

**STATE OF TEXAS            §    INTERLOCAL COOPERATION AGREEMENT FOR**  
**§**  
**§    STORMWATER MANAGEMENT BETWEEN**  
**§**  
**COUNTY OF SMITH         §    THE CITY OF TYLER AND SMITH COUNTY**

**THIS INTERLOCAL COOPERATION AGREEMENT** (the “Agreement”) is made and entered into by and between the City of Tyler (“Tyler”), a municipal corporation of Smith County, Texas, by and through its City Manager pursuant to City Council authority at a regularly scheduled City Council meeting on the 10<sup>th</sup> day of July, 2019, and Smith County, Texas (“Smith County”), a political subdivision of the State, acting by and through a County Judge pursuant to Commissioners Court authority at a regularly scheduled Commissioners Court meeting on the 2<sup>nd</sup> day of July, 2019.

**WHEREAS**, the Interlocal Cooperation Act (the “Act”), codified as Chapter 791, Texas Government Code, authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

**WHEREAS**, Texas Administrative Code Title 30, Section 281.25, as adopted by the Texas Commission on Environmental Quality (“TCEQ”) and applicable federal regulations require both Tyler and Smith County to obtain stormwater permit coverage for their municipal separate storm sewer systems (“MS4s”) because each is identified as a Regulated Small MS4; and

**WHEREAS**, TCEQ regulations require both Tyler and Smith County to take certain actions to implement the requirements of the State’s Texas Pollutant Discharge Elimination System (“TPDES”) General Permit for Regulated Small MS4s, TPDES General Permit No. TXR040000; and

**WHEREAS**, State law allows Regulated Small MS4s such as Tyler and Smith County to work together to implement provisions of the TPDES General Permit for Regulated Small MS4s; and

**WHEREAS**, Tyler and Smith County believe that by working together to implement the provisions of the TPDES General Permit for Regulated Small MS4s they can combine their resources to achieve lower costs, greater efficiency, and higher effectiveness in the programs; and

**WHEREAS**, Tyler and Smith County desire to enter into this Interlocal Cooperation Agreement pursuant to the provisions of Texas Government Code Chapter 791, the Act, and other applicable statutes, contracts pursuant thereto, and Charter provisions; and

**WHEREAS**, this Agreement will increase the efficiency and effectiveness of stormwater management in both Tyler and Smith County; and

**WHEREAS**, this Agreement will mutually benefit the parties and serve to protect the public interest and the public health, safety, welfare, and the environment.

**NOW THEREFORE**, for and in consideration of the mutual promises and obligations hereinafter stated, and for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Tyler and Smith County agree as follows:

### **I. EFFECTIVE DATE**

The effective date of this Agreement shall be the 10<sup>th</sup> day of July 2019.

### **II. TERM**

The initial term of this Agreement shall be for a period of five (5) years from the effective date of this Agreement. Thereafter, upon mutual agreement of the parties hereto, this Agreement may be renewed for two additional five (5) year terms unless terminated earlier by either party as set forth below.

### **III. DUTIES OF PARTIES**

The following outlines the duties of the parties to implement the requirements of the TPDES General Permit for Regulated Small MS4s and specifically to address the five (5) applicable Minimum Control Measures (“MCMs” identified in the TPDES General Permit for Regulated Small MS4s. The various Best Management Practices (“BMPs”) are referenced with respect to Smith County’s Stormwater Management Program (“SWMP”), and the related BMPs in Tyler’s SWMP are provided for reference.

#### **A. PUBLIC EDUCATION, OUTREACH, AND INVOLVEMENT.**

1. Smith County BMP PE/PI-1 – Public Service Announcements/Social Media: In order to address the Public Education and Outreach MCM, Tyler plans to utilize stormwater public service announcements. (*See* Tyler BMP PE/PI-1.) Because the public service announcements are broadcast throughout Smith County, Tyler shall recognize Smith County’s role in addressing stormwater issues in all stormwater public service announcements broadcast each year during the term of this Agreement.
2. Smith County BMP PE/PI-2 – Stormwater Web Site: In order to address the Public Education and Outreach MCM, Tyler plans to maintain its stormwater web site. (*See* Tyler BMP PE/PI-3.) Tyler shall work with Smith County to develop one (1) static stormwater web page for the Smith County web site. The stormwater web page developed for Smith County shall have a link to Tyler’s stormwater web site. Tyler’s stormwater website shall have a link to the Smith County website within 30

days of notice from Smith County that said Smith County stormwater website is available.

3. Smith County BMP PE/PI-4 – Stormwater Brochures: In order to address the Public Education and Outreach MCM, Tyler will continue to develop new brochures on a “as need basis” and maintain existing brochures addressing such topics as pesticides and fertilizer use, household hazardous waste, pet waste, and Tyler’s recycling program. (See Tyler BMP PE/PI-2.) Tyler shall include Smith County’s logo on applicable stormwater brochures printed each year during the term of this Agreement as requested by Smith County. Tyler will provide to Smith County the number of brochures requested by Smith County during throughout the term of the TPDES General Permit for Regulated Small MS4s. Within 30 days after Tyler submits an invoice to Smith County for the purchase of such brochures, Smith County shall reimburse Tyler for the printing costs of those brochures provided to Smith County. Smith County shall make the brochures available throughout the urbanized areas of Smith County outside Tyler’s corporate limits.

## B. ILLICIT DISCHARGE DETECTION AND ELIMINATION.

1. Smith County BMP ID-1 – Storm Drain System Outfall Mapping: In order to address the Illicit Discharge Detection and Elimination MCM, Tyler is maintaining and improving a city-wide GIS storm drain system outfall map of those locations within Tyler’s corporate limits. (See Tyler BMP ID-1.) Smith County will develop and maintain a GIS storm drain system outfall map for those portions of the urbanized area outside of Tyler’s corporate limits. Information in each of Tyler and Smith County’s said GIS storm drain system outfall maps shall be made available to the other party.
2. Smith County BMP ID-3 – Illicit Discharge Investigations: In order to address the Illicit Discharge Detection and Elimination MCM, Tyler plans to conduct illicit discharge investigations throughout the storm sewer system on an as needed basis. (See Tyler BMP ID-3.) These investigations can utilize fluorescent dye testing, smoke testing, and/or remote TV camera inspection to track down illicit connections to the MS4. Smith County shall work with Tyler to coordinate such illicit discharge investigations within the urbanized area outside of Tyler’s corporate limits when such investigations are necessary. Smith County shall reimburse Tyler on a case-by-case basis for illicit discharge investigations requested by Smith County and performed by Tyler in the urbanized area outside Tyler’s corporate limits. Smith County shall reimburse Tyler for the costs associated with the requested investigations within 30 days after Tyler submits an invoice to Smith County for such investigations.
3. Smith County BMP ID-6 – Reduce Failing Septic Systems: In order to address the Illicit Discharge Detection and Elimination MCM, Smith County plans to continue its permitting and regulation of septic systems through the TCEQ On-site Sewage Facility Program (“OSSF”). To enhance the effectiveness of this program, Smith

County has developed a brochure, which will address proper septic system care, for septic system pumping companies to distribute to septic system owners. Smith County shall include Tyler's logo on all septic tank brochures printed each year during the term of this Agreement. Tyler shall reimburse Smith County for the printing costs of brochures provided to Tyler during the term of the TPDES General Permit for Regulated Small MS4s within 30 days after Smith County submits an invoice to Tyler for such brochures. Smith County shall make the brochures available to septic system pumping companies for distribution to the owners of septic systems within Tyler's corporate limits.

4. Smith County BMP ID-7 – Smith County Cleanup Day: In order to address the Illicit Discharge Detection and Elimination MCM, Smith County plans to conduct a Smith County Cleanup Day. Smith County shall hold a Smith County Cleanup Day on an annual basis during the term of the TPDES General Permit for Regulated Small MS4s. Tyler shall allow Smith County to deliver acceptable materials collected as part of Smith County Cleanup Day to the Allied Greenwood Farm landfill for disposal, with Smith County paying for the cost as established by the City at the time of service.

#### C. CONSTRUCTION SITE STORMWATER RUNOFF CONTROL

1. Smith County BMP C-1 – Track Construction Site Notices: In order to address the Construction Site Stormwater Runoff Control MCM, Tyler plans to review plans for construction projects within Tyler's corporate limits and ETJ as allowed by State law and City ordinances. (See Tyler BMP C-2.) Smith County will track all construction site notices including Notices of Intents, Notices of Change and Notices of Termination that it receives as the MS4 operator and share that information with the City of Tyler.
2. Smith County BMP C-2 – Construction Inspection: In order to address the Construction Site Stormwater Runoff Control MCM, Tyler plans to continue to conduct construction inspections of residential and commercial sites within Tyler's corporate limits and some areas of its ETJ as allowed by State law and City ordinances. (See Tyler BMP C-3.) Smith County will notify the City of Tyler of any citizen complaints that it receives through the County's Web-Based Incident Reporting System (Smith County BMP ID-5) regarding construction sites located in the City's ETJ. If allowed under State and local law, the City of Tyler will perform construction inspections of those sites located in the City's ETJ and report inspection results to Smith County.

#### D. POST-CONSTRUCTION STORMWATER MANAGEMENT IN NEW DEVELOPMENT AND REDEVELOPMENT

1. Smith County BMP PC-1 – Long Term Operation and Maintenance of BMPs: In order to address the Post-Construction Stormwater Management in New

Development and Redevelopment MCM, Tyler plans to conduct inspections to determine the effectiveness of post-construction BMPs. (See Tyler BMP PC-3.) Tyler shall conduct these inspections within its ETJ inside the urbanized area at Smith County's request. Smith County shall reimburse Tyler on a case-by-case basis for those inspections within Tyler's ETJ requested by Smith County and performed by the City within 30 days after the City submits an invoice to Smith County for the costs associated with such inspection. Tyler shall notify the Smith County Road and Bridge Department if conditions are observed that require maintenance.

**E. POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR MUNICIPAL OPERATIONS.**

1. Smith County BMP GH-8 – Storm Drain System Cleaning. In order to address the Pollution Prevention/Good Housekeeping for Municipal Operations MCM, Smith County plans to continue to perform maintenance on drains at the Smith County Base Facility that discharge into the adjacent creek. The drains shall be cleaned on an as needed basis. Depending on the extent of the maintenance required, Smith County may request assistance from the City of Tyler. Smith County may coordinate with the City of Tyler's Streets Department to assist them in cleaning/maintaining drains with the City's vacuum truck. Smith County shall reimburse Tyler for each use of the vacuum truck at a price to be negotiated at the time of each request.

**PAYMENT/FUNDING**

Costs payable by Tyler and Smith County pursuant to this Agreement are outlined above, and will be based on actual costs with documentation of time and materials as described in invoices provided by Tyler for reimbursement requests. Smith County and Tyler shall meet each year prior to the budgeting process to finalize the estimate of BMP activities for the upcoming fiscal year. This provision shall supersede any provision in conflict within this agreement.

**MISCELLANEOUS PROVISIONS**

- A. NOTICE. Any notice given hereunder must be in writing, and may be effective by personal delivery, facsimile transmission, or by certified mail, return receipt requested, at the address of the respective parties indicated below:

City of Tyler: City Manager  
City of Tyler  
P.O. Box 2039  
Tyler, Texas 75710  
(903) 531-1250 (Telephone)  
(903) 531-1166 (Facsimile)

Smith County: County Judge  
Smith County Commissioners Court  
200 E. Ferguson, Suite 100  
Tyler, Texas 75702  
(903) 590-4600 (Telephone)  
(903) 590-4615 (Facsimile)

These addresses for notice may be changed by either party by delivering written notice within ten days of the change, in accordance with the requirements of this paragraph, to the other party.

- B. CURRENT REVENUES. Tyler and Smith County will pay for services rendered pursuant to this Agreement from current revenues.
- C. RENEWAL. The renewal of this Agreement shall be contingent upon the availability of current revenue funds and annual budget allocations and appropriations by the parties.
- D. HOLD HARMLESS. Each party to this Agreement does hereby agree to waive all claims against, release and hold the other party and its respective officials, officers, agents, and employees, both in their official capacity and individual capacity, harmless from and against any and all liability, claims, suits, demands, losses, damages (including court costs and attorneys' fees) or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement.
- E. MUTUAL COOPERATION. Tyler and Smith County agree to cooperate with each other, in good faith, at all times during the term hereof in order to effectuate the purpose and intent of this Agreement.
- F. AUTHORITY TO CONTRACT. Each party acknowledges and represents that this Agreement has been duly authorized by their respective governing body.
- G. NO PARTNERSHIP. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party, as creating the relationship of employer-employee, principal-agent, partners, joint ventures, or any other similar such relationships, between the parties hereto.

- H. ENTIRE AGREEMENT; AMENDMENTS. This Agreement contains the entire Agreement of the parties respecting the subject matter and supersedes all prior negotiations, representations and/or agreements, either written or oral, between the parties. This Agreement may not be modified or amended except by written Agreement duly executed by both parties.
- I. INTERPRETATION. This Agreement has been entered into and under the authority granted under the Act. All terms and provisions are to be construed and interpreted consistently with that Act. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.
- J. SEVERABILITY. The provisions of this Agreement are severable. In the event that any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement shall be found to be contrary to law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this Agreement; however, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty days written notice of its intent to terminate.
- K. ASSIGNMENT AND SUBLETTING. This Agreement shall not be assigned in whole or in part without the written consent of both parties.
- L. WAIVER. The waiver by either party of a breach of this Agreement shall not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision.
- M. REMEDIES. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.
- N. APPLICABLE LAWS. This Agreement will be construed in accordance with the laws and Constitution of the State of Texas. All obligations are performable in Smith County, Texas. Exclusive venue shall be in Smith County, Texas.
- O. CAPTIONS. Title and headings of Sections or Paragraphs hereof have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be

considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent.

P. COUNTERPARTS. This Agreement shall be executed in duplicate originals and all shall constitute but one and the same instrument.

IN WITNESS OF WHICH this Agreement has been executed on this the \_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF TYLER,  
a Texas municipal corporation

SMITH COUNTY, TEXAS  
a political subdivision of Texas

By: \_\_\_\_\_  
Edward Brouard  
City Manager

By: \_\_\_\_\_  
Nathaniel Moran  
County Judge

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
County Clerk