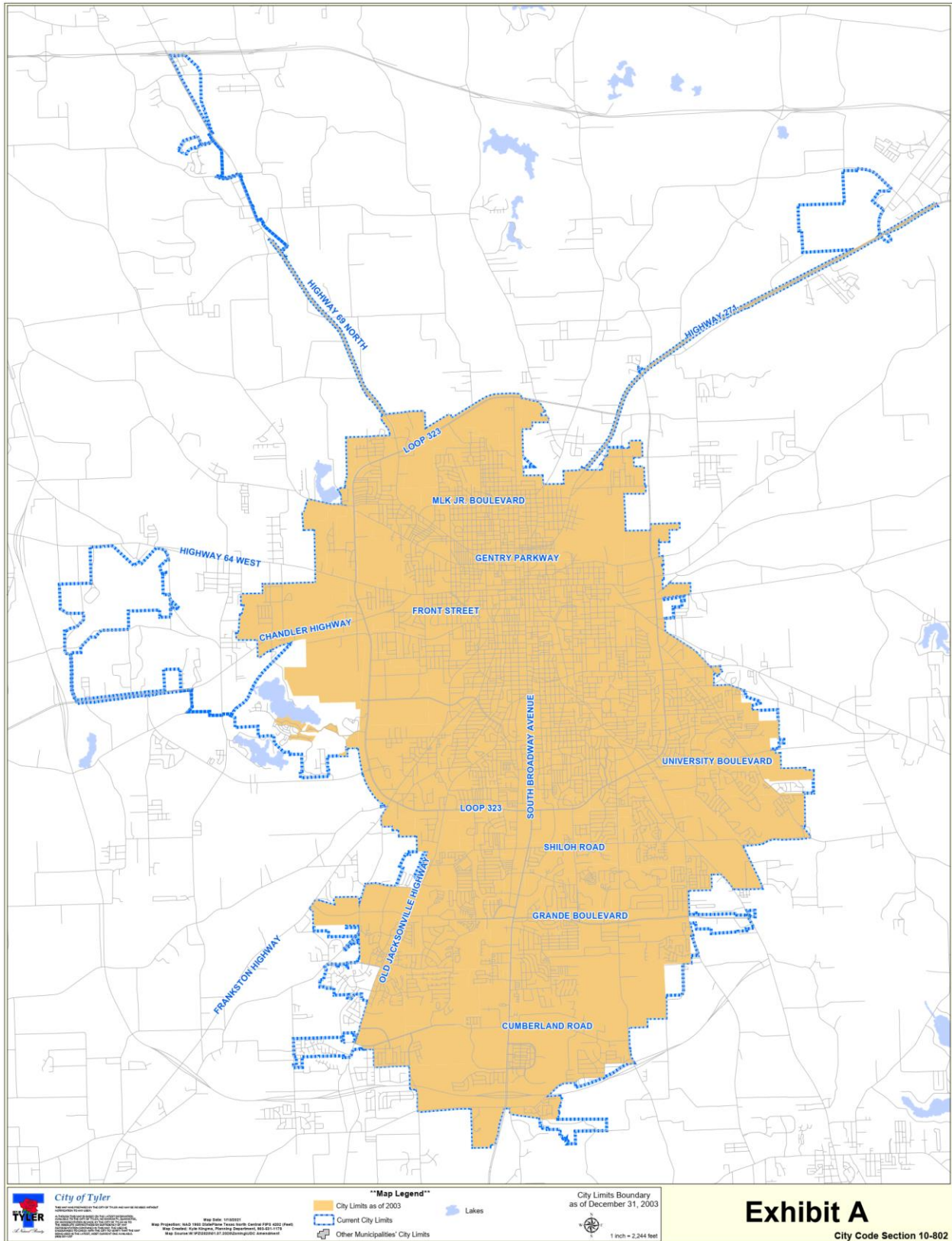
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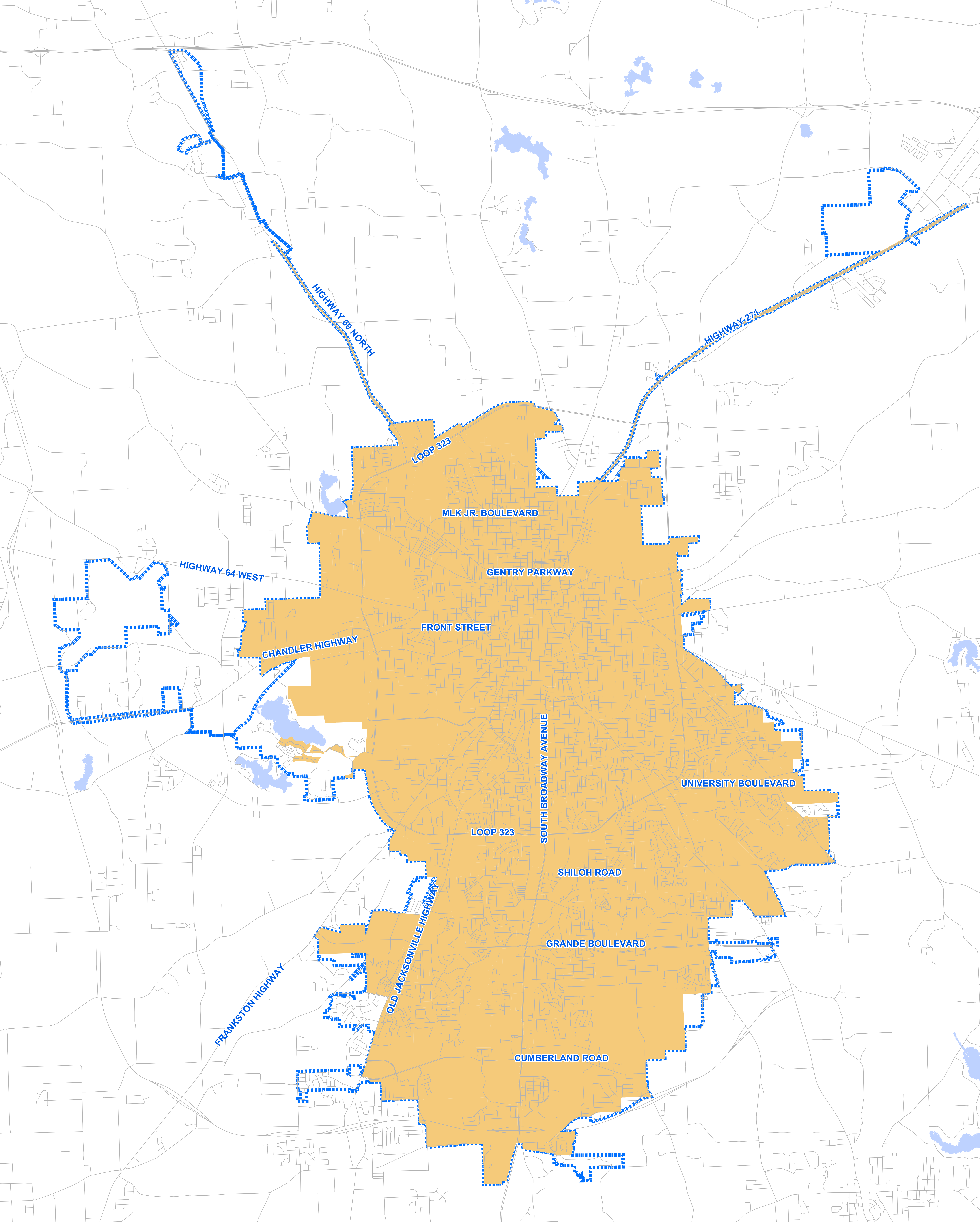
APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. 0-2024-__
EXHIBIT "A"
CITY LIMITS MAP AS OF DECEMBER 31, 2003







CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-2

Date: January 24, 2024

Subject: S23-009 MORALES LUIS & GUADALUPE (403, 405, 407 SOUTH VINE AVENUE AND 706, 708, 710, 712 WEST FRONT STREET)
Request that the City Council consider adoption of an Ordinance approving a Special Use Permit to allow for a major food truck park.

Page: Page 1 of

Item Reference:

The applicant is requesting a Special Use Permit (SUP) to allow for a major food truck park on Lot 1L of NCB 185-B, one lot containing approximately 1.02 acres of land located at the southwest intersection of West Front Street and South Vine Avenue (403, 405, 407 South Vine Avenue and 706, 708, 710, 712 West Front Street).

Tyler City Code Chapter 10, Article IX., Division A., provides that the City Council may, by ordinance, grant a special permit for special uses, which are otherwise prohibited by this ordinance and may impose appropriate conditions and safeguards. Special Use Permits are approved for a specific period of time. A use is considered special by the Unified Development Code (UDC) when there is potential for it to have adverse impact on nearby property and because the actions needed to minimize or eliminate the adverse impacts vary from site to site.

The adjacent properties north, east, and west are zoned “C-2”, General Commercial District and are developed with commercial uses. The adjacent property to the south is zoned “AR”, Adaptive Reuse District and is developed with a bed and breakfast.

The applicant proposes a major food truck park with a maximum of eight food truck sites. The restrooms are on-site in the existing building, and the food trucks will return to their commissary each night. The food trucks shall comply with all the applicable regulations of the Northeast Texas Public Health District, adopted building codes, International Fire Code, Unified Development Code, and all other applicable federal, state, and local laws. Screening and noise regulations will be as per the City regulations. An onsite property manager will be present to oversee daily operations. The Unified Development Code requires two parking spaces per mobile food unit along with 1/100 square feet of designated seating area. Currently, the site has 42 parking spaces. The food truck park will also have 400 square feet of seating area.

On January 2, 2024, the Planning and Zoning Commission held a public hearing for this request. The

applicant spoke in favor of the request and no one spoke in opposition.

As of Friday, January 12, 2024 of the 13 notices, no notices were returned in favor or opposition to the request.

All other departments have reviewed the application and anticipate no significant impact on other related services by the proposed Special Use Permit request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of the Special Use Permit for a three year period of time.

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-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; APPROVING A SPECIAL USE PERMIT TO ALLOW FOR A MAJOR FOOD TRUCK PARK ON LOT 1L OF NCB 185-B, ONE LOT CONTAINING APPROXIMATELY 1.02 ACRES OF LAND LOCATED AT THE SOUTHWEST INTERSECTION OF WEST FRONT STREET AND SOUTH VINE AVENUE (403, 405, 407 SOUTH VINE AVENUE AND 706, 708, 710, 712 WEST FRONT STREET); PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Tyler, Texas, and the City Council of the City of Tyler, Texas, in compliance with the Charter and the State law with reference to the zoning ordinance of the City of Tyler, Texas, and zoning map, have given requisite notices by publication and otherwise and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council is of the opinion that the special use 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 special use is hereby approved as follows:

I. APPLICATION S23-009

That the following described property, which is currently zoned “C-2”, General Commercial District, shall hereafter allow a Special Use Permit for a major food truck park for a period of three years, to wit:

Lot 1L of NCB 185-B, one lot containing approximately 1.02 acres of land located at the southwest intersection of West Front Street and South Vine Avenue (403, 405, 407 South Vine Avenue and 706, 708, 710, 712 West Front Street).

PART 2: The Special Use Permit is subject to restrictions listed in Exhibit “A” attached hereto and incorporated herein.

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

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

by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be January 26th, 2024.

PASSED AND APPROVED this the 24th day of January, A.D., 2024.

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

A T T E S T:

APPROVED:

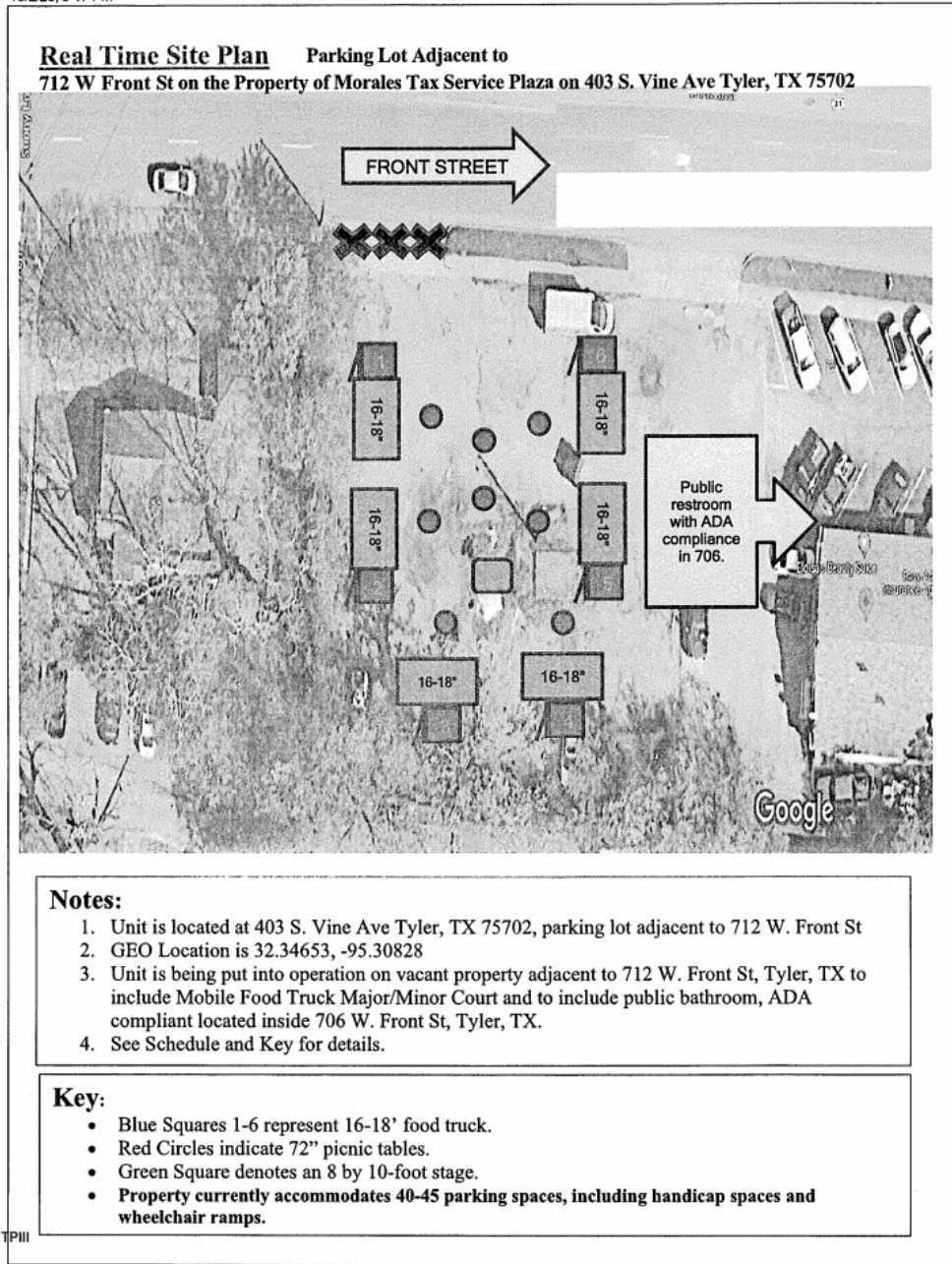
CASSANDRA BRAGER, CITY CLERK

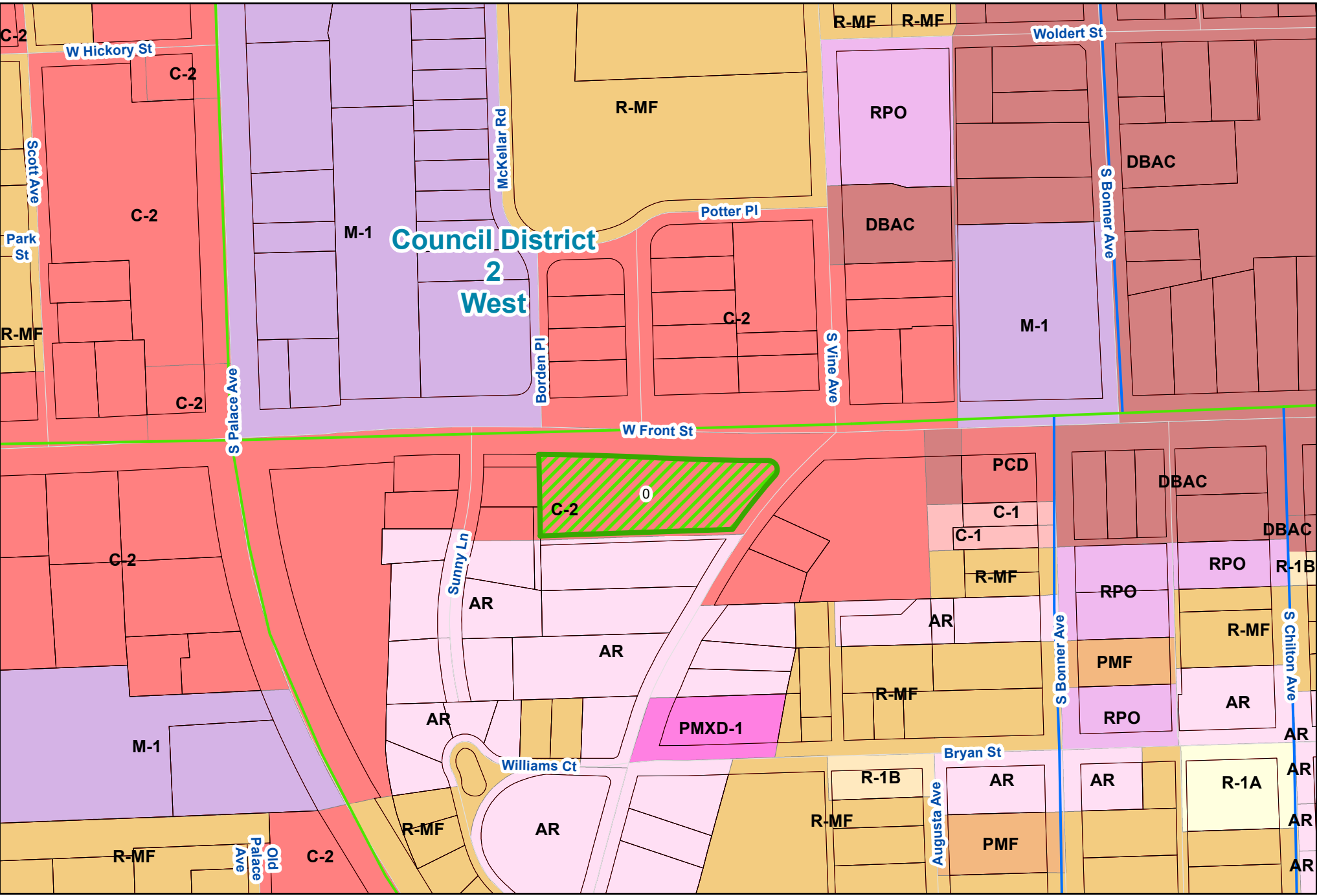
DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. O-2024-
EXHIBIT "A"
SPECIAL USE PERMIT REQUIREMENTS

1. Limited to a maximum of eight food trucks.
2. Subject to the site plan below.

10/2/23, 5:47 PM





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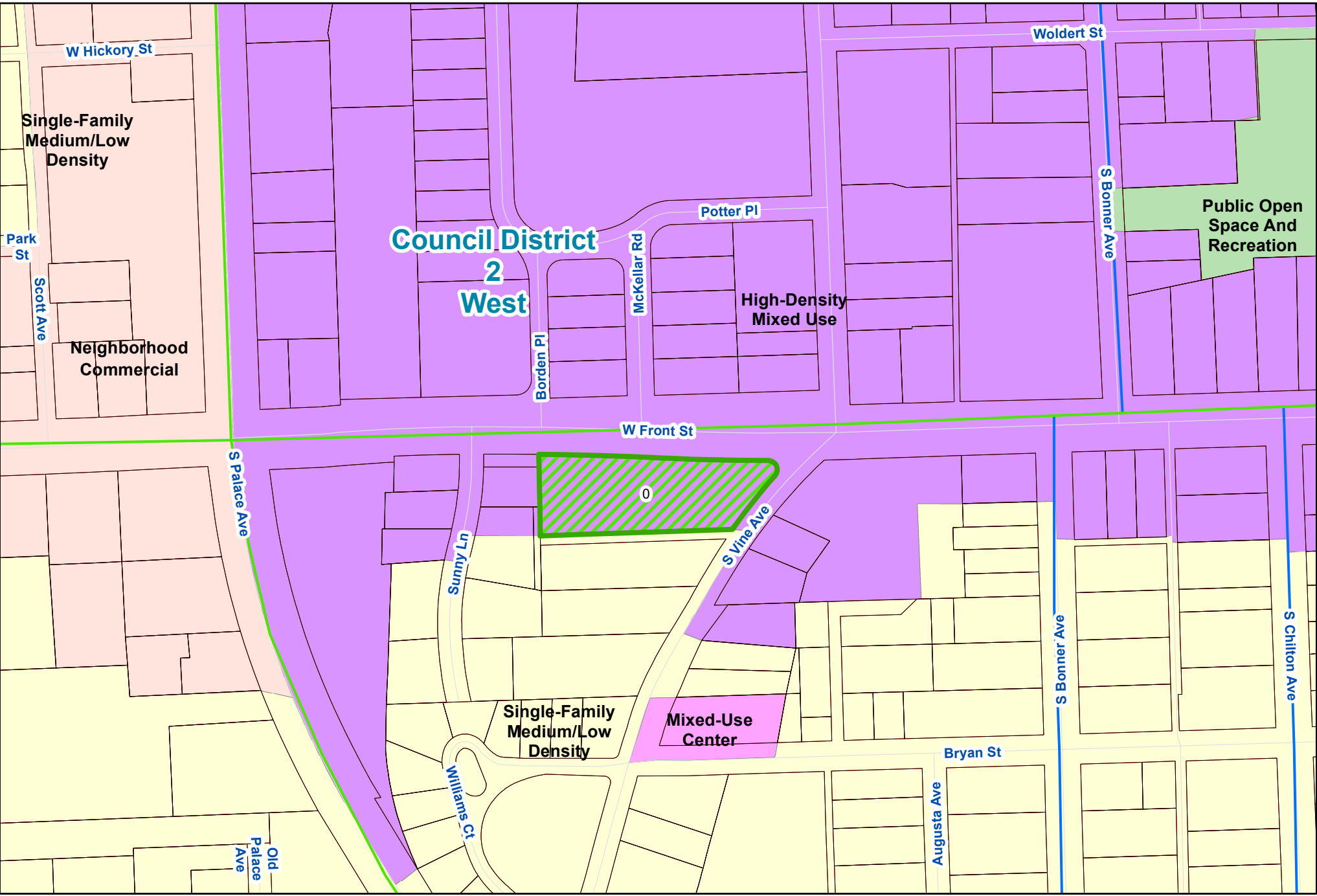
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ZONING CASE
Zoning Case #: S23-009
Special Use Permit
Current Zoning: C-2
MORALES LUIS & GUADALUPE

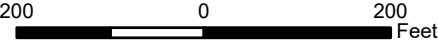


Subject Property





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ZONING CASE
 Zoning Case #: S23-009
 Special Use Permit
 Current Zoning: C-2
MORALES LUIS & GUADALUPE

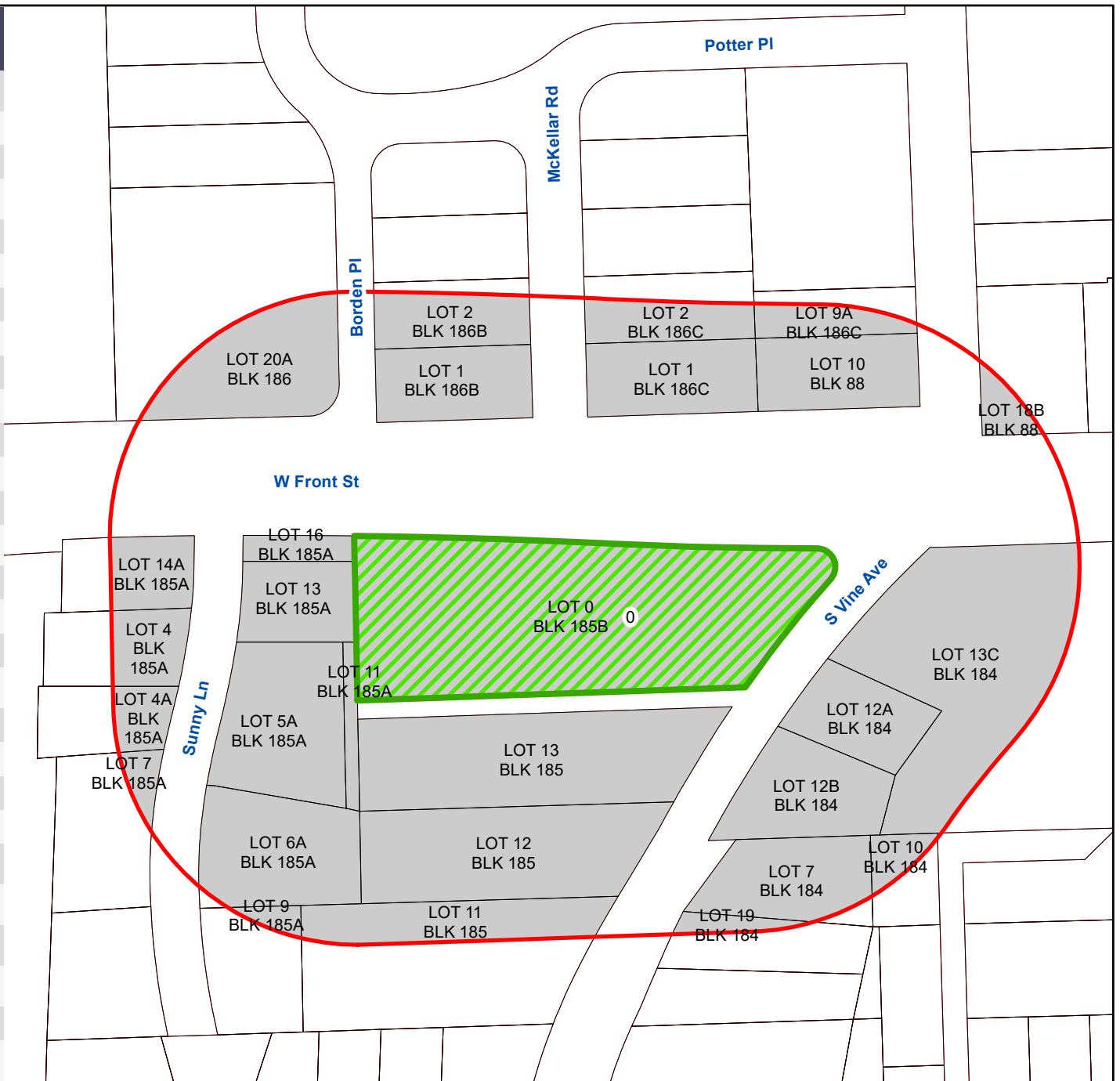


Subject Property



Notification List

186	20A	FLAT BROKE PROPERTIES LLC
185A	16	POWELL BERT & REBECCA R
185A	14A	POWELL BERT & REBECCA
185B	0	MORALES LUIS & GUADALUPE
184	13C	VERABANK N A
186C	2	BRIARWOOD GROUP LLC
186B	2	BRIARWOOD GROUP LLC
88	18B	DOBBINS ROBERT N
186C	9A	VALLE ENRIQUE
88	10	VALLE ENRIQUE
186C	1	BRIARWOOD GROUP LLC
186B	1	BRIARWOOD GROUP LLC
185A	6A	POWELL BERT & REBECCA
185	12	ANDY KOZSUCH INVESTMENTS LLC
185A	4A	POWELL BERT
185	13	POWELL BERT & REBECCA
184	12B	POWELL BERT
185A	7	POWELL BERT P & REBECCA R
185A	13	POWELL BERT & REBECCA R
185A	4	POWELL BERT & REBECCA
185A	5A	POWELL BERT
184	12A	VERABANK NA
184	10	MAYA PATTERSON HOLDINGS LLC
184	7	WELCOME HOME ESTATES LLC
185	11	DEADWOOD REAL ESTATE 2014 LLC - SERIES A
185A	9	POWELL BERT P & REBECCA R
184	19	LIVING ALTERNATIVES INC
185A	11	CONNORS CATHERINE FOX



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125 0 125 Feet

ZONING CASE
 Zoning Case #: S23-009
 Special Use Permit
 Current Zoning: C-2
 MORALES LUIS & GUADALUPE



Subject Property



200' Mailed Notification Area





CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-3

Date: January 24, 2024

Subject: S23-010 MELANIE AND RICKEY ROBERTS (3200 GARDEN VALLEY ROAD)
Request that the City Council consider adoption of an Ordinance approving a Special Use Permit renewal for a daycare center.

Page: Page 1 of

Item Reference:

The applicant is requesting the Special Use Permit (SUP) renewal for a daycare center for infants and toddlers on Lot 28 of NCB 1262, one lot totaling approximately 1.93 acres of land located east of the southeast intersection of Darla Lane and Garden Valley Road (3200 Garden Valley Road). The property is zoned “R-MF”, Multi-Family Residential District.

According to the Unified Development Code (UDC), “Special Use Permits” set standards, conditions, and procedures whereby special uses may be approved by City Council. A use is considered special by this development code when there is potential for it to have an adverse impact on nearby property and because the actions needed to minimize or eliminate the adverse impacts vary from site to site. No special use permit may be issued unless the governing body determines the proposed building or use will not (a) substantially increase traffic hazards or congestion; (b) substantially increase fire hazards; (c) adversely affect the character of the neighborhood; (d) adversely affect the general welfare of the community; or (e) overtax public utilities. Approved special uses are subject to compliance with all other applicable provisions within the UDC, such as parking, landscaping, and setbacks.

All conditions required for an SUP must be met before any part of the use can be occupied. Violation of any term, condition, requirement, or duration of a SUP approved is unlawful and will constitute a violation subject the penalties set forth in the UDC. In addition, the SUP may be revoked or suspended by the city council due to such violation, following public hearings by both the Planning and Zoning Commission and the City Council.

The adjacent properties to the north, south, and west are zoned “R-1A”, Single-Family Residential District. The adjacent properties to the north are developed with single-family homes and the adjacent properties to the west and south are undeveloped. The adjacent property to the east is zoned “INT”, Institutional District and is developed with a middle school.

SUPs are approved for specific periods of time. The terms and duration of an SUP rests with the City

Council. Most first-time SUPs are issued for three years with renewals typically approved for longer time periods, usually five years. Some special uses, due to their nature and the cost associated with their operation, may be approved indefinitely.

In January 2020, the City Council approved a daycare center for a three year period of time. The applicant is requesting to renew the same use, however for a different daycare. The applicant is currently in the application process for a license from the State of Texas for an infant and toddler daycare. Their hours would be from 7:30 am to 5:30 pm with a maximum of 34 children. A Day Care Center is allowed by SUP in R-MF zoning. The Tyler 1st Future-Land Use Guide identifies the property as “School-Public”.

The structure currently on the property most closely resembles a single-family home and is approximately 2,000 square feet in size. The applicant is working with the Fire Department on updates to the existing structure for a daycare center.

On January 2, 2024, the Planning and Zoning Commission held a public hearing for this request. The applicant spoke in favor of the request and no one spoke in opposition.

As of Friday, January 12, 2024 of the six notices mailed, none were received in favor or in opposition to the request.

All other departments have reviewed the application and anticipate no significant impact on other related services by the proposed Special Use Permit request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of the Special Use Permit for a five year period of time.

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-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; APPROVING A SPECIAL USE PERMIT TO ALLOW FOR A DAY CARE CENTER ON LOT 28 OF NCB 1262, ONE LOT TOTALING APPROXIMATELY 1.93 ACRES OF LAND LOCATED EAST OF THE SOUTHEAST INTERSECTION OF DARLA LANE AND GARDEN VALLEY ROAD (3200 GARDEN VALLEY ROAD); PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission of the City of Tyler, Texas, and the City Council of the City of Tyler, Texas, in compliance with the Charter and the State law with reference to the zoning ordinance of the City of Tyler, Texas, and zoning map, have given requisite notices by publication and otherwise and after holding a due hearing and affording a full and fair hearing to all the property owners, generally and to the persons interested, situated in the affected area and in the vicinity thereof, the City Council is of the opinion that the special use 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 special use is hereby approved as follows:

I. APPLICATION S23-0010

That the following described property, which is currently zoned “R-MF”, Multi-Family Residential District, shall hereafter allow a Special Use Permit for a major food truck park for a period of five years, to wit:

Lot 28 of NCB 1262, one lot totaling approximately 1.93 acres of land located east of the southeast intersection of Darla Lane and Garden Valley Road (3200 Garden Valley Road).

PART 2: The Special Use Permit is subject to site plan shown in Exhibit “A” attached hereto and incorporated herein.

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

PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be January 26th, 2024.

PASSED AND APPROVED this the 24th day of January, A.D., 2024.

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

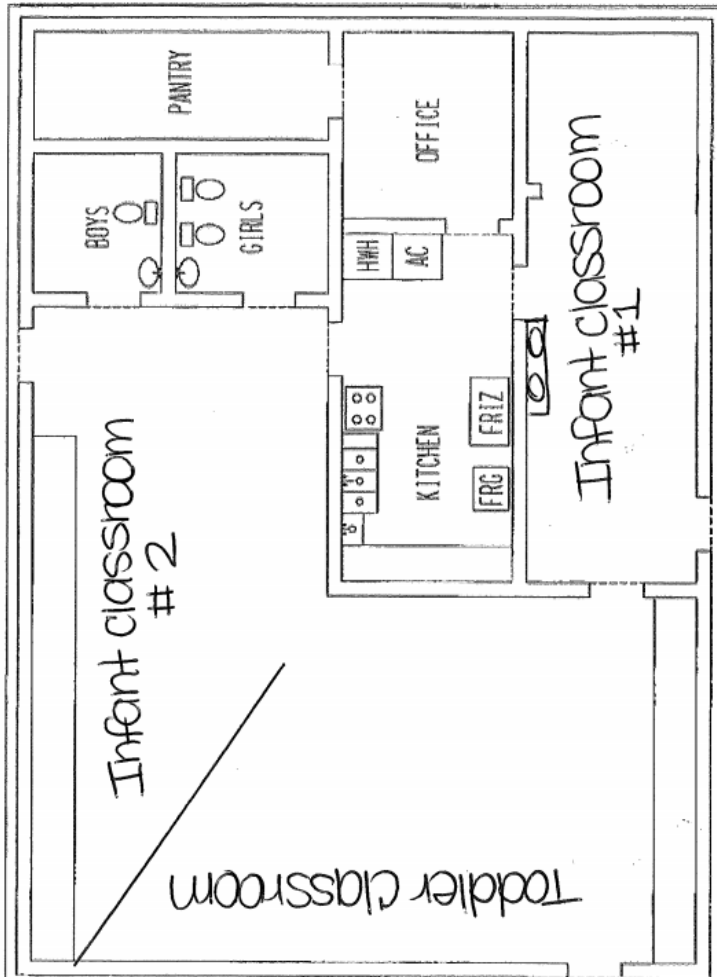
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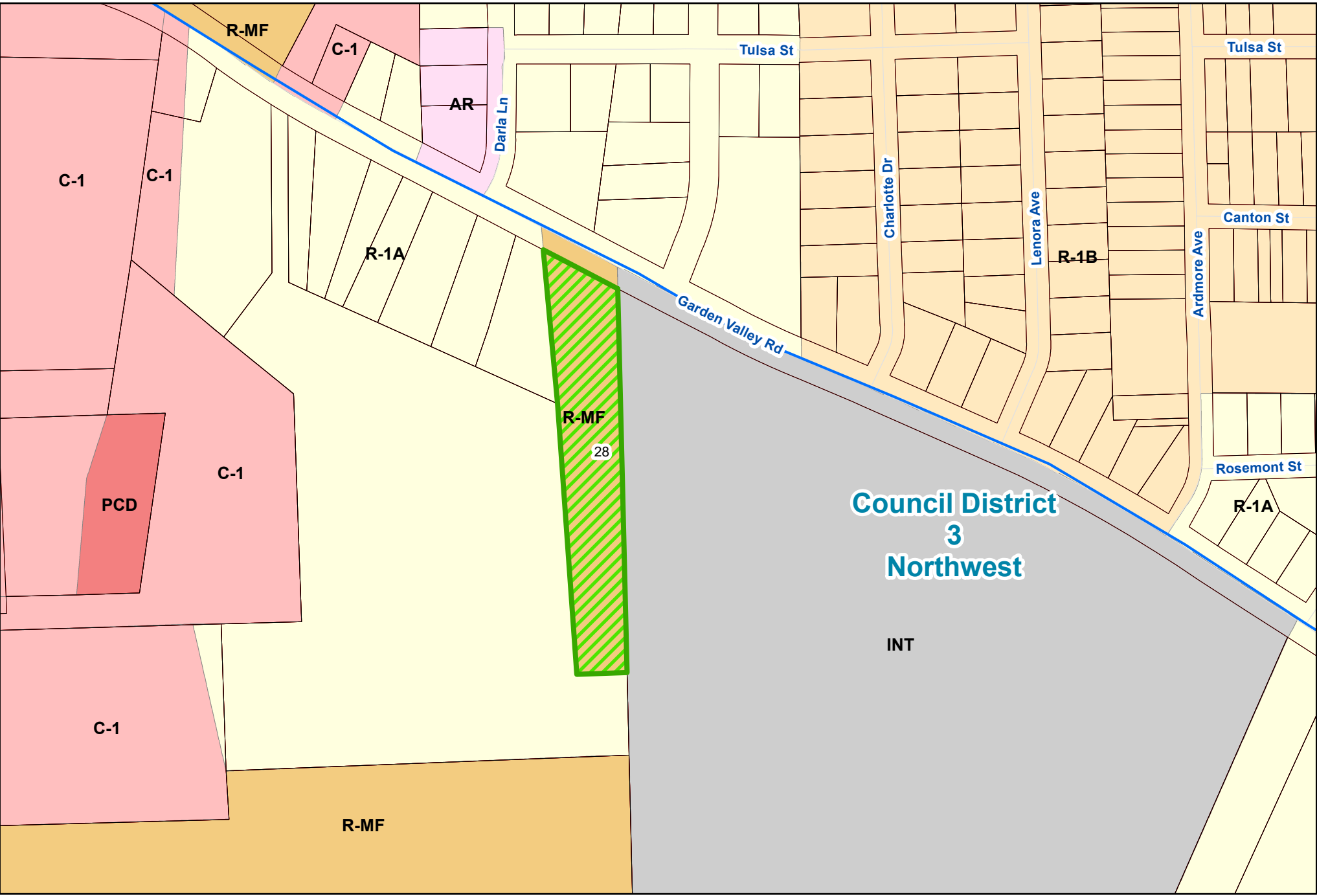
APPROVED:

CASSANDRA BRAGER, CITY CLERK

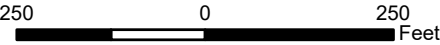
DEBORAH G. PULLUM,
CITY ATTORNEY

**ORDINANCE NO. O-2024-
EXHIBIT "A"
SPECIAL USE PERMIT SITE PLAN**





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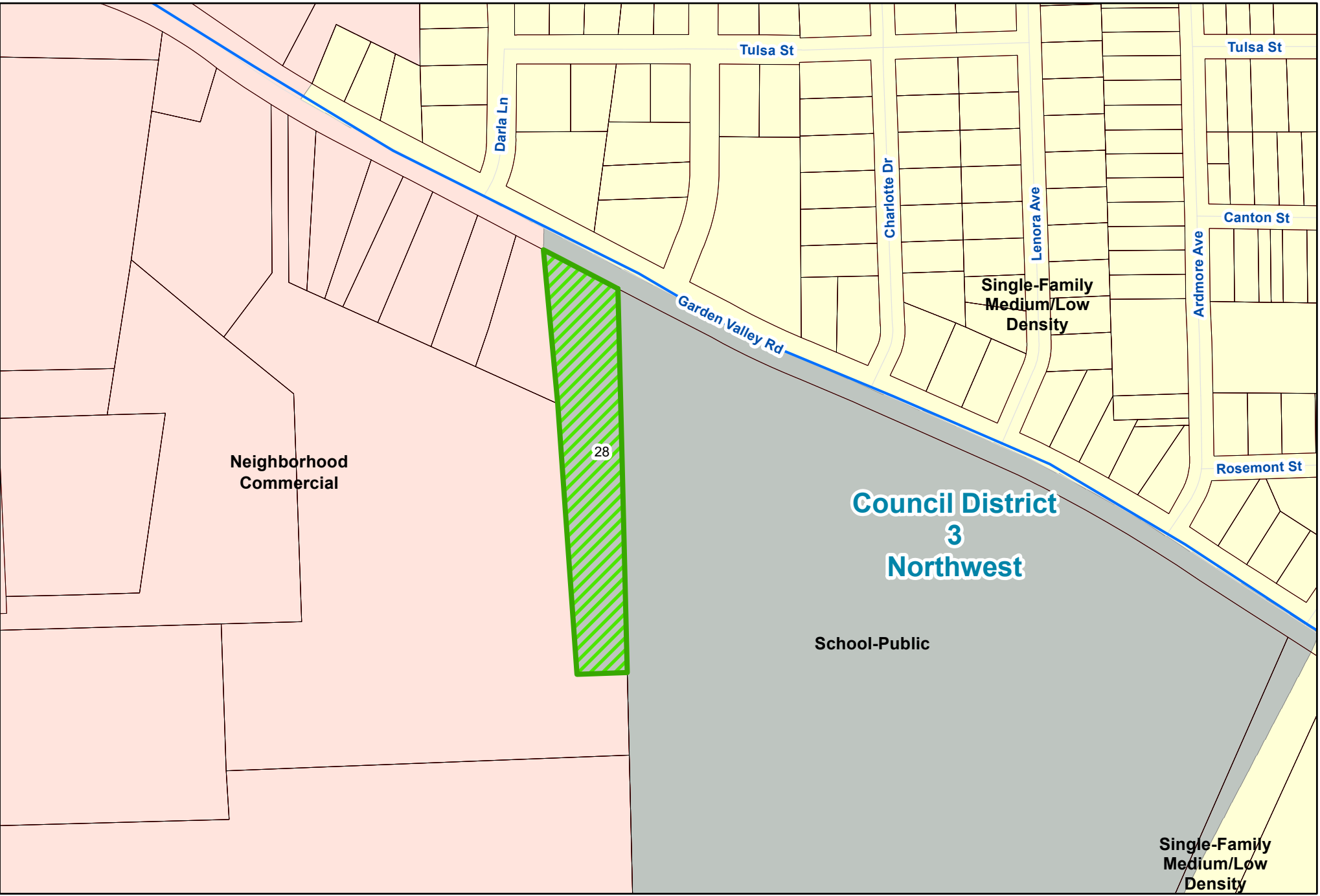


ZONING CASE
 Zoning Case #: S23-010
 Special Use Permit
 Current Zoning: R-MF
MELANIE AND RICKEY ROBERTS

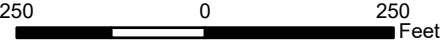


Subject Property





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ZONING CASE
 Zoning Case #: S23-010
 Special Use Permit
 Current Zoning: R-MF
MELANIE AND RICKEY ROBERTS



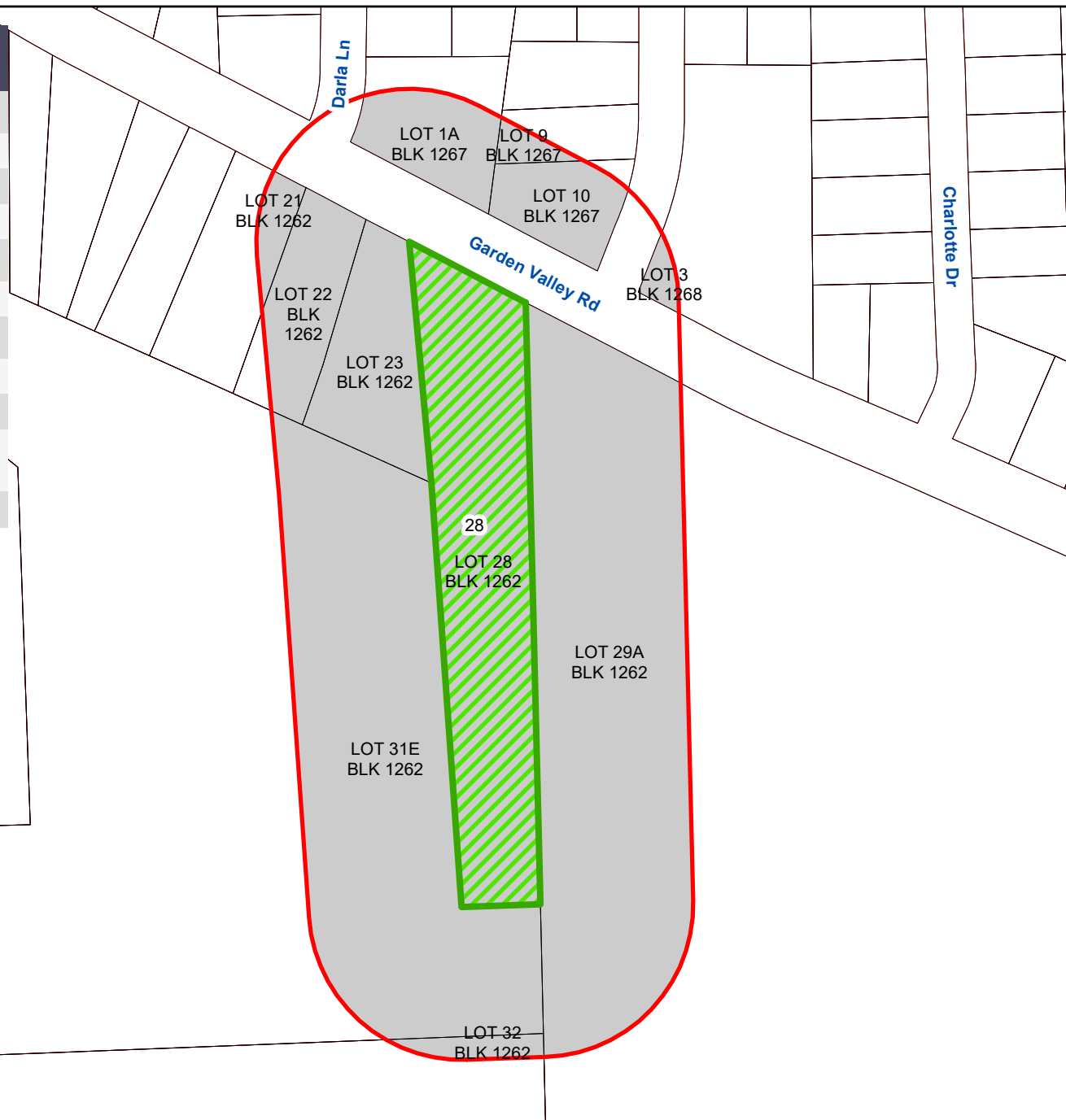
Subject Property



Notification List

1262	22	WHITE DENISE SUE WATSON
1267	1A	CURRENT OWNER
1268	3	FULL GOSPEL HOLY TEMPLE
1267	9	RUIZ MARIO A
1262	21	WHITE DENISE SUE WATSON
1267	10	RUIZ MARIO A
1262	23	WHITE DENISE SUE WATSON
1262	28	TYLER CITY OF
1262	29A	TYLER I S D
1262	31E	NEW LIFE COMMUNITY MISSIONARY BAPTIST CHURCH
1262	32	NNW LOOP 323 LP

N Northwest Loop 323
N Northwest Loop 323



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Feet

ZONING CASE
Zoning Case #: S23-010
Special Use Permit
Current Zoning: R-MF
MELANIE AND RICKEY ROBERTS



Subject Property

200' Mailed Notification Area



39



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-4

Date: January 24, 2024

Subject: Z23-045 GENECOV WEST MUD CREEK LLC (A 9.69 ACRE PORTION OF 8020 AND 8360 HOLLYTREE DRIVE)
Request that the City Council consider adoption of an Ordinance approving a zone change from “PMF”, Planned Multi-Family Residential District, “C-1”, Light Commercial District, and “PUR”, Planned Unit Residential District to “PMXD-1”, Planned Mixed-Use District 1 with written narrative, “PUR”, Planned Unit Residential District with written narrative, and “C-1”, Light Commercial District.

Page: Page 1 of

Item Reference:

The applicant is requesting the zone change to develop the area with a mixture of uses on a 9.69 portion of Tract 5A and 10, 11A, two tracts containing approximately 117.87 acres of land located east of the southeast intersection of Legacy Bend and Hollytree Drive (a 9.69 Acre Portion of 8020 and 8360 Hollytree Drive).

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

According to the Unified Development Code (UDC), the “PUR”, Planned Unit Residential District is primarily for the medium to high density development of unique and innovative forms of detached single-family housing on individually platted lots. A PUR development uses the total space within a development by creating common open spaces, scenic and recreational areas and other spaces that will compensate for the reduction of land area dedicated for residential structures. It is the intent of the PUR to provide for residential developments that utilize private streets, owned and maintained by a Homeowner’s Association. The PUR district is not intended as a convenience to circumvent regulations

set forth in other residential districts, or as a tool for mass variance, without provisions of common areas. All developments created in a PUR district must be designed and developed in accordance with an approved site development plan and submitted for approval to the Planning Commission and City Council.

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

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

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

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

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

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

The adjacent properties to the north are zoned “PXR”, Planned Mixed Residential District and are undeveloped. The adjacent properties to the west are zoned “PMXD-1”, Planned Mixed-Use District 1

and “C-1”, Light Commercial District and are undeveloped. The adjacent properties to the east are zoned “PUR”, Planned Unit Residential District and are undeveloped. The adjacent property to the south is zoned “C-1”, Light Commercial District and undeveloped.

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

The applicant is requesting the zone change to have consistent and uniform zoning within the development. The proposed PUR will establish zoning for detached single-family units with private gated subdivision similar to the properties on the east.

On January 2, 2024, the Planning and Zoning Commission held a public hearing for this request. The applicant was present to be in favor of the request and no one spoke in opposition.

As of Friday, January 12, 2024 of the six 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 other related services by the proposed zoning request.

RECOMMENDATION:

The Planning and Zoning Commission by a 6-0 vote recommends approval of a zone change from “PMF”, Planned Multi-Family Residential District, “C-1”, Light Commercial District, and “PUR”, Planned Unit Residential District to “PMXD-1”, Planned Mixed-Use District 1 with written narrative, “PUR”, Planned Unit Residential District with written narrative, and “C-1”, Light Commercial District.

ATTACHMENTS:

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

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, CFM, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM “PMF”, PLANNED MULTI-FAMILY RESIDENTIAL DISTRICT, “C-1”, LIGHT COMMERCIAL DISTRICT, AND “PUR”, PLANNED UNIT RESIDENTIAL DISTRICT TO “PMXD-1”, PLANNED MIXED-USE DISTRICT 1 WITH WRITTEN NARRATIVE, “PUR”, PLANNED UNIT RESIDENTIAL DISTRICT WITH WRITTEN NARRATIVE, AND “C-1”, LIGHT COMMERCIAL DISTRICT ON A 9.69 ACRE PORTION OF TRACT 5A AND 10, 11A, TWO TRACTS CONTAINING APPROXIMATELY 117.87 ACRES OF LAND LOCATED EAST OF THE SOUTHEAST INTERSECTION OF LEGACY BEND AND HOLLYTREE DRIVE (A 9.69 ACRE PORTION OF 8020 AND 8360 HOLLYTREE DRIVE); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

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

I. APPLICATION Z23-045

That the following described property, which has heretofore been zoned “PMF”, Planned Multi-Family Residential District, “C-1”, Light Commercial District, and “PUR”, Planned Unit Residential District, shall hereafter bear the zoning classification of “PMXD-1”, Planned Mixed-Use District 1 with written narrative, “PUR”, Planned Unit Residential District with written narrative, and “C-1”, Light Commercial District, to wit:

On a 9.69 acre portion of Tract 5A and 10, 11A, two tracts containing approximately 117.87 acres of land located east of the southeast intersection of Legacy Bend and Hollytree Drive (a 9.69 Acre Portion of 8020 and 8360 Hollytree Drive) as shown in Exhibit “A” attached hereto and incorporated herein, and in accordance with the Final Site Narrative in Exhibit “B” attached hereto and incorporated herein.

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

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

PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be January 26th, 2024.

PASSED AND APPROVED this the 24th day of January A.D., 2024.

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

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY

ORDINANCE NO. O-2024-
EXHIBIT “B”
FINAL SITE NARRATIVE

PMXD-1 Planned Mixed-Use District

Uses – All C-1, RPO and Residential

Setbacks – Front – 10’

 Sides – 5’ / 10’ Street

 Rear – 10’

 Minimum 10’ between structure

Maximum Lot Coverage – 60%

Maximum Height – 3 story / 45’

Minimum Lot Frontage – 25’

Parking and Landscaping to meet

 City of Tyler UDC standards

Signage to be consistent with C-1 regulations

PUR Planned Unit Residential District

PUR gated subdivision with private streets

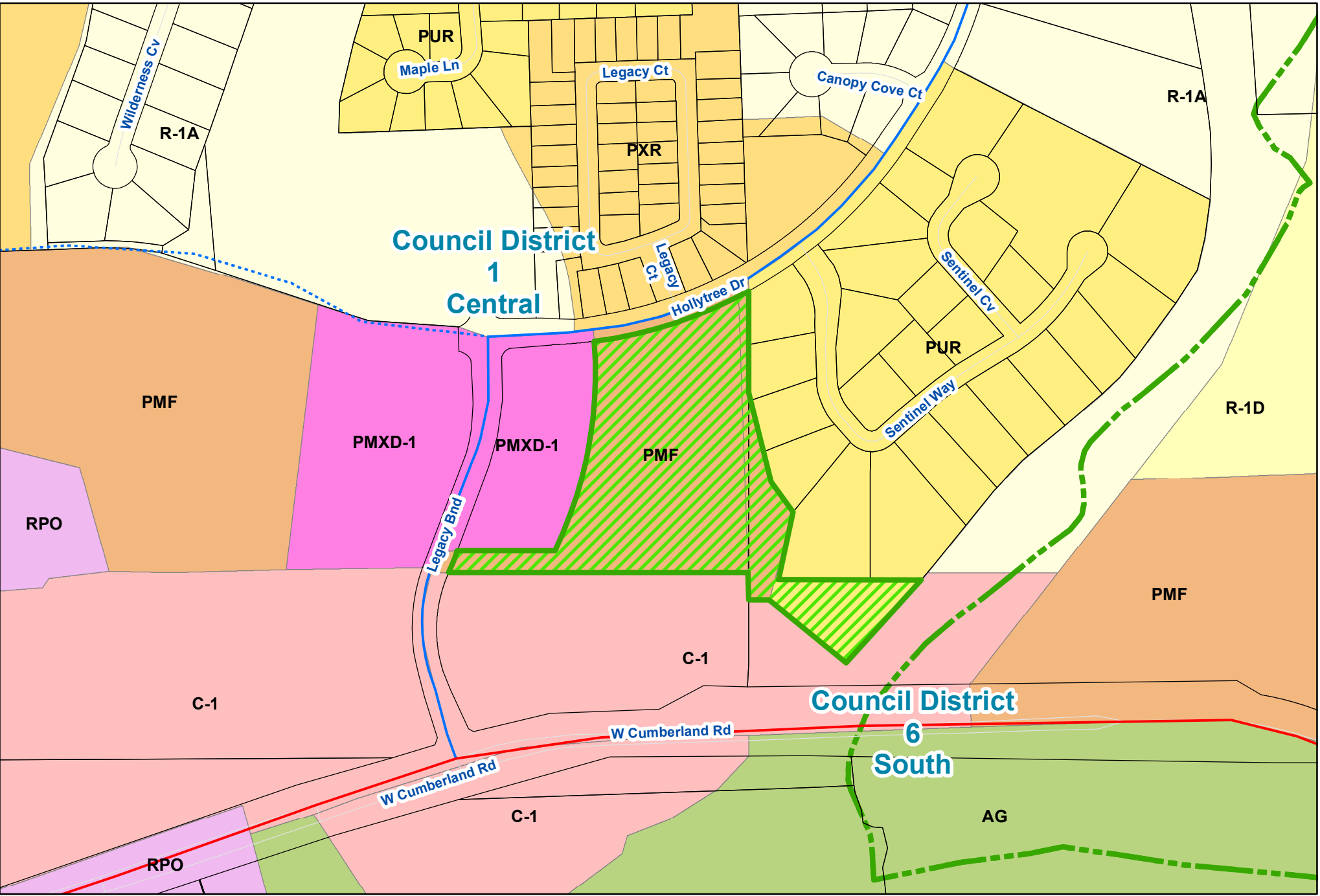
Setbacks: Front - 25’

 Rear - 25’

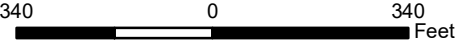
 Sides - 7.5’ (12’ corner)

Height: Two story/ 42’ Maximum

Parking, Signage, and Landscaping/Bufferyards will be as per UDC. Fencing along Hollytree Drive to comply with UDC sight visibility requirements.



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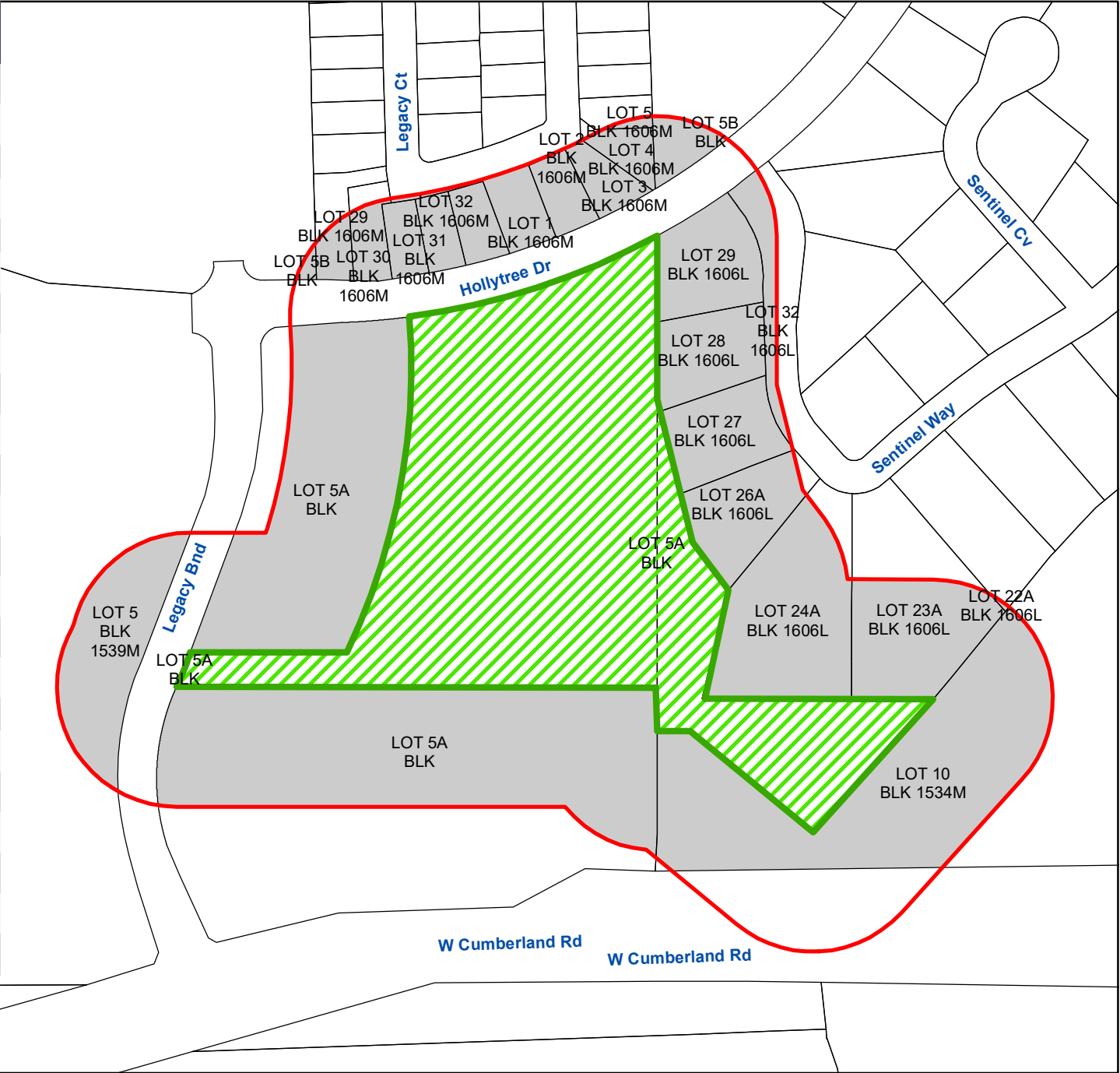
ZONING CASE
Zoning Case #: Z23-045
Current Zoning: PUR, PMF, C-1
Proposed Zoning: PUR, PMXD-1, C-1
GENECOV WEST MUD CREEK

-  Subject Property
-  Council District Boundary



Notification List

I534M	10	GENECOV WEST MUD CREEK LLC
	5A	GENECOV WEST MUD CREEK LLC
I539M	5	WEST CUMBERLAND LLC
	5B	GENECOV WEST MUD CREEK LLC
I606M	33	ENRICO MIKE T & MARY B
I606M	2	GENECOV WEST MUD CREEK LLC
I606M	3	GENECOV WEST MUD CREEK LLC
I606M	4	GENECOV WEST MUD CREEK LLC
I606M	5	GENECOV WEST MUD CREEK LLC
I606M	29	GENECOV WEST MUD CREEK LLC
I606M	30	GENECOV WEST MUD CREEK LLC
I606M	31	GENECOV WEST MUD CREEK LLC
I606M	32	GENECOV WEST MUD CREEK LLC
I606M	1	GENECOV WEST MUD CREEK LLC
I606L	29	CRAFTED HOMES LLC - SERIES 104
I606L	28	GENECOV WEST MUD CREEK LLC
I606L	27	SHOLCOMB & SONS LLC
I606L	26A	GENECOV WEST MUD CREEK LLC
I606L	22A	GENECOV WEST MUD CREEK LLC
I606L	24A	GENECOV WEST MUD CREEK LLC
I606L	23A	GENECOV WEST MUD CREEK LLC
I606L	32	GENECOV WEST MUD CREEK LLC
	5B	GENECOV WEST MUD CREEK LLC



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250 0 250 Feet

ZONING CASE

Zoning Case #: Z23-045

Current Zoning: PUR, PMF, C-1
Proposed Zoning: PUR, PMXD-1, C-1
GENECOV WEST MUD CREEK



Subject Property



200' Mailed Notification Area





CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-5

Date: January 24, 2024

Subject: Z23-044 DENNIS WALKER (2602 SEATON STREET)
Request that the City Council consider adoption of an Ordinance approving a zone change from “C-2”, General Commercial District, to “R-MF”, Multi-Family Residential District.

Page: Page 1 of

Item Reference:

The applicant is requesting the zone change to develop a six unit multi-family residence on Lot 39 of NCB 836-N, one lot containing approximately 0.66 acres of land located at the southeast intersection of Frankston Highway and Seaton Street (2602 Seaton Street).

According to the Unified Development Code (UDC), the “R-MF”, Multi-Family Residential District is primarily intended to accommodate multi-family development at a maximum density of 24 dwelling units per acre. In addition, the district allows churches, group living facilities, schools, and accessory buildings and uses. The maximum building height is 50 feet, however, the building height is allowed to exceed stated maximum height if front, rear and side setback are increased at least one foot for each foot of additional building height. Setback requirements are 25 feet in the front, rear, and interior side and 12 on the corner side. Minimum lot size is 12,500 square feet.

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

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

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

The adjacent properties to the west are zoned “C-2”, General Commercial District, and “R-1A”, a Single-Family Residential District, and developed with commercial uses and undeveloped land. The adjacent properties to the north are zoned “C-1”, Light Commercial District and are undeveloped. The adjacent properties to the east and south are zoned “R-1A”, Single-Family Residential District, and are developed with single-family homes and undeveloped, respectively.

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

The subject property is located along Frankston Highway, a major arterial street. A multi-family residence would be a transition between single-family homes and commercial properties in the neighborhood. This zone change is consistent with the Tyler 1st goal to add more residences to the North End Planning Area. Access to Frankston Highway will be in accordance with the TXDOT access management and city ordinance; property will be accessed off of Seaton Street.

On January 2, 2024, the Planning and Zoning Commission held a public hearing for this request. The applicant's agent was present to be in favor of the request and no one spoke in opposition.

As of Friday, January 12, 2024 of the ten notices mailed, no notices were returned in favor or in opposition to the request.

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

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of a zone change from “C-2”, General Commercial District, to “R-MF”, Multi-Family Residential District.

ATTACHMENTS:

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

Drafted/Recommended By:
Department Leader

Kyle Kingma, AICP, CFM, Planning Director

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM “C-2”, GENERAL COMMERCIAL DISTRICT, TO “R-MF”, MULTI-FAMILY RESIDENTIAL DISTRICT ON LOT 39 OF NCB 836-N, ONE LOT CONTAINING APPROXIMATELY 0.66 ACRES OF LAND LOCATED AT THE SOUTHEAST INTERSECTION OF FRANKSTON HIGHWAY AND SEATON STREET (2602 SEATON STREET); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

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

I. APPLICATION Z23-044

That the following described property, which has heretofore been zoned “C-2”, General Commercial District, shall hereafter bear the zoning classification of “R-MF”, Multi-Family Residential District, to wit:

Lot 39 of NCB 836-N, one lot containing approximately 0.66 acres of land located at the southeast intersection of Frankston Highway and Seaton Street (2602 Seaton 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.

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 24th day of January A.D., 2024.

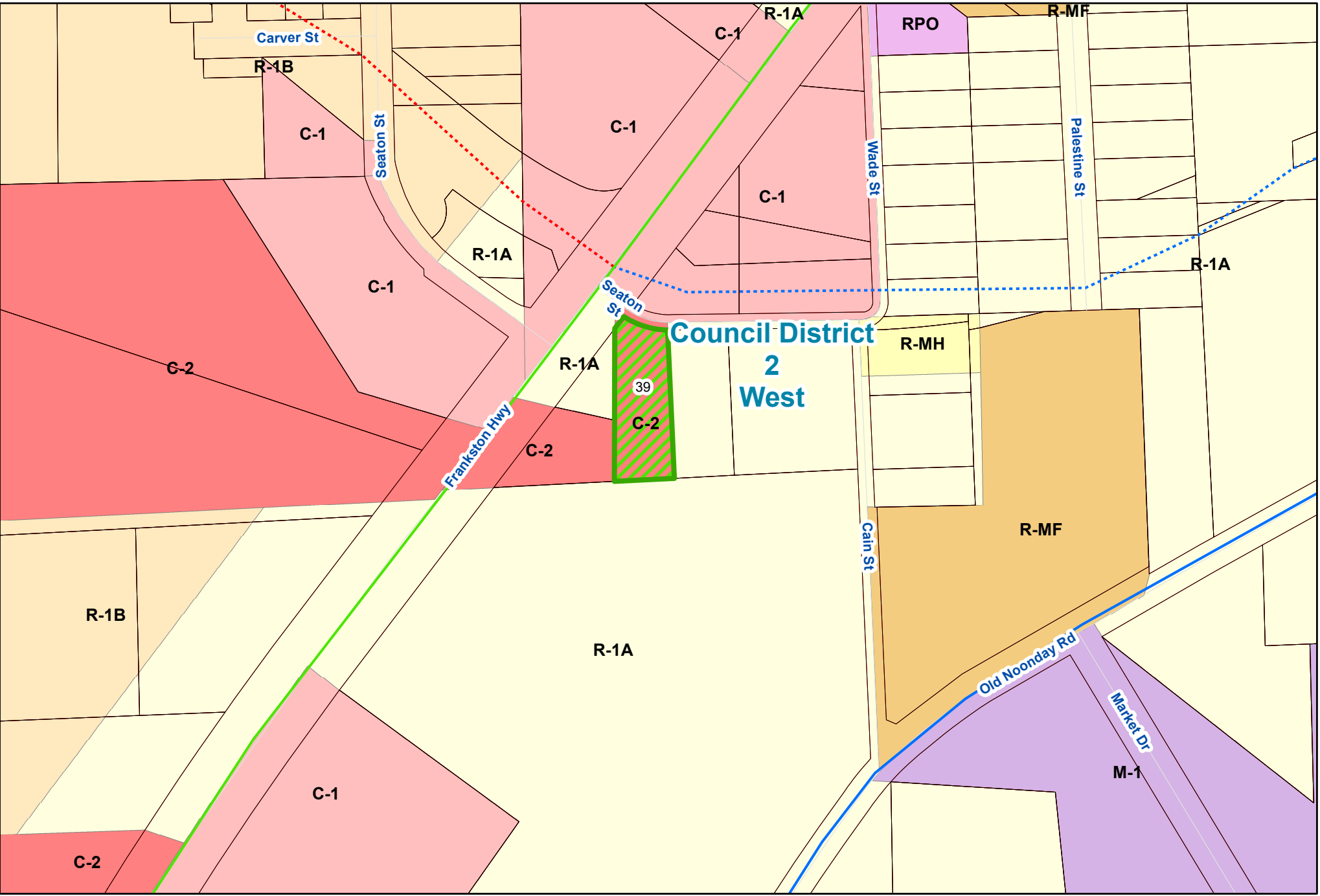
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

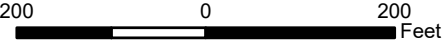
APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY



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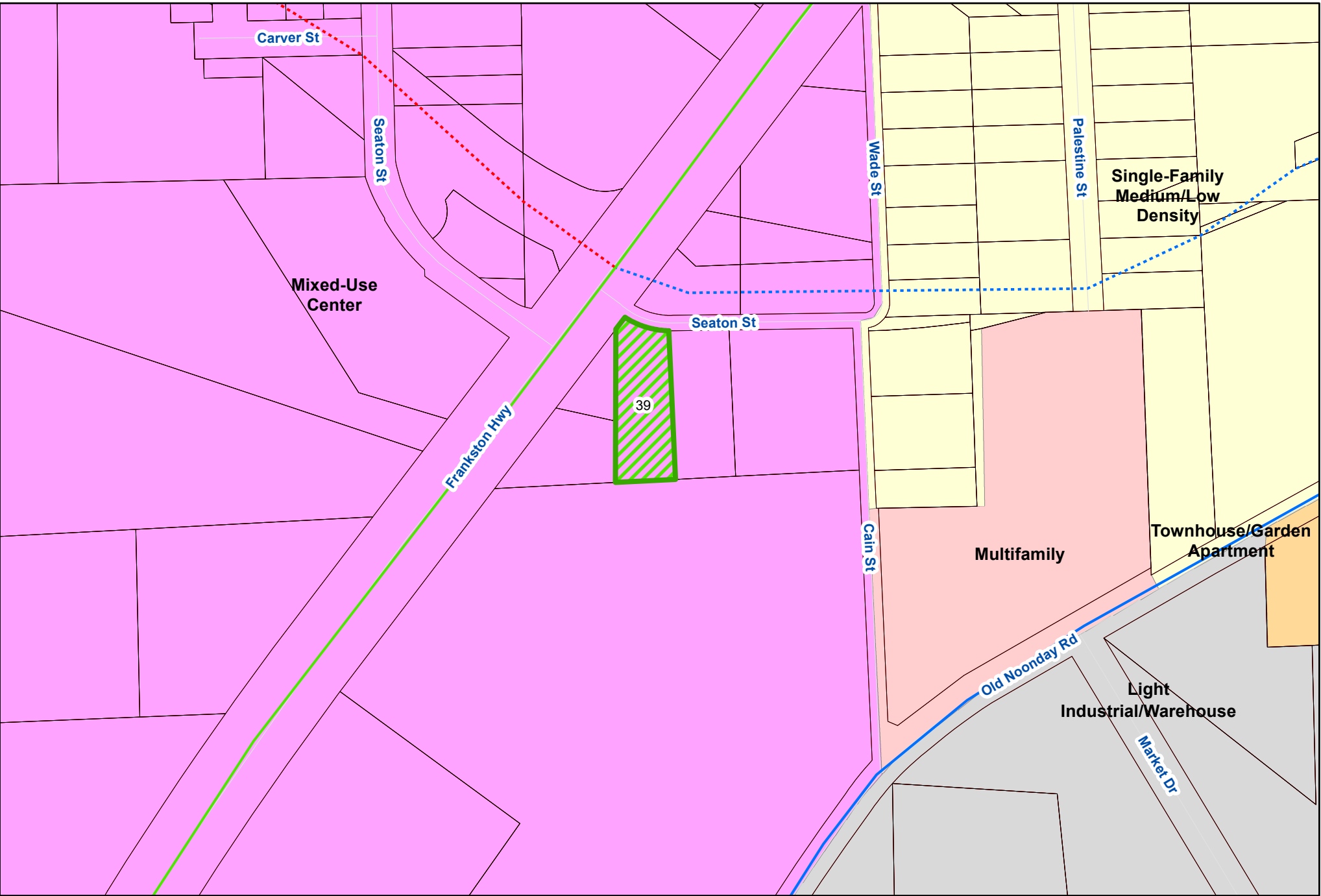


ZONING CASE
Zoning Case #: Z23-044
Current Zoning: C-2
Proposed Zoning: R-MF
DENNIS WALKER



Subject Property





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200 0 200 Feet

ZONING CASE
Zoning Case #: Z23-044
Current Zoning: C-2
Proposed Zoning: R-MF
DENNIS WALKER



Subject Property



Notification List

836N	38	FERRELL GRAY PROPERTIES LLC
836N	41	WINDOM PASCAL L
836N	57	HINES TONYA R
836N	40	OLIVER BILLY & KATHY
836N	45B	JOHNSON WINIFRED GOSSETT &
836N	36	
836N	36	
836N	37	
836N	37	
840F	11A	
840F	12A	CHURCH OF CHRIST AT SOUTH CENTRAL
840F	11A	CHURCH OF CHRIST AT SOUTH CENTRAL
840F	14C	FORD & SONS REAL ESTATE INVESTORS LLC
840F	15	FSC FD TYLER TX LLC
836N	39	LOPEZ IRAIS GARCIA

Seaton St

Frankston Hwy

Seaton St

LOT 11A
BLK 840F

LOT 12A BLK 840F
LOT 15 BLK 840F

LOT 14C
BLK 840F

LOT 37
BLK 836N

LOT 36
BLK 836N

LOT 37
BLK 836N

LOT 36
BLK 836N

LOT 57
BLK 836N

39
LOT 39
BLK 836N

LOT 40
BLK 836N

LOT 41
BLK 836N

LOT 38
BLK 836N

LOT 45B
BLK 836N



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100 0 100 Feet

ZONING CASE
Zoning Case #: Z23-044
Current Zoning: C-2
Proposed Zoning: R-MF
DENNIS WALKER



Subject Property



200' Mailed Notification Area



56



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-6

Date: January 24, 2024

Subject: Z23-040 JENKINS REGINALD (1520 WEST OAKWOOD STREET)
Request that the City Council consider adoption of an Ordinance approving a zone change from “R-MF”, Multi-Family Residential District to “R-2”, Two-Family Residential District.

Page: Page 1 of

Item Reference:

The applicant is requesting the zone change to build a duplex on Lot 15 of NCB 364, one lot containing approximately 0.26 acres of land located at the southeast intersection of West Oakwood Street and North Hill Avenue (1520 West Oakwood Street).

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

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

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

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

All adjacent properties to the north, east, south, and west are zoned “R-MF”, Multi-Family Residential

District and are developed with residential homes or are undeveloped.

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 proposed zone change aligns with the Tyler 1st Comprehensive Plan's objectives for development in the North End. The applicant is requesting the zone change in order to build a duplex. The area is primarily developed with single-family homes and duplexes, which were previously allowed to be built in the "R-MF" zoning. By changing the zoning, it would help achieve the Tyler 1st goal of adding more residences in the North End Planning Area.

On January 2, 2024, the Planning and Zoning Commission held a public hearing for this request. No one spoke in favor or in opposition to the request.

As of Friday, January 12, 2024 of the 13 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 other related services by the proposed zoning request.

RECOMMENDATION:

The Planning and Zoning Commission by a 7-0 vote recommends approval of a zone change from "R-MF", Multi-Family Residential District to "R-2", Two-Family Residential District.

ATTACHMENTS:

[Ordinance](#)

[Location Map](#)

[Future Land Use Map](#)

[Notification Map](#)

Drafted/Recommended By:

Department Leader

Kyle Kingma, AICP, CFM, Planning Director

Edited/Submitted By:

City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM “R-MF”, MULTI-FAMILY RESIDENTIAL DISTRICT TO “R-2”, TWO-FAMILY RESIDENTIAL DISTRICT ON LOT 15 OF NCB 364, ONE LOT CONTAINING APPROXIMATELY 0.26 ACRES OF LAND LOCATED AT THE SOUTHEAST INTERSECTION OF WEST OAKWOOD STREET AND NORTH HILL AVENUE (1520 WEST OAKWOOD STREET); DIRECTING THE AMENDMENT OF THE ZONING MAP; DIRECTING THE AMENDMENT OF THE FUTURE LAND USE GUIDE MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

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

I. APPLICATION Z23-040

That the following described property, which has heretofore been zoned “R-MF”, Multi-Family Residential District, shall hereafter bear the zoning classification of “R-2”, Two-Family Residential District, to wit:

Lot 15 of NCB 364, one lot containing approximately 0.26 acres of land located at the southeast intersection of West Oakwood Street and North Hill Avenue (1520 West Oakwood 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 24th day of January A.D., 2024.

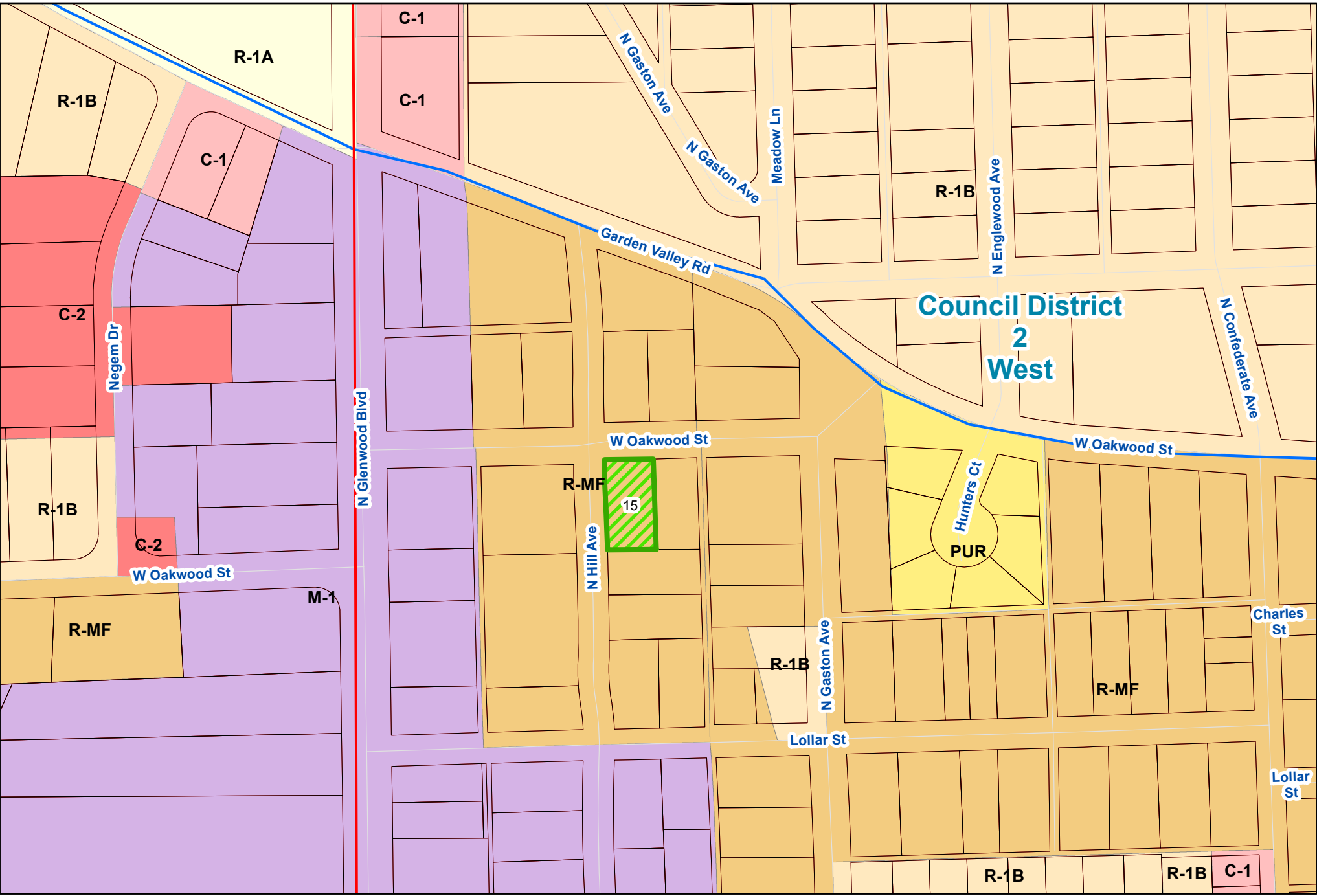
DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY



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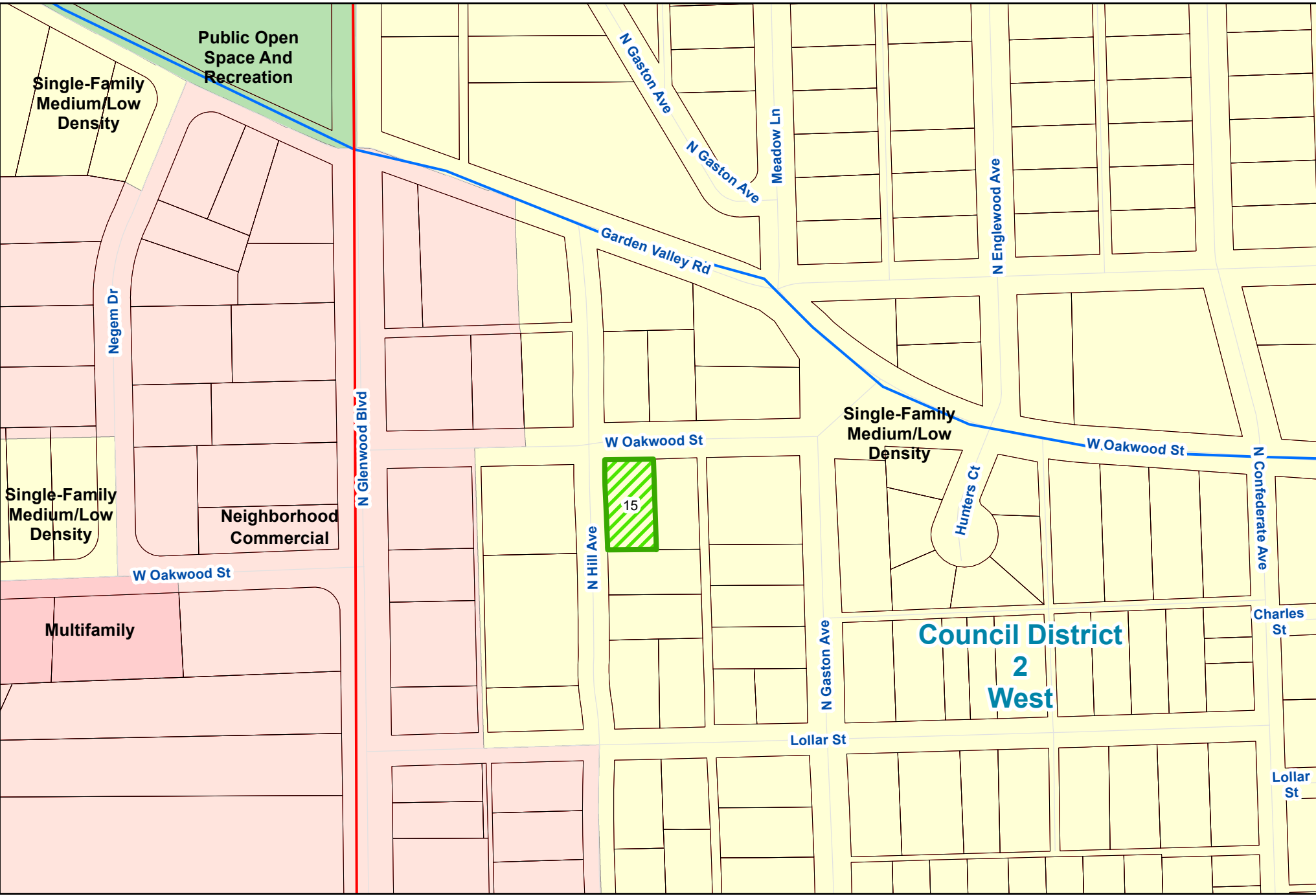
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ZONING CASE
Zoning Case #: Z23-040
Current Zoning: R-MF
Proposed Zoning: R-2
JENKINS REGINALD



Subject Property





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200 0 200 Feet

ZONING CASE
 Zoning Case #: Z23-040
 Current Zoning: R-MF
 Proposed Zoning: R-2
 JENKINS REGINALD

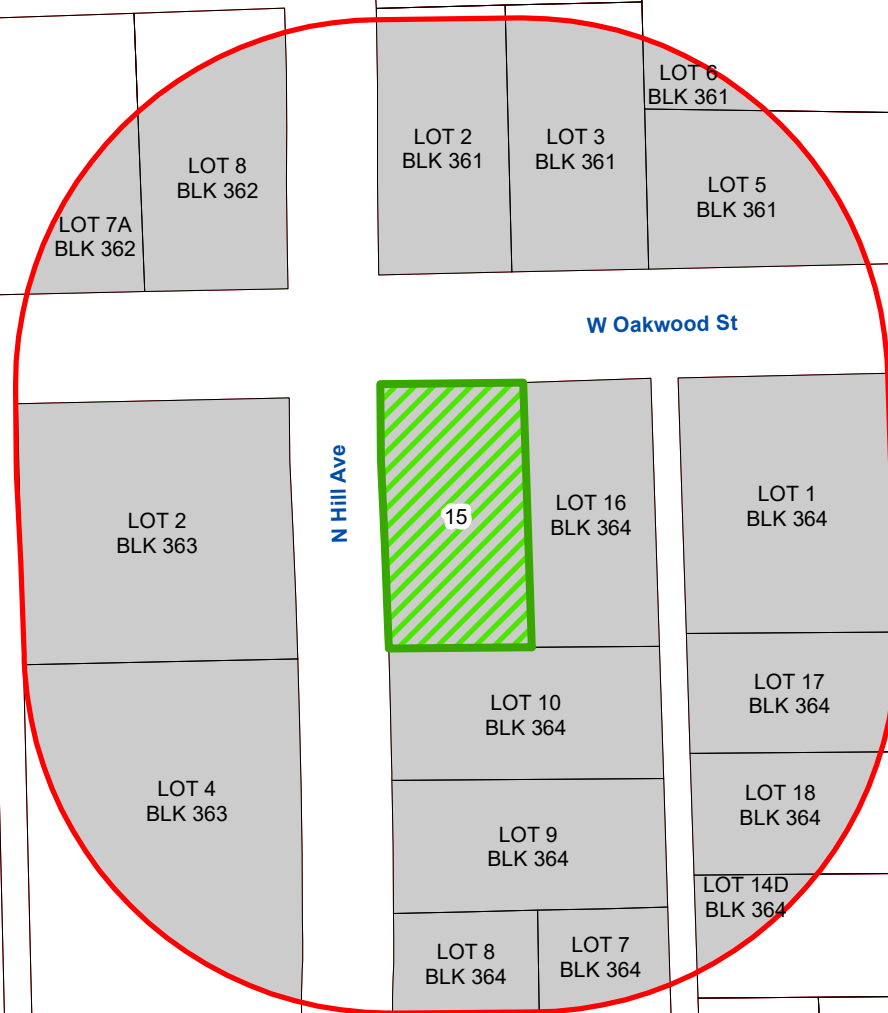


Subject Property



Notification List

361	6	TRUJILLO HERMELINDA
361	3	SOSA MARIO
361	2	WALKER MILDRED
362	8	WALKER MILDRED
362	7A	WALKER MILDRED
361	5	ARAUJO CAYETANO J & CLARA A
364	1	ESPINAZA ALFREDO & JUANA
364	16	WALKER MILDRED
364	15	JENKINS REGINALD
363	2	WALKER MILDRED
364	18	IOM ENTERPRISES LLC
364	17	ESPINAZA ALFREDO & JUANA
364	10	WALKER MILDRED
363	4	JACK F PAUL REAL ESTATE LLC
364	9	STRIPLING SANCHEZ L & SLOAN
364	7	RICHARDSON KARMON & HASKEL
364	8	STRIPLING ANDRE
364	14D	PHILLIPS E J & CHARLOTTE RENA



Meadow Ln
Garden Valley Rd

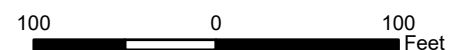
W Oakwood St

N Hill Ave

N Gaston Ave



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.



ZONING CASE
Zoning Case #: Z23-040
Current Zoning: R-MF
Proposed Zoning: R-2
JENKINS REGINALD

- Subject Property
- 200' Mailed Notification Area





**CITY OF TYLER
CITY COUNCIL COMMUNICATION**



Agenda Number: R-1

Date: January 24, 2024

Subject: Request that the City Council consider adoption of a Resolution authorizing the filing of an application with the Texas Parks and Wildlife Department (TPWD) for a Recreational Trails Grant and authorizing the City Manager to take all actions needed to receive and expend grant funds.

Page: Page 1 of

Item Reference:

TPWD administers the National Recreational Trails Fund in Texas under the approval of the Federal Highway Administration (FHWA). This federally funded program receives its funding from a portion of federal gas taxes paid on fuel used in non-highway recreational vehicles. The reimbursable grants can be up to 80% of project cost with a maximum of \$300,000 for non-motorized trail grants and a maximum award of \$500,000 for motorized (off-highway vehicle) trail grants. All grant-assisted sites must be maintained and regularly open to the public for 20 years or more upon completion.

If approved by the City Council, the City's Parks and Recreation Department would apply for \$500,000 in grant funds. The funding would be used for the development and renovation of Windsor Grove Nature Park and trails improvements.

To apply for this funding, a resolution authorizing the application must be approved by the governing body of the applicant according to the grant application criteria.

RECOMMENDATION:

Request that the City Council consider adoption of a Resolution authorizing the filing of an application with the Texas Parks and Wildlife Department (TPWD) for a Recreational Trails Grant and authorizing the City Manager to take all actions needed to receive and expend grant funds.

ATTACHMENTS:

[Parks_Resolution_-_Windsor Grove Nature Park trail 2024.revised](#)

Drafted/Recommended By:
Department Leader

Leanne Robinette, Director of Parks and Recreation

**Edited/Submitted By:
City Manager**

RESOLUTION NO. R-2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, ALSO REFERRED TO AS “APPLICANT”, AUTHORIZING SUBMISSION OF AN APPLICATION FOR TEXAS PARKS AND WILDLIFE RECREATIONAL TRAILS GRANT PROGRAM FUNDS TO BE USED FOR DIRECT COSTS FOR RECREATIONAL TRAILS PROGRAMS; DESIGNATING THE CITY MANAGER OR DESIGNEE AS BEING RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE APPLICANT IN DEALING WITH THE TEXAS PARKS AND WILDLIFE DEPARTMENT, ALSO REFERRED TO “DEPARTMENT”, FOR THE PURPOSE OF PARTICIPATING IN THE RECREATIONAL TRAILS GRANT PROGRAM; AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS AND ANY INCREASES IN FUNDING LEVELS, AND TO TAKE ALL NECESSARY ACTIONS TO OBTAIN AND USE THE GRANT FUNDS; CERTIFYING THAT THE APPLICANT’S MATCHING SHARE IS READILY AVAILABLE AND APPROVING THE CITY’S LOCAL MATCH; DEDICATING THE PROPOSED SITE FOR PERMANENT (OR FOR THE TERM OF THE LEASE FOR LEASED PROPERTY) FOR PUBLIC PARK AND RECREATIONAL USES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to promote the public welfare; and

WHEREAS, the Texas Parks and Wildlife Department (“Department”) has made available and offered state financial aid monies for proposed funding to be used for direct program costs for recreational trails programs; and

WHEREAS, the City of Tyler Parks and Recreation Department wishes to participate in the aforementioned state financial aid grant; and

WHEREAS, the City of Tyler (“City”) is fully eligible to receive assistance under the Recreational Trails Grant Program (“Program”); and

WHEREAS, the City is desirous of authorizing an official or represent and act for the City in dealing with the Department concerning the Program; and

WHEREAS, it is considered to be in the public interest to obtain and use grant funds for the public purposes described herein; and

WHEREAS, the City of Tyler Parks and Recreation Department will be applying for approximately \$500,000.00 to allow for enhancements to the Windsor Grove Nature Park trail; and

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

PART 1: That the City hereby certifies that it is eligible to receive assistance under the Program, and that notice of the application has been posted according to local public hearing requirements.

PART 2: That the City certifies that the matching share for this application is readily available at this time. The City’s match in the amount of \$500,000 is hereby approved.

PART 3: That the City hereby certifies and directs the City Manager or designee to act for the City in dealing with the Department for the purposes of the program, and that the City Manager or designee is hereby officially designated as the representative in this regard.

PART 4: That the City hereby specifically authorizes the City Manager or designee to make an application to the Department concerning the site to be known as Windsor Grove Nature Park in the City of Tyler or use as park site and is hereby dedicated (or will be dedicated upon completion of the proposed acquisition) for public park and recreation purposes in perpetuity (or for the lease term, if legal control is through a lease). Projects with federal monies may have differing requirements.

PART 5: That the City Council hereby resolves and affirms to the Texas Parks and Wildlife Department the City of Tyler's intent to comply with all of the assurances set forth in the grant agreement and all laws and regulations incorporated by reference in the grant agreement.

PART 6: That the City Manager or designee is hereby authorized and directed to accept the grant for the described Program and public purposes, as well as any grant amendments to increase the funding levels.

PART 7: That the City Manager or designee is hereby authorized and directed to execute any documents and take all actions necessary in order to accept and use the grant to fulfill the public purposes described above.

PART 8: That the City Manager or designee is hereby authorized and directed to provide such additional information as may be required by the Texas Parks and Wildlife Department.

PART 9: That this Resolution shall take effect immediately upon its adoption by the City Council.

PASSED AND APPROVED this ____ day of January, A. D. 2024.

DON 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: R-2

Date: January 24, 2024

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

Page: Page 1 of

Item Reference:

The State of Texas Office of the Governor's (OOG's) Homeland Security Grant Division (HSGD) currently serves as the State's Administrative Agency (SAA) for the State of Texas' State Homeland Security Program (SHSP). The SHSP provides grant funding that can be used to support programs and projects aimed to maintain and/or enhance the City's emergency preparedness and response capabilities.

The Tyler Fire Department seeks authorization to apply for and accept grant funding. Certain grants are currently available through the East Texas Council of Governments and funded through Homeland Security and other funding sources. Currently, these grants do not require matching funds, and the Fire Department will not accept any matching requirements for them in the future. A Resolution of the City Council is required for each grant application.

GRANT #4975501/MOBILE COMMUNICATIONS AND COMMAND PLATFORM REHAB AND TECHNOLOGY ENHANCEMENTS, IN THE AMOUNT OF \$50,000.00.

This grant will allow funding for technology upgrades for the City of Tyler Fire Department, Office of Emergency Management (OEM), and the Mobile Communications and Command Platform (MCCP) to service the City of Tyler and support emergency response to 14 counties in the ETCOG "East Texas Council of Governments" jurisdiction. The OEM's EOC will also support additional areas or agencies at the request of other governmental agencies and the State of Texas as needed and allowed.

RECOMMENDATION:

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

ATTACHMENTS:

[HSSP Grant #4975501 Resolution](#)

Drafted/Recommended By:
Department Leader

David L. Coble, Fire Chief

Edited/Submitted By:
City Manager

RESOLUTION NO. R-2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AUTHORIZING SUBMISSION OF AN APPLICATION BY THE TYLER FIRE DEPARTMENT FOR, AND ACCEPTANCE OF, FUNDING THROUGH THE OFFICE OF THE GOVERNOR'S (OOG) HOMELAND SECURITY GRANT DIVISION (HSGD) FOR GRANT FUNDING THROUGH THE STATE HOMELAND SECURITY PROGRAM (SHSP), AS MANAGED BY THE EAST TEXAS COUNCIL OF GOVERNMENTS, FOR THE SUPPORT OF PROGRAMS AND PROJECTS AIMED AT MAINTAINING AND/OR ENHANCING THE CITY'S EMERGENCY PREPAREDNESS AND RESPONSE CAPABILITIES, ALONG WITH ANY GRANT AMENDMENTS CHANGING THE GRANT FUNDING LEVELS; AUTHORIZING THE CITY MANAGER OR DESIGNEE TO TAKE ALL ACTIONS NECESSARY IN CONNECTION WITH THE GRANT; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, the Office of the Governor's (OOG's) Homeland Security Grant Division (HSGD) currently serves as the State Administrative Agency (SAA) for the State of Texas' State Homeland Security Program (SHSP) which provides grant funding that can be used to support projects and programs aimed at maintaining and/or enhancing the City of Tyler's emergency preparedness and response capabilities; and

WHEREAS, the City Council finds that it is in the best interest of the citizens of the City of Tyler to apply for grant funding to implement a project which would be implemented under the FY 23 SHSP; and

WHEREAS, the City Council has established its eligibility to apply for and receive funding through the FY 23 SHSP grant program; and

WHEREAS, it is considered to be in the public interest to obtain and use grant funds for the above public purpose(s); and

WHEREAS, the City Council hereby authorizes the City Manager of the City of Tyler or designee to apply for, accept, reject, alter or terminate the grant application on behalf of the City of Tyler; and

WHEREAS, the City Manager of the City of Tyler or designee is hereby authorized and directed to accept the grant for the described program(s) and public purpose(s), as well as any grant amendments increasing, decreasing or otherwise changing the funding levels; and

WHEREAS, in the event of loss or misuse of grant funds, the City of Tyler will return all funds to the State of Texas Office of the Governor.

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

PART 1: The City Council hereby approves the submission of the grant application for the **GRANT #4975501/MOBILE COMMUNICATIONS AND COMMAND PLATFORM REHAB AND TECHNOLOGY ENHANCEMENTS** to the Texas Governor's (OOG) Homeland Security Grant Division (HSGD).

PART 2: That the filing of the grant application, and all actions taken in connection therewith, by City Staff, is hereby authorized and affirmed.

PART 3: That the City Council hereby resolves and affirms that the City of Tyler has legal authority to apply for the grant and to carry out the proposed project(s).

PART 4: That the City Council hereby resolves and affirms the City of Tyler's intent to comply with all of the assurances set forth in the grant agreement and all laws, regulations, and circulars incorporated by reference in the grant agreement.

PART 5: That the City Manager of the City of Tyler or designee is hereby authorized and directed to take all actions necessary in order to accept and use the grant to fulfill the public purpose(s) described above.

PART 6: That the City Manager of the City of Tyler or designee is hereby authorized and directed to accept the grant for the described program(s) and public purpose(s), as well as any grant amendments increasing, decreasing, or otherwise changing the funding levels.

PART 7: That the City Manager of the City of Tyler or designee is hereby authorized and directed to provide such additional information as may be required by the State of Texas Office of the Governor, the Governor's (OOG) Homeland Security Grant Division (HSGD), and/or the East Texas Council of Governments.

PART 8: That the City Council agrees that in the event of loss or misuse of grant funds, the City will return all such grant funds to the State of Texas Office of the Governor.

PART 9: That this Resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED on this the 24th day of January, 2024.

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

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: O-1

Date: January 24, 2024

Subject: Request that the City Council consider adoption of an Ordinance amending Tyler City Code Chapter 3, Civil Service Classification Plan by amending the Civil Service Classification Plan and number of authorized Civil Service positions for Fiscal Year 2023-2024.

Page: Page 1 of

Item Reference: Texas Local Government Code Section 143.021; Tyler City Code Chapter 3

AMENDMENT OF CIVIL SERVICE CLASSIFICATION PLAN TO ESTABLISH THE NUMBER OF AUTHORIZED POLICE AND FIRE CIVIL SERVICE POSITIONS FOR FISCAL YEAR 2023-2024

The attached Ordinance has been prepared for the City Council to consider formal approval of amendments to the Civil Service Classification Plan and the number of authorized Civil Service positions within the Police Department and Tyler Fire Department in accordance with Chapter 143 of the Texas Local Government Code included in this year's current budget (Fiscal Year 2023-2024).

The Civil Service Classifications were last updated on September 27, 2023. This ordinance reflects changes made to the positions in the Tyler Police Department, which includes the addition of one Sergeant position and decrease of one Police Officer position for the remainder of fiscal year 2023-2024. There are no changes being made to the Tyler Fire Department positions at this time.

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

RECOMMENDATION:

It is recommended that the City Council approve the attached Ordinance amending Tyler City Code Chapter 3, Civil Service Classification Plan and number of Authorized Civil Service positions for Fiscal Year 2023-2024.

ATTACHMENTS:

[2024 Civil Service Classification ordinance](#)

Drafted/Recommended By:
Department Leader

Jimmy Toler

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2024-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 3 OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, “PERSONNEL/CIVIL SERVICE/TMRS”, ARTICLE III., “CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS”, DIVISION 2, “CLASSIFICATION PLAN”, AMENDING THE CIVIL SERVICE CLASSIFICATION PLAN AND NUMBER OF AUTHORIZED CIVIL SERVICE POSITIONS FOR FISCAL YEAR 2023-2024; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

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

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

Sec. 3-43. Classification plan adopted.

The following is adopted as the classification plan for Tyler Civil Service employees.

Police Department Classifications	FY 2020-2021 # of Positions	FY 2021-2022 # of Positions	FY 2022-2023 # of Positions	FY 2023-2024 # of Positions	(updated) FY 2023-2024 # of Positions
Assistant Police Chief I, II, III, IV	3	3	3	3	<u>3</u>
Police Lieutenant I, II, III, IV	8	8	8	8	<u>8</u>
Police Sergeant I, II, III, IV	27	27	27	27	<u>28</u>
Police Officer – Recruit, I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV	161	163	163	163	<u>162</u>
TOTALS	199 * One Lieutenant added; one Police Recruit added	201 * Two Police Recruits added	201	201	<u>201</u> * One Sergeant added; one Recruit removed

Fire Department Classifications	FY 2020-2021 # of Positions	FY 2021-2022 # of Positions	FY 2022-2023 # of Positions	FY 2022-2023 # of Positions	FY 2023-2024 # of Positions
Assistant Fire Chief I, II, III, IV	2	2	2	2	2
Fire Battalion Chief I, II, III, IV	7	7	7	7	7
Fire Senior Captain	14	14	14	14	16
Fire Captain I, II, III, IV	26	26	26	26	27
Fire Driver/Engineer I, II, III, IV	40	40	40	40	43
Firefighter – Recruit, I, II, III, IV, V, VI, VII, VIII, IX, X, XI	69	71	73	79	73
TOTALS	158 *One Fire Captain added; one FF removed	160 *Two additional Fire Fighters added	162 *Two additional Fire Fighters added	168 *Six Fire Fighters added (SAFER)	168 *Six Fire Fighters converted to Promoted Positions for Sta. 10

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

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

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

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

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

DON WARREN, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,
CITY ATTORNEY



CITY OF TYLER CITY COUNCIL COMMUNICATION



Agenda Number: M-1

Date: January 24, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a contract in the amount of \$143,100, with KSA Engineers, Inc., for the Decommissioning of Wells 2, 4, and 5 and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

Page: Page 1 of

Item Reference:

Between July 18 and 22, 2022, Mr. Kevin Glanton of the Texas Commission on Environmental Quality (TCEQ) Tyler Regional Office conducted an investigation of the City's water system to evaluate compliance with applicable requirements for public water supply systems. During his investigation he noted that some of the City's wells are not in use and are in a non-deteriorated state as defined in 16 TAC Chapter 76. According to these regulations, deteriorated wells must be either plugged with cement or repaired to a non-deteriorated state. The compliance documentation for wells 2, 4, and 5 must be submitted to the TCEQ prior to December 31, 2024.

Tyler Water Utilities has transitioned to relying primarily on surface water sources for our water supply. These surface water sources are Lake Palestine and Lake Tyler. This has rendered the wells obsolete and no longer necessary for our water distribution system. Wells 2 and 4 have been offline since 2011 while well 5 has been offline since 2017. Maintaining these wells has become an unnecessary financial burden for the city. Decommissioning these wells will eliminate ongoing maintenance costs associated with infrastructure that no longer serves a purpose. Proper sealing and decommissioning of the wells will be carried out in strict adherence to environmental regulations. Additionally, the land currently occupied by the wells may be repurposed for other community benefits.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a contract in the amount of \$143,100, with KSA Engineers, Inc., for the Decommissioning of Wells 2, 4, and 5 and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

ATTACHMENTS:

[Decommissioning of Wells Resolution](#)
[Water Well Demolition](#)

Drafted/Recommended By:
Department Leader

Nikki Ingram, P.E./Kate Dietz, P.E.

Edited/Submitted By:
City Manager

RESOLUTION NO. R-2024-__

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 DECOMMISSIONING OF WELLS 2, 4, AND 5 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 Decommissioning of Wells 2, 4, and 5 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 \$616,132.00.

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

PASSED AND APPROVED, this the 24th day of January, 2024.

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

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM,

CITY ATTORNEY



STATE OF TEXAS

§

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

COUNTY OF SMITH

§

This AGREEMENT is entered into, with an Effective Date of
[insert date of last party's signature], by and between the **CITY OF TYLER**, in Smith County, Texas (OWNER), acting therein by and through its duly authorized City Manager, and **KSA Engineers, Inc.** (ENGINEER or ARCHITECT), hereinafter referred to as "E/A," for the purpose of acquiring all professional engineering and/or architectural services required for the project known as **"2024 Water Well Demolition"** (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>\$80,000.00</u>
Not-to-Exceed		
- Hourly/Reimbursable	=	<u>\$63,100.00</u>
Expenses		
- Total Contract Price	=	<u>\$143,100.00</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 Engineers, Inc.
Attn: Christopher Aylor, P.E.
6781 Oak Hill Blvd
Tyler, Texas

OWNER:

City of Tyler
Attn: Kate Dietz, P.E.
P.O. Box 2039
Tyler, TX 75710

8.8. Venue.

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

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

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

FOR THE CITY OF TYLER, TEXAS:

ATTEST:

By: _____

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:

Director of Client Services

Date

Joncie H. Young

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 F – Procedure for Correcting Construction Defects

(Applicable only to construction contracts affecting City-owned buildings and other public works)

Exhibit A - E/A's Scope of Service

Exhibit A
ENGINEER'S Scope of Service
2024 Water Well Demolition
KSA Contract No. 102853

This Agreement constitutes authorization by the City of Tyler (OWNER) for KSA Engineers, Inc. (ENGINEER) to provide engineering services for the **2024 Water Well Demolition** (hereinafter called the Project).

PROJECT DESCRIPTION

Project consist of demolishing and plugging the City of Tyler's Water Wells No. 2, 4, and 5. Project will include work at three (3) separate water wells sites consisting of plugging the existing water wells, site restoration and demolition of site surface improvements, ancillary water production equipment, and associated electrical and controls equipment.

The scope of services is based on the design of one (1) construction project with a pre-design opinion of probable construction cost of \$680,000.

SCOPE OF SERVICES

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

- 1 Basic Services of ENGINEER: The ENGINEER is hereby authorized to perform the following basic services:
 - 1.2 Study and Report Phase: Not used.
 - 1.3 Preliminary Design Phase: Provide services as stated in Section 1.3 of the Agreement.
 - 1.4 Final Design Phase: Provide services as stated in Section 1.4 of the Agreement.
 - 1.5 Bidding or Negotiating Phase: Provide services as stated in Section 1.5 of the Agreement.
 - 1.6 Construction Phase: Provide services as stated in Section 1.6 of the Agreement.
 - 1.7 Operational Phase: Not used
- 2 Additional Services of ENGINEER: The ENGINEER is hereby authorized to perform the following additional services:
 - A. Design Survey
 - B. Part-Time Resident Project Representative
 - C. Reimbursable Expenses (Printing, Postage, Mileage, etc.)
- 3 ENGINEER's Exclusions:
 - A. Study and report preparation
 - B. Subsurface utility engineering and utility potholing
 - C. Historical & archeological investigation and report;
 - D. Wetland investigations, archeological investigations, environmental investigations, categorical exclusions, nationwide permits;
 - E. Coordination, application, or permitting with any and all local, State, and/or Federal agencies other than TCEQ.

- F. Stormwater pollution plans, applications, and/or permits;
 - G. The relocation of utilities;
 - H. Traffic control plans
 - I. Hydraulic studies
- 4 OWNER's Responsibilities: The OWNER's responsibilities shall be as described in SECTION 3 of the ENGINEERING CONTRACT in addition to the following responsibilities: Consultant authorization and associated payments to consultant for hydraulic capacity evaluations

Exhibit B - E/A's Project Schedule

Exhibit B
Project Schedule
2024 Water Well Demolition
KSA Contract No. 102853

PROJECT SCHEDULE

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

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

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

Exhibit C
Fee Summary
2024 Water Well Demolition
KSA Contract No. 102853

FEE SUMMARY

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

1. Preliminary Design:	\$40,000 Lump Sum
2. Final Design:	\$30,000 Lump Sum
3. Bidding:	\$10,000 Lump Sum
4. Design Survey:	\$7,500 hourly and reimbursable
5. Construction Administration:	\$22,500 hourly and reimbursable ²
6. Part-Time Resident Project Representative ³ :	\$32,100 hourly and reimbursable ²
7. Reimbursable Expenses:	\$1,000 hourly and reimbursable
Total Budget: \$143,100	

Notes:

1. Compensation shall be billed monthly for Engineer's services based on time charged by each category at the hourly rates listed on the attached schedule.
2. Construction Administration and Part-Time Resident Project Representative assumes a construction period of 90 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 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 [<i>See</i> Section 7.3.2] ☒ Occurrence Box is Checked ☒ Per Project Box is Checked for General Aggregate Limit.
4.	Business Automobile Liability [<i>See</i> 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 [<i>See</i> Section 7.3.2]
6.	Commercial Umbrella / Excess Liability [<i>See</i> Section 7.3.2] ☒ Occurrence Box is Checked
7.	Workers Compensation and Employers Liability [<i>See</i> Section 7.3.2] ☒ WC Statutory Limits Box is Checked
	Look at the “Description of Operations . . . Special Provisions” Box. [<i>See</i> Section 7.4] [<i>See also</i> 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: [<i>See generally</i> 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]	

Exhibit E - Certificate of Interested Parties (Form 1295)

(If Required)

Check Here if this Section is NOT Used ☐

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

Exhibit F - Procedure for Correcting Construction Defects

Check Here if this Section IS Applicable to This Contract ☐

****ONLY APPLICABLE FOR CONSTRUCTION ACTIVITIES AFFECTING CITY-OWNED BUILDINGS AND OTHER PUBLIC WORKS PROJECTS AS DEFINED IN TEX. GOV. CODE ANN., SEC. 2269.001 (6)****

EXHIBIT F is not applicable to “civil works” projects as defined in Tex. Gov. Code Ann., Sec. 2269.351

I. DEFINITIONS

- A. **“Public Works”** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.001 (6), are those related to constructing, altering, or repairing a public building or carrying out any public work.
- B. **“Civil works”** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.351 are those related to roads, streets, bridges, utilities, water supply projects, water plants, waste water plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage, flood control projects and transit projects.

II. NOTIFICATION OF DEFECT

- A. **ENGINEER/ARCHITECT SHALL NOTIFY OWNER IN WRITING OF ANY CONSTRUCTION DEFECT** of which the ENGINEER/ARCHITECT is aware, and which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning or supervision of the construction that is a result of:
 - i. The use of defective materials, products, or components in the construction;
 - ii. A violation of a building code applicable by law to the construction;
 - iii. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or
 - iv. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.
- B. The E/A’s writing shall identify the specific construction defect, describe the present physical condition of the affected structure; and describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

III. PROCEDURE TO CORRECT CONSTRUCTION DEFECTS

- A. Before bringing an action asserting a claim for a construction defect under this Agreement, the OWNER must provide a written report to each party with whom the OWNER has a contract for the design, construction or construction oversight of an affected structure by certified mail, return receipt requested.
 - i. The report shall clearly identify the specific construction defect(s) on which the claim is based, which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning, or supervision of the construction that is a result of:
 - a. The use of defective materials, products, or components in the construction;
 - b. A violation of a building code applicable by law to the construction;

- c. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or
 - d. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.
 - iii. The report shall clearly:
 - a. Identify the specific construction defect on which the claim is based;
 - b. Describe the present physical condition of the affected structure; and
 - c. Describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.
- B. OWNER shall allow each party with whom the OWNER has a contract for the design or construction of an affected structure and who is subject to the claim, and any known subcontractor or supplier who is subject to the claim a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after receiving the report.
- C. OWNER shall allow at least 120 days after the inspection to:
 - i. Correct any construction defect or related condition identified in the report; or
 - ii. Enter into a separate agreement with the governmental entity to correct any construction defect or related condition identified in the report.
- D. OWNER is not required to allow a party to make a correction or repair under Subsection II.A. if:
 - i. the party:
 - a. Is a contractor and cannot provide payment and performance bonds to cover the corrective work;
 - b. Cannot provide liability insurance or workers' compensation insurance;
 - c. Has been previously terminated for cause by OWNER; or
 - d. Has been convicted of a felony; or
 - ii. OWNER previously complied with the process required by Subsection II.A. regarding a construction defect or related condition identified in the report and:
 - a. The defect or condition was not corrected as required by Subsection II.C.i. or by an agreement under Subsection II.C.ii.; or
 - b. The attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.
- E. Recovery of Report Costs. If the report described in Subsection II.A. identifies a construction defect that is corrected or for which the OWNER recovers damages, the party responsible for that construction defect shall pay the reasonable amounts incurred by OWNER to obtain the report with respect to identification of that construction defect.
- F. These provisions do not prohibit or limit the OWNER from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public or a building occupant.



City of Tyler
Production Water Well Plugging
Opinion of Probable Project Cost

6781 Oak Hill Boulevard
Tyler, TX 75703
903.581.8141

Item No.	Description	Quantity	Unit	Unit Price	Total
Schedule 1.0- Water Well 2					
1.01	Mobilization, Insurance, and Bonds	1	LS	\$10,000.00	\$10,000.00
1.02	Well Pump Assembly Removal	1	LS	\$20,000.00	\$20,000.00
1.03	Well Camera Survey	1	LS	\$2,000.00	\$2,000.00
1.04	Well Plugging and Reporting	1	LS	\$125,000.00	\$125,000.00
1.05	Well Head Demolition	1	LS	\$7,500.00	\$7,500.00
1.06	Brick Building Demolition	1	LS	\$12,500.00	\$12,500.00
1.07	Chainlink Fence Removal	360	LF	\$15.00	\$5,400.00
1.08	Electrical Service and Meter Removal by Oncor	1	LS	\$5,000.00	\$5,000.00
Subtotal:					\$187,400.00
Schedule 2.0- Water Well 4					
2.01	Mobilization, Insurance, and Bonds	1	LS	\$10,000.00	\$10,000.00
2.02	Well Pump Assembly Removal	1	LS	\$20,000.00	\$20,000.00
2.03	Well Camera Survey	1	LS	\$2,000.00	\$2,000.00
2.04	Well Plugging and Reporting	1	LS	\$110,000.00	\$110,000.00
2.05	Well Head Demolition	1	LS	\$8,500.00	\$8,500.00
2.06	Brick Building Demolition	1	LS	\$12,500.00	\$12,500.00
2.07	Hydropneumatic Tank Demolition	1	LS	\$5,500.00	\$5,500.00
2.08	Ground Tank Demolition	1	LS	\$10,000.00	\$10,000.00
2.09	Electrical Service and Meter Removal by Oncor	1	LS	\$5,000.00	\$5,000.00
Subtotal:					\$183,500.00
Schedule 3.0- Water Well 5					
3.01	Mobilization, Insurance, and Bonds	1	LS	\$10,000.00	\$10,000.00
3.02	Well Pump Assembly Removal	1	LS	\$20,000.00	\$20,000.00
3.03	Well Camera Survey	1	LS	\$2,000.00	\$2,000.00
3.04	Well Plugging and Reporting	1	LS	\$125,000.00	\$125,000.00
3.05	Well Head Demolition	1	LS	\$7,500.00	\$7,500.00
3.06	Brick Building Demolition	1	LS	\$12,500.00	\$12,500.00
3.07	Vault Demolition	2	EA	\$3,750.00	\$7,500.00
3.08	Chainlink Fence Removal	230	LF	\$15.00	\$3,450.00
3.09	Electrical Service and Meter Removal by Oncor	1	LS	\$5,000.00	\$5,000.00
Subtotal:					\$192,950.00
Construction Subtotal:					\$563,850.00
Construction Contingencies @ 20%:					\$112,770.00
Pre-Agreement Opinion Of Probable Construction Cost:					\$676,620.00
Basic Services:					\$86,000.00
Additional Services:					\$57,100.00
Pre-Agreement Opinion of Probable Project Cost:					\$819,720.00

Assumptions:

Unit costs are in 2023 dollars.

Assumes 3 month construction contract.

Assumed Well 4 fencing to remain in place.

Oncor costs are assumed and will be verified during design.

Basic services include preliminary design, final design, and bidding.

Additional services include construction administration, part-time RPR, and reimbursable expenses

**THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE
AUTHORITY OF JEREMY R ORR, P.E., 124911, ON DECEMBER 4, 2023. IT IS NOT TO BE
USED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES.**



CITY OF TYLER CITY COUNCIL COMMUNICATION



Agenda Number: M-2

Date: January 24, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute a professional services contract in the amount of \$99,910.00, with Halff Associates, Inc., for the Water Conservation and Drought Contingency Plan Report project and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

Page: Page 1 of

Item Reference:

The City of Tyler has a water conservation and drought contingency emergency demand management plan that was prepared by City staff in 2019. The Texas Commission on Environmental Quality (TCEQ) requires that the plan be reviewed and updated every five years. The City of Tyler provides retail water supply and wholesale water supply, both of which are included in the plan.

While conservation and drought/emergency are included in this single project, they serve two different purposes and are governed by different rules and regulations. A water conservation plan includes ongoing activities that promote and support the use of water efficiently. A drought contingency and emergency demand plan identifies trigger thresholds at which voluntary and/or mandatory measures are implemented based on available water supply, which includes an enforcement component. Halff will prepare a single combined plan covering the water conservation and drought contingency and emergency demand management plan.

Updating these plans is a proactive and forward-thinking initiative aimed at addressing the challenges posed by evolving water needs and potential drought scenarios in our community. These two plans are crucial to enhancing the resilience of our water supply system.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a professional services contract in the amount of \$99,910.00, with Halff Associates, Inc., for the Water Conservation and Drought Contingency Plan Report project and adopt a Resolution reserving the right to reimburse expenditures with proceeds of future debt.

ATTACHMENTS:

Scope and Fee
Engineering-Architect Contract
Form 1295 Certificate
Water Conservation and Drought Contingency Plan Resolution

Drafted/Recommended By:
Department Leader

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

Edited/Submitted By:
City Manager

EXHIBIT A DRAFT SCOPE OF SERVICES

CITY OF TYLER

Water Conservation and Drought Contingency and Emergency Demand Management Plan Update

December 21, 2023

Project Introduction and Understanding

The City of Tyler has a water conservation and drought contingency emergency demand management plan that was prepared by city staff in 2019. The Texas Commission on Environmental Quality (TCEQ) requires that the plan be reviewed and updated every five (5) years. The City provides retail water supply and wholesale water supply, both of which are included in the plan. Tyler has requested Halff assist the City with the update of this plan.

While conservation and drought/emergency are included in this single plan, they serve two different purposes and are governed by different rules and regulations. A water conservation plan includes ongoing activities that promote and support the use of water efficiently. A drought contingency and emergency demand plan identifies trigger thresholds at which voluntary and/or mandatory measures are implemented based on available water supply, which includes an enforcement component. Halff will prepare a single combined plan covering the water conservation and drought contingency and emergency demand management plan.

Following a meeting with the City on Monday, December 11, 2023, Halff has developed a scope of work for the plan updates.

Project Scope Outline & Contents

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

Exhibit A	Scope of Work
Task 1:	Project Meetings
Task 2:	Project Management
Task 3:	Water Conservation Plan Update
Task 4:	Drought Contingency and Emergency Demand Management Plan Update
Task 5:	Public Involvement and Adoption by City Council
Exhibit B:	Proposed Project Schedule
Exhibit C:	Project Fee Summary
Exhibit D:	Exclusions

SCOPE OF WORK

TASK 1: Project Meetings

1. Conduct one (1) virtual project kickoff meeting with the City after receiving Notice to Proceed (NTP).
2. Conduct regular virtual meetings with City staff to maintain the project schedule and meet the TCEQ deadline. Halff anticipates that these will be held approximately every two weeks for the duration of the plan update. Halff will prepare a meeting agenda and meeting notes for each meeting. This represents eight (8) project status/check-in meetings.

TASK 2: Project Management

1. Prepare monthly project status reports to accompany invoices.
2. Coordinate with City staff, as appropriate, to obtain necessary information and data to prepare the plans. Coordination includes phone calls, conference calls, email correspondence, internal team coordination, project scheduling and updates, and online meetings (not identified in Task 1) as may be necessary for the completion of the project.

TASK 3: Water Conservation Plan Update

The updated plan must meet the TCEQ and TAC requirements. Halff will coordinate with the City to develop and update the water conservation plan that represents the City's goals and objectives while meeting the state requirements. Halff will coordinate internally regarding information needed for the water conservation plan that may be available in the recent water supply master plan.

Halff will perform the following:

1. Compare City's current water conservation plan to TCEQ and TAC requirements for retail and wholesale water providers.
2. Confirm that City's current plan complies with the Upper Neches River Municipal Water Authority's plan. Inform the City if any discrepancies are identified.
3. Review wholesale customers' conservation plans and confirm that the City requirements are represented in their wholesale customer plans. Inform the City if any discrepancies are identified. Review the City's wholesale water supply contracts to confirm water rates, amounts, and special provisions that may be relevant to the water conservation plan.
4. Obtain from City staff related ordinances, including current conservation ordinance (in Word, if available), plumbing codes, landscape water management, etc. Review and incorporate information in the plan, as appropriate.
5. Review City's progress towards achieving its five-year and ten-year targets identified in current plan.
6. Review metering information provided by City. Information includes metering device(s) used, meter testing and repair, meter replacement program and other related data.
7. Review water loss information from City, including measures to control water loss and annual water loss audits for previous five years.
8. Review City's leak detection and repair program. Provide recommendations for updates, as appropriate.
9. Review current public education program on water conservation and provide recommendations for updates, as appropriate.

10. Obtain copy of reservoir systems operation plan for inclusion in the appendices.
11. Review City's enforcement program, including related ordinances, policies, procedures, etc.
12. Review City-provided information required to update the TCEQ Utility Profile for Retail Water Supplier and update the profile accordingly.
13. Review City-provided information required to update the TCEQ Utility Profile for Wholesale Water Supplier and update the profile accordingly.
14. Update the TCEQ Water Conservation Implementation Report Form. Prepare Summary of Updates/Revisions to Water Conservation Plan based on information provided by City.
15. Update the City's water conservation plan and send to City for review and comment.
 - a. Description of service area, including maps, population, water use data, water system data, and wastewater data
 - b. Description of monitoring and record management program based on input from City staff
 - c. Current water supply system summary with information from the water master plan and City staff, including storage, treatment, delivery and distribution information
 - d. Best Management Practices (BMPs) in current plan and provide recommendations for updates, as appropriate.
 - e. Five-year and ten-year water conservation targets
 - f. Method for monitoring the effectiveness and efficiency of the plan
 - g. Current water rate structure
 - h. Program for replacement or retrofit of water conserving plumbing fixtures
 - i. Reuse and/or recycling of wastewater or graywater, if appropriate
 - j. Pressure control in the distribution system
 - k. Other information based on TCEQ, TAC, wholesale water provider, or other related requirements
16. Address City comments. Produce revised draft plan for public and City Council consideration.
17. Develop draft water conservation ordinance.
18. Upon City Council adoption, finalize the water conservation plan and obtain a copy of the approved ordinance. Provide copy of final plan for City to submit to TCEQ, Region I Water Planning Group and wholesale customers.

Task 3 documents to be provided by City:

- Water conservation plans for City of Tyler, Upper Neches River Municipal Water Authority, City of Whitehouse, Community Water and Walnut Grover Water Supply Corporation
- Wholesale water supply contracts
- Related ordinances, including current conservation ordinance (in Word, if available), plumbing codes, landscape water management, etc.
- Relevant GIS layers
- Annual reports documenting progress towards water conservation goals
- Metering device(s) used, meter testing and repair, meter replacement program and other related data
- Annual water loss audits for previous five years
- Leak detection and repair program
- Public education program on water conservation

- Reservoir systems operation plan
- Enforcement program, including related ordinances, policies, procedures, etc.
- Information needed to populate the TCEQ Utility Profile for Retail Water Supplier
- Information required to update the TCEQ Utility Profile for Wholesale Water Supplier
- Information required to update the TCEQ Water Conservation Implementation Report Form
- Water rate structure
- Other related documentation that may be identified during the plan update

Task 3 deliverables include:

- Draft water conservation plan
- Revised draft water conservation plan
- Draft water conservation ordinance
- Presentation for public meeting
- Presentation for City Council meeting
- Final water conservation plan and ordinance

Task 3 does not include:

- Performing water loss audits
- Site inspections or documentation
- Field work
- Training
- Water rate analysis
- Reservoir operation analyses or reservoir optimization
- Water system analyses
- Water or wastewater treatment analyses
- Water distribution system modeling
- Coordination with water provider, wholesale customers or retail customers
- Public outreach beyond what is specified in Task 3

TASK 4: Drought Contingency and Emergency Demand Management Plan Update

The updated plan must meet the TCEQ and TAC requirements. Halff will coordinate with the City to develop and update the drought contingency emergency demand management plan that represents the City's goals and objectives while meeting the state requirements. Halff will coordinate internally regarding information needed for the water conservation plan that may be available in the recent water supply master plan.

Halff will perform the following:

1. Compare City's current drought contingency emergency demand management plan to TCEQ and TAC requirements for retail and wholesale providers.
2. Obtain from City staff the Upper Neches River Municipal Water Authority drought contingency and emergency demand management plan. Compare to City's current

ordinance and identify any recommended adjustments for the new plan to comply with the water authority's plan, as necessary.

3. Obtain from City staff the drought contingency and emergency demand management plans for wholesale customers: City of Whitehouse, Community Water and Walnut Grover Water Supply Corporation. Review plans and confirm that the City requirements are represented in their wholesale customer plans. Inform the City if any discrepancies are identified. Review the City's wholesale water supply contracts to confirm water rates, amounts, and special provisions that may be relevant to the drought contingency and emergency demand management plan.
4. Update map of service area.
5. Update description of information monitored by the City, including initiation and termination of drought response stages with explanation for the triggering criteria. Review existing triggers using information from the City's Water Master Plan and recommend revisions to the triggers, if appropriate.
6. Review and update the drought and emergency response stages.
7. Review and update the specific, quantifiable targets for water use reductions to be achieved during periods of water shortage and drought.
8. Identify specific water supply or water demand management measures to be implemented during each stage of the plan.
9. Review and update the procedures to be followed for the initiation and termination of each drought response stage.
10. Review and update the procedure for granting a variance.
11. Review and update enforcement procedures associated with mandatory water use restrictions, including specific penalties.
12. Review and update, as appropriate, program of continuing public education regarding the plan.
13. Upon City Council adoption, finalize the plan and obtain a copy of the approved ordinance.
14. Provide copy of final plan for City to submit to TCEQ, Region I Water Planning Group and wholesale customers.

Task 4 documents to be provided by City:

- Drought contingency and emergency demand management plans for City of Tyler, Upper Neches River Municipal Water Authority, City of Whitehouse, Community Water and Walnut Grover Water Supply Corporation
- Wholesale water supply contracts
- Related ordinances, including drought contingency and emergency demand management ordinance (in Word, if available), plumbing codes, landscape water management, etc.
- Relevant GIS layers
- Other related documentation that may be identified during the plan update

Task 4 deliverables include:

- Draft drought contingency and emergency demand management plan
- Revised draft drought contingency and emergency demand management plan
- Draft drought contingency and emergency demand management ordinance
- Presentation for public meeting

- Presentation for City Council meeting
- Final drought contingency and emergency demand management plan and ordinance

Task 4 does not include:

- Field work
- Training
- Water rate analysis
- Reservoir operation analyses or reservoir optimization
- Water system analyses
- Water or wastewater treatment analyses
- Water distribution system modeling
- Coordination with water provider, wholesale customers or retail customers
- Public outreach beyond what is specified in Task 4

TASK 5: Public Involvement and Adoption by City Council

1. Develop and present the draft water conservation and drought contingency and emergency demand management plan at one (1) public meeting.
2. Develop and present the draft water conservation and drought contingency and emergency demand management plan and ordinance for City Council meeting. The draft ordinance must be read by City Council twice before taking action.

EXHIBIT B PROPOSED PROJECT SCHEDULE

CITY OF TYLER Water Conservation and Drought Contingency and Emergency Demand Plan Update December 19, 2023

Jan 8-10, 2024	Kickoff meeting
Feb 23, 2024	Draft (water conservation plan and drought contingency and emergency demand management plan) due to City for review and comment
March 1, 2024	City comments due to Halff
March 8, 2024	Revised Draft due to City to post for public review
March 11-15, 2024	Public meeting
March 27, 2024	Revised Draft for City attorney review
April 10, 2024	First reading of ordinance(s)
April 24, 2024	Second reading of ordinance(s) and City Council approval
April 26, 2024	Halff sends final documents to City
May 1, 2024	Final plans due to TCEQ



EXHIBIT C PROJECT FEE SUMMARY

CITY OF TYLER

Water Conservation and Drought Contingency and Emergency Demand Plan Update
December 21, 2023

Fee Breakdown by Task

TASK 1: PROJECT MEETINGS ¹	\$10,370.00
TASK 2: PROJECT MANAGEMENT	\$7,830.00
TASK 3: WATER CONSERVATION PLAN	\$33,120.00
TASK 4: DROUGHT CONTINGENCY AND EMERGENCY DEMAND PLAN	\$34,490.00
TASK 5: PUBLIC MEETINGS/PUBLIC INVOLVEMENT	\$14,100.00
Project Total	\$99,910.00

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

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

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

EXHIBIT D EXCLUSIONS

CITY OF TYLER

Water Conservation and Drought Contingency and Emergency Demand Plan Update December 19, 2023

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

- Performing water loss audits
- Site inspections or documentation
- Field work
- Training
- Water rate analysis
- Reservoir operation analyses or reservoir optimization
- Water system analyses
- Water or wastewater treatment analyses
- Water distribution system modeling
- Coordination with water provider, wholesale customers or retail customers
- Public outreach beyond what is specified in Tasks 3 and 4



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 Halff Associates, Inc. (ENGINEER or ARCHITECT), hereinafter referred to as "E/A," for the purpose of acquiring all professional engineering and/or architectural services required for the project known as "Water Conservation and Drought Contingency and Emergency Demand Management Plan Update" (hereinafter called the Project).

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

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

1.1. General.

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

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

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

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

1.2. Study and Report Phase.

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

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

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

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

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

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

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

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

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

1.3. Preliminary Design Phase.

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

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

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

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

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

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

1.3.6. Derive right-of-way (ROW) data and easement

documents as needed for the OWNER to begin land acquisition.

1.4. Final Design Phase.

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

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

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

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

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

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

1.5. Bidding or Negotiating Phase.

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

1.5.1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for each

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

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

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

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

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

1.6. Construction Phase.

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

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

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

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

proceeding in accordance with the Contract Documents and E/A shall keep OWNER informed of the progress of the work.

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

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

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

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

thereto.

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

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

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

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

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

1.6.11. *Limitation of Responsibilities.* E/A shall not be responsible to OWNER for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor's or

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

1.7. Operational Phase.

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

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

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

SECTION 2—ADDITIONAL SERVICES OF E/A

2.1. Services Requiring Authorization in Advance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2. Required Additional Services.

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

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

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

after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

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

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

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

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

SECTION 3—OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

3.4.2. appropriate professional interpretations of all of the foregoing;

3.4.3. environmental assessment and impact statements;

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

3.4.5. property descriptions;

3.4.6. zoning, deed and other land use restrictions;

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4—PERIODS OF SERVICE

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

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

SECTION 5—PAYMENTS TO ENGINEER AND/OR ARCHITECT CONSULTANT

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

For design, construction plan preparation, construction document preparation (including bid proposal, specifications, construction contract), and all other services to be rendered by E/A hereunder, as the same are set out in the attached sample Work Order, "Exhibit "A",

5.2. Times of Payment.

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

SECTION 6—CONSTRUCTION COST AND OPINIONS OF COST

6.1. Construction Cost.

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

6.2. Opinions of Cost.

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

SECTION 7—GENERAL CONSIDERATIONS

7.1. Termination.

7.1.1. During the construction phase of the Project, and except as provided under **Exhibit F-Procedure for Correcting Construction Defects** which is applicable when the construction is to a City-owned building or other public work, this Agreement may be terminated by either party hereto, with or without cause, upon a minimum of thirty (30) calendar days

written notice thereof. It is understood that immediately upon receipt of said notice all work and labor being performed under this Agreement shall cease immediately. Before the end of the minimum thirty (30) calendar day period following receipt of said notice, the E/A shall invoice the OWNER for all work completed. The E/A shall be compensated in accordance with the terms of this Agreement for all work accomplished and approved by the OWNER up to the date of termination.

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

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

7.2. Reuse of Documents.

The E/A's Instruments of Service (including but not limited to plans, field surveys, maps, cross sections, drawings, specifications, calculations and other data related to the Project) are and shall remain the property of the E/A until payment of the E/A in full. Upon payment of the E/A in full, said E/A's Instruments of Service shall pass to and become the property of the OWNER without restriction as to their subsequent uses. E/A acknowledges that OWNER is a governmental entity and that all Instruments of Service in respect of the Project, upon completion of the Project, shall thereafter be subject to the Texas Public Information Act (Texas Government Code Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents. In the event that a valid Public Information Request is received prior to completion of the Project and payment of the E/A in full, OWNER shall work with the E/A to protect any

information deemed to be confidential by seeking an Opinion from the Texas Attorney General as allowed by State law.

7.3. Insurance.

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

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

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

a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective date of the Agreement, or the performance of services hereunder. The E/A agrees the Self-Insured-Retention shall not exceed twenty-five thousand dollars (\$25,000). This coverage may be provided on a Per-Project Basis.

- **Pollution Liability Insurance** (if required by a City Operational Department): If a City Operational Department requires Pollution Liability coverage, the E/A agrees to maintain Pollution Liability Insurance at a limit of liability not less than one million dollars (\$1,000,000) Each Claim, two million dollars (\$2,000,000) Annual Aggregate.
- **Commercial Umbrella / Excess Liability:** E/A agrees to maintain either a Commercial Umbrella or Excess Liability at a limit of liability not less than five million dollars (\$5,000,000) Each Occurrence, five million dollars (\$5,000,000) General Aggregate. The E/A agrees to endorse the OWNER as an "Additional Insured" on the Commercial Umbrella/Excess Liability, unless the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the OWNER is automatically defined as an Additional Protected Person. The E/A agrees any Self-Insured-Retention or deductible shall not exceed twenty-five thousand dollars (\$25,000).
- **Worker's Compensation and Employer's Liability:** The E/A agrees to maintain its own Workers' Compensation Insurance pursuant to statutory limits. See TEX. LAB. CODE ANN. Title 5, Subtitle A, Chapter 401; TEX. ADMIN CODE, Title 28, Part 2. (NOTE: Elective exemptions or coverage through an employee leasing arrangement will NOT satisfy this requirement).

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

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

requirements.

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

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

7.4. Additional Insured Endorsements.

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

The form of the endorsement(s) shall be:

Option 1:

CG 20 10 10 01

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

AND, the additional endorsement of

CG 20 37 07 04

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

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

Option 2:

CG 20 10 07 04

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

AND, the additional endorsement of

CG 20 37 07 04

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

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

operations hazard.

Option 3:

GA 4113 11 99

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

AND, the additional endorsement of

GA 233 02 07

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

E/A shall attach actual copies of the endorsements.

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

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

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

E/A agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation. For deductible amounts that exceed the amounts stated herein that are acceptable to OWNER, the E/A agrees, when requested by OWNER, to maintain a Commercial Surety Bond in an amount equal to said deductible amount.

7.6. Waiver of Subrogation.

E/A agrees by entering into this written Agreement to a Waiver of Subrogation in favor of the OWNER for each required policy providing coverage during the life of this Agreement. E/A agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement and provide

such endorsement to OWNER. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the E/A enter into such an agreement on a pre-loss basis.

7.7. Subconsultants' Insurance.

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

7.8. Insurance Effective Until Completion.

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

7.9. Right to Revise or Reject Insurance.

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

7.9.2 Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's Office in the OWNER'S Legal Department for their adequacy as to form, content, form of protection, and providing company. Additionally, the OWNER reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due of its poor financial condition or failure to operate legally in the State of Texas. In such events, OWNER shall provide E/A written notice of such revisions or rejections.

7.10. Certificate of Insurance.

7.10.1 Before commencement of any work, the E/A agrees to provide OWNER with **Certificate(s) of Insurance and Endorsements** that clearly evidence

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

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

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

7.11. Insurance - No Limit on Obligation to Pay.

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

7.12. Non-compliance; Breach.

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

7.13. Indemnity.

E/A AGREES TO INDEMNIFY AND HOLD HARMLESS

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

7.14. Certificate of Interested Parties.

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

7.15. Controlling Law.

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

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

7.16. Successors and Assigns.

7.16.1. OWNER and E/A each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and E/A (and to the extent permitted by paragraph 7.16.2 the assigns

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

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

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

SECTION 8—SPECIAL PROVISIONS, SCHEDULES, AND EXHIBITS

8.1. Special Provisions.

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

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

8.1.2. OWNER reserves the right, with E/A's agreement, to consolidate any and all phases of performance set out in the standard form contractual documents. The consolidation of said services shall

not in any way affect the E/A's responsibilities to perform the services set out therein.

8.2. Exhibits.

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

- *Exhibit A - E/A's Work Order,*
- *Exhibit B - Certificate of Insurance and Endorsements,*
- *Exhibit C - Certificate of Interested Parties (Form 1295) (if required),*
- *Exhibit D - Procedure for Correcting Construction Defects (Applicable only to construction contracts affecting City-owned buildings and other public works)*

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

8.3. Entire Agreement.

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

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

8.4. Effective Date.

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

8.5. Severability.

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

8.6. Waiver.

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

8.7. Notices.

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

E/A:

Halff

Attn: Michael W. Medford, PE
1121 ESE Loop 323, Suite 117
Tyler, Texas 75701

OWNER:

City of Tyler

Attn: Kate Dietz, PE
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: Item No.
DATE APPROVED: Enter approval date

FOR THE E/A:

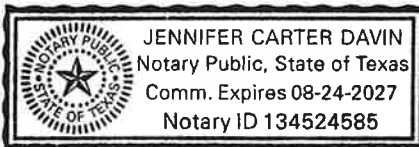
By: Michael W. Medford
Vice President 1-10-24

Michael W. Medford

Printed Name

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Michael W. Medford, who is known to me, or who was proved to me through personally known 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 10th day of January, 2024.



Jennifer Carter Davin
Notary Public In and For The State of Texas

My Commission Expires: 08-24-2027 Jennifer Carter Davin
Notary's Printed Name

INDEX OF EXHIBITS

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Exhibit B – E/A's Project Schedule

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Exhibit D - Certificates of Insurance and Endorsements

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

Exhibit F – Procedure for Correcting Construction Defects

(Applicable only to construction contracts affecting City-owned buildings and other public works)

Exhibit A - E/A's Work Order / Scope of Services

EXHIBIT A SCOPE OF SERVICES

CITY OF TYLER

Water Conservation and Drought Contingency and Emergency Demand Management Plan Update

January 9, 2024

1. Project Introduction and Understanding

The City of Tyler has a water conservation and drought contingency emergency demand management plan that was prepared by city staff in 2019. The Texas Commission on Environmental Quality (TCEQ) requires that the plan be reviewed and updated every five (5) years. The City provides retail water supply and wholesale water supply, both of which are included in the plan. Tyler has requested Halff assist the City with the update of this plan.

While conservation and drought/emergency are included in this single plan, they serve two different purposes and are governed by different rules and regulations. A water conservation plan includes ongoing activities that promote and support the use of water efficiently. A drought contingency and emergency demand plan identifies trigger thresholds at which voluntary and/or mandatory measures are implemented based on available water supply, which includes an enforcement component. Halff will prepare a single combined plan covering the water conservation and drought contingency and emergency demand management plan.

Following a meeting with the City on Monday, December 11, 2023, Halff has developed a scope of work for the plan updates.

Project Scope Outline & Contents

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

Exhibit A	Scope of Work
Task 1:	Project Meetings
Task 2:	Project Management
Task 3:	Water Conservation Plan Update
Task 4:	Drought Contingency and Emergency Demand Management Plan Update
Task 5:	Public Involvement and Adoption by City Council
Exhibit B:	Proposed Project Schedule
Exhibit C:	Project Fee Summary
Exhibit D:	Exclusions

SCOPE OF WORK

TASK 1: Project Meetings

1. Conduct one (1) virtual project kickoff meeting with the City after receiving Notice to Proceed (NTP).
2. Conduct regular virtual meetings with City staff to maintain the project schedule and meet the TCEQ deadline. Halff anticipates that these will be held approximately every two weeks for the duration of the plan update. Halff will prepare a meeting agenda and meeting notes for each meeting. This represents eight (8) project status/check-in meetings.

TASK 2: Project Management

1. Prepare monthly project status reports to accompany invoices.
2. Coordinate with City staff, as appropriate, to obtain necessary information and data to prepare the plans. Coordination includes phone calls, conference calls, email correspondence, internal team coordination, project scheduling and updates, and online meetings (not identified in Task 1) as may be necessary for the completion of the project.

TASK 3: Water Conservation Plan Update

The updated plan must meet the TCEQ and TAC requirements. Halff will coordinate with the City to develop and update the water conservation plan that represents the City's goals and objectives while meeting the state requirements. Halff will coordinate internally regarding information needed for the water conservation plan that may be available in the recent water supply master plan.

Halff will perform the following:

1. Compare City's current water conservation plan to TCEQ and TAC requirements for retail and wholesale water providers.
2. Confirm that City's current plan complies with the Upper Neches River Municipal Water Authority's plan. Inform the City if any discrepancies are identified.
3. Review wholesale customers' conservation plans and confirm that the City requirements are represented in their wholesale customer plans. Inform the City if any discrepancies are identified. Review the City's wholesale water supply contracts to confirm water rates, amounts, and special provisions that may be relevant to the water conservation plan.
4. Obtain from City staff related ordinances, including current conservation ordinance (in Word, if available), plumbing codes, landscape water management, etc. Review and incorporate information in the plan, as appropriate.
5. Review City's progress towards achieving its five-year and ten-year targets identified in current plan.
6. Review metering information provided by City. Information includes metering device(s) used, meter testing and repair, meter replacement program and other related data.
7. Review water loss information from City, including measures to control water loss and annual water loss audits for previous five years.
8. Review City's leak detection and repair program. Provide recommendations for updates, as appropriate.
9. Review current public education program on water conservation and provide recommendations for updates, as appropriate.
10. Obtain copy of reservoir systems operation plan for inclusion in the appendices.
11. Review City's enforcement program, including related ordinances, policies, procedures, etc.
12. Review City-provided information required to update the TCEQ Utility Profile for Retail Water Supplier and update the profile accordingly.

13. Review City-provided information required to update the TCEQ Utility Profile for Wholesale Water Supplier and update the profile accordingly.
14. Update the TCEQ Water Conservation Implementation Report Form. Prepare Summary of Updates/Revisions to Water Conservation Plan based on information provided by City.
15. Update the City's water conservation plan and send to City for review and comment.
 - a. Description of service area, including maps, population, water use data, water system data, and wastewater data
 - b. Description of monitoring and record management program based on input from City staff
 - c. Current water supply system summary with information from the water master plan and City staff, including storage, treatment, delivery and distribution information
 - d. Best Management Practices (BMPs) in current plan and provide recommendations for updates, as appropriate.
 - e. Five-year and ten-year water conservation targets
 - f. Method for monitoring the effectiveness and efficiency of the plan
 - g. Current water rate structure
 - h. Program for replacement or retrofit of water conserving plumbing fixtures
 - i. Reuse and/or recycling of wastewater or graywater, if appropriate
 - j. Pressure control in the distribution system
 - k. Other information based on TCEQ, TAC, wholesale water provider, or other related requirements
16. Address City comments. Produce revised draft plan for public and City Council consideration.
17. Develop draft water conservation ordinance.
18. Upon City Council adoption, finalize the water conservation plan and obtain a copy of the approved ordinance. Provide copy of final plan for City to submit to TCEQ, Region I Water Planning Group and wholesale customers.

Task 3 documents to be provided by City:

- Water conservation plans for City of Tyler, Upper Neches River Municipal Water Authority, City of Whitehouse, Community Water and Walnut Grover Water Supply Corporation
- Wholesale water supply contracts
- Related ordinances, including current conservation ordinance (in Word, if available), plumbing codes, landscape water management, etc.
- Relevant GIS layers
- Annual reports documenting progress towards water conservation goals
- Metering device(s) used, meter testing and repair, meter replacement program and other related data
- Annual water loss audits for previous five years
- Leak detection and repair program
- Public education program on water conservation
- Reservoir systems operation plan
- Enforcement program, including related ordinances, policies, procedures, etc.
- Information needed to populate the TCEQ Utility Profile for Retail Water Supplier
- Information required to update the TCEQ Utility Profile for Wholesale Water Supplier
- Information required to update the TCEQ Water Conservation Implementation Report Form
- Water rate structure
- Other related documentation that may be identified during the plan update

Task 3 deliverables include:

- Draft water conservation plan
- Revised draft water conservation plan

- Draft water conservation ordinance
- Presentation for public meeting
- Presentation for City Council meeting
- Final water conservation plan and ordinance

Task 3 does not include:

- Performing water loss audits
- Site inspections or documentation
- Field work
- Training
- Water rate analysis
- Reservoir operation analyses or reservoir optimization
- Water system analyses
- Water or wastewater treatment analyses
- Water distribution system modeling
- Coordination with water provider, wholesale customers or retail customers
- Public outreach beyond what is specified in Task 3

TASK 4: Drought Contingency and Emergency Demand Management Plan Update

The updated plan must meet the TCEQ and TAC requirements. Halff will coordinate with the City to develop and update the drought contingency emergency demand management plan that represents the City's goals and objectives while meeting the state requirements. Halff will coordinate internally regarding information needed for the water conservation plan that may be available in the recent water supply master plan.

Halff will perform the following:

1. Compare City's current drought contingency emergency demand management plan to TCEQ and TAC requirements for retail and wholesale providers.
2. Obtain from City staff the Upper Neches River Municipal Water Authority drought contingency and emergency demand management plan. Compare to City's current ordinance and identify any recommended adjustments for the new plan to comply with the water authority's plan, as necessary.
3. Obtain from City staff the drought contingency and emergency demand management plans for wholesale customers: City of Whitehouse, Community Water and Walnut Grover Water Supply Corporation. Review plans and confirm that the City requirements are represented in their wholesale customer plans. Inform the City if any discrepancies are identified. Review the City's wholesale water supply contracts to confirm water rates, amounts, and special provisions that may be relevant to the drought contingency and emergency demand management plan.
4. Update map of service area.
5. Update description of information monitored by the City, including initiation and termination of drought response stages with explanation for the triggering criteria. Review existing triggers using information from the City's Water Master Plan and recommend revisions to the triggers, if appropriate.
6. Review and update the drought and emergency response stages.
7. Review and update the specific, quantifiable targets for water use reductions to be achieved during periods of water shortage and drought.

8. Identify specific water supply or water demand management measures to be implemented during each stage of the plan.
9. Review and update the procedures to be followed for the initiation and termination of each drought response stage.
10. Review and update the procedure for granting a variance.
11. Review and update enforcement procedures associated with mandatory water use restrictions, including specific penalties.
12. Review and update, as appropriate, program of continuing public education regarding the plan.
13. Upon City Council adoption, finalize the plan and obtain a copy of the approved ordinance.
14. Provide copy of final plan for City to submit to TCEQ, Region I Water Planning Group and wholesale customers.

Task 4 documents to be provided by City:

- Drought contingency and emergency demand management plans for City of Tyler, Upper Neches River Municipal Water Authority, City of Whitehouse, Community Water and Walnut Grover Water Supply Corporation
- Wholesale water supply contracts
- Related ordinances, including drought contingency and emergency demand management ordinance (in Word, if available), plumbing codes, landscape water management, etc.
- Relevant GIS layers
- Other related documentation that may be identified during the plan update

Task 4 deliverables include:

- Draft drought contingency and emergency demand management plan
- Revised draft drought contingency and emergency demand management plan
- Draft drought contingency and emergency demand management ordinance
- Presentation for public meeting
- Presentation for City Council meeting
- Final drought contingency and emergency demand management plan and ordinance

Task 4 does not include:

- Field work
- Training
- Water rate analysis
- Reservoir operation analyses or reservoir optimization
- Water system analyses
- Water or wastewater treatment analyses
- Water distribution system modeling
- Coordination with water provider, wholesale customers or retail customers
- Public outreach beyond what is specified in Task 4

TASK 5: Public Involvement and Adoption by City Council

1. Develop and present the draft water conservation and drought contingency and emergency demand management plan at one (1) public meeting.
2. Develop and present the draft water conservation and drought contingency and emergency demand management plan and ordinance for City Council meeting. The draft ordinance must be read by City Council twice before taking action.

Exhibit B - E/A's Project Schedule

EXHIBIT B PROPOSED PROJECT SCHEDULE

CITY OF TYLER Water Conservation and Drought Contingency and Emergency Demand Plan Update January 9, 2024

Jan 8-10, 2024	Kickoff meeting
Feb 23, 2024	Draft (water conservation plan and drought contingency and emergency demand management plan) due to City for review and comment
March 1, 2024	City comments due to Halff
March 8, 2024	Revised Draft due to City to post for public review
March 11-15, 2024	Public meeting
March 27, 2024	Revised Draft for City attorney review
April 10, 2024	First reading of ordinance(s)
April 24, 2024	Second reading of ordinance(s) and City Council approval
April 26, 2024	Halff sends final documents to City
May 1, 2024	Final plans due to TCEQ

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

EXHIBIT C PROJECT FEE SUMMARY

CITY OF TYLER
Water Conservation and Drought Contingency and Emergency Demand Plan Update
January 9, 2024

Fee Breakdown by Task

TASK 1: PROJECT MEETINGS ¹	\$10,370.00
TASK 2: PROJECT MANAGEMENT	\$7,830.00
TASK 3: WATER CONSERVATION PLAN	\$33,120.00
TASK 4: DROUGHT CONTINGENCY AND EMERGENCY DEMAND PLAN	\$34,490.00
<u>TASK 5: PUBLIC MEETINGS/PUBLIC INVOLVEMENT</u>	<u>\$14,100.00</u>

Project Total	\$99,910.00
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Client agrees to pay monthly invoices or their undisputed portions within 30 days of receipt. Payment later than 30 days shall include interest at 1 ½ percent per month or lesser maximum enforceable interest rate, from the date the Client received the invoice until the date the Engineer receives payment. Such interest is due and payable when the overdue payment is made. Tasks are lump sum unless otherwise noted.

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

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

HALFF HOURLY RATES

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

OTHER DIRECT EXPENSES:

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

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

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

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

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

EXCLUSIONS

CITY OF TYLER

Water Conservation and Drought Contingency and Emergency Demand Plan Update

January 9, 2024

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

- Performing water loss audits
- Site inspections or documentation
- Field work
- Training
- Water rate analysis
- Reservoir operation analyses or reservoir optimization
- Water system analyses
- Water or wastewater treatment analyses
- Water distribution system modeling
- Coordination with water provider, wholesale customers or retail customers
- Public outreach beyond what is specified in Tasks 3 and 4

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 [<i>See</i> Section 7.3.2] ☒ Occurrence Box is Checked ☒ Per Project Box is Checked for General Aggregate Limit.
4.	Business Automobile Liability [<i>See</i> 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 [<i>See</i> Section 7.3.2]
6.	Commercial Umbrella / Excess Liability [<i>See</i> Section 7.3.2] ☒ Occurrence Box is Checked
7.	Workers Compensation and Employers Liability [<i>See</i> Section 7.3.2] ☒ WC Statutory Limits Box is Checked
	Look at the “Description of Operations . . . Special Provisions” Box. [<i>See</i> Section 7.4] [<i>See also</i> 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: [<i>See generally</i> 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]	

Exhibit E- Certificate of Interested Parties (Form 1295)

(If Required)

Check Here if this Section is NOT Used ☐

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

Exhibit F - Procedure for Correcting Construction Defects

Check Here if this Section IS Applicable to This Contract ☐

****ONLY APPLICABLE FOR CONSTRUCTION ACTIVITIES AFFECTING CITY-OWNED BUILDINGS AND OTHER PUBLIC WORKS PROJECTS AS DEFINED IN TEX. GOV. CODE ANN., SEC. 2269.001 (6)****

EXHIBIT F is not applicable to “civil works” projects as defined in Tex. Gov. Code Ann., Sec. 2269.351

I. DEFINITIONS

- A. **“Public Works”** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.001 (6), are those related to constructing, altering, or repairing a public building or carrying out any public work.
- B. **“Civil works”** projects, as defined in Tex. Gov. Code Ann., Sec. 2269.351 are those related to roads, streets, bridges, utilities, water supply projects, water plants, waste water plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage, flood control projects and transit projects.

II. NOTIFICATION OF DEFECT

- A. **ENGINEER/ARCHITECT SHALL NOTIFY OWNER IN WRITING OF ANY CONSTRUCTION DEFECT** of which the ENGINEER/ARCHITECT is aware, and which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning or supervision of the construction that is a result of:
 - i. The use of defective materials, products, or components in the construction;
 - ii. A violation of a building code applicable by law to the construction;
 - iii. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or
 - iv. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.
- B. The E/A’s writing shall identify the specific construction defect, describe the present physical condition of the affected structure; and describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

III. PROCEDURE TO CORRECT CONSTRUCTION DEFECTS

- A. Before bringing an action asserting a claim for a construction defect under this Agreement, the OWNER must provide a written report to each party with whom the OWNER has a contract for the design, construction or construction oversight of an affected structure by certified mail, return receipt requested.
 - i. The report shall clearly identify the specific construction defect(s) on which the claim is based, which shall include any deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning, or supervision of the construction that is a result of:
 - a. The use of defective materials, products, or components in the construction;
 - b. A violation of a building code applicable by law to the construction;

- c. A failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; and/or
 - d. A failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.
 - iii. The report shall clearly:
 - a. Identify the specific construction defect on which the claim is based;
 - b. Describe the present physical condition of the affected structure; and
 - c. Describe any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.
- B. OWNER shall allow each party with whom the OWNER has a contract for the design or construction of an affected structure and who is subject to the claim, and any known subcontractor or supplier who is subject to the claim a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after receiving the report.
- C. OWNER shall allow at least 120 days after the inspection to:
 - i. Correct any construction defect or related condition identified in the report; or
 - ii. Enter into a separate agreement with the governmental entity to correct any construction defect or related condition identified in the report.
- D. OWNER is not required to allow a party to make a correction or repair under Subsection II.A. if:
 - i. the party:
 - a. Is a contractor and cannot provide payment and performance bonds to cover the corrective work;
 - b. Cannot provide liability insurance or workers' compensation insurance;
 - c. Has been previously terminated for cause by OWNER; or
 - d. Has been convicted of a felony; or
 - ii. OWNER previously complied with the process required by Subsection II.A. regarding a construction defect or related condition identified in the report and:
 - a. The defect or condition was not corrected as required by Subsection II.C.i. or by an agreement under Subsection II.C.ii.; or
 - b. The attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.
- E. Recovery of Report Costs. If the report described in Subsection II.A. identifies a construction defect that is corrected or for which the OWNER recovers damages, the party responsible for that construction defect shall pay the reasonable amounts incurred by OWNER to obtain the report with respect to identification of that construction defect.
- F. These provisions do not prohibit or limit the OWNER from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public or a building occupant.

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.

Halff Associates, Inc.
Austin, TX United States

Certificate Number:
2024-1110813

Date Filed:
01/10/2024

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

Date Acknowledged:

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.

The Texas Commission on Environmental Quality (TCEQ) requires this plan be reviewed and updated every five years; City of Tyler has requested Halff to update this plan.

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Baker , Jessica	Richardson, TX United States	X	
	Bertram, Shawn	Austin , TX United States	X	
	Delgado, Jose	McAllen, TX United States	X	
	Ickert, Andrew	Fort Worth, TX United States	X	
	Pylant, Ben	Fort Worth , TX United States	X	
	Jackson, Todd	Austin, TX United States	X	
	Killen, Russell	Richardson, TX United States	X	
	Miller, Steven	Austin, TX United States	X	
	Moya, Mike	Austin, TX United States	X	
	Murray, Menton	McAllen, TX United States	X	
	Sagel, Joseph	Richardson, TX United States	X	
	Tanksley, Dan	Richardson, TX United States	X	
	Hollis, Leigh	Frisco, TX United States	X	
	French, Sherri	Frisco, 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.

Halff Associates, Inc.
Austin, TX United States

Certificate Number:
2024-1110813

Date Filed:
01/10/2024

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

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.

The Texas Commission on Environmental Quality (TCEQ) requires this plan be reviewed and updated every five years; City of Tyler has requested Halff to update this plan.

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is Michael W. Medford, and my date of birth is 12/14/1974.

My address is 1121 ESE Loop 323, STE. 117, Tyler, TX, 75701, USA.
(street) (city) (state) (zip code) (country)

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

Executed in Smith County, State of Texas, on the 10th day of January, 2024.
(month) (year)

Michael W. Medford
Signature of authorized agent of contracting business entity
(Declarant)

RESOLUTION NO. R-2024-__

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 WATER CONSERVATION AND DROUGHT CONTINGENCY PLAN; 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 Water Conservation and Drought Contingency Plan 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 \$99,910.00.

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

PASSED AND APPROVED, this the 24th day of January, 2024.

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-1

Date: January 24, 2024

Subject: Request that the City Council consider authorizing the application and acceptance of grant funding from the Office of the Governor, Public Safety Office – Criminal Justice Division, in the amount not to exceed \$99,475.28, for the purchase of protective ballistic shields.

Page: Page 1 of

Item Reference:

In December 2023, the Texas Governor's Office released a funding announcement for the Bullet-Resistant Shield Program, FY2025 through the Public Safety Office, Criminal Justice Division. This grant program is open to independent school districts, institutions of higher education, units of local government, Texas DPS and other educational institutions that operate law enforcement agencies employing peace officers. The grant funding is intended to be used for the purchase of bullet-resistant shields for peace officers.

If awarded, program funds received by the Tyler Police Department from this grant will be used to purchase:

- Up to thirty-one (31) PROTECH Assault II VP tactical rifle shields (dimension of 16" x 30", with viewport and POLICE label on front) (20 lbs.) (NIJ level III) (\$3,208.88 each).

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager, on behalf of the Tyler Police Department, to apply for and accept grant funding from the Office of the Governor, Public Safety Office – Criminal Justice Division, in an amount not to exceed \$99,475.28 for the fiscal year of 2024-2025. All grant funding will be utilized to purchase bullet-resistant shield equipment for the Tyler Police Department.

ATTACHMENTS:

[Resolution- Rifle Shields FY25](#)

Drafted/Recommended By:
Department Leader

Jimmy Toler

Edited/Submitted By:
City Manager

RESOLUTION NO. R-2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AUTHORIZING THE CITY TO APPLY FOR AND ACCEPT GRANT FUNDING FROM THE OFFICE OF THE GOVERNOR, PUBLIC SAFETY OFFICE CRIMINAL JUSTICE DIVISION, FOR THE PURCHASE OF THIRTY-ONE (31) BALLISTIC RIFLE SHIELDS; DESIGNATING THE CITY'S AUTHORIZED OFFICIAL; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Tyler finds it in the best interest of the citizens of Tyler that the established Office of the Governor, Public Safety Office Criminal Justice Division funding be utilized for the 2024-2025 year; and

WHEREAS, The City Council agrees that in the event of loss or misuse of the Office of the Governor, Public Safety Office Criminal Justice Division funds, the Tyler City Council assures that the funds will be returned to the Criminal Justice Division in full; and

WHEREAS, the City Council designates the City Manager as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant, to accept any increases in grant funding, and/or take all necessary actions related to the grant, on behalf of the applicant agency; and

WHEREAS, The Office of the Governor, Public Safety Office Criminal Justice Division will fund the proposed equipment in the amount of \$99,475.28 for one year only, after which additional funding must be reapplied for; and

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

PART 1: That the City Council of the City of Tyler hereby approves the application and acceptance of the grant funding through the Office of the Governor, Public Safety Office Criminal Justice Division in the amount not to exceed \$99,475.28, to assist in funding up to thirty-one (31) ballistic rifle shields for the Tyler Police Department for one year.

PART 2: That the City Manager is hereby designated as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant, to accept any increases in grant funding, and/or take all necessary actions related to the grant, on behalf of the applicant agency; and

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

PASSED AND APPROVED this 24th day of January, A.D., 2024.

**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-2

Date: January 24, 2024

Subject: Request that the City Council consider adoption of a Resolution authorizing the application and acceptance of grant funding for the Police Department from the Office of the Governor, Homeland Security Grants Division, in the amount not to exceed \$66,800, for the purchase of equipment intended to support local preparedness for law enforcement terrorism prevention activities.

Page: Page 1 of

Item Reference:

In December 2023, the Texas Governor's Office released a funding announcement for the 2024 State Homeland Security Program through the Public Safety Office's grants division. This grant program is open to local and state agencies with eligible project applications being coordinated through the appropriate regional council of government. Grant funding is intended to support investments that improve the ability of jurisdictions to prevent a threatened or actual act of terrorism, and to increase protection to citizens, visitors, and other assets.

If awarded, program funds received by the Tyler Police Department from this grant will be used to purchase a small to medium-platform tactical robot with accessories for \$66,800. This robot will replace an older piece of equipment that is no longer serviceable as a functioning piece of equipment for the department's SWAT team. The Police Department will cover any costs over the grant amount from its own budget.

RECOMMENDATION:

It is recommended that the City Council adopt a Resolution to authorize the City Manager, on behalf of the Tyler Police Department, to apply for and accept grant funding from the Office of the Governor, Homeland Security Grants Division, in an amount not to exceed \$66,800 for the fiscal year of 2024-2025.

ATTACHMENTS:

[Resolution - SHSP FY24.25 SWAT robot](#)

Drafted/Recommended By:
Department Leader

Jimmy Toler

**Edited/Submitted By:
City Manager**

RESOLUTION NO. R-2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AUTHORIZING SUBMISSION OF AN APPLICATION BY THE TYLER POLICE DEPARTMENT FOR, AND ACCEPTANCE OF, FUNDING THROUGH THE OFFICE OF THE GOVERNOR'S (OOG) HOMELAND SECURITY GRANTS DIVISION (HSGD) FOR GRANT FUNDING THROUGH THE STATE HOMELAND SECURITY PROGRAM (SHSP), AS MANAGED BY THE EAST TEXAS COUNCIL OF GOVERNMENTS, TO FUND THE PURCHASE OF EQUIPMENT INTENDED TO SUPPORT LOCAL PREPAREDNESS FOR LAW ENFORCEMENT TERRORISM PREVENTION ACTIVITIES (LETPA); DESIGNATING THE CITY'S AUTHORIZED OFFICIAL; AUTHORIZING ALL NECESSARY ACTIONS RELATED TO ACCEPTANCE AND USE OF THE GRANT; AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, the Office of the Governor's Homeland Security Grants Division (HSGD) currently serves as the State Administrative Agency (SAA) for the State of Texas' State Homeland Security Program (SHSP), which provides grant funding used to support programs and projects aimed at maintaining and/or enhancing emergency preparedness and response capabilities; and

WHEREAS, The City Council of the City of Tyler finds it in the best interest of the citizens of Tyler that the established State Homeland Security Program (SHSP) funding be utilized for the 2024-2025 year; and

WHEREAS, The City Council agrees that in the event of loss or misuse of the State Homeland Security Program funds, the Tyler City Council assures that the funds will be returned in full to the Office of the Governor; and

WHEREAS, The City Council designates the City Manager as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter, terminate, and/or take all necessary actions related to the grant and use of funds under the grant on behalf of the applicant agency; and

WHEREAS, the Office of the Governor's Homeland Security Grants Division will fund the proposed equipment in the amount of \$66,800 for one year, after which additional funding must be reapplied for;

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

PART 1: That the City Council of the City of Tyler approves grant application **#4988101 / SHSP FY24.25 Robot**, for and acceptance of State Homeland Security Program funding through the Office of the Governor, not to exceed \$66,800, to assist in funding a small to medium-platform tactical robot with accessories, intended to support the grant program purpose, for the Tyler Police Department.

PART 2: That the City Manager is hereby designated as the City of Tyler's authorized official, and is hereby authorized to apply for, reject, alter, terminate, and/or take all necessary actions related to the grant and use of funds thereunder on behalf of the City of Tyler;

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

PASSED AND APPROVED this 24th day of January, A.D., 2024.

**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-3

Date: January 24, 2024

Subject: Request that the City Council consider authorizing the City Manager, on behalf of the Tyler Police Department, to seek funding from the Department of Justice through the Edward Byrne Memorial Justice Assistance Grant (JAG), FY2025 in the amount of \$47,925.02 to fund the purchase of PANASONIC Toughbook 55 laptops with adaptors.

Page: Page 1 of

Item Reference:

Similar to past years, the Tyler Police Department will seek funding from the Department of Justice through the Edward Byrne Memorial Justice Assistance Grant (JAG), FY2025 of an amount not to exceed \$47,925.02 to fund the purchase of thirteen (13) PANASONIC Toughbook 55 laptop computers with adaptors. The PANASONIC in-car laptops will provide officers with state-of-the-art technology to assist them in performing their day-to-day operations and are intended to replace aging equipment currently in use.

The Tyler Police Department typically supplements up to 20% of budgeted money from the Asset Forfeiture Account.

RECOMMENDATION:

It is recommended that the City Council adopt the attached Resolution authorizing the Tyler City Manager and the Tyler Police Department to apply for and accept grant funding from the Department of Justice through the Edward Byrne Memorial Justice Assistance Grant, FY2025 of an amount not to exceed \$47,925.02 to fund the purchase of thirteen (13) PANASONIC Toughbook 55 laptop computers with adaptors.

ATTACHMENTS:

[Resolution - JAG 24.25 Laptops](#)

Drafted/Recommended By:
Department Leader

Jimmy Toler

Edited/Submitted By:
City Manager

RESOLUTION NO. R-2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AUTHORIZING THE CITY TO APPLY FOR AND ACCEPT FUNDING FROM THE DEPARTMENT OF JUSTICE THROUGH THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) TO FUND THE PURCHASE OF PANASONIC TOUGHBOOK IN-CAR LAPTOP COMPUTERS WITH ADAPTORS; DESIGNATING THE CITY'S AUTHORIZED OFFICIAL; AUTHORIZING ALL NECESSARY ACTIONS RELATED TO ACCEPTANCE AND USE OF THE GRANT; AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, the City Council finds it in the best interest of the citizens of Tyler that the established Justice Assistance Grant (JAG) funding be utilized for the 2024-2025 year; and

WHEREAS, The City Council agrees that in the event of loss or misuse of the Justice Assistance Grant funds, the Tyler City Council assures that the funds will be returned in full; and

WHEREAS, The City Council designates the City Manager as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency; and

WHEREAS, the City Manager is hereby authorized to take all necessary actions, including the use and expenditure of funds, related to the grant on behalf of the City of Tyler; and

WHEREAS, the Department of Justice, through the Justice Assistance Grant will fund the proposed equipment in the amount of up to \$47,925.02 for one year only, after which additional funding must be reapplied for

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

PART 1: That the City Council of the City of Tyler hereby approves the acceptance of Edward Byrne Memorial Justice Assistance Grant (JAG) funding through the Department of Justice, and is not to exceed \$47,925.02, to assist in funding Panasonic Toughbook in-car laptop computers and adaptors for the Tyler Police Department for one year.

PART 2: That the City Manager is hereby designated as the City of Tyler's authorized official, and is hereby authorized to apply for, reject, alter, terminate, and/or take all necessary actions, including the use and expenditure of funds, related to the grant on behalf of the City of Tyler;

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

PASSED AND APPROVED this 24th day of January, A.D., 2024.

**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-4

Date: January 24, 2024

Subject: Request that the City Council consider authorizing the City Manager to execute the proposal with Hi-Lite Airfield Services, LLC under the Sourcewell Contract # 110122-HLA in the amount of \$63,219.50 for repainting the surface painted markings on Taxiways Foxtrot and Kilo at Tyler Pounds Regional Airport.

Page: Page 1 of

Item Reference:

On October 25, 2023, the City Council approved the acceptance of the Fiscal Year 2024 Texas Department of Transportation (TxDOT) Routine Airport Maintenance Program (RAMP) Grant totaling \$100,000.00 requiring a 10% match. The TxDOT RAMP Grant funds general maintenance at Tyler Pounds Regional Airport. Airport Staff has worked with Hi-Lite Airfield Services, LLC to utilize their contract with Sourcewell to repaint the surface painted markings on Taxiway Foxtrot and Taxiway Kilo.

Budget:

TXDOT RAMP Grant Funding (90%)	56,897.55
Airport Budget (10%)	6,321.95
TOTAL PROGRAM FUNDING	\$ 63,219.50

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute the proposal with Hi-Lite Airfield Services, LLC under the Sourcewell Contract #110122-HLA in the amount of \$63,219.50 for repainting of the surface painted markings on Taxiways Foxtrot and Kilo at Tyler Pounds Regional Airport

ATTACHMENTS:

[Tyler Texas - Fall Taxiway Painting Sourcewell Proposal](#)

Drafted/Recommended By:
Department Leader

Stephen Thompson, Airport Manager

**Edited/Submitted By:
City Manager**



Tyler Pounds Texas – Fall Taxiway Painting, Sourcewell Proposal

Hi-Lite Airfield Services, LLC

4816 Lena Road
Bradenton, FL 34211

Attn: Dean Jentes
City/State: Tyler, TX

Bid Date: 11/17/23

Proposal #: 23-18244-P

Project Reference:

Completion Date: 12/31/23

Phone: (941) 713-2155

Item#	Description	Qty	Unit	\$ / Unit	Price
P-620-B.II	Black Taxiway Airfield Marking	17,610	SF	\$ 0.80	\$ 14,088.00
P-620-Paint.MOB	Pavement Marking Mobilization	1	EA	\$ 3,720.00	\$ 3,720.00
P-620-SPHPS.II.I	SPHPS Markings	3,832	SF	\$ 8.00	\$ 30,656.00
P-620-Y.II.I	Yellow Taxiway Airfield Marking	9,837	SF	\$ 1.50	\$ 14,755.50
Total:					\$ 63,219.50

Project Description: Fall Taxiway Painting

Remarks:

Price Per Sourcewell Contract # 110122-HLA

Price Includes (1) Mobilization for pavement marking

Any additional mobilizations will be charged at \$3,720.00 per occurrence

Paint:

TT-P-1952F Type II Waterborne Paint

Beads:

TT-B)1325D Type I Reflective Media

- No Temporary Markings included
- Quoted quantities are estimates only. Actual quantities will be field measured and verified for invoicing
- Owner to provide adequate water source and dump site for solid/liquid debris
- Surface must be clean and free of FOD prior to painting.
- No surface preparation will be performed outside Hi-Lite's scope of work. Hi-Lite will not be responsible for cleaning other contractor's/construction debris and all markings assumed to be clean and ready to paint prior to Hi-Lite's arrival on site
- All barricades, traffic control, set up, and tear down provided by others
- All work must be performed in dry weather, with acceptable temperatures, if our warranty is to be in effect
- Stand-by time caused by others will be billed at \$750/hour
- Hi-Lite will not be liable for any liquidated damages due to time constraints caused by others
- Minimum of 10 days' notice required for scheduling
- Any changes to the Plans & Specifications herein that affects Hi-Lite's work will require a reevaluation of the price
- If quantities are altered more than 15% in any year, Hi-Lite will reserve the right to adjust pricing
- No retainage to be held on this contract. Payment terms to be net 30 days
- If a Payment and Performance Bond is requested, add 2% to the total price
- Does not include prevailing wages
- Assumes working hours during all daylight hours, 7 days per week

HI-LITE AIRFIELD SERVICES, LLC
4816 Lena Road
Bradenton, FL 34211
315.583.6111
www.hi-lite.com



Note: This Quote/Proposal is Only Valid in its Entirety And Prices Are Valid for (30) Days. If you need further information please contact: PJ Mills – Director of Marketing & Business Development, (941) 713-2155, pj.mills@hi-lite.com

We Propose Hereby To Furnish Material and Labor in Accordance with Above Specifications For the Above Sum. Prices May Vary Slightly to Suit your Project's Particular Needs Such as Number of Mobilizations and Traffic Control. Acceptance Of This Proposal Is Only Valid in its Entirety. Note: This Proposal is Valid for 30 Days.

Date: _____ **Signature:** _____

Acceptance Of Proposal – The Above Prices, Specifications and Conditions Are Satisfactory and Hereby Accepted. You Are Authorized To Do The Work As Specified.

Date: _____ **Signature:** _____

HI-LITE AIRFIELD SERVICES, LLC
4816 Lena Road
Bradenton, FL 34211
315.583.6111
www.hi-lite.com



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**



Agenda Number: C-A-5

Date: January 24, 2024

Subject: Request that the City Council consider amending and updating Tyler City Code Chapter 12 for adjustments to the office space rental rate fee for on-site car rentals at Tyler Pounds Regional Airport.

Page: Page 1 of

Item Reference:

Tyler City Code Article III, Section 12-31a currently defines the On-Site Car Rental rates as follows:

The concession fee for the right to use the Airport and Airport Terminal by on-site rental car companies shall be no less than forty thousand dollars (\$40,000.00) per year, or ten percent (10%) of gross monthly revenue based on net time and mileage, whichever is greater amount. The rental rate for office and counter space used by on-site rental car companies shall be five hundred and fifty dollars (\$550.00) per month.

Tyler Pounds Regional Airport receives numerous FAA grants for airfield maintenance and improvements. Grant assurances are reviewed and approved by the City of Tyler. To comply with FAA grant assurances and FAA Policy regarding the establishment of Airport Rates and Charges, the airport should maintain a fee and rental structure for the facilities and services at the airport that will make the airport as self-sustaining as possible and maintain the economic value of the property.

Staff proposes the following rate adjustments to be presented to City Council as follows:

The rental rate for office and counter space used by on-site rental car companies shall be six hundred dollars (\$600.00) per month.

The rental rate for office and counter space increase will bring in an additional one thousand eight hundred dollars (\$1,800.00) annually.

January 22, 2024, the Airport Advisory Board will approve this action.

RECOMMENDATION:

It is recommended that the City Council approve amending City Code Chapter 12, to allow adjustments to on-site car rental rates at Tyler Pounds Regional Airport.

ATTACHMENTS:

[01-24-24 Ordinance Rental Car Office Renta increase to \\$600](#)

Drafted/Recommended By:

Department Leader

Stephen Thompson, Airport Manager

Edited/Submitted By:

City Manager

ORDINANCE NO. 0-2024-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 12, "AIRPORT AND TRANSIT", ARTICLE III., "AIRPORT COMMERCIAL ACTIVITIES" OF THE CODE OF ORDINANCES THE CITY OF TYLER, TEXAS, BY AMENDING FEES AND RENTAL PROVISIONS TO INCREASE THE RENTAL RATE FOR OFFICE AND COUNTER SPACE USED BY ON-SITE-RENTAL CAR COMPANIES AND RENTAL CAR CONCESSION FEE AT TYLER POUNDS REGIONAL AIRPORT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

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

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

WHEREAS, the City of Tyler has adopted ordinances pursuant to Texas Local Government Code Sections 51.001 and 51.072, as well as Tyler City Charter Sections 1, 2 and 6; and

WHEREAS, Texas Transportation Code Section 22.011(a)(1) states that a local government may plan, establish, construct, improve, equip, maintain, operate, regulate, protect, and police an airport or air navigation facility in or outside of the territory of the local government; and

WHEREAS, Texas Local Government Code Section 241.011(a) provides that to prevent the creation of an airport hazard, a political subdivision in which an airport hazard area is located may adopt, administer, and enforce, under its police power, airport hazard area zoning regulations for the airport hazard area; and

WHEREAS, Texas Local Government Code Section 241.012(a)(1) states that a political subdivision may adopt, administer, and enforce, under its police power, airport compatible land use zoning regulations for the part of a controlled compatible land use area located within the political subdivision if the airport is used in the interest of the public to the benefit of the political subdivision; and

WHEREAS, the City of Tyler has established Airport regulations in Tyler City Code Chapter 12; and

WHEREAS, miscellaneous Airport fees for service are set forth in City Code Chapter 12; and

WHEREAS, on June 19, 2002 the City Council amended the existing Westside Terminal building rental rates at Tyler Pounds Regional Airport; and

WHEREAS, on May 28, 2003 the City Council amended the existing Westside Terminal building rental rates; and

WHEREAS, on December 14, 2005 the City Council amended the existing Westside Terminal Building rental rates; and

WHEREAS, on September 22, 2010 the City Council amended the existing Westside Terminal Building rental rates; and

WHEREAS, on February 13, 2013 the City Council amended the existing Westside Terminal Building rental rates; and

WHEREAS, on June 8, 2016 the City Council amended the existing Westside Terminal Building rental rates; and

WHEREAS, on January 11, 2017 the City Council amended the existing Westside Terminal Building rental rates; and

WHEREAS, on September 25, 2019 the City Council amended the existing Westside Terminal Building rental rates; and

WHEREAS, on December 14, 2022 the City Council amended the existing Westside Terminal Building rental rates; and

WHEREAS, it is important to amend the Westside Terminal building rental rates related to office and counter space rental rates used by on-site rental car companies at Tyler Pounds Regional Airport; and

WHEREAS, Tyler City Code Sec. 12-2.1 states that the Airport Advisory Board shall make recommendations to the City Council with respect to Airport operation; and

WHEREAS, City Code Sec. 12-2.5 provides that the Airport Advisory Board, in an advisory capacity, shall work toward the general improvement of the Airport and the advancement of the City as an air transportation center; and

WHEREAS, the Airport Advisory Board met on January 22, 2024, and voted to recommend increases in the Westside Terminal Building office and counter space rental rates used by on-site rental car companies at Tyler Pounds Regional Airport;

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

PART 1: That Tyler City Code Chapter 12, “Airport and Transit”, Article III., “Airport Commercial Activities”, is hereby amended by amending Section 12-31 to read as follows:

Sec. 12-31. Fees and rentals.

Westside Terminal building rates for exclusive office and counter areas for commercial airlines shall be twenty-nine dollars and fifty-two cents (\$29.52) per square foot per year. Terminal building common area ~~free~~ fees for signatory commercial airlines shall be thirty-five cents (\$.35) per enplaned passenger and common are fees for non-signatory commercial airlines or charter flights shall be seventy-five cents (\$.75) per enplaned passenger. The rental rates for that portion of the terminal building used for restaurant purposes shall be based upon a percentage of gross receipts as set by the City Council. Rental rates for FAA use of terminal building space shall be set out in those leases and approved by the City Council. The rental rates for the conference room in the Westside Terminal Building shall be fifty dollars (\$50.00) per day, twenty-five dollars (\$25.00) for four (4) hours or less, and twenty dollars (\$20.00) for each additional furniture set up. Such rental rates for the conference room in the Westside Terminal Building shall not be charged to non-profit organizations, nor to City of Tyler employees or representatives that are conducting City-related business. Additionally, a damage deposit of fifty dollars (\$50.00) per rental shall be required from each user of the conference room in the Westside Terminal Building, except that such deposit shall not be required for City of Tyler employees or representatives that are conducting City-related business. The concession fee for the right to use the Airport and Airport Terminal by on-site rental car companies shall be no less than forty thousand (\$40,000.00) per year, or ten percent (10%) of gross monthly revenue based on net time and mileage, whichever is the greater amount. The rental rate for office and counter space used by on-site rental car companies shall be ~~five hundred fifty dollars (\$550.00)~~ six hundred dollars (\$600.00) per month. On-site car rental companies shall pay a fee of sixty dollars (\$60.00) per space per month for use of ready car and other parking spaces at the Westside Terminal Building. The rental car company leasing counter space will not be allowed to display dual brands from a single leased counter space. On-site car rental companies shall pay a minimum fee of three dollars (\$3.00) per wash of a single vehicle and receive twelve minutes of wash bay operation with a fee of twenty-five cents (\$.25) per minute for each additional minute thereafter for use of the rental car wash bay. Users of the car wash rental bay shall not stack or stage vehicles for consecutive washes with a single swipe of the car wash payment card. Fees include use of vacuums at no additional charge. Ord. No. 0-99-35, 4/28/99) (Ord. No. 0-2001-33, 8/15/01) (Ord. No. 0-2002-22, 6-19-2002) (Ord. 0-2003-22, 5/28/03) (Ord. No. 0-2005-96; 12/14/05) (Ord. 0-2010-99, 9/22/10) (Ord. No. 0-2012-69, 9/12/12) (Ord. No. 0-2013-11; 2/13/13) (Ord. No. 0-2016-50; 6/08/16) (Ord. No. 0-2017-9; 1/11/17) (Ord. No. 0-2019-80; 9/25/19) (Ord. No. 0-2022-110; 12/14/22) (Ord. No. 0-2024 - ; 01/24/24)

b. through l. No changes...

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

PART 3: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be _____, 2024.

PASSED AND APPROVED this 24 day of January, A.D., 2024.

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

A T T E S T:

CASSANDRA BRAGER, CITY CLERK

APPROVED:

DEBORAH G. PULLUM,
CITY ATTORNEY