

CITY COUNCIL AGENDA

Wednesday, June 26, 2019
9:00 a.m.



CITY COUNCIL

Martin Heines, Mayor
Linda Sellers, District 1
Broderick McGee, District 2
Edward Moore, District 3
Don Warren, District 4
Bob Westbrook, District 5
Criss Sudduth, District 6

Edward Broussard, City Manager



CITY COUNCIL MEETING AGENDA

CITY COUNCIL CHAMBERS - CITY HALL

212 North Bonner

Tyler, Texas 75702

Wednesday, June 26, 2019

9:00 a.m.

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.

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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. Delay or interruption of the proceedings will not be tolerated.



INVOCATION

PLEDGE OF ALLEGIANCE

MINUTES

Request that the City Council consider approval of the Minutes of the regular meeting of the City Council of the City of Tyler, Texas on April 24, 2019.

AWARDS

A-1 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. These employees represent **120** years of service with the City of Tyler.

Service Awards

Date of Hire	First Name	Last Name	Title	Department	Years of Service
06/13/1994	Darrell	Cook	Police Officer XII	Police	25
06/13/1994	Eddie	Sheffield	Police Lieutenant I	Police	25
6/12/1989	Kenneth	Johnson Sr.	Chief Treatment Plant Operator	Wastewater Treatment	30
6/26/1979	Elaine	Massingburge	Library Assistant	Library	40

ZONING

Z-1 PD19-011 WERNER TAYLOR LAND AND DEVELOPMENT (7147 CROSSWATER) Request that the City Council consider approving a zone change from “C-1”, Light Commercial District to “PUR”, Planned Unit Residential District with final site plan.

Z-2 PD19-013 SMITH AUBREY JR (2516 MCDONALD ROAD) Request that the City Council consider approving a zone change from “PMF”, Planned Multifamily to “POD”, Planned Office District with final site plan.

- Z-3** S19-004 WHITMIL DONALD AND SHELLY (1302 BUTLER AVENUE) Request that the City Council consider approving a Special Use Permit (SUP) for a child home daycare.
- Z-4** Z19-012 STAPLES JULIA ANN KLINE LIFE ESTATE (6150 PALUXY DRIVE) Request that the City Council consider approving a zone change from “AG”, Agricultural District to “C-1”, Light Commercial District.
- Z-5** Z19-013 WELLS PROPERTY MANAGEMENT LLC (421 SOUTH BONNER AVENUE) Request that the City Council consider approving a zone change from “R-MF”, Multi-Family Residential District to “AR”, Adaptive Reuse District.
- Z-6** Z19-014 SIDAR BUILDERS LLC (2202 KENNEDY AVENUE) Request that the City Council consider approving a zone change from “R-1A”, Single-Family Residential District to “R-1B”, Single-Family Residential District.

ORDINANCE

- O-1** Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 2 to re-adopt current guidelines and criteria governing tax abatement in the City of Tyler.

MISCELLANEOUS

- M-1** Request that the City Council authorize the City Manager to sign an Authorization and Reimbursement Agreement with the Union Pacific Railroad Company for improving the at-grade crossing at Martin Luther King Boulevard in the amount of \$212,257.50.
- M-2** Request that the City Council consider authorizing the City Manager to renew the engineering services contract with Pipeline Analysis, LLC and renew Work Order No. 1, with a maximum cost of \$1,000,000 per year, for support of the Wastewater Collection System’s Capacity, Management, Operations and Maintenance Program.
- M-3** Request that the City Council award the first major manhole rehabilitation package “Western Seal”, City of Tyler Bid Number 19-034, to Quadex Lining Systems, LLC for \$947,824.00.
- M-4** Request that the City Council consider authorizing the City Manager to apply for and to accept a FAA Grant totaling approximately \$855,000 to fund 90 percent of the costs to update the Airport’s Master Plan and design security fencing upgrades and improvements at Tyler Pounds Regional Airport.
- M-5** Request that the City Council consider authorizing the City Manager to execute a new Commercial Airline Operating Lease with Frontier Airlines, Inc.

M-6 Request that the City Council consider authorizing the City Manager to execute an agreement with Habitat for Humanity of Smith County to administer the Critical Home Repair Program funded with Community Development Block Grant (CDBG) funds.

BOARD APPOINTMENTS

B-1 Request that the City Council consider approving nominations to the Tyler One Half Cent Sales Tax Corporation Board from District Nos. 1, 5 and 6, and the Member At-Large.

CONSENT

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

C-A-1 Request that the City Council consider authorizing the City Manager to sign an Easement Agreement between Pinnacle Racing LLC and Cavender Investment Properties F, LTD at Tyler Pounds Regional Airport.

C-A-2 Request that the City Council consider approving an Information Systems Facilities Management ten (10) year Interlocal Agreement for Computer Support Services with City of Whitehouse.

CITY MANAGER'S REPORT

ADJOURNMENT

**MINUTES OF THE
REGULAR CALLED MEETING OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS
April 24, 2019**

A regular called meeting of the City Council of the City of Tyler, Texas, was held Wednesday, April 24, 2019 at 9:00 a.m. in the City Council Chambers, 2nd floor of City Hall, Tyler, Texas, with the following present:

Mayor:	Martin Heines
Mayor Pro Tem:	Linda Sellers
Councilmembers:	Bob Westbrook Don Warren Broderick McGee Ed Moore
City Manager:	Edward Broussard
City Attorney:	Deborah G. Pullum
Deputy City Attorney:	Steve Kean
Assistant City Attorney:	Regina Moss
Managing Director of Administrative Services/HR:	ReNissa Wade
Chief Financial Officer:	Keidric Trimble
Chief Information Officer:	Benny Yazdanpanahi
City Fire Chief:	David Coble
Police Chief:	Jimmy Toler
Managing Director of Culture, Recreation and Tourism Services:	Stephanie Franklin
Managing Director of Planning & Economic Development:	Heather Nick
Water Business Office Manager:	Jim Yanker
City Engineer:	Lisa Crossman
Managing Director of Utilities and Public Works:	
Director of Utilities:	Jimmie Johnson
City Clerk:	Cassandra Brager

INVOCATION

The Invocation was given by Assistant Pastor Doug Baker, Marvin Methodist Church.

MINUTES

Motion by Mayor Pro Tem Sellers to approve the March 6, 2019 special called minutes; seconded by Councilmember Warren; motion carried 6 - 0 & approved as presented.

AWARDS

A-1 We would like to recognize the following employee for his years of service and commitment to the City of Tyler. At this important milestone, we express our sincere appreciation for your dedication and for the special contribution you make to our organization. He represents **20** years of service with the City of Tyler.

Service Awards

Date of Hire	First Name	Last Name	Title	Department	Years of Service
4/5/1999	Billy	Yates	Assistant Police Chief I	Police	20

- A-2 Request that the City Council consider recognizing a City employee as the Blueprint Blue Ribbon Award winner, for placing the highest premium on responsiveness to citizens' needs.**

Lauren Justice was as the Blueprint Blue Ribbon Award winner for April 2019, for placing the highest premium on responsiveness to citizens' needs.

RESOLUTIONS

- R-1 Request that the City Council consider adopting a resolution supporting the passage of legislation relating to the creation of the Rose City Municipal Utility District. (R-2019-19)**

City Manager, Edward Broussard – Stated that the proposed legislation authored by State Representative District 6 Matt Shaefer intends to create a municipal utility district to be known as the Rose City Municipal Utility District, being approximately 27,300 acres located within the corporate limits and extraterritorial jurisdiction of the southern and southwestern portions of the City of Tyler, and partly in the extraterritorial jurisdiction of the City of Bullard. According to the proposed bill, the district would be overseen by a board of five directors appointed by the local governing bodies and the state representative whose legislative district encompasses the majority of the area.

Among other powers, the proposed district would have the authority to issue bonds, impose fees, and provide sewer and wastewater services without a certificate of convenience and necessity, and contract with the City to operate and maintain the district's sewer and wastewater facilities. However, the proposed legislation also provides a mechanism for the utility commission to decertify the territory inside the district of an existing retail public utility certificate holder, and compensate the existing certificate holder in an amount determined by the utility commission.

County Judge, Nathaniel Moran and Jeff Warr- Spoke in favor of the Rose City Municipal Utility District.

Monroe Kirby, 11105 CR 249, Chapel Hill community – Stated that he owns property on 155 South a mile past Loop 323, has no service there, and wanted to know why the city keeps passing him up.

Mayor Heines – Stated that it will take a lift station in that area but the city is working on something in that area.

Motion by Councilmember Warren; seconded by Mayor Pro Tem Sellers; motion carried 6 - 0 & approved as presented.

ZONING

- Z-1 S19-001 RENFRO VICTORIA Y (711 MOCKINGBIRD LANE) Request that the City Council consider approving a Special Use Permit to allow for a child home day care.**

Motion by Councilmember McGee; seconded by Councilmember Moore; motion carried 6 - 0 & approved as presented.



- Z-2 Z19-003 MARTINEZ JUAN (1325 AND 1329 CONNALLY STREET) Request that the City Council consider approving a zone change from “R-2”, Two-Family Residential District to “R-1D”, Single-Family Attached and Detached Residential District. (O-2019-26)**

Motion by Councilmember McGee; seconded by Councilmember Warren; motion carried 6 - 0 & approved as presented.

- Z-3 Z18-043 LINDA L WHEAT (3615 WOODBINE BOULEVARD) Request that the City Council consider approving a zone change from “R-1A”, Single-Family Residential District to “AR”, Adaptive Reuse District. (O-2019-27)**

Motion by Councilmember Westbrook; seconded by Councilmember Moore; motion carried 6 - 0 & approved as presented.

- Z-4 PD18-033 GENECOV INVESTMENTS (318.69 ACRES OF LAND) Request that the City Council consider approving a zone change from “AG”, Agricultural District and “R-1A”, Single-Family Residential District to “R-1A”, Single-Family Residential District, “R-1B”, Single-Family Residential District, “R-1D”, Single-Family Attached/Detached Residential District, “PXR”, Planned Mixed Residential District with written narrative, “PMF”, Planned Multi-Family Residential District with written narrative, “R-MF”, Multi-Family Residential District, “C-1”, Light Commercial District, and “PMXD-1”, Planned Mixed Use District with written narrative. (O-2019-28)**

Mark Priestner, 3815 Old Bullard Rd. – Planning consultant for landowner; spoke in favor of item.

(Council recessed meeting at 10:16 for a break – Council reconvened regular session at 10:26 am)

Ray McKinney, 1350 Dominion Plaza – President of Genecov group; spoke in favor of item.

Jeannie Weaver, 2009 Hollystone Dr. – Spoke in opposition of the item; requested that no additional access/traffic be allowed onto Hollytree Drive.

Marcy Justis, 7402 MaCallan Cove – Spoke in opposition of the item; stated he was concerned about buffers between subdivision sections, and protection of endangered wildlife

through environmental studies.

Gordon Bryson, 2205 Thornwood - Spoke in opposition of the item; stated he was concerned about having no information on whether there has been an environmental study for the area around Legacy Trail; concerned about the protection of the historic cemetery in the area.

Angela Bridges, 1605 Royal Oak Dr. – Spoke in opposition of the item; presented a petition of citizens concerned about items such as: lack of infrastructure for internet, increased crime, impact on school zones, and traffic safety.

Robert Justis, 7402 MaCallan Cove – Spoke in opposition of the item; proposed alternative plan for collector street access; requested that Hollytree not connect to Old Jacksonville; proposed that it break in two key areas: 1) that it does not cross the creek and 2) that it does not cross the new Legacy Trail.

Bettye Baty, 2210 Firestone Circle – Spoke in opposition of the item; stated that she and her husband undertook the reclamation of the historic cemetery in the area; her husband is now buried in the cemetery, and she is concerned about the protection of the historic cemetery in the area.

Carolyn Bronston, 7912 Hollytree Drive – Spoke in opposition of the item; requested further modifications of the development in accordance with the wishes of the current residents of the Hollytree subdivision.

John Hart, 1839 Bent Tree Ln – (President of Hollytree Homeowners Association but was speaking in his personal/individual capacity) Spoke in opposition of the item; stated that current plan is premature and not adequately studied. He stated that his primary concern is traffic safety; other concerns include drainage and lack of environmental studies. (Following citizen's comments and Priestner's responses, Mr. Hart was asked to respond.) Mr. Hart responded that he would take some of the suggestions to improve traffic safety along Hollytree Drive back to the HOA for further consideration and possible coordination and implementation with the City.

Mark Loughmiller, 7418 Princedale – Spoke in opposition of the item; stated that he was concerned about the protection of the historic cemetery and particularly the frontage track adjacent to the cemetery; also concerned about the density on the RMF tract. (Following citizen's comments and Priestner's responses, Mr. Loughmiller was asked to respond.) Mr. Loughmiller stated although the plan is not perfect, he is pleased with the concessions and/or modifications made by Genecov on the single-family tracts.

Harry Bergman, 7429 Princedale – Spoke in opposition of the item; stated that current plan is premature and not adequately studied; requested that the Council consider the alternate plan put forward by Robert Justis.

Trey Brewer, 1350 Dominion Plaza – Vice President of Genecov; stated he was present to answer any questions.

Bob InLow, 7224 Princedale – Spoke in opposition of the item; stated that he agreed with the other speakers, and was primarily concerned about traffic safety.

Duane Griffith, 766 Esperanza Pl- Spoke in opposition of the item; stated his main concern about the zoning request was the potential change in aesthetics, quality of neighborhood, and decrease of home values.

Parker Cuvelier, 7132 Shaddock Ridge – Spoke in opposition of the item; stated he was concerned about the traffic intensity on the roadways in the neighborhood, and about the traffic on the trail that would be placed directly behind his house.

Ashley Smith, 7034 Walden Dr. – Spoke in opposition of the item; stated that current Genecov plan was not in character with the current neighborhood; stated he was concerned about the environmental impact of the development on the natural characteristics of the property in the neighborhood;

Brook Swann, 6705 Hollytree Circle – Spoke in opposition of the item; stated he was concerned about the possible impact of the proposed development on traffic safety and increased crime;

Art Hughes, 1404 Woodlands Dr. – Spoke in opposition of the item; stated he did not want Hollytree to be a thoroughfare; and he did not want unoccupied homes.

Dawn Von Eschenbach, 2186 Pinehurst - Spoke in opposition of the item; stated he was concerned about the amount of proposed green space that is in the Genecov plan, about the density of the development, and about whether the surrounding schools could accommodate the impact; also stated his concern about the traffic impact.

Joe Nichols, 7135 Turnberry Ct. – Spoke in opposition of the item; stated that as an entertainer, he was concerned with the privacy and safety of his children, the possible higher traffic volume, and the possible increase in crime (noting that break-ins and burglaries have been on the rise in the neighborhood lately); also stated his concern with the extent of future development.

Kerri Seamans, 7207 Cherryhill Dr. – Spoke in opposition of the item; stated she supports the other speakers' comments; requested that there not be access to Hollytree Drive if the development is allowed.

Wanda Feliciano, 6503 Gleneagles Dr. – Spoke in opposition of the item; stated that she does not want the neighborhood to change. She stated she would at least ask that there be no traffic connection from the proposed development to Hollytree.

Mark Priestner, 3815 Old Bullard Rd - Spoke in favor of the item and responded to the expressed concerns. He stated the following:

- The traffic impact has been determined to be total trip generation of 15,000 cars per day, and peak hour trips of 1,300 per day;
- Hollytree Drive is a major collector rather than a residential collector, and is at a current capacity of 11 percent, post development would be increased to 18 percent capacity; and
- They anticipate that more traffic will be going through the proposed development from Hollytree than traffic going through Hollytree from the development.

Motion by Councilmember Westbrook to approve the zone change **excepting out** the 24.95 acre tract identified as tract 4B in the applicant's application (*see attached Exhibit "C", page 20 of 24 which contains Exhibit "A" Tract 4B*); seconded by Mayor Pro Tem Sellers; motion carried 6 - 0 as amended. (Councilmember Sellers exits.) Council recessed for a short period and then reconvened.

Z-5 Z19-005 GARAGE PROPERTIES LLC (412 AND 418 EAST ERWIN STREET) Request that the City Council consider approving a zone change from "M-1", Light Industrial District to "DBAC", Downtown Business, Arts and Culture District. (O-2019-29)

Motion by Councilmember Warren; seconded by Councilmember McGee; motion carried 5 - 0 & approved as presented.

Z-6 Z19-006 TYLERTEX HOLDINGS LLC (7906 AND 7716 NEIGHBORS ROAD) Request that the City Council consider approving a zone change from "M-2", General Industrial District to "R-1B" Single-Family Residential District. (O-2019-30)

Motion by Councilmember Westbrook; seconded by Councilmember Moore; motion carried 5 - 0 & approved as presented.

Z-7 Z19-007 PARSLEY DWIGHT & KATHY (1937 DEERBROOK DRIVE) Request that the City Council consider approving a zone change from "M-1", Light Industrial District to "C-2" General Commercial District. (O-2019- 31)

Motion by Councilmember Westbrook; seconded by Councilmember McGee; motion carried 5 - 0 & approved as presented.

Z-8 Z19-002 ZB3 PROPERTIES LLC (2469 EARL CAMPBELL PARKWAY) Request that the City Council consider approving a "PCD", Planned Commercial District amendment with a written narrative. (O-2019-32)


Motion by Councilmember Warren; seconded by Councilmember Moore; motion carried 5 - 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 adopting a Resolution agreeing to the sale of certain tracts of land located at 845 Turner Avenue within the Tyler city limits and owned by taxing entities including the City of Tyler. (R-2019-20)

C-A-2 Request that the City Council consider adopting a Resolution agreeing to the sale of certain tracts of land located at 1009 South Englewood Street within the Tyler city limits and owned by taxing entities including the City of Tyler. (R-2019-21)

- C-A-3** Request that the City Council consider adopting a Resolution agreeing to the sale of certain tracts of land located at 1100 North Bois D Arc within the Tyler city limits and owned by taxing entities including the City of Tyler. (R-2019-22)
- C-A-4** Request that the City Council consider adopting a Resolution agreeing to the sale of certain tracts of land located at 1107 West 32nd Street within the Tyler city limits and owned by taxing entities including the City of Tyler. (R-2019-23)
- C-A-5** Request that the City Council consider adopting a Resolution agreeing to the sale of certain tracts of land located at 1207 Lenox within the Tyler city limits and owned by taxing entities including the City of Tyler. (R-2019-24)
- C-A-6** Request that the City Council consider adopting a Resolution agreeing to the sale of certain tracts of land located at 2202 Woodlawn Street within the Tyler city limits and owned by taxing entities including the City of Tyler. (R-2019-25)
- C-A-7** Request that the City Council consider adopting a Resolution agreeing to the sale of certain tracts of land located at South Peach Avenue within the Tyler city limits and owned by taxing entities including the City of Tyler. (R-2019-26)
- C-A-8** Request that the City Council authorize the City Manager to ratify staff action of \$40,000.00 for the emergency replacement of the High Service Pump No. 5 motor starter at the Golden Road Water Treatment Plant, to Alan Fielding Electric.
-  **C-A-9** Request that City Council authorize the City Manager to renew the memorandum of understanding with the East Texas Symphony Orchestra for the operations of Liberty Hall.
- C-A-10** Request that the City Council consider adoption of a Resolution to authorize continued participation by the City of Tyler with the Steering Committee of Cities Served by Oncor, and authorizing the annual assessment payment of eight (8) cents per capita to the Steering Committee. (R-2019-27)
- C-A-11** Request that the City Council consider authorizing the purchase of new chairs for Harvey Convention Center and the Rose Garden Center in the amount of \$34,004.32 to Mity Lite, Inc.

Motion by Councilmember Westbrook; seconded by Councilmember Moore; motion carried 5 - 0 & approved as presented.

CITY MANAGER'S REPORT

Nothing to report

EXECUTIVE SESSION – City Council convened into executive session at 2:27 pm.

Executive Item No. 1:

Under Texas Government Code Section 551.071 "Litigation" deliberation regarding the following:

Pending or contemplated litigation or settlement offer involving *ETMC EMS, et al v. Champion EMS, et al v. City of Tyler, et al.*

City council reconvened from executive session at 3:18 pm with no action taken.

ADJOURNMENT

Motion by Councilmember Warren; seconded by Councilmember Moore; motion carried 5- 0 & approved as presented.

**MARTIN HEINES, MAYOR OF
THE CITY OF TYLER, TEXAS**

A T T E S T:

CASSANDRA BRAGER, CITY CLERK

ATTACHMENT TO THE
MINUTES OF THE APRIL 24, 2019 COUNCIL MEETING



CITY OF TYLER
CITY COUNCIL COMMUNICATION

Agenda Number: Z-4

Date: April 24, 2019

Subject: PD18-033 GENECOV INVESTMENTS (318.69 ACRES OF LAND)
Request that the City Council consider approving a zone change from
“AG”, Agricultural District and “R-1A”, Single-Family Residential
District to “R-1A”, Single-Family Residential District, “R-1B”,
Single-Family Residential District, “R-1D”, Single-Family
Attached/Detached Residential District, “PXR”, Planned Mixed
Residential District with written narrative, “PMF”, Planned Multi-
Family Residential District with written narrative, “R-MF”, Multi-
Family Residential District, “C-1”, Light Commercial District, and
“PMXD-1”, Planned Mixed Use District with written narrative.

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Item Reference:

The applicant is requesting the zone change to allow for a mixture of office, retail and residential uses on approximately 318.69 acres of land located generally between Old Jacksonville Highway and Waljim Road from west to east, and between Dueling Oaks and West Cumberland Road from north to south (Tracts 5A, 5B, 5C, 5D, 10, and 11A of Abstract A0562 M Long, Tracts 7B, 7C of Abstract A0794 T Price, Tracts 18A, 18A.1, 18B and 18B.1 of Abstract A0443 J Hope).

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

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

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According to the UDC, the “R-1D”, Single-Family Detached and Attached Residential District is primarily intended to accommodate single-family detached and attached housing, such as duplexes, townhouses and rowhouses on small individual lots. In addition, the district allows churches, schools, and accessory buildings and uses. The maximum building height is 42 feet. Setback requirements are 25 feet in the front, 15 feet in the rear, zero feet on the interior side and 12 feet on the corner side. Minimum lot size is 3,000 square feet.

According to the 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 the UDC, the “PXR”, Planned Mixed Residential District is primarily intended to provide for medium-density development of innovative forms of detached and attached single-family housing. The PXR district is also intended to permit, where appropriate pursuant to the Tyler 1st Comprehensive Plan and Future Land Use Guide (FLUG), a mixture of single-family attached and detached housing types in areas using individually platted lots. All developments created in a PXR district must be designed and developed in accordance with an approved site development plan and submitted for approval to the Planning and Zoning Commission and to City Council.

According to the UDC, the “PMF”, Planned Multi-Family District is primarily intended to implement the Tyler 1st Comprehensive Plan by providing for the medium to high density development of condominiums, apartments, and nursing homes. A PMF development may include common open spaces, scenic and recreational areas. All developments created in a PMF district must be designed and developed in accordance with an approved site development plan and submitted for approval to the Planning and Zoning Commission and to City Council.

According to the 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 the 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 and Zoning Commission and to City Council. Where narrative is submitted and approved by the City Council, future site plans may be approved by staff when they are consistent

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with the standards included in the narrative.

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

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

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

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

The adjacent properties are generally zoned “AG”, Agricultural District, “R-1A”, Single-Family Residential District, “R-1B”, Single-Family Residential District, “PUR”, Planned Unit Residential District, “PMF”, Planned Multi-Family Residential District and “C-1”, Light Commercial District. The properties are generally developed with single-family homes including large lot, medium lot, and garden homes. The “PMF” zoned properties are developed with condominiums.

The adopted Future Land Use Guide (FLUG) identifies this property as Single-Family Medium/Low Density and Mixed-Use Center. This request is generally consistent with the FLUG, but it will amend medium density residential areas to Townhouse/Garden Apartment and nonresidential areas to Mixed-Use Center.

The applicant is requesting to establish zoning appropriate for imminent development of approximately 318.69 acres of land south of the Hollytree community and along West Mud Creek. The area was annexed into the City of Tyler in 1996 and 2000 and was given an original zoning of “AG”, Agricultural District, which is standard practice for vacant acreage.

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On August 12, 2016, the West Cumberland Road extension was completed. West Cumberland Road is a four-lane, divided arterial street that connects Old Jacksonville Highway to South Broadway Avenue. It is anticipated to become a highly-travelled thoroughfare. Maple Lane was also recently connected to Hollytree Drive. Both streets are 70 feet wide major collector streets. Hollytree is on the Master Street Plan to connect into Old Jacksonville Highway.

The applicant is proposing a mixture of residential densities as well as complimentary neighborhood-serving commercial uses. The proposed zoning recognizes that the planned thoroughfares and connections will support a diversity of residential density types. The proposed zoning allows for the appropriate transition of uses from Cumberland Road and for appropriate residential densities near the intersection of Maple Lane and Hollytree Drive (collector streets).

The applicant originally requested a zone change for the northeast corner of West Cumberland Road and Maple Lane. The request was tabled by the Planning and Zoning Commission on January 8, 2019 and February 5, 2019 to allow the applicant to meet with surrounding neighborhoods. The applicant met with homeowners from the Hollytree community on January 15, 2019, the Prestonwood community on February 12, 2019, and the Bishops Gate community on February 19, 2019. All meetings were held at the Faulkner Park Police Substation and were well-attended by members of these communities. The applicant discussed the overall plan for the Genecov property and listened to concerns from neighbors. The applicant amended portions of their request after hearing feedback from neighbors.

The applicant has submitted site narratives for the areas to be zoned “PXR”, “PMF” and “PMXD-1”. The “PXR” narrative proposes a maximum height of 42 feet and setbacks of 20 feet front, zero side interior if attached, five side interior if detached, 12 feet side corner, and 15 feet rear yard. These areas will be developed with a mixture of attached and detached housing.

“PMF” zoning near the intersection of Hollytree Drive and Maple Lane will be limited to two story or 40 feet in height with a maximum density of 15 units per acre. The UDC allows for a maximum density of 24 units per acre for multi-family zoning. Uses will be restricted to attached and detached single-family homes on one large lot and multi-family apartments. The narrative restricts Crisis Center, Halfway House, and Rescue Mission uses. The narrative also stipulates a 25 foot landscape buffer along Hollytree Drive, except for driveway access.

“PMF” zoning near the intersection of Cumberland Road and a future extension of Deer Ridge Lane (adjacent to Hamilton Commons) will be limited to a maximum height of three stories or 45 feet whereas the UDC does not stipulate a maximum height for “PMF” zoning.

“PMXD-1” development will be limited to loft residential, “RPO” and “C-1” uses. Signage will be consistent with “C-1” standards.

On April 2, 2019, the Planning and Zoning Commission held a public hearing for this request. Representatives from Genecov, Ray McKinney and Trey Brewer, spoke in favor of the request. They discussed their engagement process with the surrounding neighborhoods and the changes they made after hearing feedback. Mark Priestner, the applicant’s consultant, also discussed the project. A number of neighbors spoke in opposition with concerns about potential impacts to property values,

Agenda Number: Z-4

traffic and the overall quality of the area. There was considerable discussion about the proposed “R-MF” zoning near the west end of the property. Owners within the Bishops Gate community were concerned about the view of multi-family housing along the Legacy Trail. The applicant discussed that they will place a stipulation in the deed restrictions to leave a buffer to protect the view. Staff notes that a potential deed restriction will not be enforceable by the City and that the restriction cannot be added to “R-MF” zoning approval.

As of Friday, April 12, 2019, of the 138 notices mailed, two notices were returned in favor of the request and 33 were returned in opposition with a total protest calculation of 6.49 percent. Other forms of notice were provided including a publication in the Tyler Morning Telegraph and yellow signs posted in highly visible locations on the property. A number of neighbors from outside of the 200 foot mailed notification area submitted letters in opposition as well.

Neighbors in opposition to the request cited concerns with the potential impact to property values, loss of trees, increased traffic in the area and multi-family development. While “R-1D” zoning allows for attached units (townhomes), it is still single-family zoning as each unit will be on an individual lot. “R-1D” also allows for a diversity of housing types for all stages of the life cycle. The “PMF” zoning is located in areas that are either already zoned for multi-family use or nearby mixed-use centers. Higher density housing near neighborhood-serving commercial areas can alleviate vehicle trips elsewhere on the street system and promote alternative modes of transportation.

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

RECOMMENDATION:

The Planning and Zoning Commission by a 4-2 vote recommends approval of the zone change from “AG”, Agricultural District and “R-1A”, Single-Family Residential District to “R-1A”, Single-Family Residential District, “R-1B”, Single-Family Residential District, “R-1D”, Single-Family Attached/Detached Residential District, “PXR”, Planned Mixed Residential District with written narrative, “PMF”, Planned Multi-Family Residential District with written narrative, “R-MF”, Multi-Family Residential District, “C-1”, Light Commercial District, and “PMXD-1”, Planned Mixed Use District with written narrative.

ATTACHMENTS:

1. Ordinance
2. Exhibit “A”: Written Narratives
3. Exhibit “B”: Proposed Zoning Map
4. Exhibit “C”: Metes and Bounds Descriptions
5. Exhibit “D”: Location Map
6. Exhibit “E”: Tyler 1st Future Land Use Map
7. Exhibit “F”: Notification



Agenda Number: Z-4

**Drafted/Recommended By:
Department Leader**

**Heather Nick, AICP
Managing Director**

**Edited/Submitted By:
City Manager**

ORDINANCE NO. O-2019-

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 “AG”, AGRICULTURAL DISTRICT AND “R-1A”, SINGLE-FAMILY RESIDENTIAL DISTRICT TO “R-1A”, SINGLE-FAMILY RESIDENTIAL DISTRICT, “R-1B”, SINGLE-FAMILY RESIDENTIAL DISTRICT, “R-1D”, SINGLE-FAMILY ATTACHED/DETACHED RESIDENTIAL DISTRICT, “PXR”, PLANNED MIXED RESIDENTIAL DISTRICT WITH WRITTEN NARRATIVE, “PMF”, PLANNED MULTI-FAMILY RESIDENTIAL DISTRICT WITH WRITTEN NARRATIVE, “R-MF”, MULTI-FAMILY RESIDENTIAL DISTRICT, “C-1”, LIGHT COMMERCIAL DISTRICT, AND “PMXD-1”, PLANNED MIXED USE DISTRICT WITH WRITTEN NARRATIVE ON APPROXIMATELY 318.69 ACRES OF LAND LOCATED GENERALLY BETWEEN OLD JACKSONVILLE HIGHWAY AND WALJIM ROAD FROM WEST TO EAST, AND BETWEEN DUELING OAKS AND WEST CUMBERLAND ROAD FROM NORTH TO SOUTH (TRACTS 5A, 5B, 5C, 5D, 10, AND 11A OF ABST. A0562 M LONG, TRACTS 7B, 7C OF ABST. A0794 T PRICE, TRACTS 18A, 18A.1, 18B AND 18B.1 OF ABST. A0443 J HOPE); DIRECTING THE AMENDMENT OF THE ZONING MAP; DIRECTING THE AMENDMENT OF THE FUTURE LAND USE GUIDE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

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

I. APPLICATION PD18-033

That the following described property, which has heretofore been zoned “AG”, Agricultural District and “R-1A”, Single-Family Residential District shall hereafter bear the zoning classification of “R-1A”, Single-Family Residential District, “R-1B”, Single-Family Residential District, “R-1D”, Single-Family Attached/Detached Residential District, “PXR”, Planned Mixed Residential District with written narrative, “PMF”, Planned Multi-Family Residential District with written narrative, “R-MF”, Multi-Family Residential District, “C-1”, Light Commercial District, and “PMXD-1”, Planned Mixed Use District with written narrative, to wit:

Approximately 318.69 acres of land located generally between Old Jacksonville Highway and Waljim Road from west to east, and between Dueling Oaks and West Cumberland Road from north to south (Tracts 5A, 5B, 5C, 5D, 10, and 11A of Abst. A0562 M Long, Tracts 7B, 7C of Abst. A0794 T Price, Tracts 18A, 18A.1, 18B and 18B.1 of Abst. A0443 J Hope), in accordance with Exhibit “A” and as described by Exhibits “B” and “C”, all attached hereto

and incorporated herein.

PART 2: That the City Manager is hereby ordered and directed to cause the zoning map to be amended to reflect the above described zoning and the Future Land Use Guide to reflect Single-Family and Single-Family Attached Medium/High Density (“R-1D” and “PXR” areas) and Mixed-Use Center (“R-MF”, “PMF”, “C-1”, and “PMXD-1” areas).

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 April 26th, 2019.

PASSED AND APPROVED this the 24th day of April A.D., 2019.

MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

STEVEN M. KEAN,
DEPUTY CITY ATTORNEY

ORDINANCE 0-2019
EXHIBIT "A"
WRITTEN NARRATIVES
1 OF 2



Zoning areas and Planned District Narrative – Genecov Properties

All regulations and uses per the Tyler UDC except where noted below.

Tract 8 - PMXD-1 Planned Mixed-Use District

PMXD-1

Uses – All C-1, RPO and Residential

Setbacks – Front – 10'
Sides – 5' / 10' Street
Rear – 10'
Minimum 10' between structure

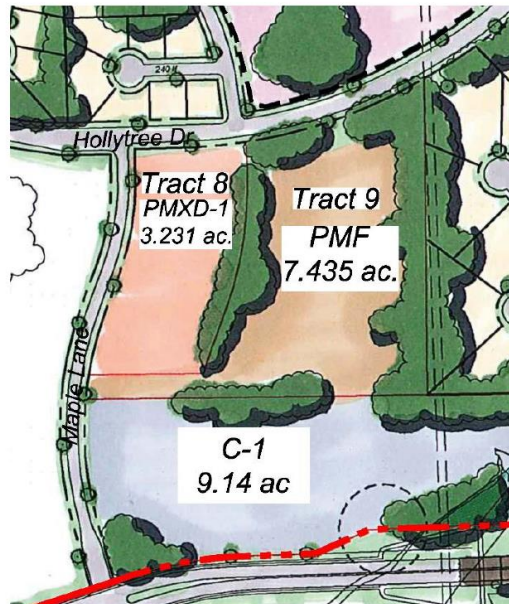
Maximum Lot Coverage – 60%

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



Tract 9 - PMF Planned Multi-family

PMF

Uses – Attached / Detached Single Family and Multi-family Residential except for Crises Center, Halfway House and Rescue Mission/Home as defined by the UDC.

Setbacks – 15' from exterior zoning district boundary
Minimum 10' between attached / detached single family structures
Minimum 15' between multi-family structures

Maximum Height – 2 story / 40'

Density – 15 units per acre max

Maximum Lot Coverage – 60%

Parking, Landscaping and Signage per City of Tyler UDC

25' landscape buffer along Hollytree Drive (driveway access permitted)

EXHIBIT "A"
WRITTEN NARRATIVES
2 OF 2

Tract 2 - PMF Planned Multi-family

PMF

Uses – Attached / Detached Single Family and Multi-family Residential

Setbacks – 15' from exterior zoning district boundary

Minimum 10' between attached / detached single family structures

Minimum 15' between multi-family structures

Maximum Height – 3 story / 45'

Maximum Lot Coverage – 60%

Parking, Landscaping and Signage per City of Tyler UDC



Tracts 5 & 6 - PXR Planned Mixed Residential

PXR

Uses – Attached / Detached Single Family

Maximum Height – 2.5 story / 42'

Minimum lot size – 2,700 sf

Setbacks (attached) – Front – 20'

Sides – 0' interior / 12' street

Rear – 15'

15' between structures

Maximum six (6) attached units in a single row

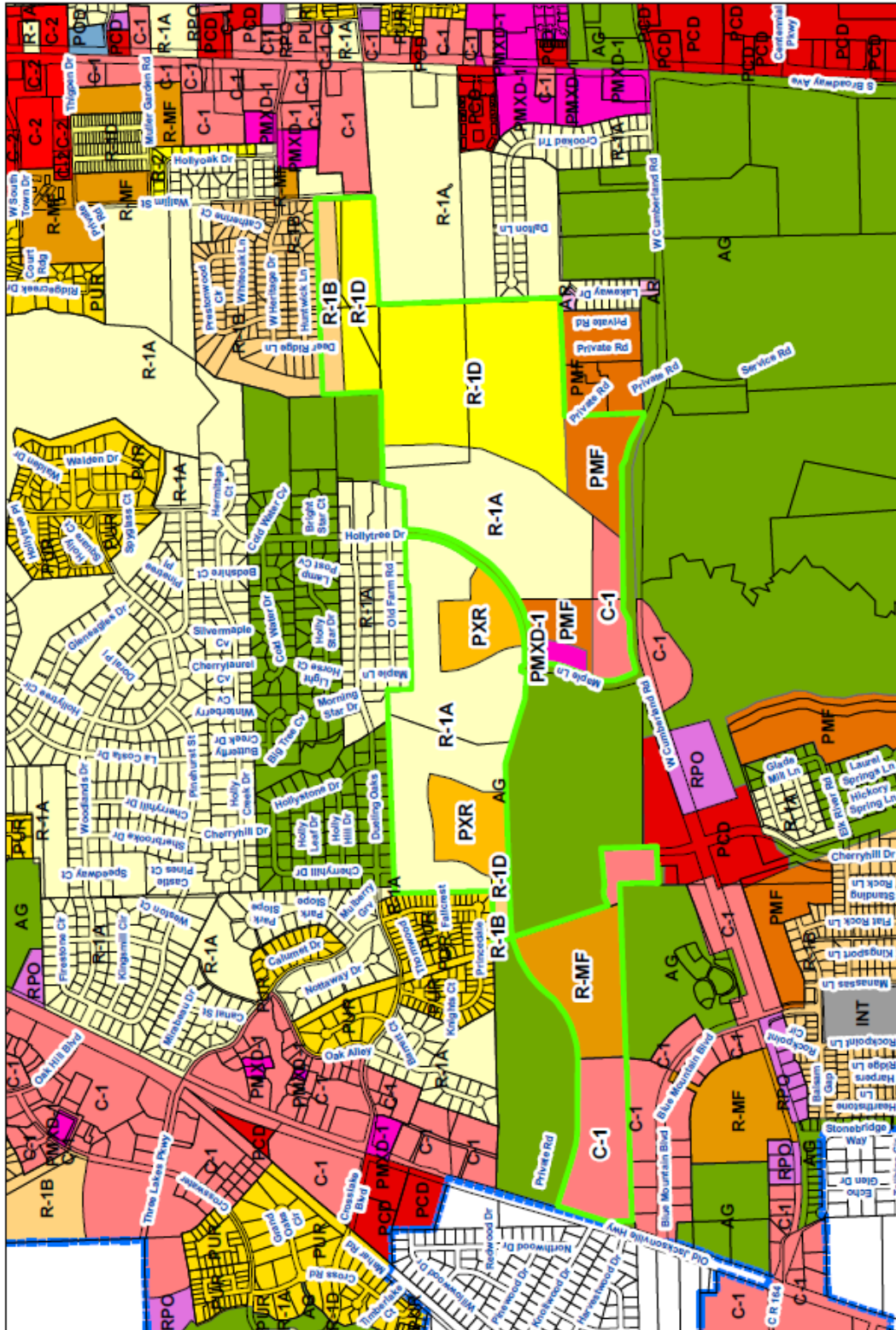
Setbacks (detached) – Front – 20'

Sides – 5' interior / 12' street

Rear – 15'



ORDINANCE 0-2019
EXHIBIT "B"
PROPOSED ZONING MAP



Subject Property
 City Limits

ZONING CASE
 Zoning Case #: PD18-033
 Proposed Zoning: PMF, C-1, PMXD-1, R1B, R1D, PXR, R1A, RMF
 Applicant: Genecov Investments LTD

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
 1,250 0 1,250 Feet



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EXHIBIT "C"
METES AND BOUNDS DESCRIPTIONS
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- *Surveying*
- *Mapping*
- *Planning*

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EXHIBIT "A"
PARCEL 1, R1B
90.974-Acre Tract

Being a 90.974-acre tract of land situated in the John Hope Survey, Abstract No. 443 and the Mary M. Long Survey, Abstract No. 562, City of Tyler, Smith County, Texas, and being part of a called 434.2-acre tract of land described in a Deed from Roosth Farm Rental, LLC to West Cumberland, LLC recorded under County Clerk's File No. 20170100029364 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 90.974-acre tract of land being more completely described by metes and bounds as follows:

Beginning at a 1" iron rod found for the Southeast corner of Lot 11, N.C.B. 1606-G of Holly Heights, Unit 5 as evidenced by a Final Plat thereof recorded in Cabinet E, Slide 203-D of the Plat Records of Smith County, Texas, (P.R.S.C.T.), said 1" iron rod found being in the North boundary line of said Mary M. Long Survey and said 434.2-acre tract and the South boundary line of said John Hope Survey;

Thence North 03 degrees 03 minutes 26 seconds West, a distance of 554.80 feet along the East boundary line of said Lot 11 to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" in the East boundary line of Lot 22, N.C.B. 1604 of Holly Star as evidenced by a Final Plat thereof recorded in Cabinet D, Slide 216-D, P.R.S.C.T., same being the Southwest corner of Prestonwood, Unit 5 as evidenced by a Final Plat thereof recorded in Cabinet D, Slide 185-C, P.R.S.C.T.;

Thence North 87 degrees 49 minutes 12 seconds East, a distance of 1980.68 feet along the North boundary line of said 434.2-acre tract and the South boundary line of said Prestonwood, Unit 5 and the South boundary line of Prestonwood, Unit 4 to 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found for the Northeast corner of said 434.2-acre tract, in the East boundary line of said John Hope Survey, and the West boundary line of the Robert Tombs Survey, Abstract No. 987;

Thence South 01 degree 56 minutes 36 seconds East, a distance of 300.37 feet along the East boundary line of said 434.2-acre tract and said John Hope Survey and the West boundary line of said Robert Tombs Survey to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687";

Thence South 01 degree 56 minutes 01 second East, a distance of 286.29 feet continuing along the East boundary line of said 434.2-acre tract and John Hope Survey and the West boundary line of said Robert Tombs Survey to a 1/2" iron rod found for an exterior corner in the East boundary line of said Hope Survey and an interior corner in the West boundary line of said Tombs Survey, said iron rod found also being in the North boundary line of a called 45.8388-acre tract to Dunwood Cemetery Service Co. described in a Deed as being part of a called 50-acre tract from W. E. Hale to T. L. Wright recorded in Volume 358, Page 620 of the Deed Records of Smith County, Texas, (D.R.S.C.T.);

Thence South 88 degrees 30 minutes 25 seconds West, a distance of 1101.14 feet along an upper South boundary line of said 434.2-acre tract and the South boundary line of said John Hope Survey and the North boundary line of said 45.8388-acre tract and said Robert Tombs Survey to a 1/2" iron rod found with plastic cap stamped "MSM" for an interior corner in the East boundary line of said 434.2-acre tract

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EXHIBIT "C"
METES AND BOUNDS DESCRIPTIONS
2 OF 24

and the Northeast corner of said Mary M. Long Survey, the Northwest corner of said 45.8388-acre tract, and an exterior corner in the West boundary line of said Tombs Survey;

Thence South 01 degree 50 minutes 10 seconds East, a distance of 763.74 feet along the East boundary line of said 434.2-acre tract and said Mary M. Long Survey and the West boundary line of said 45.8388-acre tract and said Robert Tombs Survey to a 1-1/2" iron pipe found;

Thence South 02 degrees 02 minutes 18 seconds East, a distance of 115.50 feet continuing along the East boundary line of said 434.2-acre tract and said Mary M. Long Survey and the West boundary line of said 45.8388-acre tract and said Robert Tombs Survey to a bent sucker rod found for the Southwest corner of said 45.8388-acre tract and the Northwest corner of Lot 54, N.C.B. 1546-I of Cumberland Place West, Unit 1 as evidenced by and Amended Plat thereof recorded in Cabinet E, Slide 271-B of the Plat Records of Smith County, Texas, P.R.S.C.T.;

Thence South 02 degrees 05 minutes 01 second East, a distance of 955.22 feet along the East boundary line of said 434.2-acre tract and said Mary M. Long Survey and the West boundary line of said Cumberland Place West, Unit 1 and said Robert Tombs Survey to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" for an exterior corner in the East boundary line of said 434.2-acre tract, also being in the North boundary line of Lot 2-A, N.C.B. 1546-D of Cumberland Park as evidenced by a First Amendment Plat thereof recorded in Cabinet E, Slide 161-D, P.R.S.C.T.;

Thence South 87 degrees 55 minutes 56 seconds West, along a South boundary line of said 434.2-acre tract and the North boundary line of said Lot 2-A, Lot 1-D and Lot 1-C, N.C.B. 1546-H, Hamilton Commons as evidenced by a 1st Amendment Plat thereof recorded in Cabinet E, Slide 227-D, P.R.S.C.T., at a distance of 1177.36 feet, passing a 1" square iron bolt found for the Northwest corner of said Lot 1-C, at an interior ell corner in the East boundary line of said 434.2-acre tract and continuing along said course for a total distance of 1965.07 feet to a point for corner;

Thence North 38 degrees 11 minutes 30 seconds East, a distance of 394.68 feet to a point for corner;

Thence North 22 degrees 28 minutes 54 seconds East, a distance of 591.74 feet to a point for corner;

Thence North 06 degrees 31 minutes 14 seconds East, a distance of 436.03 feet to a point for corner;

Thence North 01 degree 56 minutes 49 seconds West, a distance of 582.02 feet to a point for corner in the South boundary line of aforementioned Lot 11 of Holly Heights, Unit 5 and said John Hope Survey and the North boundary line of said Mary M. Long Survey;

Thence North 88 degrees 03 minutes 11 seconds East, a distance of 532.00 feet to the place of beginning, containing 90.974 acres of land.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2016.

ORDINANCE O-2019
EXHIBIT "C"
METES AND BOUNDS DESCRIPTIONS
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GIVEN UNDER MY HAND AND SEAL, This the 30th day of January, 2019.



Kevin L. Kilgore, R.P.L.S. 4687



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EXHIBIT "C"
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- *Surveying*
- *Mapping*
- *Planning*

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EXHIBIT "A"
PARCEL 2, PMF
14.449-Acre Tract

Being a 14.449-acre tract of land situated in the Mary M. Long Survey, Abstract No. 562, City of Tyler, Smith County, Texas, and being part of a called 434.2-acre tract of land described in a Deed from Roosth Farm Rental, LLC to West Cumberland, LLC recorded under County Clerk's File No. 20170100029364 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 14.449-acre tract of land being more completely described by metes and bounds as follows:

Beginning at a 1" square iron bolt found for the Northwest corner of said Lot 1-C, N.C.B. 1546-H of Hamilton Commons as evidenced by a 1st Amendment Plat thereof recorded in Cabinet E, Slide 227-D, of the Plat Records of Smith County, Texas, (P.R.S.C.T.), same being an interior ell corner in the East boundary line of said 434.2-acre tract;

Thence South 02 degrees 25 minutes 58 seconds East, a distance of 789.92 feet along the East boundary line of said 434.2-acre tract and the West boundary line of said Lot 1-C to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" for the Southeast corner of said 434.2-acre tract and the Southwest corner of said Lot 1-C;

Thence South 87 degrees 37 minutes 47 seconds West, a distance of 38.38 feet along the South boundary line of said 434.2-acre tract to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" in the North right-of-way line of West Cumberland Road;

Thence North 65 degrees 00 minutes 26 seconds West, a distance of 173.81 feet along the North right-of-way line of West Cumberland Road, same being the South boundary line of said 434.2-acre tract to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687";

Thence continuing along the North right-of-way line of said West Cumberland Road and the South boundary line of said 434.2-acre tract and along a curve to the left with a delta angle of 15 degrees 27 minutes 07 seconds, a radius of 1052.50 feet, an arc length of 283.84 feet, a chord bearing of North 72 degrees 43 minutes 59 seconds West, and a chord length of 282.98 feet to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687";

Thence North 62 degrees 50 minutes 36 seconds West, a distance of 154.49 feet continuing along the North right-of-way line of said West Cumberland Road and South boundary line of said 434.2-acre tract to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687";

Thence South 88 degrees 00 minutes 37 seconds West, a distance of 655.90 feet to a point for corner;

Thence North 38 degrees 11 minutes 30 seconds East, a distance of 708.96 feet to a point for corner;

Thence North 87 degrees 55 minutes 56 seconds East, a distance of 787.71 feet to the place of beginning, containing 14.449 acres of land.

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Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2016.

GIVEN UNDER MY HAND AND SEAL, This the 30th day of January, 2019.



Kevin L. Kilgore, R.P.L.S. 4687



ORDINANCE O-2019
EXHIBIT "C"
METES AND BOUNDS DESCRIPTIONS
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- *Surveying*
- *Mapping*
- *Planning*

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EXHIBIT "A"
PARCEL 3, R1A
52.309-Acre Tract

Being a 52.309-acre tract of land situated in the Mary M. Long Survey, Abstract No. 562, City of Tyler, Smith County, Texas, and being part of a called 434.2-acre tract of land described in a Deed from Roosth Farm Rental, LLC to West Cumberland, LLC recorded under County Clerk's File No. 20170100029364 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 52.309-acre tract of land being more completely described by metes and bounds as follows:

Beginning at a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" in the East right-of-way line of Hollytree Drive, (variable width right-of-way) as evidenced by a Final Plat of Hollytree South, Unit 1, Right-of-Way Dedication recorded in Cabinet F, Slide 33-A of the Plat Records of Smith County, Texas, (P.R.S.C.T.) same being the Southwest corner of a called 0.193-acre tract, described in a Deed from Genecov Investments, Ltd. & Sam Roosth, Trustee to Jim and Dottie Hairston Family Partnership, LP recorded Smith County Clerk's File No. 2013-R00022068, O.P.R.S.C.T.;

Thence North 88 degrees 12 minutes 08 seconds East, a distance of 419.51 feet along the South boundary line of said 0.193-acre tract to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" for the Southeast corner of same;

Thence North 04 degrees 05 minutes 06 seconds East, a distance of 64.09 feet along the East boundary line of said 0.193-acre tract and the East boundary line of Lot 9, N.C.B. 1606-G of Holly Heights, Unit 5 as evidenced by a Final Plat thereof recorded in Cabinet E, Slide 203-D, P.R.S.C.T. to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687";

Thence North 12 degrees 52 minutes 18 seconds East, a distance of 169.63 feet continuing along said East boundary line of Lot 9 and along the East boundary line of Lot 10, N.C.B. 1606-G, of said Holly Heights, Unit 5 to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" in the North boundary line of aforementioned Mary M. Long Survey and 434.2-acre tract and the South boundary line of the John Hope Survey, Abstract No. 443 and Lot 11, N.C.B. 1606-G, Holly Heights, Unit 5;

Thence North 88 degrees 03 minutes 01 second East, a distance of 379.25 feet along said North and South boundary lines to a point for corner;

Thence South 01 degree 56 minutes 49 seconds East, a distance of 582.02 feet to a point for corner;

Thence South 06 degrees 31 minutes 14 seconds West, a distance of 436.03 feet to a point for corner;

Thence South 22 degrees 28 minutes 54 seconds West, a distance of 591.74 feet to a point for corner;

Thence South 38 degrees 11 minutes 30 seconds West, a distance of 1103.64 feet to a point for corner in the North right-of-way line of West Cumberland Road and the South boundary line of said 434.2-acre tract;

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EXHIBIT "C"
METES AND BOUNDS DESCRIPTIONS
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Thence South 88 degrees 00 minutes 37 seconds West, a distance of 547.99 feet continuing along the North right-of-way line of said West Cumberland Road and the South boundary line of said 434.2-acre tract to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence North 02 degrees 03 minutes 05 seconds West, a distance of 1077.18 feet to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found in the South right-of-way line of aforementioned Hollytree Drive;

Thence along said South right-of-way line of Hollytree Drive and a curve to the left with a delta angle of 27 degrees 47 minutes 58 seconds, a radius of 1185.00 feet, an arc length of 574.95 feet, a chord bearing of North 47 degrees 16 minutes 09 seconds East, for a chord length of 569.33 feet to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence North 33 degrees 22 minutes 10 seconds East, a distance of 188.73 feet continuing along the Southeast right-of-way line of Hollytree Drive to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence along the East right-of-way line of Hollytree Drive and a curve to the left with a delta angle of 35 degrees 08 minutes 47 seconds, a radius of 985.00 feet, an arc length of 604.22 feet, a chord bearing of North 15 degrees 47 minutes 47 seconds East, for a chord length of 594.79 feet to the place of beginning, containing 52.309 acres of land.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2016.

GIVEN UNDER MY HAND AND SEAL, This the 30th day of January, 2019.



Kevin L. Kilgore, R.P.L.S. 4687



ORDINANCE O-2019
EXHIBIT "C"
METES AND BOUNDS DESCRIPTIONS
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- *Surveying*
- *Mapping*
- *Planning*

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EXHIBIT "A"
PARCEL 4, R1A
61.734-Acre Tract

Being a 61.734-acre tract of land situated in the Mary M. Long Survey, Abstract No. 562, City of Tyler, Smith County, Texas, and being part of a called 434.2-acre tract of land described in a Deed from Roosth Farm Rental, LLC to West Cumberland, LLC recorded under County Clerk's File No. 20170100029364 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 61.734-acre tract of land being more completely described by metes and bounds as follows:

Beginning at a 1/2" iron rod found in the North boundary line of said 434.2-acre tract for the Southwest corner of Lot 1, N.C.B. 1570-M as evidenced by a Corrected Final Plat of Bishops Gate at Oak Hollow Unit 1 recorded in Cabinet E, Slide 32-A of the Plat Records of Smith County, Texas, (P.R.S.C.T.), said iron rod found also being the Northwest corner of said Mary M. Long Survey and being an interior ell corner in the East boundary line of the Thomas Price Survey, Abstract No. 794;

Thence North 87 degrees 59 minutes 15 seconds East, a distance of 2034.43 feet along the South boundary line of said Lot 1 of Bishops Gate at Oak Hollow Unit 1, the South boundary line of Holly Heights, Unit 4 as evidenced by a Corrected Final Plat thereof recorded in Cabinet D, Slide 346-B, P.R.S.C.T., the South boundary line of Holly Heights, Unit 9 as evidenced by a Final Plat thereof recorded in Cabinet F, Slide 25-D, P.R.S.C.T., said Thomas Price Survey, and John Hope Survey, Abstract No. 443, and the North boundary line of said Mary M. Long Survey to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" at an interior ell corner in the South boundary line of said Holly Heights, Unit 9;

Thence South 01 degree 52 minutes 52 seconds East, a distance of 230.00 feet along a Southerly West boundary line of Holly Heights, Unit 9 and the West boundary line of a called 0.702-acre tract described in a Deed from Genecov Investments, Ltd. & Sam Roosth to Jim & Dottie Hairston Family Partnership, LP recorded under Smith County Clerk's File No. 2013-R00022068, O.P.R.S.C.T. to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found for the Southwest corner of same;

Thence North 88 degrees 12 minutes 08 seconds East, a distance of 1529.86 feet along the South boundary line of said 0.702-acre tract to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found in the West right-of-way line of Hollytree Drive, (variable width right-of-way) as evidenced by a Final Plat of Hollytree South, Unit 1, Right-of-Way Dedication recorded in Cabinet F, Slide 33-A of the Plat Records of Smith County, Texas, (P.R.S.C.T.) same being the Southeast corner of a said 0.702-acre tract;

Thence along said West right-of-way line of Hollytree Drive and a curve to the right with a delta angle of 35 degrees 08 minutes 30 seconds, a radius of 915.00 feet, an arc length of 561.20 feet, a chord bearing of South 15 degrees 46 minutes 51 seconds West, for a chord length of 552.45 feet to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence South 33 degrees 22 minutes 10 seconds West, a distance of 188.73 feet continuing along said West right-of-way line of said Hollytree Drive to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

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Thence continuing along said West right-of-way line of Hollytree Drive and along a curve to the right with a delta angle of 01 degree 58 minutes 53 seconds, a radius of 1115.00 feet, an arc length of 38.56 feet, a chord bearing of South 34 degrees 21 minutes 37 seconds West, for a chord length of 38.56 feet to a point for corner;

Thence North 59 degrees 45 minutes 51 seconds West, a distance of 163.15 feet to a point for corner;

Thence South 88 degrees 16 minutes 56 seconds West, a distance of 203.02 feet to a point for corner;

Thence North 02 degrees 16 minutes 52 seconds West, a distance of 320.25 feet to a point for corner;

Thence South 88 degrees 12 minutes 08 seconds West, a distance of 705.90 feet to a point for corner;

Thence South 01 degree 01 minute 30 seconds East, a distance of 39.78 feet to a point for corner;

Thence along a curve to the left with a delta angle of 25 degrees 27 minutes 53 seconds, a radius of 833.11 feet, an arc length of 370.27 feet, a chord bearing of South 14 degrees 45 minutes 15 seconds East, for a chord length of 367.23 feet to a point for corner;

Thence South 28 degrees 38 minutes 30 seconds East, a distance of 145.32 feet to a point for corner;

Thence along a curve to the right with a delta angle of 20 degrees 31 minutes 00 seconds, a radius of 641.81 feet, an arc length of 229.82 feet, a chord bearing of South 20 degrees 46 minutes 55 seconds East, for a chord length of 228.60 feet to a point for corner;

Thence South 07 degrees 50 minutes 37 seconds East, a distance of 100.98 feet to a point for corner in the North right-of-way line of aforesaid Hollytree Drive;

Thence North 87 degrees 31 minutes 36 seconds West, a distance of 69.31 feet along said North right-of-way line of Hollytree Drive to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687 found;

Thence South 88 degrees 07 minutes 09 seconds West, a distance of 115.36 feet to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence along a curve to the right with a delta angle of 90 degrees 06 minutes 11 seconds, a radius of 30.00 feet, an arc length of 47.18 feet, a chord bearing of North 46 degrees 49 minutes 46 seconds West, and a chord length of 42.46 feet to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" in the East right-of-way line of Maple Lane per aforementioned Final Plat of Hollytree South, Unit 1, Right-of-Way Dedication recorded in Cabinet F, Slide 33-A, P.R.S.C.T.;

Thence South 88 degrees 13 minutes 20 seconds West, a distance of 60.00 feet to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" in the West right-of-way line of Maple Lane;

Thence South 01 degree 46 minutes 40 seconds East, a distance of 10.22 feet along said West right-of-way line of Maple Lane to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687";

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Thence along a curve to the right with a delta angle of 89 degrees 53 minutes 49 seconds, a radius of 30.00 feet, an arc length of 47.07 feet, a chord bearing of South 43 degrees 10 minutes 14 seconds West, and a chord length of 42.39 feet to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" in the North right-of-way line of Hollytree Drive;

Thence South 88 degrees 07 minutes 09 seconds West, a distance of 10.25 feet along said North right-of-way line of Hollytree Drive to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" in the North right-of-way line of Hollytree Drive;

Thence South 01 degree 52 minutes 51 seconds East, a distance of 35.00 feet to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" in the proposed centerline of Hollytree Drive;

Thence South 88 degrees 07 minutes 09 seconds West, a distance of 94.86 feet along said proposed centerline of Hollytree Drive to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence continuing along said proposed centerline of Hollytree Drive and along a curve to the right with a delta angle of 20 degrees 25 minutes 45 seconds, a radius of 700.00 feet, an arc length of 249.59 feet, a chord bearing of North 81 degrees 39 minutes 59 seconds West, for a chord length of 248.27 feet to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence North 71 degrees 27 minutes 06 seconds West, a distance of 456.40 feet continuing along said proposed centerline of Hollytree Drive to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence continuing along said proposed centerline of Hollytree Drive and along a curve to the left with a delta angle of 20 degrees 57 minutes 01 second, a radius of 700.00 feet, an arc length of 255.96 feet, a chord bearing of North 81 degrees 55 minutes 37 seconds West, for a chord length of 254.53 feet to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence South 87 degrees 35 minutes 53 seconds West, a distance of 116.64 feet continuing along said proposed centerline of Hollytree Drive to a point for corner;

Thence North 01 degree 08 minutes 55 seconds West, a distance of 256.20 feet to a point for corner;

Thence North 22 degrees 44 minutes 00 seconds East, a distance of 345.08 feet to a point for corner;

Thence North 13 degrees 00 minutes 52 seconds East, a distance of 216.29 feet to a point for corner;

Thence along a curve to the left with a delta angle of 29 degrees 05 minutes 12 seconds, a radius of 705.70 feet, an arc length of 358.25 feet, a chord bearing of North 89 degrees 49 minutes 42 seconds West, for a chord length of 354.42 feet to a point for corner;

Thence along a reverse curve to the right with a delta angle of 14 degrees 51 minutes 11 seconds, a radius of 977.60 feet, an arc length of 253.43 feet, a chord bearing of South 81 degrees 04 minutes 10 seconds West, for a chord length of 252.72 feet to a point for corner;

Thence South 88 degrees 41 minutes 50 seconds West, a distance of 270.59 feet to a point for corner;

Thence South 00 degrees 55 minutes 59 seconds East, a distance of 187.39 feet to a point for corner;

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Thence along a curve to the right with a delta angle of 34 degrees 00 minutes 16 seconds, a radius of 300.00 feet, an arc length of 178.05 feet, a chord bearing of South 16 degrees 04 minutes 09 seconds West, for a chord length of 175.45 feet to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" set;

Thence South 33 degrees 04 minutes 17 seconds West, a distance of 111.74 feet to a point for corner;

Thence along a curve to the left with a delta angle of 24 degrees 36 minutes 57 seconds, a radius of 300.00 feet, an arc length of 128.89 feet, a chord bearing of South 20 degrees 45 minutes 49 seconds West, for a chord length of 127.90 feet to a point for corner;

Thence South 88 degrees 08 minutes 19 seconds West, a distance of 158.39 feet to a 1/2" iron rod found for the Southeast corner of Lots 20 and 19, N.C.B. 1570-M of Bishops Gate at Oak Hollow Unit 3 as evidenced by a Final Plat thereof recorded in Cabinet E, Slide 257-C, P.R.S.C.T., said iron rod found also being in an East boundary line of said Thomas Price Survey and the West boundary line of said Mary M. Long Survey;

Thence North 01 degree 38 minutes 50 seconds West, a distance of 968.79 feet along the upper West boundary line of said 434.2-acre tract and the West boundary line of said Mary M. Long Survey and the East boundary line of Bishops Gate at Oak Hollow, Unit 3, First Amendment Bishops Gate at Oak Hollow Unit 2 as evidenced by a Plat thereof recorded in Cabinet E, Slide 210-B, P.R.S.C.T. and Bishops Gate at Oak Hollow Unit 2 as evidenced by a Final Plat thereof recorded in Cabinet E, Slide 136-A, P.R.S.C.T., and said Thomas Price Survey to the place of beginning, containing 61.734 acres of land.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2016.

GIVEN UNDER MY HAND AND SEAL, This the 30th day of January, 2019.



Kevin L. Kilgore, R.P.L.S. 4687



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- *Planning*

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EXHIBIT "A"
PARCEL 5, GH
13.022-Acre Tract

Being a 13.022-acre tract of land situated in the Mary M. Long Survey, Abstract No. 562, City of Tyler, Smith County, Texas, and being part of a called 434.2-acre tract of land described in a Deed from Roosth Farm Rental, LLC to West Cumberland, LLC recorded under County Clerk's File No. 20170100029364 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 13.022-acre tract of land being more completely described by metes and bounds as follows:

Beginning at a point for corner from which a 1/2" iron rod found in the North boundary line of said 434.2-acre tract for the Southwest corner of Lot 1, N.C.B. 1570-M as evidenced by a Corrected Final Plat of Bishops Gate at Oak Hollow Unit 1 recorded in Cabinet E, Slide 32-A of the Plat Records of Smith County, Texas, (P.R.S.C.T.), also being the Northwest corner of said Mary M. Long Survey and being an interior ell corner in the East boundary line of the Thomas Price Survey, Abstract No. 794, bears North 78 degrees 24 minutes 49 seconds West, a distance of 2278.26 feet;

Thence North 88 degrees 12 minutes 08 seconds East, a distance of 705.90 feet to a point for corner;

Thence South 02 degrees 16 minutes 52 seconds East, a distance of 320.25 feet to a point for corner;

Thence North 88 degrees 16 minutes 56 seconds East, a distance of 203.02 feet to a point for corner;

Thence South 59 degrees 45 minutes 51 seconds East, a distance of 163.15 feet to a point for corner in the North right-of-way line of Hollytree Drive, (variable width right-of-way) as evidenced by a Final Plat of Hollytree South, Unit 1, Right-of-Way Dedication recorded in Cabinet F, Slide 33-A of the Plat Records of Smith County, Texas, (P.R.S.C.T.);

Thence along said North right-of-way line of Hollytree Drive and a curve to the right with a delta angle of 48 degrees 17 minutes 18 seconds, a radius of 1115.00 feet, an arc length of 939.71 feet, a chord bearing of South 59 degrees 29 minutes 42 seconds West, for a chord length of 912.15 feet to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence North 87 degrees 31 minutes 36 seconds West, a distance of 17.53 feet continuing with said North right-of-way line to a point for corner;

Thence North 07 degrees 50 minutes 37 seconds West, a distance of 100.98 feet to a point for corner;

Thence along a curve to the left with a delta angle of 20 degrees 31 minutes 00 seconds, a radius of 641.81 feet, an arc length of 229.82 feet, a chord bearing of North 20 degrees 46 minutes 55 seconds West, for a chord length of 228.60 feet to a point for corner;

Thence North 28 degrees 38 minutes 30 seconds West, a distance of 145.32 feet to a point for corner;

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Thence along a curve to the right with a delta angle of 25 degrees 27 minutes 53 seconds, a radius of 833.11 feet, an arc length of 370.27 feet, a chord bearing of North 14 degrees 45 minutes 15 seconds West, for a chord length of 367.23 feet to a point for corner;

Thence North 01 degree 01 minute 30 seconds West, a distance of 39.78 feet to the place of beginning, containing 13.022 acres of land.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2016.

GIVEN UNDER MY HAND AND SEAL, This the 30th day of January, 2019.



Kevin L. Kilgore, R.P.L.S. 4687



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EXHIBIT "A"
PARCEL 6, GH
15.005-Acre Tract

Being a 15.005-acre tract of land situated in the Mary M. Long Survey, Abstract No. 562, City of Tyler, Smith County, Texas, and being part of a called 434.2-acre tract of land described in a Deed from Roosth Farm Rental, LLC to West Cumberland, LLC recorded under County Clerk's File No. 20170100029364 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 15.005-acre tract of land being more completely described by metes and bounds as follows:

Beginning at a point for corner from which a 1/2" iron rod found in the North boundary line of said 434.2-acre tract for the Southwest corner of Lot 1, N.C.B. 1570-M as evidenced by a Corrected Final Plat of Bishops Gate at Oak Hollow Unit 1 recorded in Cabinet E, Slide 32-A of the Plat Records of Smith County, Texas, (P.R.S.C.T.), also being the Northwest corner of said Mary M. Long Survey and being an interior ell corner in the East boundary line of the Thomas Price Survey, Abstract No. 794, bears North 40 degrees 37 minutes 11 seconds West, a distance of 519.15 feet;

Thence North 88 degrees 41 minutes 50 seconds East, a distance of 270.59 feet to a point for corner;

Thence along a curve to the left with a delta angle of 14 degrees 51 minutes 11 seconds, a radius of 977.60 feet, an arc length of 253.43 feet, a chord bearing of North 81 degrees 04 minutes 10 seconds East, for a chord length of 252.72 feet to a point for corner;

Thence along a reverse curve to the right with a delta angle of 29 degrees 05 minutes 12 seconds, a radius of 705.70 feet, an arc length of 358.25 feet, a chord bearing of South 89 degrees 49 minutes 42 seconds East, for a chord length of 354.42 feet to a point for corner;

Thence South 13 degrees 00 minutes 52 seconds West, a distance of 216.29 feet to a point for corner;

Thence South 22 degrees 44 minutes 00 seconds West, a distance of 345.08 feet to a point for corner;

Thence South 01 degree 08 minutes 55 seconds East, a distance of 256.20 feet to a point for corner in the proposed centerline of Hollytree Drive;

Thence South 87 degrees 35 minutes 53 seconds West, a distance of 849.12 feet along said proposed centerline of Hollytree Drive to a point for corner;

Thence North 01 degree 34 minutes 32 seconds West, a distance of 154.94 feet to a point for corner;

Thence along a curve to the right with a delta angle of 34 degrees 38 minutes 49 seconds, a radius of 300.00 feet, an arc length of 181.41 feet, a chord bearing of North 15 degrees 44 minutes 52 seconds East, for a chord length of 178.66 feet to a point for corner;

Thence North 33 degrees 04 minutes 17 seconds East, a distance of 111.74 feet to a point for corner;

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Thence along a curve to the left with a delta angle of 34 degrees 00 minutes 16 seconds, a radius of 300.00 feet, an arc length of 178.05 feet, a chord bearing of North 16 degrees 04 minutes 09 seconds East, for a chord length of 175.45 feet to a point for corner;

Thence North 00 degrees 55 minutes 59 seconds West, a distance of 187.39 feet to the place of beginning, containing 15.005 acres of land.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2016.

GIVEN UNDER MY HAND AND SEAL, This the 30th day of January, 2019.



Kevin L. Kilgore, R.P.L.S. 4687



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- *Mapping*
- *Planning*

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EXHIBIT "A"
PARCEL 7
3.311-Acre Tract

Being a 3.311-acre tract of land situated in the Thomas Price Survey, Abstract No. 794 and the Mary M. Long Survey, Abstract No. 562, City of Tyler, Smith County, Texas, and being part of a called 434.2-acre tract of land described in a Deed from Roosth Farm Rental, LLC to West Cumberland, LLC recorded under County Clerk's File No. 20170100029364 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 3.311-acre tract of land being more completely described by metes and bounds as follows:

Beginning at a 1/2" iron rod found for the Southeast corner of Lots 20 and 19, N.C.B. 1570-M of Bishops Gate at Oak Hollow Unit 3 as evidenced by a Final Plat thereof recorded in Cabinet E, Slide 257-C of the Plat Records of Smith County, Texas, (P.R.S.C.T.), said iron rod found also being on an East boundary line of said Thomas Price Survey and the West boundary line of said Mary M. Long Survey;

Thence North 88 degrees 08 minutes 19 seconds East, a distance of 158.39 feet to a point for corner;

Thence along a curve to the left with a delta angle of 10 degrees 01 minute 52 seconds, a radius of 300.00 feet, an arc length of 52.52 feet, a chord bearing of South 03 degrees 26 minutes 24 seconds West, for a chord length of 52.46 feet to a point for corner;

Thence South 01 degree 34 minutes 32 seconds East, a distance of 154.94 feet to a point for corner in the proposed centerline of Hollytree Drive;

Thence South 87 degrees 35 minutes 53 seconds West, a distance of 516.78 feet along said proposed centerline of Hollytree Drive to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found;

Thence along said proposed centerline of Hollytree Drive and a curve to the left with a delta angle of 08 degrees 25 minutes 02 seconds, a radius of 900.00 feet, an arc length of 132.22 feet, a chord bearing of South 83 degrees 23 minutes 22 seconds West, for a chord length of 132.10 feet to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found in the centerline of a 100.00-foot wide easement to Texas Power & Light Company described in a Deed recorded in Volume 673, Page 166 of the Deed Records of Smith County, Texas, (D.R.S.C.T.);

Thence North 18 degrees 12 minutes 33 seconds West, a distance of 232.38 feet along the centerline of said Texas Power & Light Company easement to a 1/2" iron rod with plastic cap stamped "K.L.K. #4687" found in the North boundary line of aforementioned 434.2-acre tract;

Thence North 88 degrees 08 minutes 19 seconds East, a distance of 561.04 feet along the North boundary line of said 434.2-acre tract and the South boundary line of aforementioned Bishops Gate at Oak Hollow, Unit 3 to the place of beginning, containing 3.311 acres of land.

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Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2016.

GIVEN UNDER MY HAND AND SEAL, This the 30th day of January, 2019.



Kevin L. Kilgore, R.P.L.S. 4687



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- *Surveying*
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EXHIBIT "A"
TRACT 4A
19.66-Acre Tract

Being a 19.66-acre tract of land situated in the Thomas Price Survey, Abstract No. 794, City of Tyler, Smith County, Texas, and being part of a called 434.2-acre tract of land described in a Deed from Roosth Farm Rental, LLC to West Cumberland, LLC recorded under County Clerk's File No. 20170100029364 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 19.66-acre tract of land being more completely described by metes and bounds as follows:

Beginning at a 1/2" iron rod found for the Southwest corner of said 434.2-acre tract in the East boundary line of a called 0.233-acre tract of land described in a Deed to Jimmy Ray McManus recorded in Volume 4893, Page 60, O.P.R.S.C.T. and the Don Thomas Quevado Survey, Abstract No. 18, Section No. 5, the West boundary line of said Thomas Price Survey, and the North boundary line of Lot 1, N.C.B. 1137-Q as evidenced by a Final Plat of Blue Mountain, Unit 1 at Cumberland Gap recorded in Cabinet D, Slide 312-A of the Plat Records of Smith County, Texas, (P.R.S.C.T.);

Thence North 01 degree 44 minutes 58 seconds West, a distance of 111.72 feet along the West boundary line of said 434.2-acre tract and the East boundary line of said 0.233-acre tract to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the East right-of-way line of Old Jacksonville Highway/Farm to Market Highway No. 2493, (variable width right-of-way);

Thence North 19 degrees 11 minutes 16 seconds East, a distance of 365.88 feet along the West boundary line of said 434.2-acre tract and said East right-of-way line of Old Jacksonville Highway/F. M. 2493 to a found Texas Department of Transportation Type II right-of-way monument, (brass disc in concrete flush with ground);

Thence North 12 degrees 10 minutes 58 seconds East, a distance of 259.00 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the proposed centerline of Hollytree Drive;

Thence South 73 degrees 28 minutes 27 seconds East, a distance of 491.31 feet along said proposed centerline of Hollytree Drive to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence along said proposed centerline of Hollytree Drive and a curve to the left with a delta angle of 18 degrees 14 minutes 42 seconds, a radius of 1285.00 feet, an arc length of 409.19 feet, a chord bearing of South 82 degrees 35 minutes 48 seconds East, and a chord length of 407.46 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

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Thence North 88 degrees 16 minutes 50 seconds East, a distance of 587.11 feet continuing along said proposed centerline of Hollytree Drive to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence South 01 degree 51 minutes 41 seconds East, a distance of 486.50 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the South boundary line of said 434.2-acre tract and the North boundary line of Lot 1, N.C.B. 1137-R of Rose Lawn Addition Unit 1 At Cumberland Gap as evidenced by a Final Plat recorded in Cabinet D, Slide 318-B of the Plat Records of Smith County, Texas, (P.R.S.C.T.);

Thence South 88 degrees 16 minutes 50 seconds West, a distance of 1649.97 feet along the South boundary line of said 434.2-acre tract, the North boundary line of said Lot 1, and the North boundary line of aforementioned Blue Mountain Unit 1 At Cumberland Gap to the **place of beginning** containing 19.66 acres of land.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2016.

GIVEN UNDER MY HAND AND SEAL, This the 7th day of June, 2018.



Kevin L. Kilgore, R.P.L.S. 4687



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EXHIBIT "A"
TRACT 4B
24.95-Acre Tract

Being a 24.95-acre tract of land situated in the Thomas Price Survey, Abstract No. 794, City of Tyler, Smith County, Texas, and being part of a called 434.2-acre tract of land described in a Deed from Roosth Farm Rental, LLC to West Cumberland, LLC recorded under County Clerk's File No. 20170100029364 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 24.95-acre tract of land being more completely described by metes and bounds as follows:

Beginning at a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the South boundary line of said 434.2-acre tract and the North boundary line of Lot 1, N.C.B. 1137-R of Rose Lawn Addition Unit 1 At Cumberland Gap as evidenced by a Final Plat thereof recorded in Cabinet D, Slide 318-B of the Plat Records of Smith County, Texas, (P.R.S.C. T.), from which a 1/2" iron rod found for the Southwest corner of said 434.2-acre tract bears South 88 degrees 16 minutes 50 seconds West, a distance of 1649.97 feet;

Thence North 01 degree 51 minutes 41 seconds West, a distance of 486.50 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687 in the proposed centerline of Hollytree Drive, (variable width right-of-way);

Thence along said proposed centerline of Hollytree Drive and a curve to the left having a delta angle of 48 degrees 28 minutes 52 seconds, a radius of 900.00 feet, an arc length of 761.54 feet, a chord bearing of North 63 degrees 53 minutes 53 seconds East, and a chord length of 739.02 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence along a reverse curve to the right having a delta angle of 39 degrees 31 minutes 24 seconds, a radius of 900.00 feet, an arc length of 620.83 feet, a chord bearing of North 59 degrees 25 minutes 09 seconds East, and a chord length of 608.59 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. 4687" in the centerline of a 100.00-ft wide Texas Power & Light Company easement recorded in Volume 673, Page 166 of the Deed Records of Smith County, Texas, (D.R.S.C.T.);

Thence South 18 degrees 12 minutes 33 seconds East, a distance of 1131.91 feet along the centerline of said Texas Power & Light Company to a 1/2" iron set with plastic cap stamped "K.L.K #4687 in the South boundary line of said 434.2-acre tract and the North boundary line of aforementioned Lot 1, N.C.B. 1137-R of Rose Lawn Addition Unit 1;

Thence South 88 degrees 16 minutes 50 seconds West, a distance of 1526.19 feet along said South boundary line and said North boundary line to the **place of beginning** containing 24.95 acres of land.

ORDINANCE O-2019
EXHIBIT "C"
METES AND BOUNDS DESCRIPTIONS
21 OF 24

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2016.

GIVEN UNDER MY HAND AND SEAL, This the 7th day of June, 2018.



Kevin L. Kilgore, R.P.L.S. 4687



ORDINANCE O-2019
EXHIBIT "C"
METES AND BOUNDS DESCRIPTIONS
22 OF 24



- *Surveying*
- *Mapping*
- *Planning*

6712 Paluxy Drive • Tyler, Texas 75703 • 903.581.7800 • 903.581.3756

EXHIBIT "A"
TRACT 4C
5.06-Acre Tract

Being a 5.06-acre tract of land situated in the Thomas Price Survey, Abstract No. 794 and the Mary M. Long Survey, Abstract No. 562, City of Tyler, Smith County, Texas, and being part of a called 434.2-acre tract of land described in a Deed from Roosth Farm Rental, LLC to West Cumberland, LLC recorded under County Clerk's File No. 20170100029364 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 5.06-acre tract of land being more completely described by metes and bounds as follows:

Beginning at a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the South boundary line of said 434.2-acre tract and the North boundary line of Lot 1, N.C.B. 1137-R of Rose Lawn Addition Unit 1 At Cumberland Gap as evidenced by a Final Plat thereof recorded in Cabinet D, Slide 318-B of the Plat Records of Smith County, Texas, (P.R.S.C.T.), from which a 1/2" iron rod found for the Northeast corner of same in the East boundary line of said Thomas Price Survey and the West boundary line of said Mary M. Long Survey, bears North 88 degrees 16 minutes 50 seconds East, a distance of 171.20 feet, said iron rod found also being in the centerline of a 100.00-foot wide Texas Power & Light Company easement recorded in Volume 673, Page 166 of the Deed Records of Smith County, Texas, (D.R.S.C.T.);

Thence North 18 degrees 12 minutes 33 seconds West, a distance of 128.86 feet along the centerline of said Texas Power & Light Company easement to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 71 degrees 47 minutes 27 seconds East, a distance of 50.00 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 53 degrees 36 minutes 09 seconds East, a distance of 14.13 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 63 degrees 27 minutes 13 seconds East, a distance of 23.38 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 85 degrees 18 minutes 18 seconds East, a distance of 36.12 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 86 degrees 22 minutes 53 seconds East, a distance of 37.77 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

ORDINANCE O-2019
EXHIBIT "C"
METES AND BOUNDS DESCRIPTIONS
23 OF 24

Thence South 79 degrees 20 minutes 53 seconds East, a distance of 39.67 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687"CC;

Thence South 89 degrees 05 minutes 29 seconds East, a distance of 26.27 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 83 degrees 55 minutes 38 seconds East, a distance of 92.97 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 84 degrees 11 minutes 53 seconds East, a distance of 66.64 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 84 degrees 47 minutes 56 seconds East, a distance of 126.78 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 88 degrees 10 minutes 51 seconds East, a distance of 54.70 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the proposed centerline of Cherryhill Drive, (variable width right-of-way);

Thence South 01 degree 52 minutes 54 seconds East, a distance of 551.16 feet along said proposed centerline of Cherryhill Drive to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the South boundary line of said 434.2-acre tract and the North boundary line of a called 8.651-acre Right-of-Way Acquisition tract described in a Deed from Tyler Blue Ridge, LLC to City of Tyler, Texas recorded under Smith County Clerk's File No. 2014-R00019453, O.P.R.S.C.T.;

Thence South 88 degrees 05 minutes 25 seconds West, a distance of 353.61 feet along the South boundary line of said 434.2-acre tract and the North boundary line of said 8.651-acre tract and a called 1.0-acre tract of land reserved as Graveyard by R. B. Long, Sr. described in a Deed recorded in Volume 31, Page 168 of the Deed Records of Smith County, Texas, (D.R.S.C.T.) to a 1/2" iron rod found for the Northwest corner of said 1.0-acre tract, same being in the East boundary line of Lot 1, N.C.B. 1137-R of Rose Lawn Addition, Unit 1 at Cumberland Gap as evidenced by a Final Plat thereof recorded in Cabinet D, Slide 318-B, P.R.S.C.T.;

Thence North 01 degree 44 minutes 50 seconds West, a distance of 383.71 feet along the East boundary line of said Lot 1 and a West boundary line of said 434.2-acre tract to a 1/2" iron rod found for the Northeast corner of said Lot 1;

Thence South 88 degrees 16 minutes 50 seconds West, a distance of 171.19 feet along the South boundary line of said 434.2-acre tract and the North boundary line of said Rose Lawn Addition, Unit 1 to the **place of beginning** containing 5.06 acres of land.

ORDINANCE O-2019
EXHIBIT "C"
METES AND BOUNDS DESCRIPTIONS
24 OF 24

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2016.

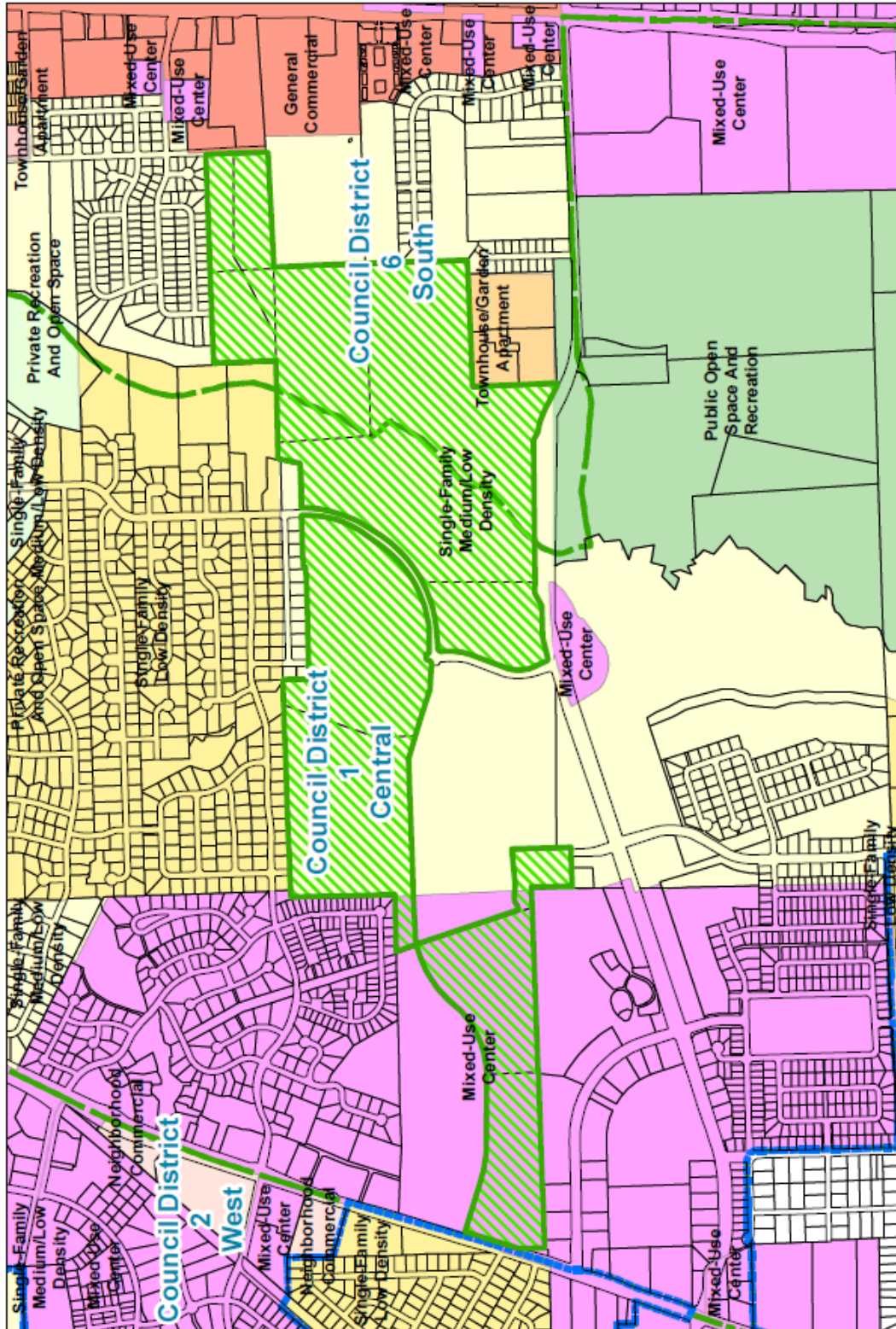
GIVEN UNDER MY HAND AND SEAL, This the 7th day of June, 2018.






Kevin L. Kilgore, R.P.L.S. 4687



EXHIBIT "E"
TYLER 1ST FUTURE LAND USE GUIDE

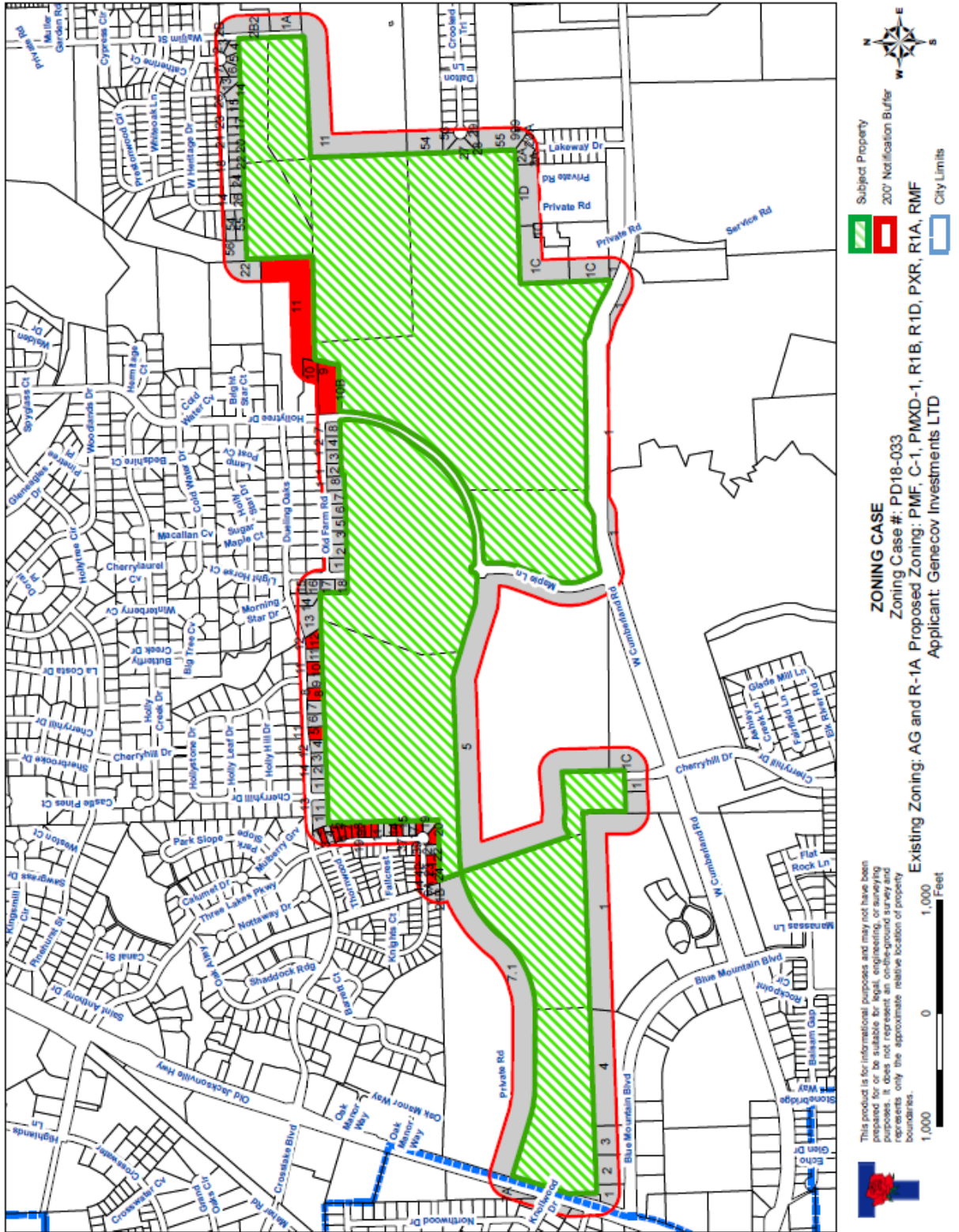


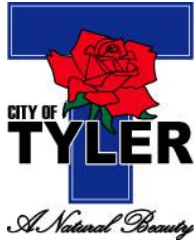
 Subject Property
 Council District Boundary
 City Limits

ZONING CASE
 Zoning Case #: PD18-033
 Existing Zoning: AG and R-1A Proposed Zoning: PMF, C-1, PMXD-1, R1B, R1D, PXR, R1A, RMF
 Applicant: Genecov Investments LTD

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
 1,100 0 1,100 Feet

EXHIBIT "F" NOTIFICATION MAP





CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-1

Date: June 26, 2019

Subject: PD19-011 WERNER TAYLOR LAND AND DEVELOPMENT (7147 CROSSWATER) Request that the City Council consider approving a zone change from “C-1”, Light Commercial District to “PUR”, Planned Unit Residential District with final site plan.

Page: Page 1 of 3

Item Reference:

The applicant is requesting the zone change to allow for the development of single-family homes on Tract 12, one tract of land containing approximately 3.49 acres of land located at the southwest intersection of Three Lakes Parkway and Crosswater (7147 Crosswater).

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 and Zoning Commission and to City Council.

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

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

Agenda Number: Z-1

Page: 2 of 3

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 that can be accommodated by the timely provision of public utilities, facilities, and services.

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

The adjacent properties to the west, north and east are zoned “C-1”, Light Commercial District. The property to the north is the location of Three Lakes Middle School whereas the properties to the west and east are largely undeveloped. The adjacent properties to the south are zoned “PUR”, Planned Unit Residential District and are developed with single-family homes.

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

The applicant is proposing to develop 18 detached single-family homes at a density of 4.95 units per acre. The development will be accessed via a private street that intersects with Three Lakes Parkway. Houses will be limited to two story or 42 feet in height, which is consistent with other single-family zoning. Lots 1-6 will have setbacks of 15 feet front and rear yard and five feet on the sides. Lots 7-18 will have setbacks of 15 feet front yard, 12 feet rear yard and five feet on the sides with the exception of Lot 7, which will have a side setback of zero feet on the west side. Lot 7 is adjacent to a common area that will be used for a drainage easement and green space.

On June 4, 2019, the Planning and Zoning Commission held a public hearing for this request. Mark Priestner, representing the applicant, was present for questions. No one spoke in opposition.

As of Friday, June 14, 2019, of the 15 notices mailed, no notices have been returned in favor or in opposition to the request.

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

Agenda Number: Z-1

Page: 3 of 3

RECOMMENDATION:

The Planning and Zoning Commission by a 6-0 vote recommends approving a zone change from “C-1”, Light Commercial District to “PUR”, Planned Unit Residential District with final site plan.

ATTACHMENTS:

1. [Ordinance](#)
2. [Location Map](#)
3. [Future Land Use Map](#)
4. [Notification Map](#)

**Drafted/Recommended By:
Department Leader**



Heather Nick

**Edited/Submitted By:
City Manager**



ORDINANCE NO. O-2019-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM “C-1”, LIGHT COMMERCIAL DISTRICT TO “PUR”, PLANNED UNIT RESIDENTIAL DISTRICT WITH FINAL SITE PLAN ON TRACT 12, ONE TRACT OF LAND CONTAINING APPROXIMATELY 3.49 ACRES OF LAND LOCATED AT THE SOUTHWEST INTERSECTION OF THREE LAKES PARKWAY AND CROSSWATER (7147 CROSSWATER); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

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

I. APPLICATION PD19-011

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

Tract 12, one tract of land containing approximately 3.49 acres of land located at the southwest intersection of Three Lakes Parkway and Crosswater (7147 Crosswater), described by metes and bounds in Exhibit “A” and in accordance with 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 June 28th, 2019.

PASSED AND APPROVED this the 26th day of June A.D., 2019.

MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM, CITY
ATTORNEY

ORDINANCE 0-2019____
EXHIBIT "A"
1 OF 2



- *Surveying*
- *Mapping*
- *Planning*

6712 Paluxy Drive • Tyler, Texas 75703 • 903.581.7800 • 903.581.3756

EXHIBIT "A"
Three Lakes Villas
3.495-Acre Tract

Being a 3.495-acre tract of land situated in the Thomas Price Survey, Abstract No. 794 and the Don Thomas Quevado, Abstract No. 18, Section No. 5, Tyler, Smith County, Texas and being part of a called 119.715-acre tract, (Tract 1), described in a Warranty Deed from Sandra C. Taylor, Individually, and Sandra Crank Taylor, Trustee of the Sandra Crank Taylor Special Marital Trust (Created under the Last Will and Testament of Larry James Taylor, Deceased) to Werner-Taylor Land & Development, L.P., a Texas Limited Partnership recorded under Clerk's File No. 20180100016823 of the Official Public Records of Smith County, Texas, (O.P.R.S.C.T.), said 3.495-acre tract being more particularly described by metes and bounds as follows:

Beginning at a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" for the Northeast corner of Lot 13, N.C.B. 1660-S of Crosswater Garden Homes as evidenced by a final plat thereof recorded in Cabinet F, Slide 40-B of the Plat Records of Smith County, Texas, (P.R.S.C.T.);

Thence South 81 degrees 33 minutes 32 seconds West, a distance of 95.38 feet along the North boundary line of said Lot 13 to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in same;

Thence North 08 degrees 24 minutes 22 seconds West, a distance of 110.0 feet across said 119.715-acre tract to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 01 degrees 49 minutes 58 seconds West, a distance of 79.16 feet continuing across said 119.715-acre tract to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence North 11 degrees 03 minutes 08 seconds East, a distance of 140.00 feet continuing across said 119.715-acre tract to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the proposed South right-of-way line of Three Lakes Boulevard;

Thence South 78 degrees 56 minutes 52 seconds East, a distance of 280.00 feet along said proposed South right-of-way line of Three Lakes Boulevard to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence South 05 degrees 20 minutes 30 seconds West, a distance of 133.49 feet across said 119.715-acre tract to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687";

Thence South 60 degrees 34 minutes 31 seconds East, a distance of 219.38 feet continuing across said 119.715-acre tract to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the West boundary line of Lot 3, N.C.B. 1660-L, The Crossing Town Center, Unit 6 as evidenced by a Final Plat thereof recorded in Cabinet F, Slide 48-B, P.R.S.C.T.;

ORDINANCE 0-2019 _____
EXHIBIT "A"
2 OF 2

Thence South 17 degrees 03 minutes 02 seconds West, a distance of 13.85 feet with the West boundary line of said Lot 3 to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" at the Southwest corner of same and being the Northwest corner of Lot 2, N.C.B. 1660-L, The Crossing Town Center, Unit 5 as evidenced by Final Plat thereof recorded in Cabinet E, Slide 388-A, P.R.S.C.T.;

Thence South 29 degrees 25 minutes 29 seconds West, a distance of 148.11 feet along the West boundary line of said Lot 2 to a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" for the Southwest corner of same and the Northwest corner of Lot 1, N.C.B. 1660-L of The Crossing Town Center, Unit 3 as evidenced by a Final Plat thereof recorded in Cabinet E, Slide 309-B, P.R.S.C.T.;

Thence South 42 degrees 49 minutes 32 seconds West, along the West boundary line of said Lot 1 and across said 119.715-acre tract, at a distance of 156.36 feet, pass a 1/2" iron rod found with plastic cap stamped "K.L.K. #4687" for the Southwest corner of said Lot 1 and continue along said course for a total distance of 190.64 feet to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the East boundary line of Lot 17, N.C.B. 1660-S of aforesaid Crosswater Garden Homes;

Thence North 43 degrees 05 minutes 59 seconds West, a distance of 108.54 feet along the East boundary line of Crosswater Garden Homes to a 1/2" iron rod set with plastic cap stamped "K.L.K. #4687" in the East boundary line of Lot 15 of said Crosswater Garden Homes at the point of curvature of a curve to the right;

Thence along the East boundary line of said Crosswater Garden Homes and along said curve to the right with a delta angle of 36 degrees 12 minutes 18 seconds, a radius of 330.00 feet, an arc length of 208.53 feet, a chord bearing of North 25 degrees 00 minutes 28 seconds West, a chord distance of 205.07 feet to the place of beginning containing 3.495 acres of land.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83, (feet), based on the 1993 adjustment of the NAD 83 System. The Control Monument is TJC1-Tyler, Leica Geosystems Smartnet of North America.

I, Kevin L. Kilgore, Registered Professional Land Surveyor No. 4687, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of March, 2019.

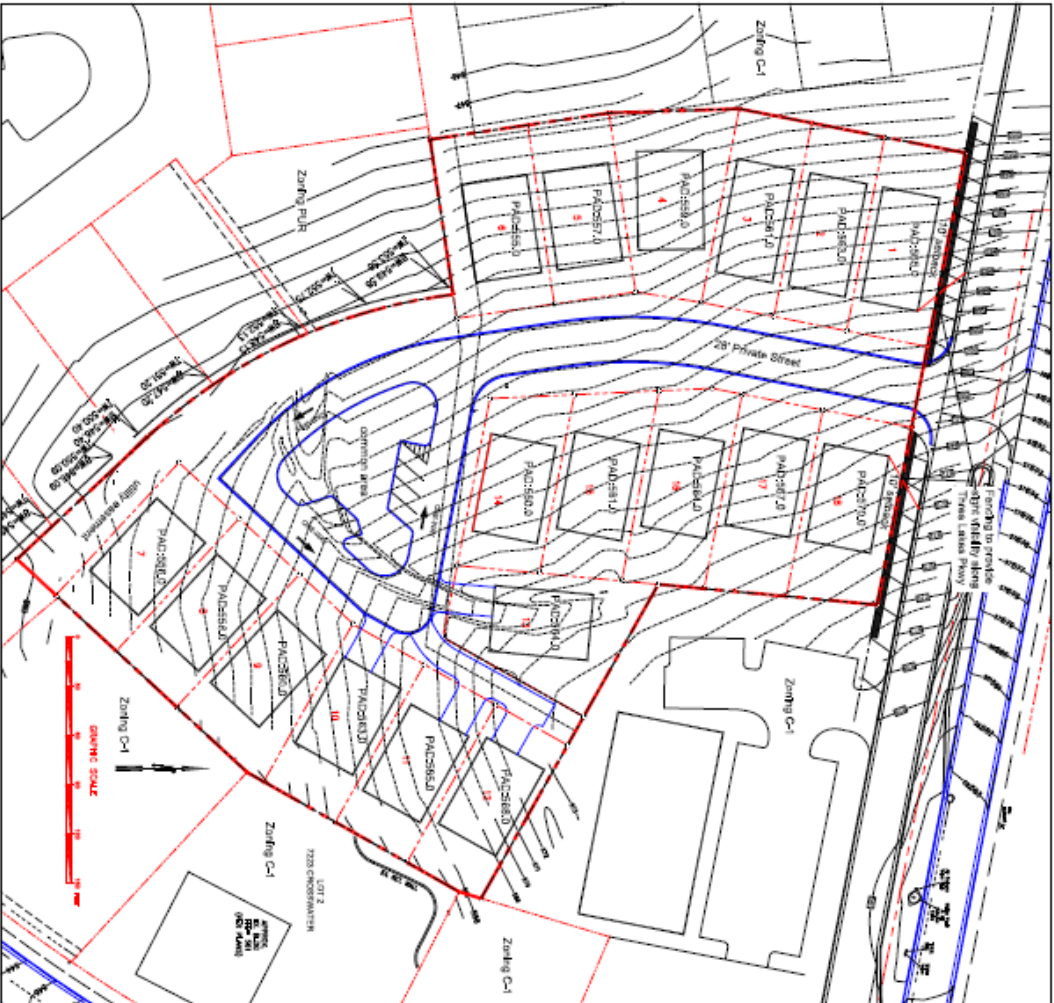
GIVEN UNDER MY HAND AND SEAL, This the 23RD day of April, 2019.



Kevin L. Kilgore, R.P.L.S. 4687



ORDINANCE 0-2019
EXHIBIT "B"



Three Lakes Villas tyler, texas

SITE INFORMATION:

DEVELOPER:
Werner-Taylor Land &
Development, L.P.
7286 Crosswater
Tyler, TX 75703
Office: (903)592-8634
mike@crossingtyler.com



ACREAGE: 3.6322 ACRES

CURRENT ZONING: C-1

PROPOSED ZONING: PUR

DENSITY: Total units - 18 (4.95 units/acre)

SETBACKS: Lots 1-6 Front and Rear - 15'

Sides - 5'

Lots 7-18 Front 15' Rear - 12'

Sides - 5' (Lot 7 west side setback - 0')

HEIGHT: Two Story / 42' Maximum

PARKING: Total Road - 36 (2 sp per unit)

Provided - Driveways - 36

Garage - 36 Guest - 7

note: See final plat for property and lot dimensions. Sidewalks to be consistent with approved alternate sidewalk plan.

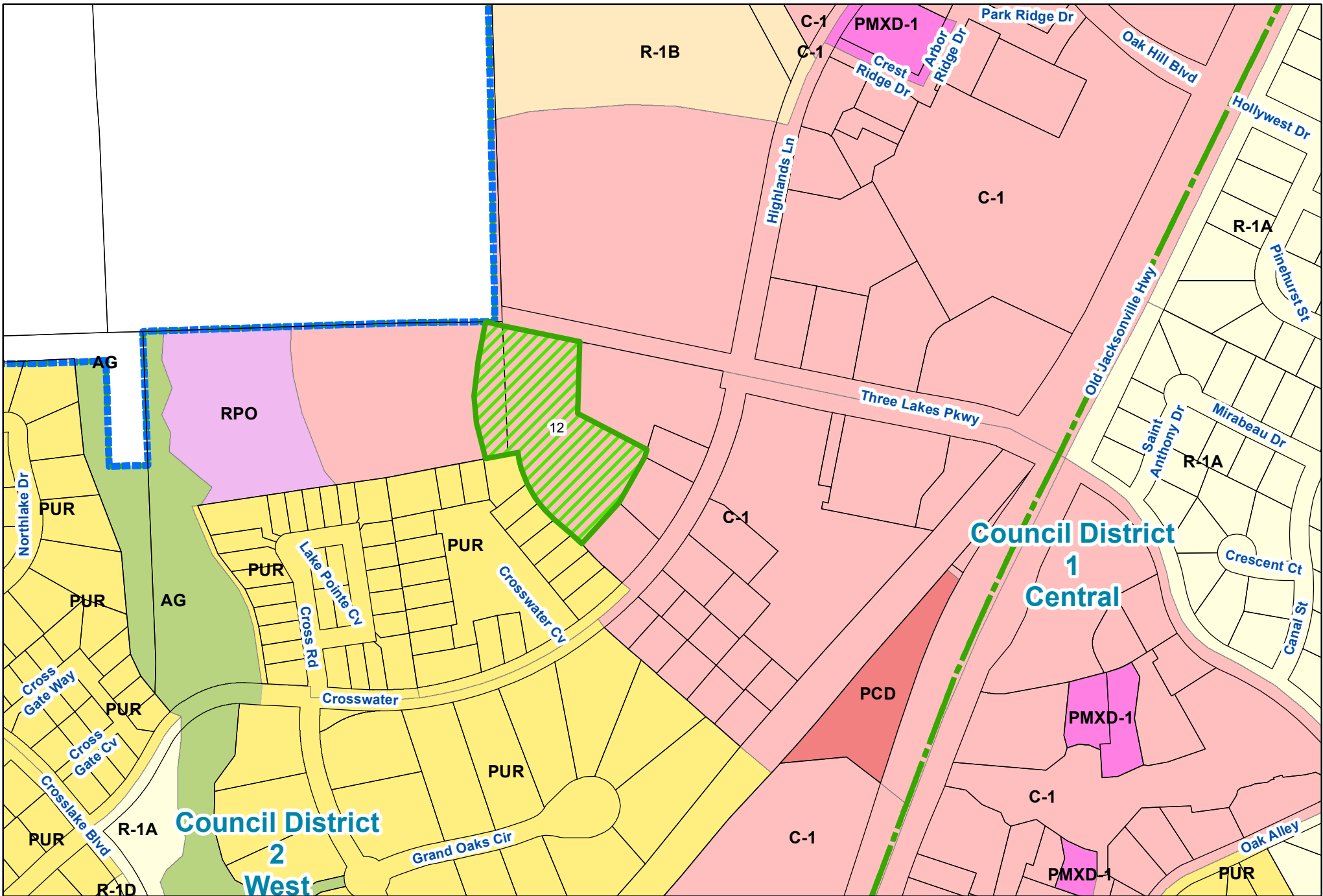
SIGNAGE: Development signage (per UDC Sign Chart Section 10-4-09) will comply with Tyler UDC. Number and locations determined by Tyler UDC.

LANDSCAPING / BUFFERYARDS: landscaping to meet or exceed minimum requirements per Tyler UDC. Bufferyards (if req'd) to be installed per UDC.

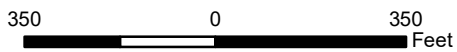
Fencing along Three Lakes to comply with UDC sight visibility requirements.

SITE PLAN PREPARED BY:





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 #: PD19-011

Current Zoning: C-1 Proposed Zoning: PUR

Applicant: WERNER TAYLOR LAND AND DEVELOPMENT

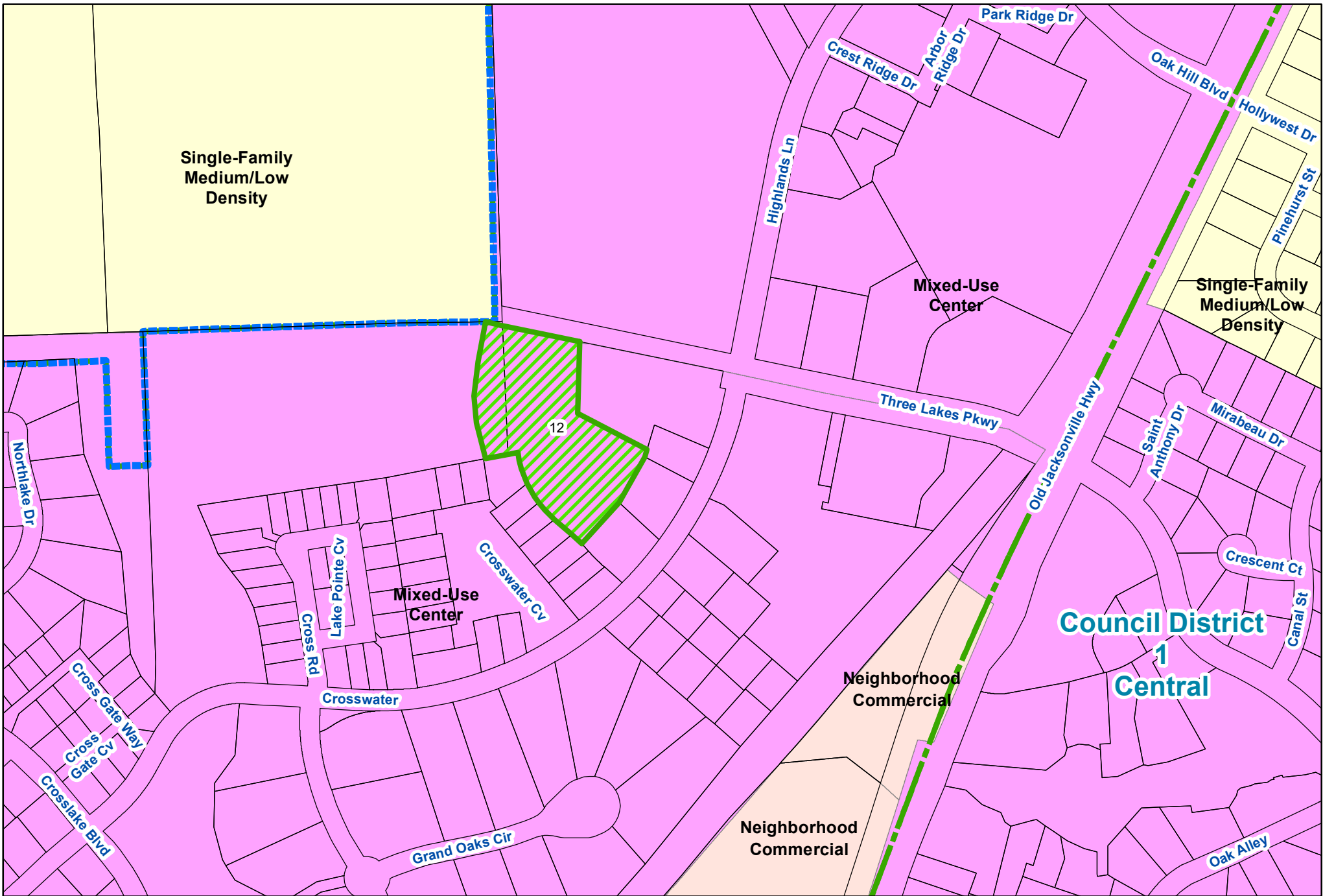


Subject Property

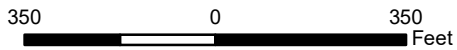
City Limits

Council District Boundary





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ZONING CASE

Zoning Case #: PD19-011

Current Zoning: C-1 Proposed Zoning: PUR

Applicant: WERNER TAYLOR LAND AND DEVELOPMENT



Subject Property

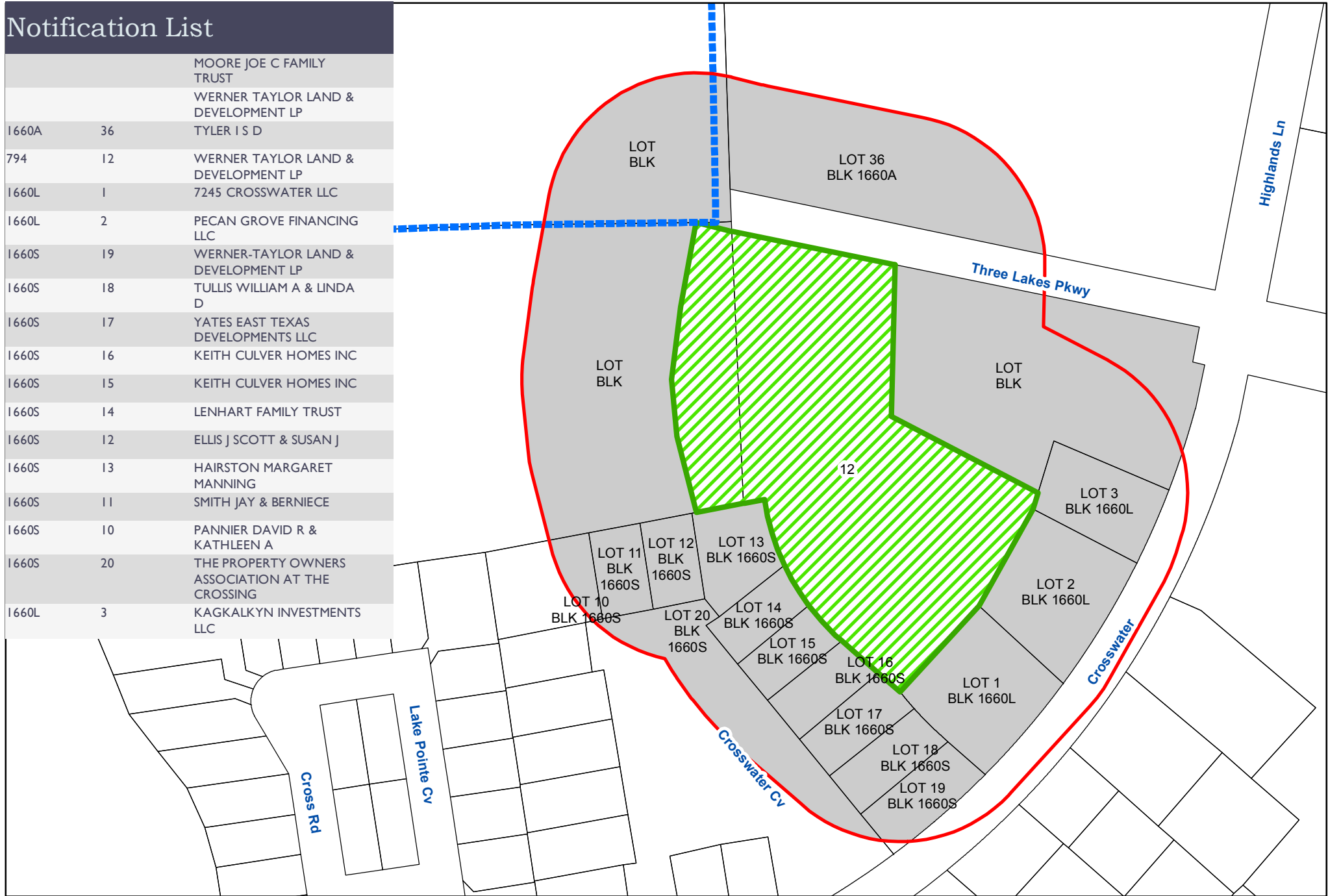
City Limits

Council District Boundary

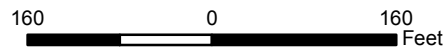


Notification List

		MOORE JOE C FAMILY TRUST
		WERNER TAYLOR LAND & DEVELOPMENT LP
1660A	36	TYLER I S D
794	12	WERNER TAYLOR LAND & DEVELOPMENT LP
1660L	1	7245 CROSSWATER LLC
1660L	2	PECAN GROVE FINANCING LLC
1660S	19	WERNER-TAYLOR LAND & DEVELOPMENT LP
1660S	18	TULLIS WILLIAM A & LINDA D
1660S	17	YATES EAST TEXAS DEVELOPMENTS LLC
1660S	16	KEITH CULVER HOMES INC
1660S	15	KEITH CULVER HOMES INC
1660S	14	LENHART FAMILY TRUST
1660S	12	ELLIS J SCOTT & SUSAN J
1660S	13	HAIRSTON MARGARET MANNING
1660S	11	SMITH JAY & BERNIECE
1660S	10	PANNIER DAVID R & KATHLEEN A
1660S	20	THE PROPERTY OWNERS ASSOCIATION AT THE CROSSING
1660L	3	KAGKALKYN INVESTMENTS LLC



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ZONING CASE

Zoning Case #: PD19-011

Current Zoning: C-1 Proposed Zoning: PUR

Applicant: WERNER TAYLOR LAND AND DEVELOPMENT



Subject Property

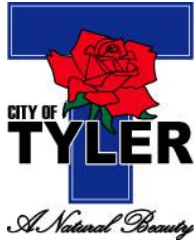


200' Notification Buffer



City Limits





CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-2

Date: June 26, 2019

Subject: PD19-013 SMITH AUBREY JR (2516 MCDONALD ROAD) Request that the City Council consider approving a zone change from “PMF”, Planned Multifamily to “POD”, Planned Office District with final site plan.

Page: Page 1 of 3

Item Reference:

The applicant is requesting the zone change to allow for a parking lot for a medical building facility on Lot 17 of NCB 968, one lot containing approximately 0.65 acres of land located east of the northeast intersection of McDonald Road and Boldt Avenue (2516 McDonald Road).

According to the Unified Development Code (UDC), the “POD”, Planned Office District will be used where office type facilities are needed to serve developing residential communities located throughout the city and shall be designed and developed as a unit according to an approved site plan. Development criteria are required that will ensure a compatible relationship between the "POD" development and the close-by residential areas. The owner shall submit a plan for the use and development of all or part of such tract of land to the Planning and Zoning Commission and to the City Council. Any significant change in the site development plan requires approval of the Planning and Zoning Commission and the City Council through a public hearing process. The plan for the proposed development must present a unified and organized arrangement of buildings and service facilities, such that a functional relationship within the property is achieved. The arrangement of buildings and service facilities shall not adversely affect the use of properties immediately adjacent to the development. Reasonable additional requirements as to landscaping, lighting, signs or other advertising devices, screening, access ways, building setbacks, and height and area limitations may be imposed by the Planning and Zoning Commission for the protection of the adjoining property.

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

Agenda Number: Z-2

Page: 2 of 3

- e. The property to be rezoned is suitable for uses permitted by the District that would be applied by the proposed amendment.

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

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

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

The adjacent properties to the north are zoned “R-1A”, Single-Family Residential District and “C-2”, General Commercial District and are developed with single-family homes and CVC Cardiology Clinic. The adjacent property to the east is zoned “RPO”, Restricted Professional Office District and is developed with offices. The adjacent properties to the west and south are zoned “R-1A”, Single-Family Residential District and are developed with single-family homes.

This request is consistent with the Tyler Future Land Use Guide, which identifies this property as Neighborhood Commercial.

The applicant is proposing a parking lot to provide additional parking spaces for the CVC Medical Cardiology Clinic that fronts along Loop 323. A Type ‘B’ Option (C) Bufferyard and a six foot tall wood fence is proposed between the subject property and the residential properties along the western edge of the property. Landscaping, signage and lighting will meet the requirements as per UDC. A creek runs along the eastern edge of the property that makes the portion undevelopable. “POD” zoning does not allow for a stand-alone parking lot. The subject property will be required to be combined with the CVC clinic lot located at the northeastern end of the subject property. The applicant has submitted the replat and it is in process.

On June 4, 2019, the Planning and Zoning Commission held a public hearing on this request. Brent Bradberry, representing the applicant, spoke in favor of the request. No one spoke in opposition.

As of Friday, June 14, 2019, of the 21 notices mailed, one notice was returned in favor and one notice in opposition to the request with the total protest calculation of 3.50 percent. The opposition stated that they would prefer a security fencing for protection from the parking lot at night. A six foot tall wood privacy fence is proposed along the northwest corner of the property.

Agenda Number: Z-2

Page: 3 of 3

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

RECOMMENDATION:

The Planning and Zoning Commission by a 6-0 vote recommends approval of the request to change the zoning from “PMF”, Planned Multi-Family Residential District to “POD”, Planned Office District with a final site plan.

ATTACHMENTS:

1. [Ordinance](#)
2. [Location Map](#)
3. [Future Land Use Map](#)
4. [Notification Map](#)

**Drafted/Recommended By:
Department Leader**



Heather Nick

**Edited/Submitted By:
City Manager**



ORDINANCE NO. O-2019-

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 TO “POD”, PLANNED OFFICE DISTRICT WITH A FINAL SITE PLAN ON LOT 17 OF NCB 968, ONE LOT CONTAINING APPROXIMATELY 0.65 ACRES OF LAND LOCATED EAST OF THE NORTHEAST INTERSECTION OF MCDONALD ROAD AND BOLDT AVENUE (2516 MCDONALD ROAD); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

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

I. APPLICATION PD19-013

That the following described property, which has heretofore been zoned “PMF”, Planned Multi-Family Residential District, shall hereafter bear the zoning classification of “POD”, Planned Office District with a final site plan, to wit:

Lot 17 of NCB 968, one lot containing approximately 0.65 acres of land located east of the northeast intersection of McDonald Road and Boldt Avenue (2516 McDonald Road), and in accordance with Exhibit “A” attached hereto and incorporated herein.

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

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

PART 4: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be June 28th, 2019.

PASSED AND APPROVED this the 26th day of June A.D., 2019.

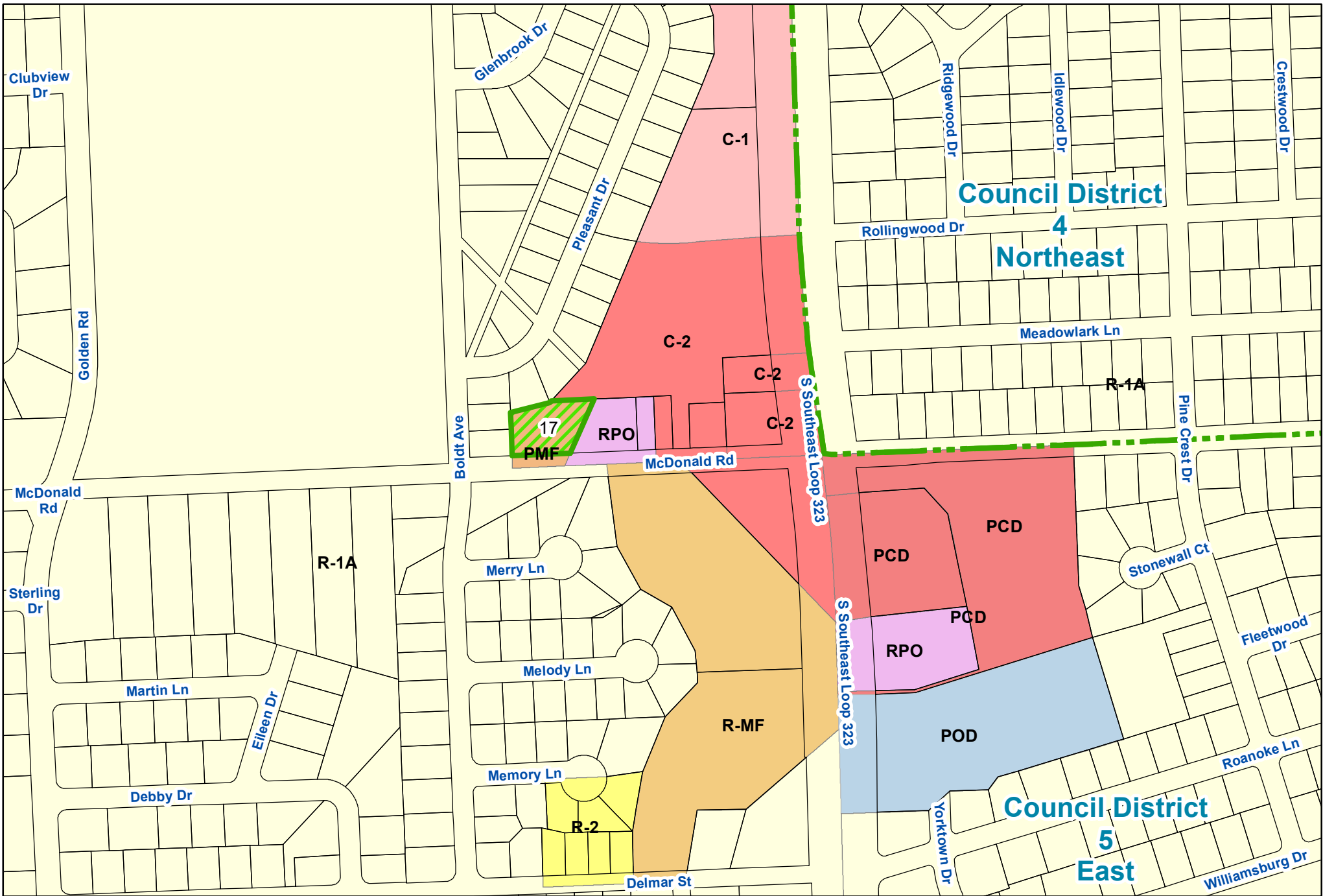
MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

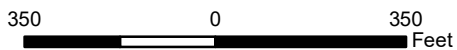
APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM, CITY
ATTORNEY



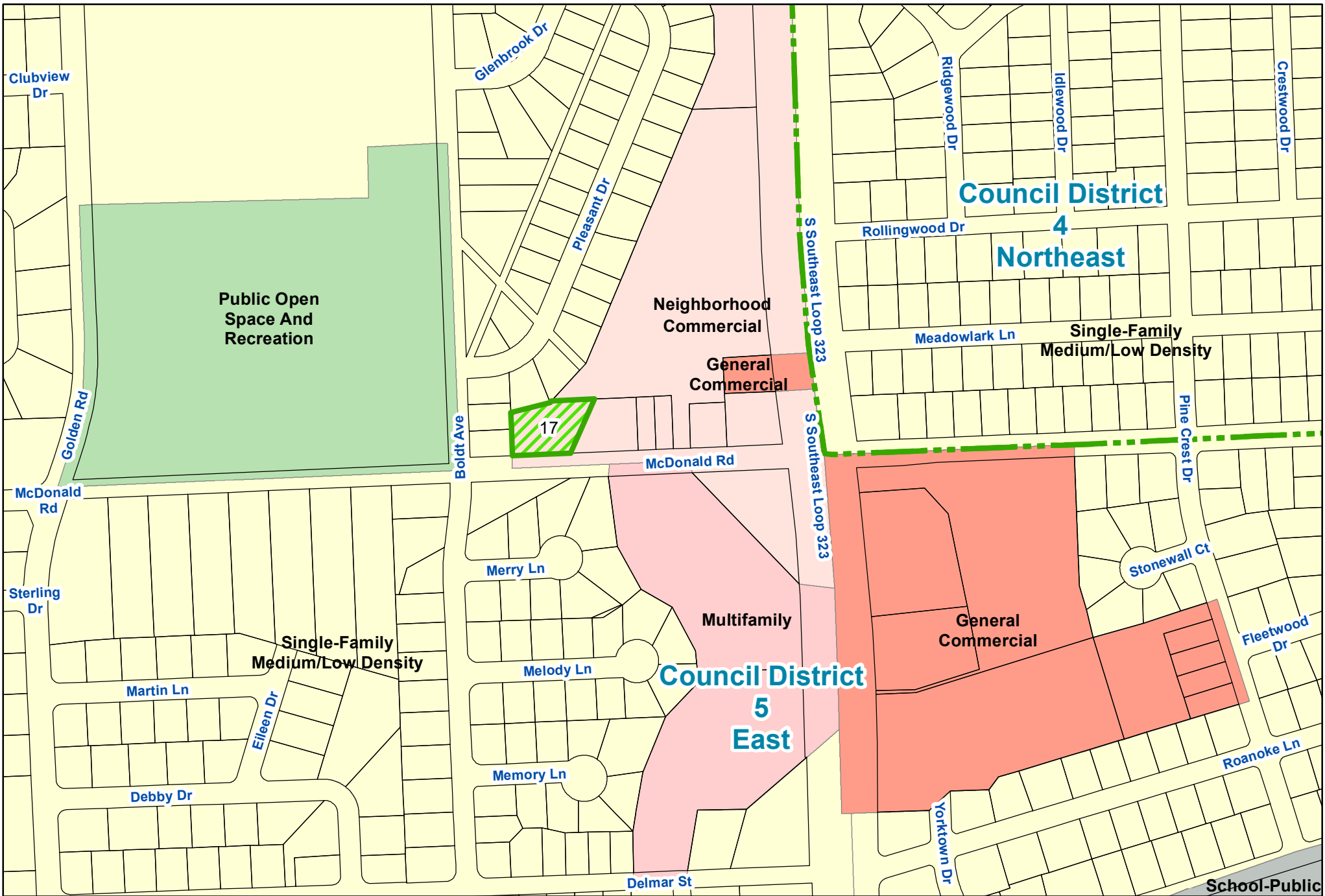
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



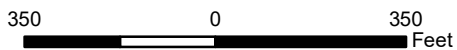
ZONING CASE
 Zoning Case #: PD19-013
 Current Zoning: PMF Proposed Zoning: POD
 Applicant: SMITH AUBREY JR

-  Subject Property
-  Council District Boundary





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ZONING CASE

Zoning Case #: PD19-013
 Current Zoning: PMF Proposed Zoning: POD
 Applicant: SMITH AUBREY JR



Subject Property



Council District Boundary



Notification List

970	999	TYLER CITY OF
968G	1A	CVC PHOENIX HOLDINGS LLC
968E	13A	BROWN JILL C
968F	6	DECK GARY LEWIS
968E	13B	PCS REALTY PARTNERS LTD
968F	5	HAINES GREGORY L & BRENDA K
968F	4	PCS REALTY PARTNERS LTD
968F	1	SHAVER GERELD H -LIFE ESTATE-
968	7	SWINNEY PAUL GLENN
968	6	REGIAN JEFFREY A & NELDA S
968F	16	EMBREY JAMES L EST ET AL
968F	2	LAUGHLIN LONNIE L & JOYCE
1069	3A	FOX RUN RIVERSIDE LLC
968F	3	GARRISON SUSAN S & JOSEPH A
1070B	5	AVELLANEDA SERGIO & ANGELA
1070B	4	BODENHAMER PROPERTIES LLC
1070B	2	TRIMBLE JAMES S
1067	26	QUATTLEBAUM MYRNA JEAN
1070B	3	WELLS RUSSELL T
1070B	1	DORSEY CARL E

LOT 999
BLK 970

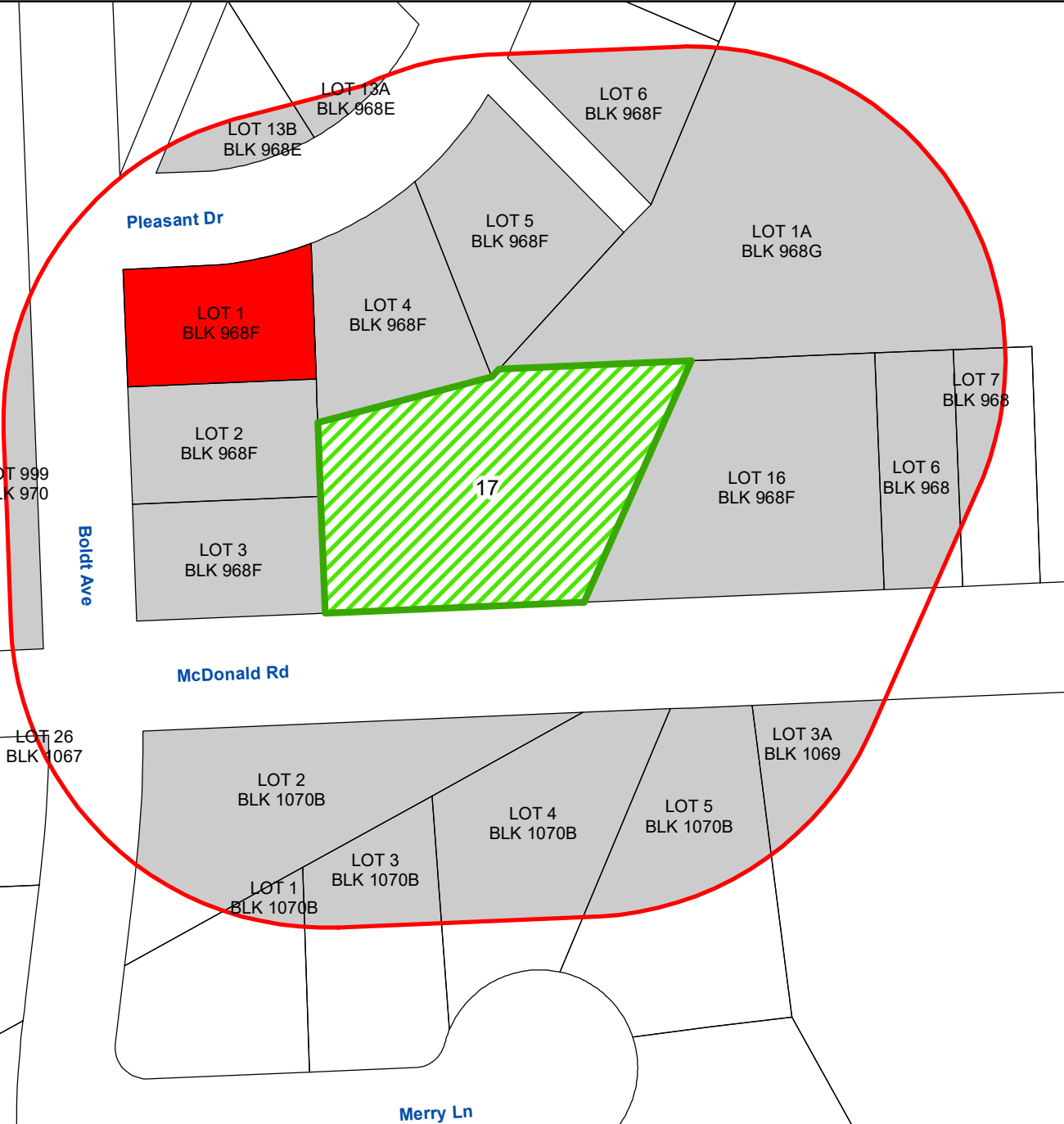
LOT 26
BLK 1067

Boldt Ave

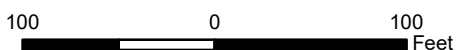
Pleasant Dr

McDonald Rd

Merry Ln



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ZONING CASE
 Zoning Case #: PD19-013
 Current Zoning: PMF Proposed Zoning: POD
 Applicant: SMITH AUBREY JR

- Subject Property
- 200' Notification Buffer
- Protest Lots



This document is released for the purpose of interim review under the authority of Travis D. Pierce, P.E., Lic. # 106240, on May 31, 2019. It is not to be used for permit, construction or bidding purposes.

SEAL: TBPE Firm Registration No. F-20022

C:\Users\tdpierce\OneDrive\Documents\Pierce Murray Logo 09

ENGINEER:

DATE

04-28

REVISION

ISSUED FOR INFORMATION

A

MARK

CVC PARKING
LOT 17 BLOCK 968

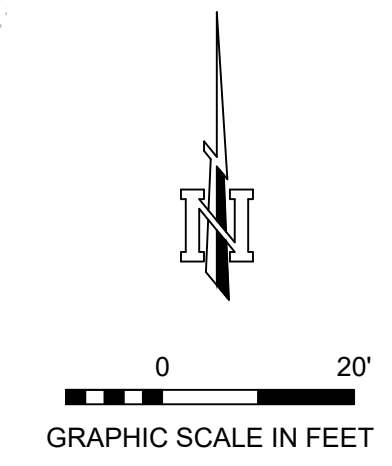
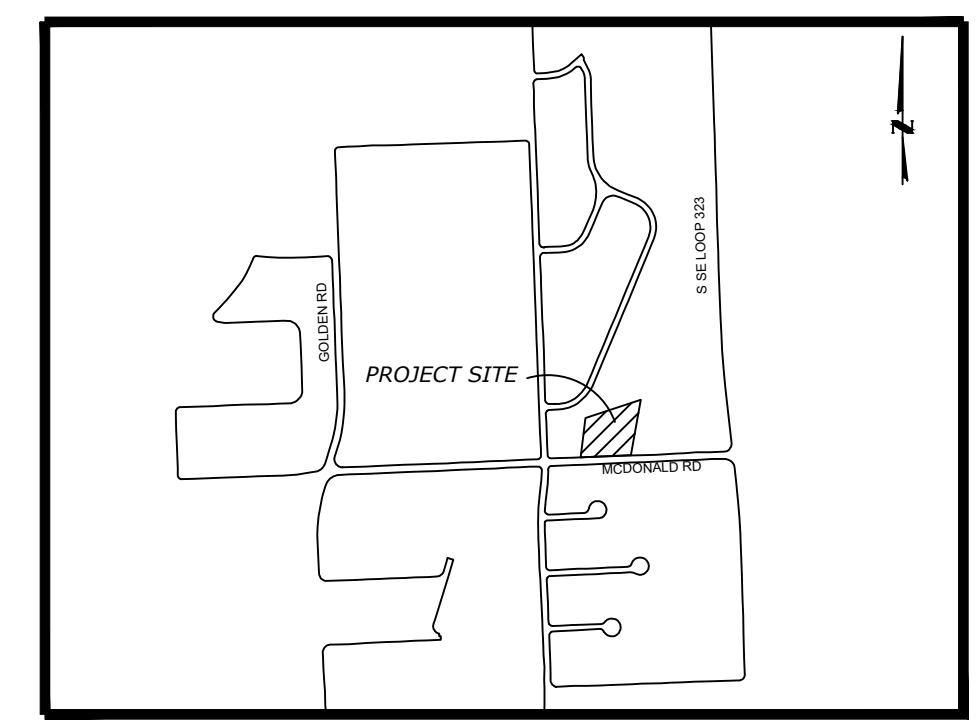
PROJECT NAME:

DRAWN BY: TDP
DESIGNED BY: TDP
PMLS JOB NO.: 1902-013

SITE
DEVELOPMENT
PLAN

SHEET NO.

01



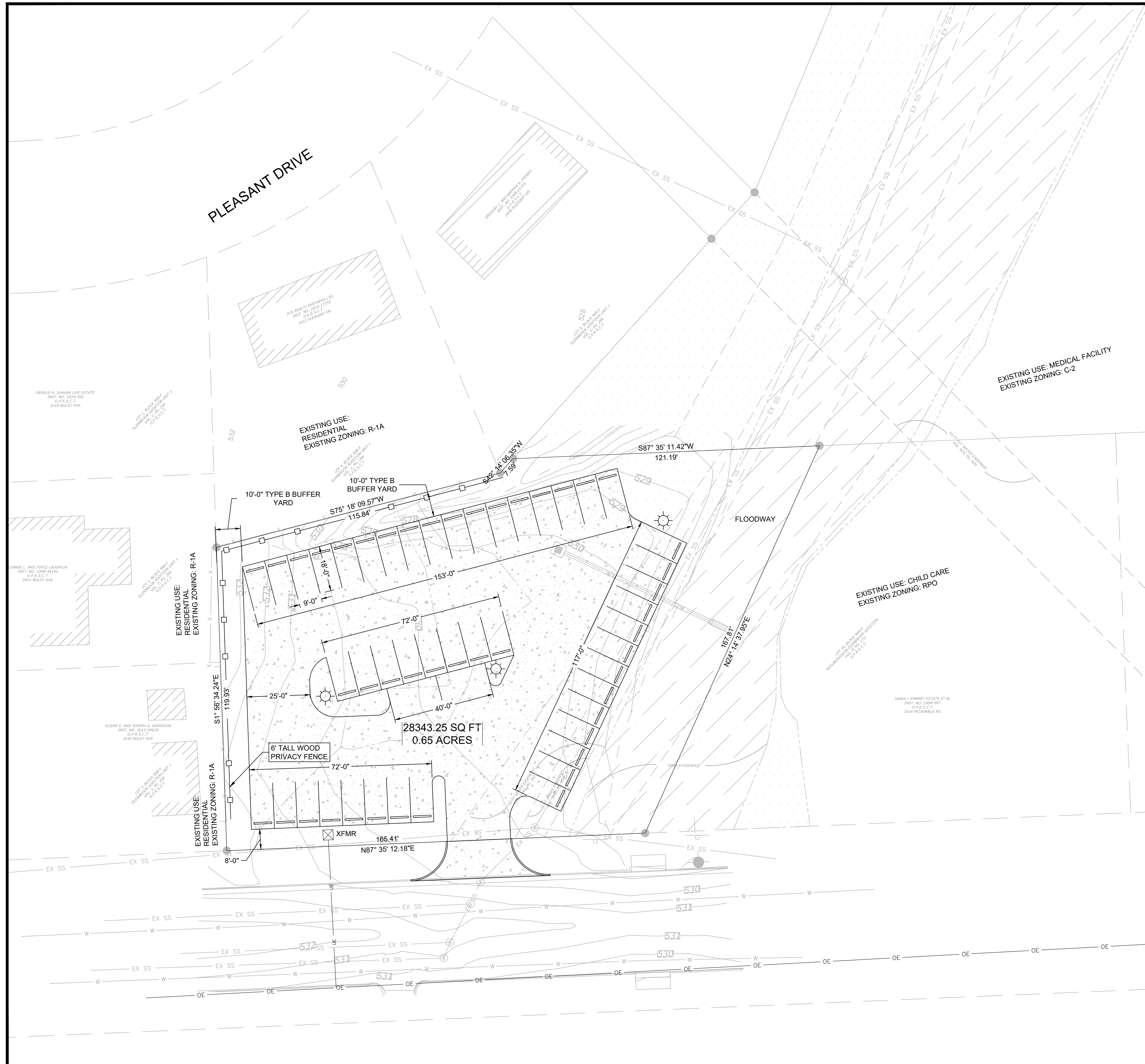
GENERAL NOTES:

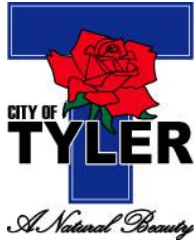
- ADA PARKING WILL BE PROVIDED WITHIN THE EXISTING FACILITY PARKING LOT.

LEGEND:

- PARKING LOT LIGHT
- 6' TALL WOODEN PRIVACY FENCE

SITE DATA	
PROPERTY OWNER:	
CVC PHOENIX HOLDINGS, LLC 2401 S. SOUTHEAST LOOP 323 TYLER, TEXAS 75701	
ENGINEER / SURVEYOR (APPLICANT):	
PIERCE-MURRAY LAND SOLUTIONS, LLC 800 TALLYHO CIRCLE TYLER, TEXAS 75703 TRAVIS@PIERCEMURRAY.COM (903) 520-7964	
DEVELOPER:	
CVC PHOENIX HOLDINGS, LLC 2401 S. SOUTHEAST LOOP 323 TYLER, TEXAS 75701	
CURRENT LAND USE:	VACANT
PROPOSED LAND USE:	SURFACE PARKING
CURRENT ZONING:	PLANNED MULTI-FAMILY (P-MF)
PROPOSED ZONING:	PLANNED OFFICE DEVELOPMENT (POD)
PLATTING:	LOT 17 BLOCK 968 TO BE REPLATTED AND COMBINED WITH LOT 1A BLOCK 968-G
ACREAGE:	0.65 ACRES (28,343 SF)
BUILDING DIMENSIONS:	NOT APPLICABLE
TOTAL PARKING / DRIVES:	18,956 SF
USEABLE OPEN SPACE:	10,037 SF (34.6%)
SETBACKS:	FRONT - 10 FT REAR - 10 FT SIDE (EAST) - 10 FT SIDE (WEST) - 10 FT
SIGNAGE:	DEVELOPMENT SIGNAGE TO WILL COMPLY WITH THE CITY OF TYLER UDC SIGN CHART SECTION 10-409 INCLUDING NUMBER, SIZE AND LOCATION.
LANDSCAPE / BUFFERYARDS:	LANDSCAPING TO MEET OR EXCEED MINIMUM REQUIREMENTS PER THE CITY OF TYLER UDC. BUFFERYARDS ARE TYPE 'B' OPTION 'C' PER UDC.
LIGHTING	LIGHTING WILL COMPLY WITH THE ARTICLE 6, DIVISION J OF THE CITY OF TYLER UDC.
SCREENING:	6-FT TALL WOODEN PRIVACY FENCE
PARKING:	48





CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-3

Date: June 26, 2019

Subject: S19-004 WHITMIL DONALD AND SHELLY (1302 BUTLER AVENUE) Request that the City Council consider approving a Special Use Permit (SUP) for a child home daycare.

Page: Page 1 of 2

Item Reference:

The applicant is requesting the Special Use Permit (SUP) in order to allow for a child home daycare on Lot 85 of NCB 661A, one lot containing approximately 0.17 acres of land located north of the northeast intersection of West 2nd Street and Butler Avenue (1302 Butler Avenue). The property is currently zoned "R-1B", Single-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 an approved SUP 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.

All adjacent properties are zoned "R-2", Two-Family Residential District and are developed with single-family homes.

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.

Agenda Number: Z-3

Page: 2 of 2

A Special Use Permit allows a maximum of six children for a home day care in “R-2” zoning. The applicant is currently operating a daycare and has requested the Special Use Permit to comply with the ordinance. The applicant is licensed with the State to operate a day care. The property has a play area in the backyard and is protected with a six-foot tall wooden fence. On-street parking and a driveway that can accommodate two parking spaces provide the necessary parking requirements.

On June 4, 2019, the Planning and Zoning Commission held a public hearing on this request. The applicant was present for questions. No one spoke in opposition to the request.

As of Friday, June 14, 2019, of the 41 notices mailed, two notices were returned in favor of the request and none in opposition to the request.

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

RECOMMENDATION:

The Planning and Zoning Commission by a 6-0 vote recommends approval of the Special Use Permit for the operation of a child home daycare for a three-year period of time.

ATTACHMENTS:

1. [Ordinance](#)
2. [Location Map](#)
3. [Future Land Use Map](#)
4. [Notification Map](#)

**Drafted/Recommended By:
Department Leader**



Heather Nick

**Edited/Submitted By:
City Manager**



ORDINANCE NO. O-2019-

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 CHILD HOME DAYCARE FOR A THREE YEAR PERIOD OF TIME ON LOT 85 OF NCB 661A, ONE LOT CONTAINING APPROXIMATELY 0.17 ACRES OF LAND LOCATED NORTH OF THE NORTHEAST INTERSECTION OF WEST 2ND STREET AND BUTLER AVENUE (1302 BUTLER AVENUE); 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 S19-004

That the following described property, which is currently zoned “R-1B”, Single-Family Residential District, shall hereafter be used under a Special Use Permit to allow for a telecommunications facility, to-wit:

Lot 85 of NCB 661A, one lot containing approximately 0.17 acres of land located north of the northeast intersection of West 2nd Street and Butler Avenue (1302 Butler Avenue).

PART 2: The Special Use Permit is restricted to a child home daycare up to six children for a three year period of time.

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 June 28th, 2019.

PASSED AND APPROVED this the 26th day of June, A.D., 2019.

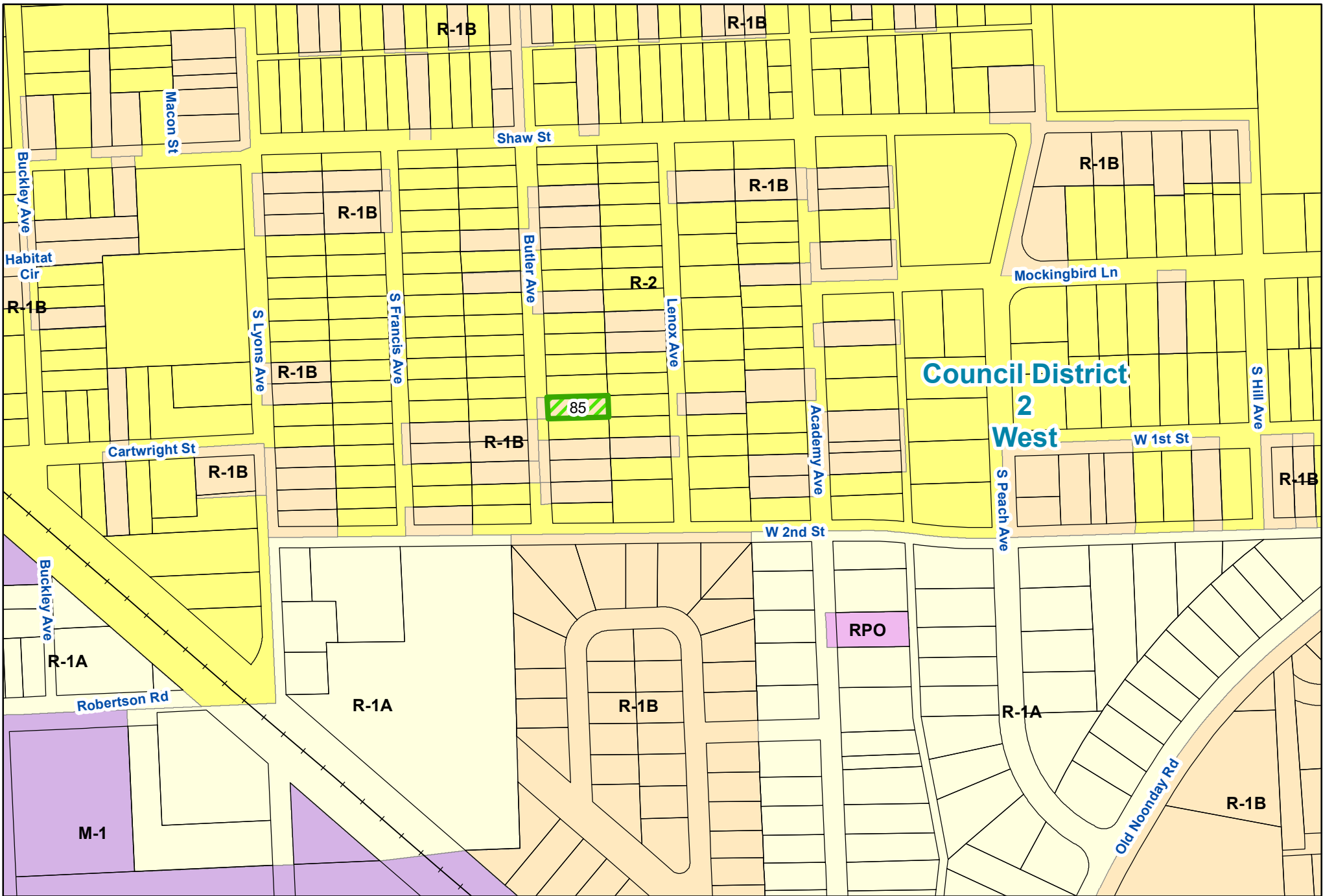
MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

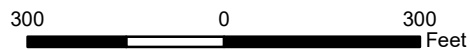
APPROVED:

CASSANDRA BRAGER, CITY CLERK

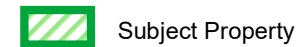
DEBORAH G. PULLUM,
CITY ATTORNEY



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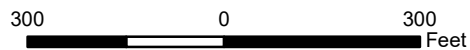


ZONING CASE
 Zoning Case #: S19-004
 SPECIAL USE PERMIT
 Applicant: WHITMIL DONALD AND SHELLY





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ZONING CASE
 Zoning Case #: S19-004
 SPECIAL USE PERMIT
 Applicant: WHITMIL DONALD AND SHELLY



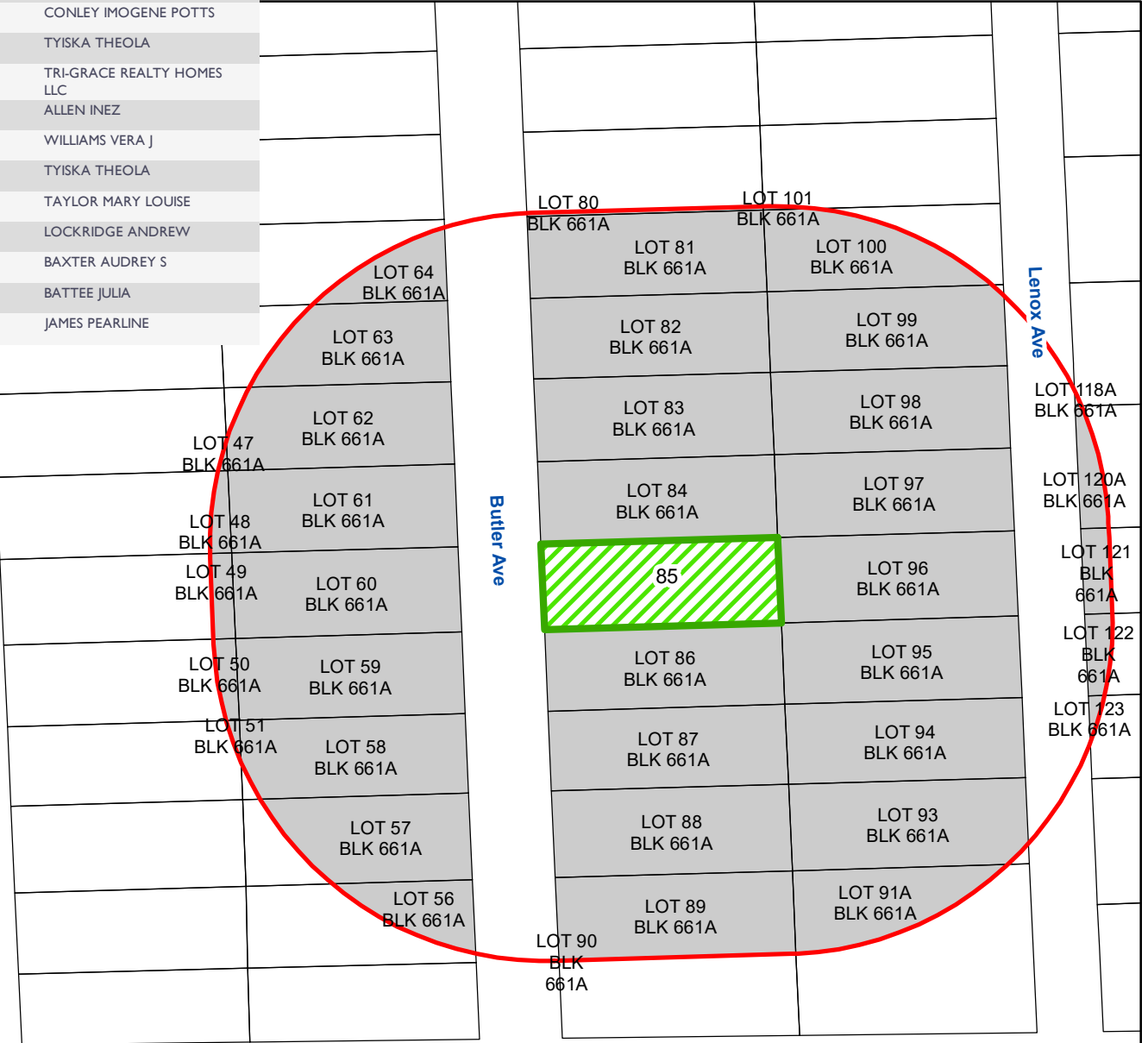
Subject Property



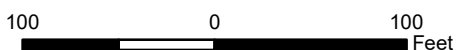
Notification List

661A	96	PENA PABLO TARANGO &
661A	85	WHITMILL DONALD & SHELLY
661A	60	JONES KASHUNDRA S
661A	123	HAYTER WOODROW JR & GLORIA P
661A	94	BROWN RENEE D
661A	121	GREEN TIFFANY
661A	64	CHOICE FAYE H & DAVID E
661A	101	TEXAN ROOT HOMES LLC
661A	80	TUCKER JESSIE EARL
661A	100	OVERSHOWN RICHARD A
661A	81	SAUCEDO JOSE
661A	118A	HUNTER WILLIE EST & FRANCES HUNTER
661A	99	WHITLOW JOSEPHINE BISCOE &
661A	82	CROWDER SHAYLA & VITTORIO KELLUM
661A	63	JOHNSON DOROTHY & LOUISE SHANKLIN
661A	49	SANDERS DEBRA
661A	98	WADE REGINALD
661A	83	CELIS JUAN A
661A	62	RAMIREZ RICARDO
661A	47	TAYLOR GORDON MCKAY & PAULA Y
661A	120A	TENNYSON CLYDE HERMAN & GRACE HELEN
661A	97	WADE REGINALD
661A	84	CELIS JUAN ANTONIO & CLAUDIA JUAREZ
661A	61	JACKSON DWIGHT & DANA HASKINS
661A	48	DEWS OSIE CHARLES JR &
661A	122	KENNEY JANET L
661A	95	TARANGO PABLO
661A	86	VELAZQUEZ ALEJANDRO



661A	59	TRI-GRACE REALTY HOMES LLC
661A	50	CONLEY IMOGENE POTTS
661A	87	TYISKA THEOLA
661A	58	TRI-GRACE REALTY HOMES LLC
661A	51	ALLEN INEZ
661A	93	WILLIAMS VERA J
661A	88	TYISKA THEOLA
661A	57	TAYLOR MARY LOUISE
661A	90	LOCKRIDGE ANDREW
661A	91A	BAXTER AUDREY S
661A	89	BATTEE JULIA
661A	56	JAMES PEARLINE



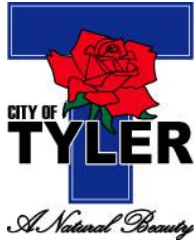
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ZONING CASE
 Zoning Case #: S19-004
SPECIAL USE PERMIT
 Applicant: WHITMIL DONALD AND SHELLY

 Subject Property
 200' Notification Buffer





CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-4

Date: June 26, 2019

Subject: Z19-012 STAPLES JULIA ANN KLINE LIFE ESTATE (6150 PALUXY DRIVE) Request that the City Council consider approving a zone change from “AG”, Agricultural District to “C-1”, Light Commercial District.

Page: Page 1 of 2

Item Reference:

The applicant is requesting the zone change to allow for retail uses on Tract 8 and 9, one tract containing approximately 13.12 acres of land located at the northeast intersection of East Grande Boulevard and Paluxy Drive (6150 Paluxy Drive).

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

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

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

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

Agenda Number: Z-4

Page: 2 of 2

The adjacent properties to the north are zoned “PUR”, Planned Unit Residential District and are undeveloped. The adjacent property to the east is zoned “AG”, Agricultural District and is undeveloped. The adjacent properties to the west are zoned “C-1”, Light Commercial District and “RPO”, Restricted Professional Office District and consist of a mixture of undeveloped land and offices. The adjacent properties to the south are zoned “M-1”, Light Industrial District and “C-2”, General Commercial District and are developed with retail and industrial uses.

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

The subject property is a corner lot located at the intersection of two arterial streets, East Grande Boulevard and Paluxy Drive. There are existing commercial and industrial uses in the area. A large powerline easement will restrict development to the southern portion of the lot. In terms of land use compatibility, a bufferyard is used to prevent or minimize any effects of the use of a property or zoning district with a greater intensity on a lesser intensity of use. A Type ‘B’ bufferyard, which contains a ten to 20 foot wide planting area with varying amounts of trees and shrubbery will be required between the subject property and the residential properties to the north.

On June 4, 2019, the Planning and Zoning Commission held a public hearing on this request. The applicant spoke in favor of the request. One neighbor asked questions regarding the proposed layout of the development. The applicant stated they did not have any immediate plans for the property.

As of Friday, June 14, 2019, of the 11 notices mailed, no notices were returned in favor and one notice in opposition to the request with the total protest calculation of 0.72 percent. The opposition stated they did not prefer a commercial property behind their property.

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

RECOMMENDATION:

The Planning and Zoning Commission by a 6-0 vote recommends approval of the request to change the zoning from “AG”, Agricultural District to “C-1”, Light Commercial District.

ATTACHMENTS:

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

Drafted/Recommended By:
Department Leader



Heather Nick

Edited/Submitted By:
City Manager



ORDINANCE NO. O-2019-

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 “AG”, AGRICULTURAL DISTRICT TO “C-1”, LIGHT COMMERCIAL DISTRICT ON TRACT 8 AND 9, ONE TRACT CONTAINING APPROXIMATELY 13.12 ACRES OF LAND LOCATED AT THE NORTHEAST INTERSECTION OF EAST GRANDE BOULEVARD AND PALUXY DRIVE (6150 PALUXY DRIVE); DIRECTING THE AMENDMENT OF THE ZONING MAP; DIRECTING THE AMENDMENT OF THE FUTURE LAND USE GUIDE; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

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

I. APPLICATION Z19-012

That the following described property, which has heretofore been zoned “AG”, Agricultural District, shall hereafter bear the zoning classification of “C-1”, Light Commercial District, to wit:

Tract 8 and 9, one tract containing approximately 13.12 acres of land located at the northeast intersection of East Grande Boulevard and Paluxy Drive (6150 Paluxy Drive).

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 a portion of the Future Land Use Guide to reflect Neighborhood Commercial.

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

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

PASSED AND APPROVED this the 26th day of June A.D., 2019.

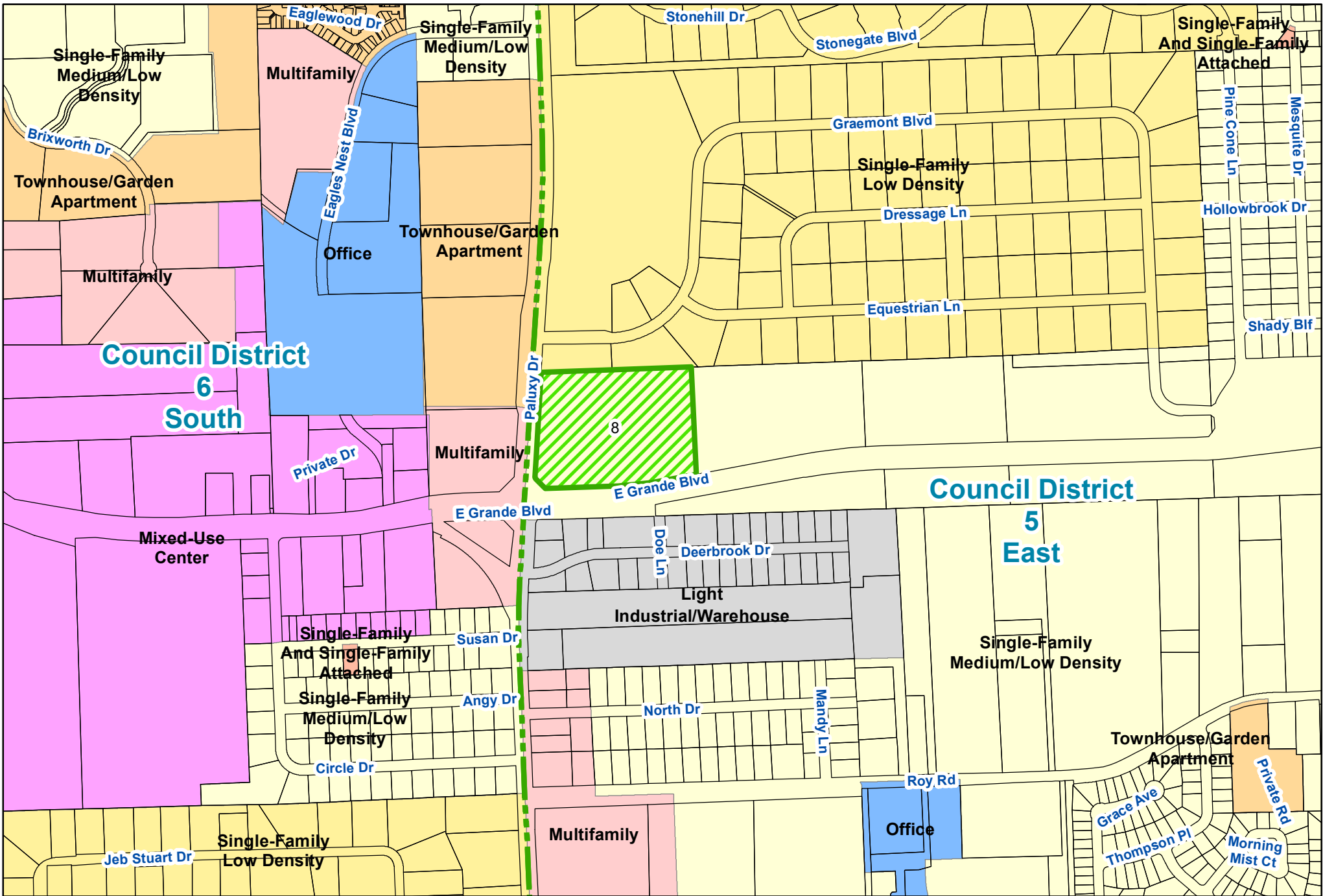
MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

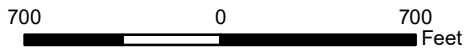
APPROVED:

CASSANDRA BRAGER, CITY CLERK

DEBORAH G. PULLUM
CITY ATTORNEY



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ZONING CASE

Zoning Case #: Z19-012

Current Zoning: AG Proposed Zoning: C-1

Applicant: STAPLES JULIA ANN KLINE LIFE ESTATE



Subject Property

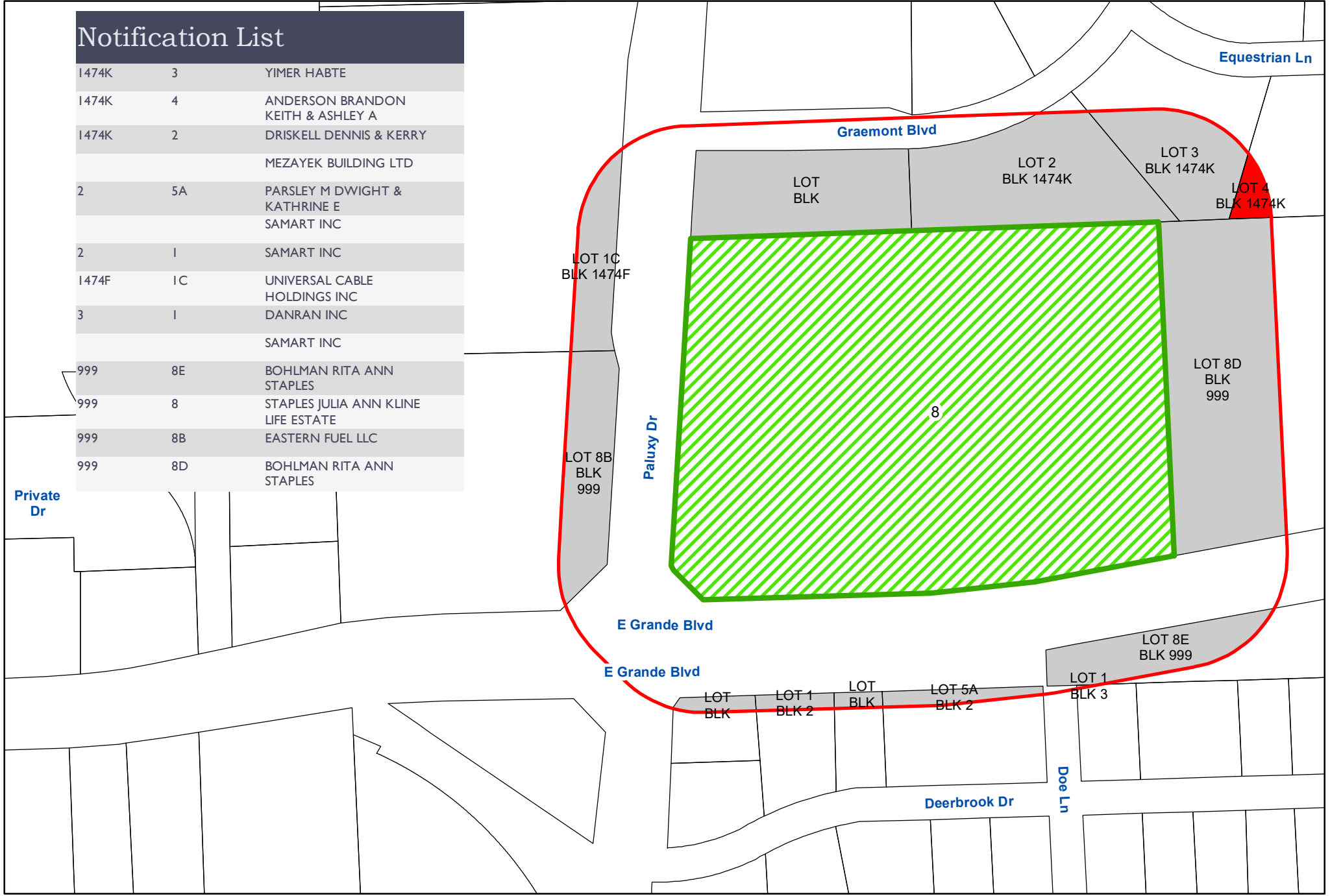


Council District Boundary

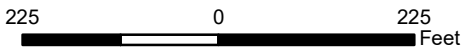


Notification List

1474K	3	YIMER HABTE
1474K	4	ANDERSON BRANDON KEITH & ASHLEY A
1474K	2	DRISKELL DENNIS & KERRY
		MEZAYEK BUILDING LTD
2	5A	PARSLEY M DWIGHT & KATHRINE E SAMART INC
2	I	SAMART INC
1474F	IC	UNIVERSAL CABLE HOLDINGS INC
3	I	DANRAN INC
		SAMART INC
999	8E	BOHLMAN RITA ANN STAPLES
999	8	STAPLES JULIA ANN KLINE LIFE ESTATE
999	8B	EASTERN FUEL LLC
999	8D	BOHLMAN RITA ANN STAPLES



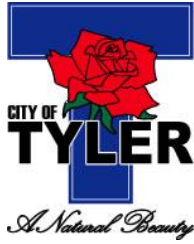
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ZONING CASE
 Zoning Case #: Z19-012
 Current Zoning: AG Proposed Zoning: C-1
 Applicant: STAPLES JULIA ANN KLINE LIFE ESTATE

- Subject Property
- 200' Notification Buffer
- Protest Lots





CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: Z-5

Date: June 26, 2019

Subject: Z19-013 WELLS PROPERTY MANAGEMENT LLC (421 SOUTH BONNER AVENUE) Request that the City Council consider approving a zone change from “R-MF”, Multi-Family Residential District to “AR”, Adaptive Reuse District.

Page: Page 1 of 2

Item Reference:

The applicant is requesting the zone change to allow for the operation of a birthing center on Lots 4 and 11 of NCB 80 and Lots 1 and 10 of NCB 184, four lots containing approximately 0.51 acres of land located south of the southwest intersection of West Front Street and South Bonner Avenue (421 South Bonner Avenue).

According to the Unified Development Code (UDC), the “AR”, Adaptive Reuse District is primarily intended to provide for the rehabilitation and reuse of residential buildings for low-intensity commercial or office activities without detracting from the essential residential character of the area, nor allowing the proliferation of intense commercial uses. The minimum lot area is 7,000 square feet. The maximum height is 42 feet or two and one half stories. Setback requirements are 25 feet in the front and rear and the interior side yard setback is six feet and the corner side yard is 12 feet.

The adjacent properties to the north are zoned “R-MF”, Multi-Family Residential District and “C-2”, General Commercial District and are developed with single-family homes and a bank respectively. The adjacent properties to the south and west are zoned “R-MF”, Multi-Family Residential District and consist of a mixture of undeveloped land and a single-family home. The adjacent properties to the east are zoned “RPO”, Restricted Professional Office District and are developed with offices.

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

The “AR” zoning district is a more restrictive land use than other zoning designations that allow for the requested use. The property will be required to maintain its residential character should it be for anything other than a residence, which includes limited signage and parking among other restrictions. The property will have to provide a minimum of four parking spaces.

The birthing center has been operating since 2013 and this zone change is requested to bring the property into compliance. The regular hours of operation of the center are Tuesdays and Wednesdays

Agenda Number: Z-5

Page: 2 of 2

from 9am to 6pm. Parking is provided by four covered parking spaces in the backyard and on-street parking. No overnight stay is provided in the facility.

The “AR” district is typically found within neighborhoods as it provides for the reuse of residential buildings for low-intensity personal service, office and retail uses. For this reason, the requirements for maximum paved surface in the front yard and dimensional standards (setbacks) are consistent with single-family residential districts.

On June 4, 2019, the Planning and Zoning Commission held a public hearing on this request. The applicant was present to speak in favor of the application. No one spoke in opposition.

As of Friday, June 14, 2019, of the 25 notices mailed, one notice was returned in favor and none in opposition to the request.

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

RECOMMENDATION:

The Planning and Zoning Commission by a 6-0 vote recommends approval of the request to change the zoning from “R-MF”, Multi-Family Residential District to “AR”, Adaptive Reuse District.

ATTACHMENTS:

1. [Ordinance](#)
2. [Location Map](#)
3. [Future Land Use Map](#)
4. [Notification Map](#)

Drafted/Recommended By:
Department Leader



Heather Nick

Edited/Submitted By:
City Manager



ORDINANCE NO. O-2019-

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 “AR”, ADAPTIVE REUSE DISTRICT ON LOTS 4 AND 11 OF NCB 80 AND LOTS 1 AND 10 OF NCB 184, FOUR LOTS CONTAINING APPROXIMATELY 0.51 ACRES OF LAND LOCATED SOUTH OF THE SOUTHWEST INTERSECTION OF WEST FRONT STREET AND SOUTH BONNER AVENUE (421 SOUTH BONNER AVENUE); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

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

I. APPLICATION Z19-013

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

Lots 4 and 11 of NCB 80 and Lots 1 and 10 of NCB 184, four lots containing approximately 0.51 acres of land located south of the southwest intersection of West Front Street and South Bonner Avenue (421 South Bonner Avenue).

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

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

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

PASSED AND APPROVED this the 26th day of June A.D., 2019.

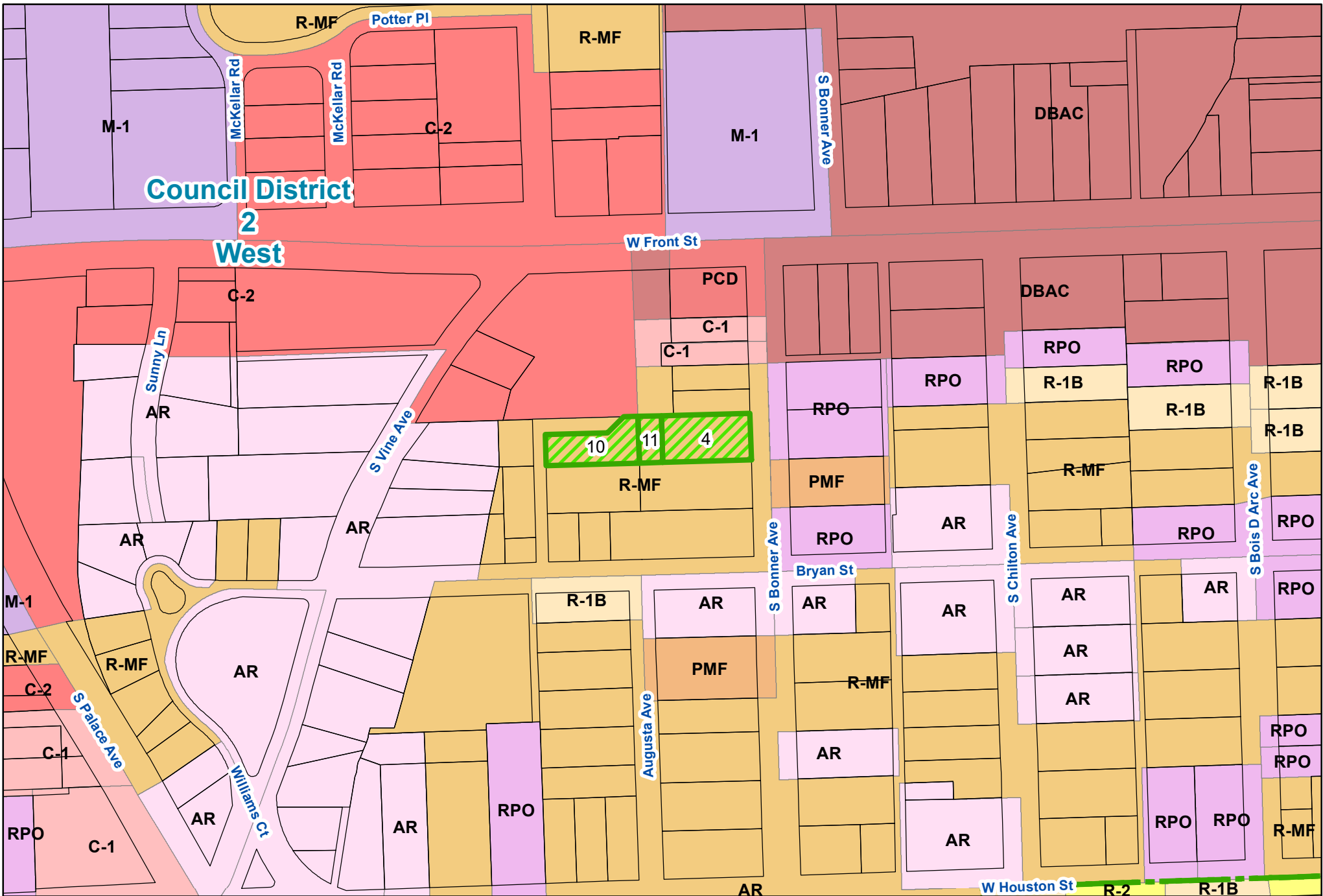
MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

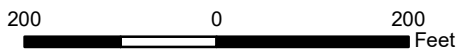
APPROVED:

CASSANDRA BRAGER, CITY CLERK


DEBORAH G. PULLUM
CITY ATTORNEY




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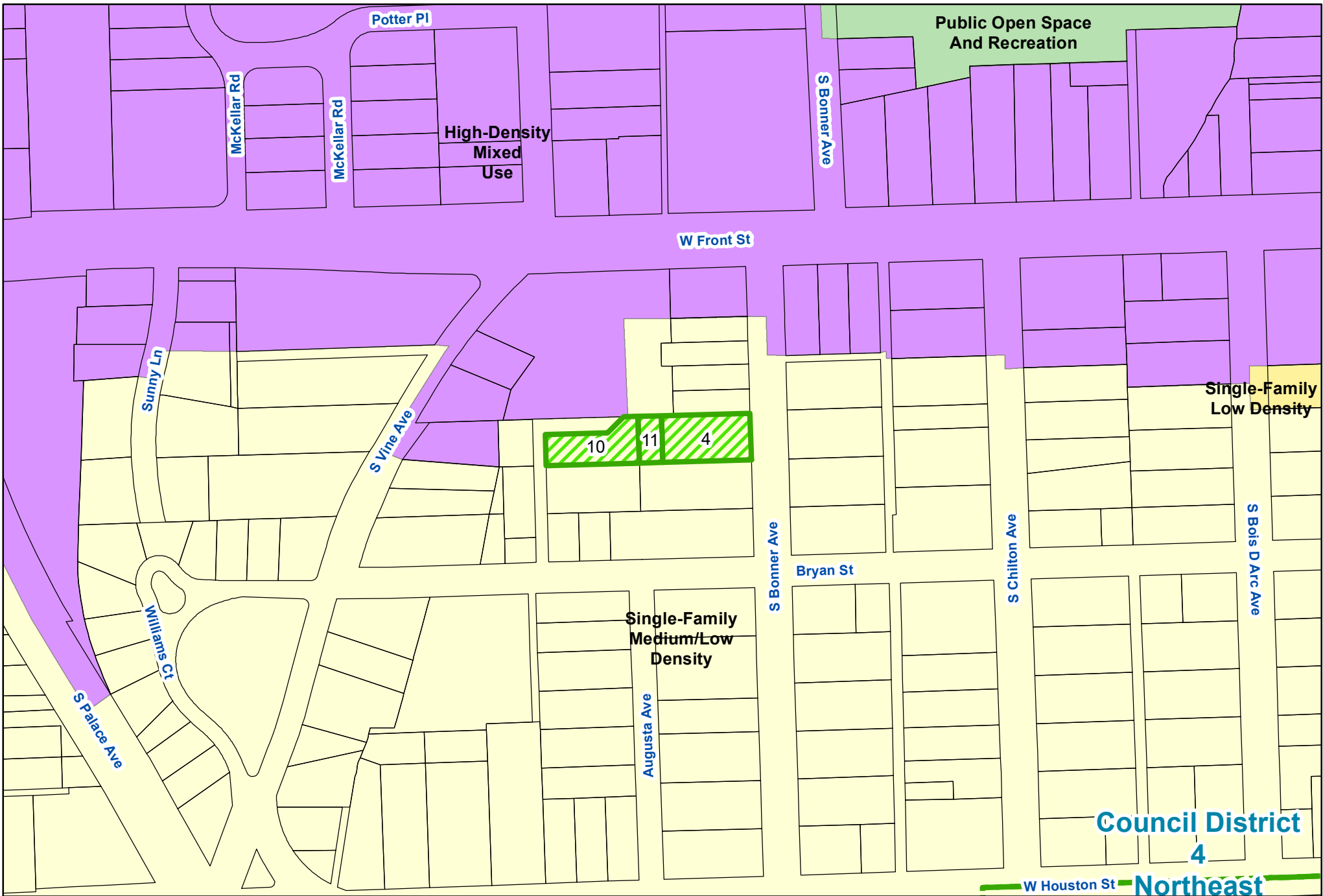


ZONING CASE
 Zoning Case #: Z19-013
 Current Zoning: R-MF Proposed Zoning: AR
 Applicant: WELLS PROPERTY MANAGEMENT LLC

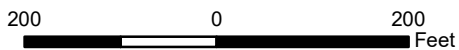
 Subject Property

 Council District Boundary







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ZONING CASE
 Zoning Case #: Z19-013
 Current Zoning: R-MF Proposed Zoning: AR
 Applicant: WELLS PROPERTY MANAGEMENT LLC

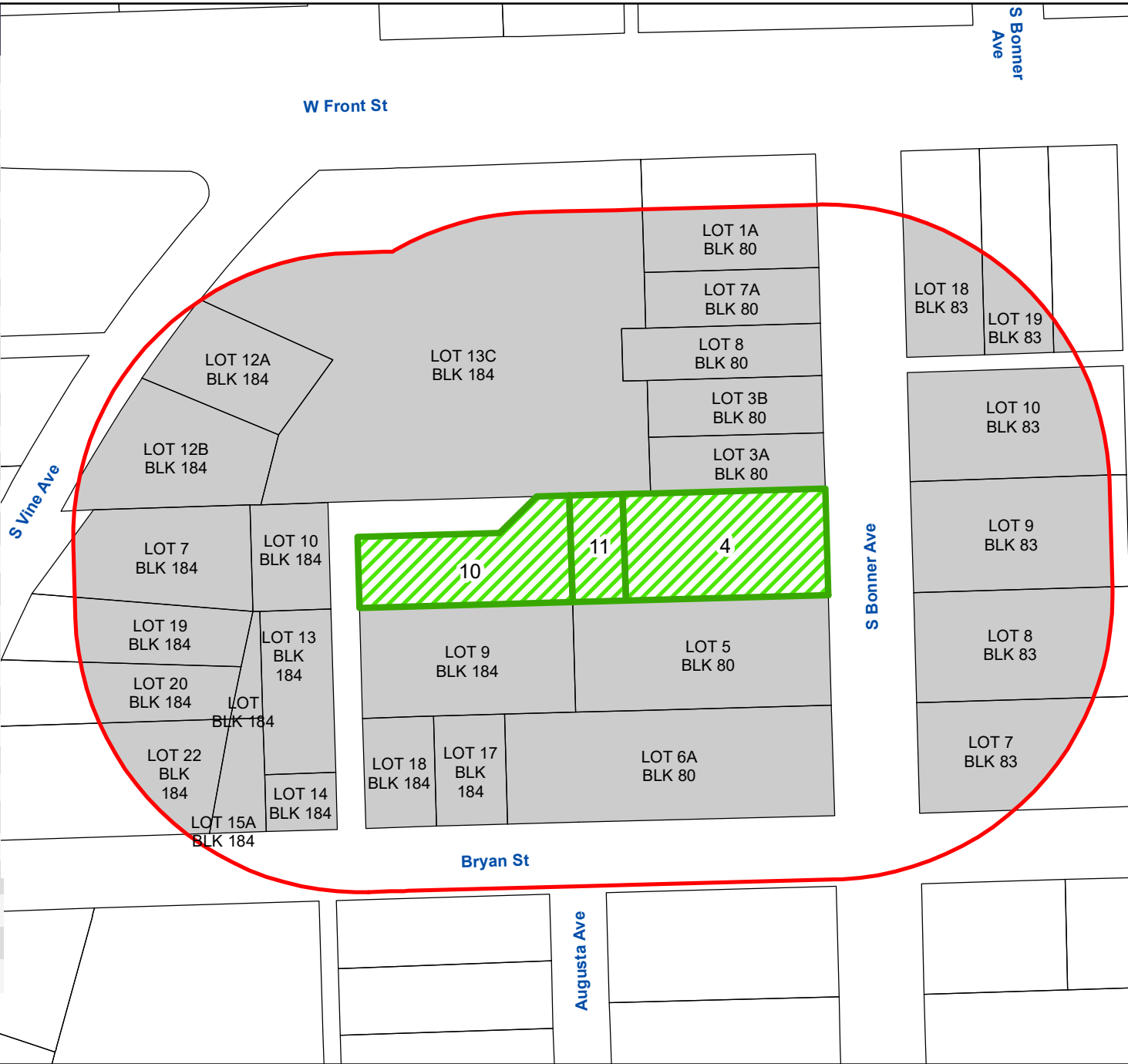
 Subject Property

 Council District Boundary

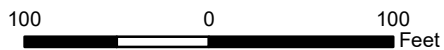


Notification List

83	20	WILDER HAROLD
83	19	WILDER HAROLD
83	18	WILDER HAROLD
80	1A	CARDENAS ENRIQUE VALLE
184	13C	CITIZENS NATIONAL BANK
83	9	KEELING DAVID BART SR
80	4	WELLS PROPERTY MANAGEMENT LLC
80	3A	JOHNS KARYN D
83	10	COWAN JACK F
80	3B	TYLER MKH LTD
184	12B	PATTERSON PATRICIA ANN
80	11	WELLS PROPERTY MANAGEMENT LLC
184	10	WELLS PROPERTY MANAGEMENT LLC
80	7A	DESHA PROPERTIES
184	12A	WHITE DEBRA A
80	8	SAUCEDO JOSE M & ANAHI M HERNANDEZ
184	10	WELLS PROPERTY MANAGEMENT LLC
184	7	COURSON ROBERT
83	8	MCINTOSH ANDREW GEORGE & SUSAN C
184	19	LIVING ALTERNATIVES INC
80	5	MIRANDA JOSE LUIS
184	9	TABUSINTAC INC
184	13	BARNETT JODIE O JR ETAL
184		WELLS PROPERTY MANAGEMENT LLC
184	20	FOR-STAN PROPERTIES LLC
83	7	LIVELY WILLIAM H JR
80	6A	CENTER PIECE INVESTMENTS PROPERTY
184	17	SMITH ROBERT LAYNE
184	18	HOOD LAURA DE LA TORRE
184	15A	WELLS PROPERTY MANAGEMENT LLC
184	22	HOLLY TREE PROPERTIES LLC
184	14	WELLS PROPERTY MANAGEMENT LLC



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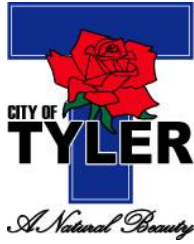


ZONING CASE
 Zoning Case #: Z19-013
 Current Zoning: R-MF Proposed Zoning: AR
 Applicant: WELLS PROPERTY MANAGEMENT LLC



Subject Property
 200' Notification Buffer





**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: Z-6

Date: June 26, 2019

**Subject: Z19-014 SIDAR BUILDERS LLC (2202 KENNEDY AVENUE)
Request that the City Council consider approving a zone change from
“R-1A”, Single-Family Residential District to “R-1B”, Single-Family
Residential District.**

Page: Page 1 of 2

Item Reference:

The applicant is requesting the zone change in order to construct five detached single-family homes on Lot 23 of NCB 712 and Lot 8 of NCB 709, two lots containing approximately 1.33 acres of land located south of the southeast intersection of West Ninth Street and Kennedy Avenue (2202 Kennedy Avenue).

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

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

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

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

All adjacent properties are zoned “R-1A”, Single-Family Residential District and are developed with single-family homes.

Agenda Number: Z-6

Page: 2 of 2

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

The applicant plans to construct five detached single-family homes. The requested "R-1B" zoning would allow for flexibility in the lot configuration and would allow the houses to have larger footprints as "R-1B" has reduced setbacks of six feet.

On June 4, 2019, the Planning and Zoning Commission held a public hearing on this request. David Socia, the applicant, spoke in favor of the request. Adjacent neighbors spoke about a concern related to additional housing being built in the neighborhood. The Commission and staff discussed that the same number of homes could be built under the current zoning, but that the zone change would provide the applicant with smaller side yard setbacks. "R-1A" zoning requires interior side setbacks of seven and half feet, whereas "R-1B" zoning requires six feet wide setbacks.

As of Friday, June 14, 2019, of the 30 notices mailed, no notices were returned in favor and one notice was returned in opposition with a total protest calculation of 8.35 percent. The notice indicated a concern with additional residents in the neighborhood.

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

RECOMMENDATION:

The Planning and Zoning Commission by a 5-0 vote recommends approval of the request to change the zoning from "R-1A", Single-Family Residential District to "R-1B", Single-Family Residential District.

ATTACHMENTS:

1. [Ordinance](#)
2. [Location Map](#)
3. [Future Land Use Map](#)
4. [Notification Map](#)

**Drafted/Recommended By:
Department Leader**



Heather Nick

**Edited/Submitted By:
City Manager**



ORDINANCE NO. O-2019-

AN ORDINANCE AMENDING THE CITY OF TYLER ZONING ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; BY CHANGING THE ZONING FROM “R-1A”, SINGLE-FAMILY RESIDENTIAL DISTRICT TO “R-1B”, SINGLE-FAMILY RESIDENTIAL DISTRICT ON LOT 23 OF NCB 712 AND LOT 8 OF NCB 709, TWO LOTS CONTAINING APPROXIMATELY 1.33 ACRES OF LAND LOCATED SOUTH OF THE SOUTHEAST INTERSECTION OF WEST NINTH STREET AND KENNEDY AVENUE (2202 KENNEDY AVENUE); DIRECTING THE AMENDMENT OF THE ZONING MAP; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

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

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

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

I. APPLICATION Z19-014

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

Lot 23 of NCB 712 and Lot 8 of NCB 709, two lots containing approximately 1.33 acres of land located south of the southeast intersection of West Ninth Street and Kennedy Avenue (2202 Kennedy Avenue).

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

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

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

PASSED AND APPROVED this the 26th day of June A.D., 2019.

MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

A T T E S T:

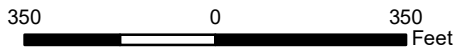
APPROVED:

CASSANDRA BRAGER, CITY CLERK



DEBORAH G. PULLUM
CITY ATTORNEY



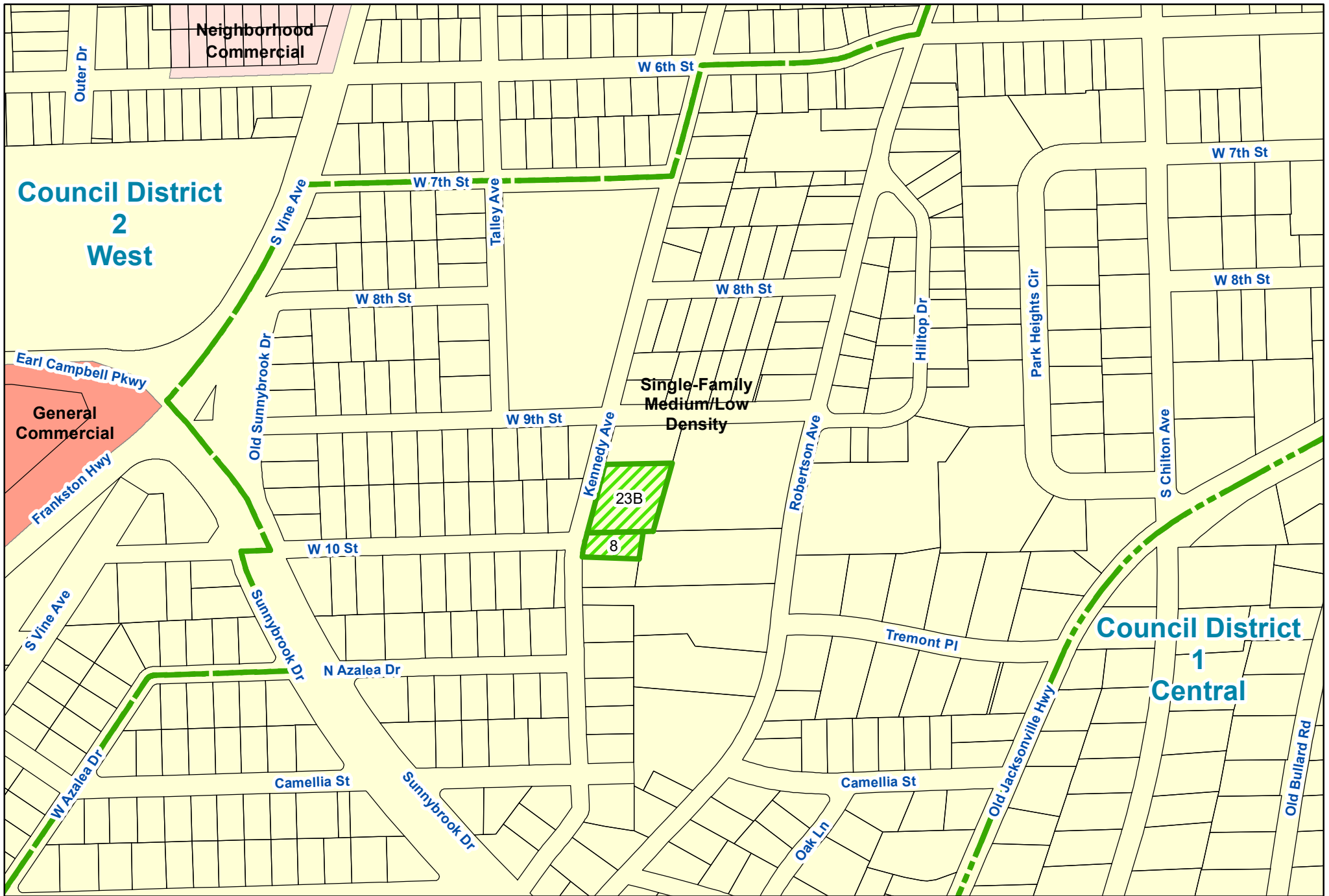
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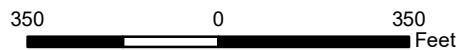
ZONING CASE
 Zoning Case #: Z19-014
 Current Zoning: R-1A Proposed Zoning: R-1B
 Applicant: SIDAR BUILDERS LLC

-  Subject Property
-  Council District Boundary





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ZONING CASE

Zoning Case #: Z19-014

Current Zoning: R-1A Proposed Zoning: R-1B
 Applicant: SIDAR BUILDERS LLC



Subject Property

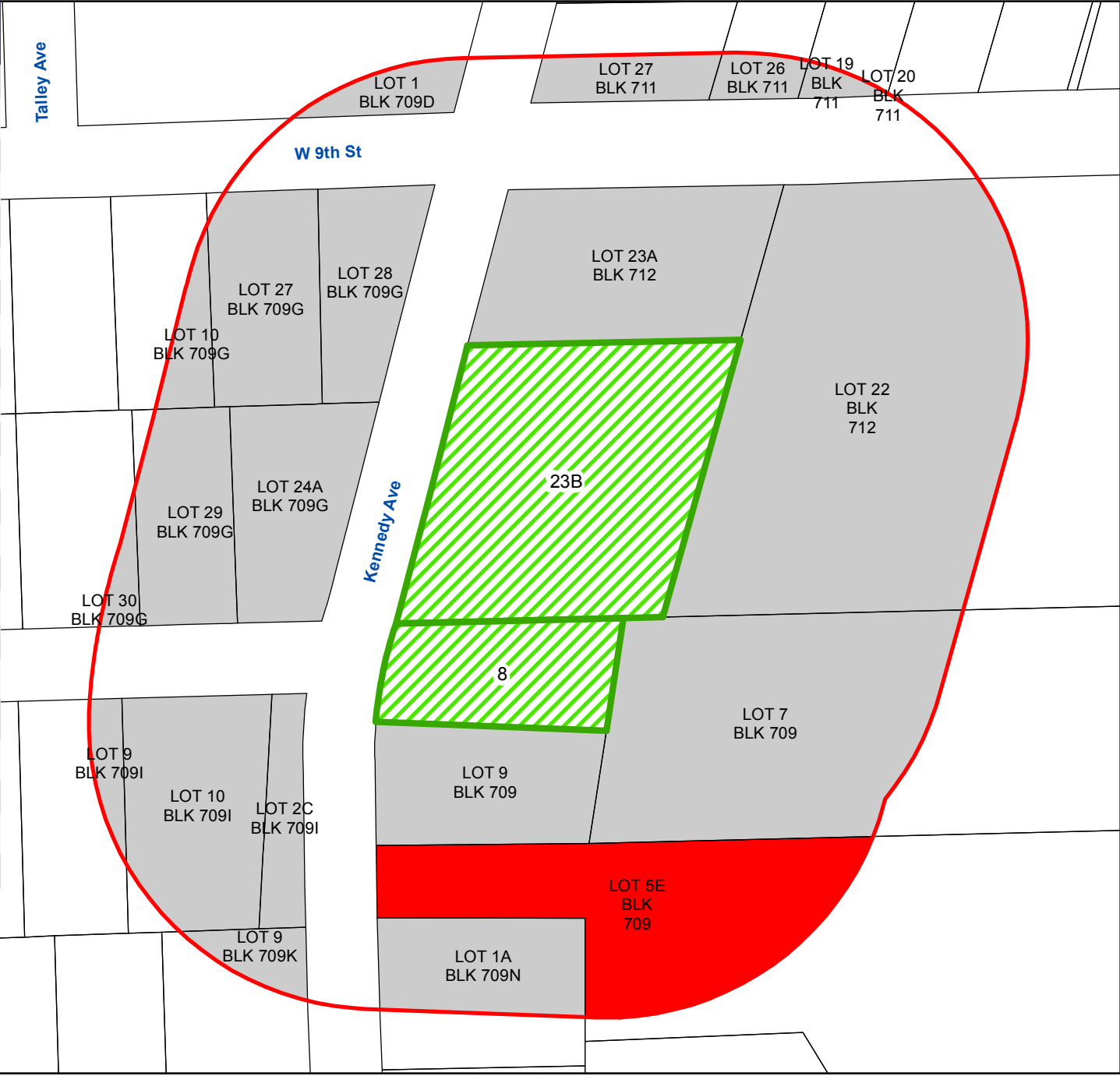


Council District Boundary

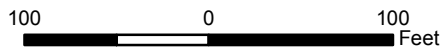


Notification List




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711	27	DREW STEVEN D & DEANNA G
711	20	VARGAS JOSE
711	19	GROAT GARY R & DEBBIE
711	26	REINA MARTIN NINO & MARIA JUANA REYNA
712	22	MCSWANE DOUGLAS R JR &
709G	28	KELLING VIRGINIA
712	23A	HAYS DAVID M
709G	27	JOHNSON KIMBERLY LASHAWN
709G	10	RANEY SUE W
712	23B	ROOSTH HEIRS 870 LLC
709G	24A	RUSSELL BOBBIE M
709G	29	POWELL BERT P
709G	30	WOODS LARRY LEE
709I	2C	TYLER CITY OF
709I	10	PCS REALTY PARTNERS LTD
709I	9	MOORE SHARON
709	7	BROOKSHIRE BRUCE & MICHELLE
709	8	ROOSTH INTERESTS 850 LLC
709	9	ROOSTH INTERESTS 850 LLC
709	5E	TORRANS JEAN
709N	1A	LENNON TRAVIS L & JO CAROL
709K	9	SWIFT CAROLYN



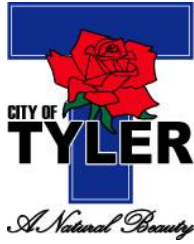
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ZONING CASE
 Zoning Case #: Z19-014
 Current Zoning: R-1A Proposed Zoning: R-1B
 Applicant: SIDAR BUILDERS LLC

-  Subject Property
-  200' Notification Buffer
-  Protest Lots





**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: O-1

Date: June 26, 2019

Subject: Request that the City Council consider adopting an Ordinance amending Tyler City Code Chapter 2 to re-adopt current guidelines and criteria governing tax abatement in the City of Tyler.

Page: Page 1 of 1

Item Reference: Texas Tax Code Chapter 312; City Code Chapter 2, Article III.

State law, at Texas Property Tax Code Section 312.002(a), states that a taxing unit may not enter into a tax abatement agreement, and the governing body of a taxing unit may not designate an area as a reinvestment zone, unless the governing body of the taxing unit has established guidelines and criteria governing tax abatement agreements and a resolution stating that the taxing unit elects to participate in tax abatement. The City of Tyler's guidelines and criteria for tax abatement are located in City Code Chapter 2, Article III., "Tax Abatement Policy".

Texas Property Tax Code Section 312.002(c) provides that the guidelines and criteria for tax abatement are effective for two years. It is now time for renewal of the Tax Abatement Policy in City Code Chapter 2. The current Tax Abatement Ordinance is being presented to the City Council for re-adoption without any recommended new changes to the policies. Minor corrections to the ordinance citations at the end of the sections are the only amendments.

RECOMMENDATION:

It is recommended that the City Council adopt the attached Ordinance amending Tyler City Code Chapter 2 to re-adopt current guidelines and criteria governing tax abatement in the City of Tyler.

ATTACHMENTS:

1. [Ordinance](#)

Drafted/Recommended By:
Department Leader

Heather Nick

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2019-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 2 “FINANCE AND TAXATION”, ARTICLE III, “TAX ABATEMENT POLICY” OF THE CODE OF ORDINANCES, CITY OF TYLER, TEXAS, RELATING TO TAX ABATEMENT; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, State law, at Texas Property Tax Code Section 312.002(a), states that a taxing unit may not enter into a tax abatement agreement, and the governing body of a taxing unit may not designate an area as a reinvestment zone, unless the governing body of the taxing unit has established guidelines and criteria governing tax abatement; and

WHEREAS, the City of Tyler's guidelines and criteria for tax abatement are located in City Code Chapter 2, Article III., "Tax Abatement Policy"; and

WHEREAS, Texas Property Tax Code Section 312.002(c) provides that guidelines and criteria for tax abatement are effective for two (2) years; and

WHEREAS, in accordance with Texas Property Tax Code Section 312.002(c), it is time for review of the Tax Abatement Policy in City Code Chapter 2;

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

PART 1: That Tyler City Code Chapter 2, “Finance and Taxation”, Article III., “Tax Abatement Policy”, is hereby adopted and amended to read as follows:

ARTICLE III. TAX ABATEMENT POLICY

Sec. 2-30. Tax Abatement Policy Principles.

- a. A city, pursuant to State law, is authorized to offer abatement of City ad valorem taxes to industries and commercial enterprises within the City limits. The tax abatements are granted to real property owners who execute a tax abatement agreement with the City. The purpose of the tax abatement is to encourage the growth and establishment of industry and commercial enterprise in the City. Growth is measured both by increases in capital expenditure for buildings, machinery, and other capital goods and the increase in the Tyler workforce. The City’s priority for tax abatement is to extend tax abatement to primary employers. A primary employer is one which forms the economic base of the community by generating a majority of sales outside of Smith County. In providing local jobs, the retention of existing jobs is recognized as more important than recruitment of new companies. Surveys in Texas have shown three-fourths of new jobs come from expansion of existing local companies. Abatement is given to provide significant, long term, positive economic impact to the community by using local contractors and the resident workforce to the maximum extent feasible and by developing, redeveloping and improving real estate within the City limits. The City’s goal in providing tax abatements is to create additional jobs within the City. Abatements, however, may be granted when the City is convinced that the abatement is needed to retain existing jobs which would otherwise be lost. Examples of uses eligible for abatements include manufacturing,

distribution centers, corporate or regional office parks, and research facilities. Small companies have provided a significant source of new jobs within the City. Therefore, proposals by small entrepreneurs will be encouraged whenever the proposals comply with the policies of this chapter.

- b. The City strives for efficiency in processing applications for tax abatement. It is understood that unduly long decision-making processes will discourage businesses that might otherwise be interested in moving to or expanding in Tyler. (Ord. No. O-98-21; 3/18/98) (Ord. No. O-2000-74, 9/27/00) (Ord. No. O-2002-33, 8/28/2002) (Ord. No. O-2004-63, 8/25/04) (Ord. No. O-2006-87; 10/11/06) (Ord. No. O-2008-148; 11/19/08) (Ord. No. O-2011-6, 1/12/2011) (Ord. No. O-2013-7, 1/9/2013) (Ord. No. O-2015-53; 5/13/2015) (Ord. No. O-2017-43; 5/4~~0~~24/17) (Ord. No. O-2019- ; 6/26/19)

Sec. 2-31. Abatement Eligibility Criteria.

- a. Tax abatement will be considered for the following facilities if such development will create substantial capital improvements within the City limits or additional jobs:
 - 1. Manufacturing facilities;
 - 2. Distribution facilities;
 - 3. Corporate offices;
 - 4. Research parks;
 - 5. Major tourism attractions;
- b. Successful applicants must be located within a reinvestment zone prior to the inception of the project.
- c. The project must provide for capital expenditures of at least one million dollars or an annual payroll increase of four hundred thousand dollars or the creation of twenty-five new permanent full-time jobs.
- d. When an investment improves existing property, the portion of the value of property eligible for abatement is:
 - 1. For real property, the value of real property which has increased in market value because of the development, re-development or improvements specified in the abatement contract.
 - 2. For personal property, the market value of the personal property at the location, other than inventory or supplies, purchased with new capital identified in the tax abatement contract. Personal property located at the site before the period covered by the agreement, is not eligible for tax abatement.
 - 3. If the investment meets the criteria set out in paragraph c., the property eligible for abatement may be personal, real or mixed. (Ord. No. O-98-21; 3/18/98) (Ord. No. O-2000-74, 9/27/00) (Ord. No. O-2002-33, 8/28/2002) (Ord. No. O-2004-63, 8/25/04) (Ord. No. O-2006-87; 10/11/06) (Ord. No. O-

2008-148; 11/19/08) (Ord. No. O-2011-6, 1/12/2011) (Ord. No. O-2013-7, 1/9/2013) (Ord. No. O-2015-53; 5/13/2015) (Ord. No. O-2017-43; 5/4~~0~~24/17) (Ord. No. O-2019- ; 6/26/19)

Sec. 2-32. Abatement Review.

- a. The City Manager, in consultation with the Tyler Economic Development Council, will initially negotiate all tax abatement contracts agreements. The proposed contracts will then be submitted to the Reinvestment Zone Committee for review. The recommendation of the Reinvestment Zone Committee will be submitted to all participating local governments, including the City Council.
- b. A Reinvestment Zone Committee is responsible for reviewing all applications for abatement, recommending action to be taken on the application by the City Council, and monitoring compliance with abatement contracts. Any deviations from the original abatement contract will be reported by the committee to the City Council along with recommendations from the committee. If recommended by the committee, an abatement contract may be terminated by action of the City Council if the property owner fails to comply with the agreement. Notification of such termination for cause shall be in writing and shall be delivered to the property owner at its address of record. An abatement contract may also be voluntarily terminated where all parties agree through use of a termination agreement approved by the City Council. Committee members shall be appointed by the City Manager and will include representatives who are active in promoting the economic health of the City and the other affected taxing jurisdictions. The committee will include representatives from each of the taxing entities that will be asked to participate in a tax abatement contract. Members do not have to be City residents.
- c. When considering abatement contracts, the City will consider any burdens which will be placed on existing infrastructure and basic services by the proposed project. The City may reject applications which place inordinate demands on public services or require inordinately large expenditures to improve or maintain local government infrastructure.
- d. Representatives of the taxing jurisdictions periodically review commitments made pursuant to this policy: this policy is reviewed every two years; all reinvestment zones are reviewed every five years; and tax abatement contracts are reviewed annually. This policy is separate from any policy concerned with enterprise zones and any obligations deriving from existing industrial development contracts. (Ord. No. O-98-21; 3/18/98) (Ord. No. O-2000-23, 4/5/00) (Ord. No. O-2000-74, 9/27/00) (Ord. No. O-2002-33, 8/28/2002) (Ord. No. O-2004-63, 8/25/04) (Ord. No. O-2006-87; 10/11/06) (Ord. No. O-2008-148; 11/19/08) (Ord. No. O-2011-6, 1/12/2011) (Ord. No. O-2013-7, 1/9/2013) (Ord. No. O-2015-53; 5/13/2015) (Ord. No. O-2017-43; 5/4~~0~~24/17) (Ord. No. O-2019- ; 6/25/19)

Secs. 2-33 - 2-39 Reserved.

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

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

PASSED AND APPROVED this 26th day of June, A. D., 2019.

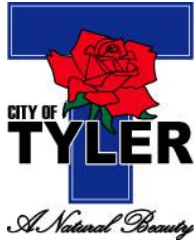
MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

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: June 12, 2019

Subject: Request that the City Council authorize the City Manager to sign an Authorization and Reimbursement Agreement with the Union Pacific Railroad Company for improving the at-grade crossing at Martin Luther King Boulevard in the amount of \$212,257.50.

Page: Page 1 of 1

Item Reference: Item M-3; December 13, 2017

Adams Engineering has completed design of sidewalk and lighting improvements to Martin Luther King Jr. Boulevard from West Gentry Parkway to Broadway Avenue. The project includes adding sidewalk and lighting across Union Pacific Railroad's (UPRR) crossing at Martin Luther King Jr. Boulevard.

The crossing is in need of upgrading by removing the existing deteriorated wooden planking and adding concrete planking. The estimated cost for upgrading the crossing is \$424,515. UPRR has agreed to pay for one-half the cost of these improvements. This agreement will allow UPRR to make these improvements in conjunction with this project.

FUNDING: Half Cent


RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to sign an Authorization and Reimbursement Agreement with the Union Pacific Railroad Company for improving the at-grade crossing at Martin Luther King Boulevard in the amount of \$212,257.50.

ATTACHMENTS:

1. [Location Map](#)
2. [UPRR Agreement](#)

Drafted/Recommended By:
Department Leader

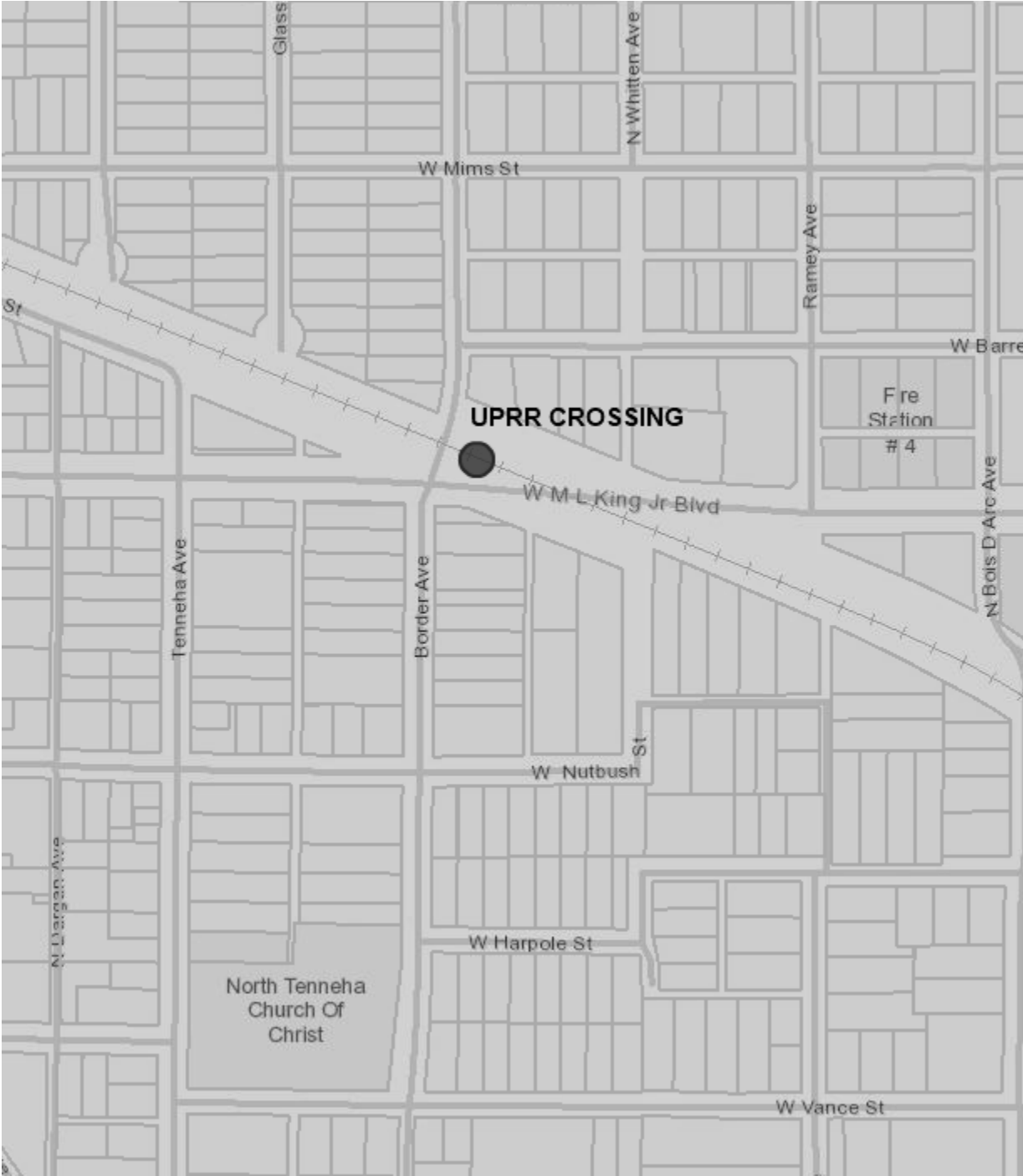

Lisa Crossman, P.E., City Engineer

Edited/Submitted By:
City Manager



ATTACHMENT 1

LOCATION MAP



**AUTHORIZATION AND REIMBURSEMENT AGREEMENT
PUBLIC ROAD CROSSING IMPROVEMENTS - SURFACE**

THIS AUTHORIZATION AND REIMBURSEMENT AGREEMENT (**Agreement**) is made and entered into as of _____ day of _____, _____ (**Effective Date**), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (**Railroad**), and CITY OF TYLER a municipal corporation or political subdivision of the State of Texas (**Agency**).

RECITALS

In accordance with the terms and conditions of this Agreement, Agency and Railroad desire to improve the existing, at-grade crossing area (**Project**) along, over and across Railroad's track and right of way, as such crossing area is more particularly described on **Exhibit A** attached hereto and made a part hereof (**Crossing Area**).

AGREEMENT

NOW THEREFORE, the parties hereto agree as follows:

1. Railroad agrees to perform the Project work described on **Exhibit B** attached hereto the (Railroad Work).
2. Agency has appropriated sufficient funds to complete the Project and shall reimburse Railroad for costs incurred by Railroad in connection with the Railroad Work in accordance with **Exhibit C** attached hereto.
3. Railroad's estimated cost for the Railroad Work is included on **Exhibit D** attached hereto (**Estimate**) and may include without limitation costs of engineering review, construction, inspection, flagging, procurement and delivery of materials, equipment rental, manpower and all direct and indirect overhead labor/construction costs, including Railroad's standard additive rates. Such standard additive rates may be subject to upward or downward adjustment based on industry standards and practices, and the parties acknowledge and agree that any such adjustment to standard additive rates may be made retroactively.
4. If Agency will be performing any Project work, such work is described on **Exhibit B** attached hereto (**Agency Work**). Agency shall perform the Agency Work, if any, at its sole cost, and Railroad consents to Agency (or any contractor or other agent hired by Agency) performing the Agency Work within the Crossing Area, subject to complying with the terms and conditions of this Agreement. Railroad's consent shall not be deemed to grant Agency (or any contractor or other agent hired by Agency) any property interest in the Crossing Area or other Railroad property.
5. If Agency hires a contractor or other agent to perform the Agency Work, Agency shall require such contractor or agent to execute Railroad's then current form of Contractor's Right of Entry Agreement (**CROE Agreement**) and to comply with the requirements set forth therein. If Agency performs the Agency Work, Agency shall comply with the safety standards set forth in the CROE Agreement.

6. No work of any kind shall be performed, and no person, equipment, machinery, tools, materials, vehicles or other items shall be located, operated, placed or stored within twenty-five (25) feet of any track at any time for any reason except as otherwise provided herein. Prior to commencing the Agency Work, and if the performance of any Agency Work requires any person or equipment to be within twenty-five (25) feet of any track, Agency shall provide Railroad at least thirty (30) working days advance notice of the performance of such proposed work, and upon Railroad's receipt of such notice, Railroad will determine and inform Agency whether a flagman need to be present or whether Agency needs to implement any special protective or safety measures. Subject to **Exhibit C**, in the event that flagging or other special protection or safety measures are required to be performed in connection with the Railroad Work specifically or the Project generally, and regardless if the costs for such measures are included in the Estimate, Agency shall be responsible for all such costs incurred in connection therewith.

7. Prior to commencing any Agency Work, Agency shall telephone (or shall cause its contractor or agent to telephone) Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central time, Monday through Friday, except holidays) at 1-800-336-9193 to determine if fiber optic cable is buried anywhere on Railroad's property to be used in connection with the Agency Work. If fiber optic cable is present, Agency, at its sole cost, will coordinate (or will cause its contractor or agent to coordinate) with the applicable telecommunications companies for the relocation or other protection of the fiber optic cable prior to beginning any Agency Work.

8. Agency, for itself and for its successors and assigns, hereby waives any right of assessment against Railroad, as an adjacent property owner, for any and all improvements made under this Agreement.

9. Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

10. This Agreement sets forth the entire agreement between the parties regarding the Project and the installation and maintenance of the Project improvements within the Crossing Area. To the extent that any terms or provisions of this Agreement regarding the installation and maintenance of such Project improvements are inconsistent with the terms or provisions set forth in any existing agreement affecting the Crossing Area, such terms and provisions shall be deemed superseded by this Agreement to the extent of such inconsistency.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

TYLER, TEXAS

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation

Signature

Signature

Printed Name

Printed Name

Title

Title

Exhibit A
Description of Crossing Location

Street	West Martin Luther King Jr Boulevard	DOT #	426769G
Subdivision	Tyler Ind Ld	Milepost	20.257
City	Tyler	State	TX
County	Smith		

Exhibit B
Scope of Work

Railroad Work:

Remove the existing crossing surface and install a new 336TF of concrete planking.
Provide Traffic Control and pavement patch work.

Agency Work:

Roadway Pavement and sidewalk construction.

Exhibit C
Reimbursement Method

Agency agrees to reimburse Railroad for **FIFTY PERCENT (50%)** of actual costs incurred by Railroad in connection with the Railroad Work. During the performance of the Railroad Work, Railroad will provide progressive billing to Agency based on Railroad's actual costs. Within one hundred twenty (120) days after completion of the Project, Railroad will submit a final billing to Agency for any balance owed Railroad in connection with the Railroad Work. Agency shall pay Railroad within thirty (30) days after Agency's receipt of any progressive and final bills submitted by Railroad.

Exhibit D
Estimate Cover Page
(see attached)

Material And Force Account Estimate City/State/Federal

Estimate Number: 120564 Version: 1

Standard Rates: Labor Additive = 253.76%
Estimate Good Until 07/23/19

Location: TYLER IND LD, INDL, 20.24-20.27
Description of Work: Tyler Ind Ld / 426769G-2 / W. Martin Luther King Jr Blvd
Remove existing crossing surface, install new 336' CON10W Crossing
Project Built Using Standar Recollect Additive Rate
UPRR Will Be Reimbursed for 50% of Costs by City/State/Federal Funds
Prepared For:

Buy America: Yes

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	UP %50	Agcy %50
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ENGINEERING

Engineering			1	LS	21,105.00	21,105	0	21,105	10,553	10,553		
Bill Prep Fee - Track Surface RECOLLECT			1	LS	900.00	0	900	900	450	450		
Homeline Freight - Track Surface RECOLLECT			1	LS	900.00	0	900	900	450	450		
Foreign Line Freight - Track Surface RECOLLECT			1	LS	2,316.00	0	2,316	2,316	1,158	1,158		
Sub-Total =								21,105	4,116	25,221	12,611	12,611

TRACK CONSTRUCTION - COMPANY

BALAST	BALAST CL1		4	CL	1,371.95	1,024	4,464	5,488	2,744	2,744		
RDXING	New Road Crossing		336	TF	875.91	189,555	104,749	294,305	147,152	147,152		
TRACK	Construct Track		64	TF	245.63	9,129	6,591	15,720	7,860	7,860		
COMPUT	Transition Rails		2	PR	.00	0	0	0	0	0		
Sub-Total =								199,708	115,805	315,512	157,756	157,756

TRACK REMOVAL - COMPANY

RDXING	Remove road crossing - prefab		336	TF	132.53	44,532	0	44,532	22,266	22,266		
Sub-Total =								44,532	0	44,532	22,266	22,266

SITE WORK - CONTRACT

	Asphalt: Hot Mix		1	TN	10,000.00	0	10,000	10,000	5,000	5,000		
	Traffic Control - Detour Signs & Coordination		1	LS	2,000.00	0	2,000	2,000	1,000	1,000		
Sub-Total =								0	12,000	12,000	6,000	6,000

SIGNAL - COMPANY

	Signal: Install		1	LS	2,250.00	2,250	0	2,250	1,125	1,125		
Sub-Total =								2,250	0	2,250	1,125	1,125

EQUIPMENT RENTAL

	Equipment Rental		1	LS	25,000.00	0	25,000	25,000	12,500	12,500		
Sub-Total =								0	25,000	25,000	12,500	12,500

Total Wgt. in Tons = 1,721 **Totals = 267,594 156,921 424,515 212,258 212,258**

Grand Total = \$424,515

Disclaimer: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in cost or amount of material or labor required, Agency will pay actual costs at rates effective at the time of construction.



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: M-2

Date: June 12, 2019

Subject: Request that the City Council consider authorizing the City Manager to renew the engineering services contract with Pipeline Analysis, LLC and renew Work Order No. 1, with a maximum cost of \$1,000,000 per year, for support of the Wastewater Collection System's Capacity, Management, Operations and Maintenance Program.

Page: 1 of 2

Item Reference: Agenda Item M-3, April 11, 2018

In 2017, Tyler Water Utilities (TWU) entered into a Consent Decree with the Environmental Protection Agency (EPA) to address the City's aging wastewater collection system and resulting discharges. The Consent Decree became effective on April 10, 2017.

On April 12, 2017, the City Council approved Work Order #1 for Staff Support Services. TWU selected Pipeline Analysis (PA) to provide Staff Support Services to help TWU comply with the requirements of the Consent Decree and avoid further penalties and fines.

Work completed by PA in 2017 included development and implementation of a Capacity, Management, Operations and Maintenance Program (CMOM). The CMOM program was submitted to the EPA and Texas Commission on Environmental Quality (TCEQ) on October 5, 2017. During the CMOM development, PA evaluated the data collection and recordkeeping procedures to ensure that TWU is collecting and maintaining the types and amount of data required for the quarterly and annual reports to the EPA. In addition, PA completed thorough inspections of various wastewater collection system (WWCS) components, e.g., manholes, lift stations, and force mains.

This year, the services to be provided will include, but are not limited to:

- Work with the calibrated hydraulic model.
 - Field verification of potential capacity constraints.
 - Installation of additional flow monitors to refine data
 - Management and coordination of field activities
 - Supervision of model scenarios with the goal to obtain the most cost effective and best fit for the City of Tyler
- Assistance in implementation of remedial measures projects based on the Phase 1 assessment information (2017) selected to be completed this year.
- Assistance with evaluating consultants and contractors to provide sewer cleaning services, pipeline testing, and inspection services.

- Assistance with compiling data, identifying trends, and writing the annual report for submission to the EPA.
- Phase 4 assessment activity work, to begin 2020.
 - The completion of the Phase 2 Condition Assessment Report for assessment activities (2018) due July 1, has been previously authorized.
 - The current Phase 3 assessment activity (2019) has also been previously authorized.

Individual tasks outlined by the Scope of Services in Work Order No. 1 will be assigned to PA on an as-needed basis and may either be performed directly by PA or by other consultants, with PA providing assistance to City staff to procure those consultants. Payment will be made as tasks are completed and will not exceed \$1,000,000 per year.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to renew the engineering services contract with Pipeline Analysis, LLC and renew Work Order No. 1, with a maximum cost of \$1,000,000 per year, for support of the Wastewater Collection System's Capacity, Management, Operations and Maintenance Program.

ATTACHMENTS:

1. Work Order No. 1 – Previously approved
2. Work Order No. 1 – Updated to reflect new Project Manager, date, fees

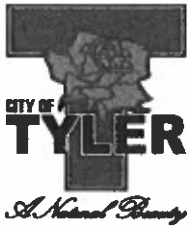
Drafted/Recommended By:
Key Leader



Dr. Jimmie Johnson, Director of Utilities

Edited/Submitted By:
City Manager





**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: M-3

Date: April 11, 2018

Subject: Request that the City Council consider authorizing the City Manager to renew Work Order No. 1, with a maximum cost of \$1,000,000 per year, for support of the Wastewater Collection System's Capacity, Management, Operations and Maintenance Program.

Page: 1 of 2

Item Reference: April 12, 2017; M-2

In 2017, Tyler Water Utilities (TWU) entered into a Consent Decree with the Environmental Protection Agency (EPA) to address the City's aging wastewater collection system and resulting discharges. The Consent Decree became effective on April 10, 2017.

On April 12, 2017, the City Council approved Work Order #1 for Staff Support Services. TWU selected Pipeline Analysis (PA) to provide Staff Support Services to help TWU comply with the requirements of the Consent Decree and avoid further penalties and fines.

Work completed by PA in 2017 included development and implementation of a Capacity, Management, Operations and Maintenance Program (CMOM). The CMOM program was submitted to the EPA and Texas Commission on Environmental Quality (TCEQ) on October 5, 2017. During the CMOM development, PA evaluated the data collection and recordkeeping procedures to ensure that TWU is collecting and maintaining the types and amount of data required for the quarterly and annual reports to the EPA. In addition, PA completed thorough inspections of various wastewater collection system (WWCS) components, e.g., manholes, lift stations, and force mains.

This year, the services to be provided will include, but not be limited to:

- Preparation of the Annual Condition and Remedial Measures report for Year 1, due in July to the EPA.
- Assistance in development of Capital Improvements Plan (CIP) based on the assessment information from Year 1.
- Assistance with getting the Indefinite Delivery and Indefinite Quantity (IDIQ) contract ready and implemented for use in Year 3. The IDIQ contract is currently under review in the City's Legal department.

Agenda Number: M-3

Page 2 of 2

- Assistance with evaluating consultants and contractors to provide sewer cleaning services, pipeline testing, and inspection services.
- Assistance with compiling data, identifying trends, and writing the annual report for submission to the EPA.
- Assistance during construction of the remedial measures projects selected to be completed this year.

Individual tasks outlined by the Scope of Services in Work Order No. 1 will be assigned to PA on an as needed basis and may either be performed directly by PA, or by other consultants, with PA providing assistance to City staff to procure those consultants. Payment will be made as tasks are completed and will not exceed \$1,000,000 per year.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to renew the engineering services contract with Pipeline Analysis, LLC and execute Work Order No. 1, with a maximum cost of \$1,000,000 per year, for support of the Wastewater Collection System's Capacity, Management, Operations and Maintenance Program.

ATTACHMENTS:

- I. Work Order No. 1

Drafted/Recommended By:
Key Leader



Scott Taylor, P.E., Managing Director of Utilities and Public Works

Edited/Submitted By:
City Manager



**Professional Services
Work Order 1.0
Sanitary Sewer System
Consent Decree
Staff Support & Augmentation**



City of Tyler

James H. Forbes, Jr., P.E.



Pipeline Analysis, LLC
1115 Main Street
Garland, Texas 75040
972-470-0655
TBPE Firm No. 6538

Work Order No. 1.0

Staff Support & Augmentation Services

BACKGROUND

This project will provide the necessary support assistance as requested by the City of Tyler staff to ensure compliance with the terms and timelines as outlined in the EPA consent decree. The proposed scope of services outlines the work tasks that may be requested by City staff as a result of specific Work Orders approved by the City of Tyler Director of Utilities.

The approach is organized around the City's objectives for this project:

- Fulfill anticipated Consent Decree Requirements
- Reduction in Sanitary Sewer Overflows (SSO's) as defined in the Consent Decree
- Cost controls and Least Cost Alternatives for Compliance
- Attainment of long-term Infiltration/Inflow solutions
- Collection System Capacity Assurance
- Regulatory compliance
- Sustainability of Program Elements
- Customer satisfaction

Pipeline Analysis, LLC will perform professional services, when requested, for the City of Tyler. Specific assignments to be performed by the consultant under each numbered Work Order will consist of engineering services to address requirements of the EPA Consent Decree. These services will consist of engineering analysis to address requirements of wastewater collection system inspection, evaluation, planning, information management, training, preventative maintenance, hydraulic modeling and reporting needed for regulatory compliance.

Tyler Water Utilities (TWU) has been negotiating with the Environmental Protection Agency (EPA) since 2009 to develop a Consent Decree to address the city's aging wastewater collection system and resulting unauthorized discharges. The intent of this project will be to provide City staff with technical support and assistance as they move forward with the implementation of the requirements of the Consent Decree. In some cases, Pipeline Analysis LLC (the CONSULTANT) and/or sub-consultants to Pipeline Analysis LLC may be tasked with performing services as described in Basic and Additional Services and in other cases the CONSULTANT may be tasked with assisting City staff with preparing Request for Proposals, bid specifications, or other contract documents so that the services described below may be contracted directly to other firms. In those cases, the CONSULTANT may assist City staff with contract management.

The Program – The Program is the comprehensive multi-year effort by the City to effectively improve the wastewater collection and treatment system's performance and regulatory compliance. The City will be the Program Manager for this effort. Pipeline Analysis LLC and its sub-consultants will support the City, as needed and requested, to set the Program goals and objectives, organizational charts, systems, policies, procedures, standards, etc. for efficient

program implementation and will provide staff when areas of need are identified. Other engineering firms, consultants, construction contractors, etc. will be involved in implementing the City's Program. There will be corresponding Program progress reports, staffing plans, Program schedules, etc. that Pipeline Analysis may help the City produce in support of staff.

The Project – The Project is the individual Work Orders. This includes the specific tasks that Pipeline Analysis is authorized to perform in support of the City staff.

James H. Forbes, Jr. will serve as Project Manager. Depending on the specific needs of the City, there may also be a number of assigned Work Order Managers.

Basic and Additional Services

This section defines the scope for services (summarized in Attachment A) that may be requested as part of a Work Order, but the CONSULTANT will not begin work on this section without specific written approval by the Director of Utilities. The CONSULTANT will, with written authorization by the Director of Utilities, perform the following services:

BASIC SERVICES

I. Project Coordination

A. Action Plan:

1. **Project Kick-off Meeting** - A project kick-off meeting will be conducted CONSULTANT with core City staff that will have the day-to-day responsibility for implementation of the Program and managing the City's wastewater system. The 90 day action plan will be prepared, reviewed and adjusted to meet the specific needs of the City. Data and information needs will be identified along with project organization, management and communication plans.
2. **Stakeholder Interviews** - Key stakeholders in the overall regulatory compliance and wastewater management Program will be identified in the Project Kick-off meeting. Stakeholders may include other City department personnel involved or impacted by the Program, administrative staff, City elected officials, and others identified by the City. The CONSULTANT may conduct individual interviews with available stakeholders in preparation for the Program Goals and Objectives meeting. The interviews will be used to define the overall Program issues, concerns, strategic goals and objectives from the perspective of each individual stakeholder.
3. **Program Goals and Objectives Workshop** - The CONSULTANT may facilitate a workshop to establish the strategic goals and objectives of the overall Program. The workshop will include the core City team and stakeholders identified in the Project Kick-off meeting. The workshop will define the Program success factors and establish the overriding strategic goals and objectives that set the framework for the Program tactical initiatives which will also be identified at the workshop. Key service levels or measurable performance indicators will be identified at this workshop. Strategic goals and objectives can guide a compliance program through completion.
4. **Management Plan Development** - The CONSULTANT may assist the City in the development of a comprehensive Management Plan. The Management Plan will establish necessary program functions, systems, polices, and procedures to be

implemented, and the protocols by which the City will achieve its strategic goals and objectives over the life of the Program. The Management and Implementation Plan may include the following:

- a. Program Organization Structure and Staffing
 - b. Program Facilities and Office
 - c. Communication Management
 - d. Document Management
 - e. Contract Management
 - f. Management Information Systems
 - g. Cost Management
 - h. Schedule Management
 - i. Change Management
 - j. QA/QC Management Plan
 - k. Risk Management
 - l. Regulatory and Progress Reporting
 - m. Land and Easement Acquisition
 - n. Customer Communication and Service
 - o. Inter-Department and Inter-Agency Coordination
 - p. Design Management
 - q. Construction Management
 - r. CONSULTANT Transition Plan
5. Information Management Plan (IMP) – The CONSULTANT may develop an Information Management Plan (IMP) based on the data and information needs assessment initiated in the Project Kick-off Meeting. This plan will define the asset inventory, capacity, management, operation, maintenance and customer service data and information required for effectively managing the City’s wastewater system. The IMP will define the sources and owners of the required information and provide recommendations to add additional data identified in a data gap analysis. The IMP will provide an action for hardware, software, data management and business process improvements to effectively manage the large amount of data required for successful completion of the Program.
6. Reporting Plan – The CONSULTANT may prepare a detailed Reporting Plan that aligns the various sources of data and information identified in the IMP with the specific regulatory monitoring and reporting requirements. This plan will provide the specific business processes and procedures to routinely compile required data and information for compliance reporting. Specific roles and responsibilities for data collection, compilation and reporting will be identified along with routine schedules for data and report deliverables. The reporting plan will rely heavily on the IMP to maximize the use of the City’s Asset Management and Work Order systems for routine compliance reporting. Compliance report formats and templates will be developed as part of this plan to establish a reliable reporting process at the onset of the Program.

B. Project Coordination

CONSULTANT may plan and assign proper qualified and experienced personnel to Project activities and provide other required equipment and material resources and maintain availability for proper Program execution. The CONSULTANT may coordinate the efforts of CONSULTANT and any SUB-CONSULTANTS assigned to the Project to maintain budget, schedule, scope, and quality compliance. The CONSULTANT may prepare and submit

monthly progress/status reports for the Project. Monthly Progress Reports shall include a narrative of activities performed during the subject billing period, an updated schedule, and identification of proposed resolution of issues, Project change management log, and a cost estimate to complete the Work. Based on the overall Program staffing, the CONSULTANT may provide staff support requested by the City. In addition to the functions identified throughout this scope of work, the CONSULTANT may assist with the following representative Program functions:

1. Document Control
2. Program Progress Reporting
3. Information System Management
4. Risk Mitigation
5. Cost and Schedule Management
6. Design Review
7. Construction Inspection
8. Quality Management

C. QA/QC Advisory

The CONSULTANT may assist the City in the development of a Quality Assurance and Quality Control (QA/QC) Plan to check, as a minimum, document management systems compliance, planning methods, design methods, calculations, engineering and design documents, construction documents, cost estimates, field investigations, measurements, and other technical issues associated with Program and Project planning and execution. The QA/QC plan may be designed to be expanded and modified as the Program needs change.

D. Program Scheduling

The CONSULTANT may assist the City in preparing and maintaining an integrated electronic Program schedule that will include all aspects of the Compliance Program. Periodically update the schedule at all phases of the Program. Schedule shall include critical activity start and/or completion dates as milestones, including monthly progress meetings, proposed engineering design, and all deliverable due dates.

E. Cost Estimating

The CONSULTANT may assist the City in developing cost estimating guides and standards for Program related field surveys and inspections, design and construction of system rehabilitation and replacement and other related Program elements. The CONSULTANT may assist the City in preparing planning and design level construction cost estimates and in the review of cost estimates completed by others.

II. Asset Management

A. Information System Assessment

The CONSULTANT may conduct an assessment of the City's wastewater system information management systems including CityWorks, GIS, Bentley Hydraulic Model and other supporting software in use by the City staff. While the focus of this assessment will be on the reporting requirements, the assessment will also consider improved efficiencies in the long term management of the wastewater system. The information system assessment will include related hardware, software, data management, systems integration, procedures and business practices for wastewater system information management. The results and

recommendations of the assessment will be documented in a Technical Memorandum and summarized in the Information Management Plan.

B. CityWorks/GIS Integration

City may authorize CONSULTANT to perform various tasks associated with the integration of CityWorks, GIS and other software systems. Tasks may include evaluation of existing software/hardware and recommending needed improvements, upgrades, custom programming and support of other software to enhance CityWorks Spatial reporting requirements, and develop automated reports, custom reports, and programming in support of regulatory compliance.

C. CityWorks Reporting Templates

The City may authorize the CONSULTANT to assist in the development of various reporting templates and forms for the data and information stored in the City's CityWorks Asset Management Software System. Reporting tools like IBM COGNOS for CityWorks may be implemented to provide the required compliance reporting.

D. Data Management

The CONSULTANT may assist the City in data collection, formatting, compilation, review, analysis, and reporting in accordance with the Information Management Plan. The CONSULTANT may work with the City to format and input data into the appropriate information management system to support compliance and better manage the overall wastewater system. The CONSULTANT may assist the City with routine updates of the data and information needs assessment and data management business processes. The CONSULTANT may also assist the City in the acquisition of any additional data identified in data gap analyses and perform routine quality control of the data in the information management systems.

III. Permitting and Regulatory

A. TCEQ/EPA Reporting and Documentation

The Program will identify a significant number of periodic reporting requirements that must be submitted to the EPA. Likewise, TCEQ reporting requirements already in place within the TPDES permitting framework will continue to be necessary. This task implements the recommendations of the Reporting Plan to provide the routine required regulatory reports and correspondence to provide: 1) that the required reports are generated and submitted on time; 2) the various required reports are consistent with one another in terms of the information reported; and 3) that the resources expended to generate these reports is managed to reduce project costs. Potential elements of this task include:

1. Update required monitoring and reporting requirements of the Program and other regulatory reports required by the TCEQ or EPA. Report requirements will be cross-referenced to identify report information needs in one report that may be common to other reports.
2. Development of a report schedule for the initial two-years of the Program.
3. Development of a tracking system to ensure that required reports are generated on time.

This task will support the regulatory compliance requirements of the program. Over time, other tasks may result in the need to modify the reporting schedule, tracking system, or report templates.

ADDITIONAL SERVICES

I. Project Coordination

A. Public Relations and Outreach

The CONSULTANT may assist the City in providing information to and to educate the public about Program goals and objectives through various outreach techniques to gather and maintain public support for the Program and for individual projects. The public information program may be designed to make direct contact, and nurture and maintain positive relationships with those individuals who reside, own businesses, work, and attend school in those areas affected by project construction as well as the community as a whole. The CONSULTANT may assist the City in the development of presentations, newsletters, press releases and other media materials required for the public information and participation program.

B. Presentation Support

The CONSULTANT may assist the City in the development of presentation material to communicate Program progress and explain technical and non-technical aspects of the Program to various stakeholder groups.

C. CIP/O&M Budget Planning

The CONSULTANT may assist the City in preparing annual Compliance Program budgets including capital improvement and operation and maintenance budgets.

D. Procurement/Contracts Management

The CONSULTANT may assist the City in the evaluation of various project delivery alternatives for wastewater system improvements, preparing procurement documents for field services, planning, design, and construction projects associated with the Program.

E. Program Modifications

The CONSULTANT may assist the City in identifying changes in the work to be completed under the Program to reduce costs and improve the Program effectiveness. The CONSULTANT may assist in preparing the necessary documentation in support of regulatory reporting requirements and assist when potential Program modifications are requested.

F. Transition Plan and Training

The CONSULTANT may provide temporary staff support requested by the City to initiate a variety of regulatory functions. Short term Program assignments may be completed by the CONSULTANT and delivered to the City. Longer term assignments may be initiated with CONSULTANT staff support and transition to City staff. The CONSULTANT may develop a transition plan and provide required training to transition Program functions to City staff.

II. Condition Assessment

A. CCTV/Line Cleaning Support

Perform CCTV as required to inspect designated pipelines and provide data in PACP format for each pipeline inspected. Scope of work may only require delivery of PACP CCTV digital data and may also include analysis of the collected data to determine cause of obstructions, condition assessment of pipeline, establish preliminary repair methods and estimated costs. Cleaning may be requested to facilitate CCTV inspection, debris removal, or to facilitate the annual cleaning goals and schedules established by the City.

B. Line and Manhole Inspections and Assessment

City may authorize the inspection of each line entering and exiting the manhole. Normally performed in conjunction with manhole inspection, data on each pipe rim to invert distance, size, material, condition, photograph, observed defects, etc. is obtained and documented. City may authorize analysis of this data to establish prioritized remedial measures necessary to restore integrity along with estimated costs. Manhole inspections may be authorized to establish the existing condition and remedial measures necessary to prioritize and rehabilitate these assets. Inspection personnel will use digital cameras during the inspection of all manholes. All photographs will be included in the field inspection database so that a permanent electronic record can be maintained. During the preliminary and final data analysis, these photographs will provide detailed backup information on site conditions, observed defects and condition of the asset to assist in preparing recommended remedial action and estimated costs. The City may authorize the delivery of the manhole inspection data with or without analysis.

C. Smoke Testing

Smoke Testing may be authorized to locate both public and private sector defects contributing to wet weather inflow, trace sewer connections or identify illicit connections with the storm sewer system. Smoke testing will normally include public notification using door hangers and coordination with fire and other city departments. Documentation of the tests will include digital database, photographs and defect location sketches. City may authorize analysis of collected data to include prioritized remedial measures and estimated costs.

D. PACP Coding/Training

City may authorize QA/QC of CCTV data including review of PACP codes and/or coding of defects to meet PACP standards. CONSULTANT may be authorized to provide PACP training and certification.

E. Lift Station Assessment

The City may authorize the CONSULTANT to perform a condition and/or capacity assessment(s) of designated lift stations. The assessment may require specialized staff to evaluate and prioritize structural, electrical, mechanical, instrumentation, site conditions, hydraulics, pump performance, O&M history, SOPs, flow monitoring, etc. and recommend remedial measures to address observed deficiencies and estimated costs.

F. Force Main/ARV Assessment

The City may authorize the CONSULTANT to undertake an assessment of the lift station force main(s) and ARV. The assessment would include the walking of force mains and

documenting observed depressions, wet soils, leaks, map location of ARV's, ARV condition, prioritized remedial measures and estimated costs.

G. I/I Prioritization and Reduction

City may authorize CONSULTANT to prioritize areas of the city for I/I reduction efforts and develop documentation to establish the baseline I/I and subsequent percentage reduction in I/I following remedial measures. This scope may include analysis of flow data or installing flow meters to obtain detailed flow data for I/I prioritization. Analysis may include evaluating the cost effectiveness of transport treatment options, flow equalization, I/I reduction, etc.

III. Asset Management

A. Software Upgrades

Based on the recommendations in the Information Management Plan for the Program, the City may authorize the CONSULTANT to assist with the procurement, installation, implementation and training for software upgrades and additions to maintain compliance and improve overall wastewater system management.

B. CityWorks Data Migration

Wastewater system data may be developed through any number of different source and information management systems. The City may authorize the CONSULTANT to migrate system inventory, performance, compliance, condition, risk, operations and maintenance data from different software systems into the City's CityWorks Asset Management System.

C. Mobile Solutions

The City may authorize the CONSULTANT to assist with the implementation and enhancement of mobile technology devices and the migration of data from the mobile field devices into the City's CityWorks Asset Management System. This effort may include the development of custom data input templates for mobile devices and intranet or Web based solutions for data migration.

D. Information Systems Integration

CONSULTANT may be authorized to facilitate integration of various software programs or databases from or to GIS and/or CityWorks. Such integration may include linking data from other software, such as Bentley, CityWorks, etc., for use in generating standardized reports for internal or regulatory compliance. Wastewater system asset inventory, performance, compliance condition assessment, risk assessment, operations, and maintenance, rehabilitation and improvement data may be located in a number of different information management systems. The City may authorize the CONSULTANT to develop protocols, common asset identification system, software and hardware to integrate various wastewater information management systems within the City's overall Information Technology framework.

E. CMOM Plan Development and Implementation

CONSULTANT may be authorized to assist the City in the development and implementation of the CMOM (Capacity, Management, Operations and Maintenance) provisions. Tasks may include development of databases to track required progress, programing support to generate required reporting metrics, software/hardware upgrades, estimating least cost alternatives, training, SOP development, SSORP Plan development, FOG Plan development and updating narrative sections of the CMOM Plan.

F. FOG Program Support

CONSULTANT may be authorized to assist the City in the support and/or implementation of the FOG requirements that may include FOG Manual updates, software integration for monitoring and compliance reporting, software/hardware upgrades, inspection staff support, SOP development, training, cost estimating, public relations programs and program evaluation.

G. SSORP Program Support

CONSULTANT may be authorized to assist the City in support and/or implementation of the SSO Response Plan and/or Lift Station Overflow Response Plan requirements. Task may include SSORP Manual updates, development of SOPs, software/hardware upgrades. SSO root cause analysis, CCTV in support of the SSORP, data analysis, training, cost estimating, software integration for monitoring and compliance reporting, Lift Station Overflow Response Plan (LSORP) support and implementation assistance.

H. SSO Verification and Analysis

CONSULTANT may be authorized to perform inspections and analysis to verify occurrences of SSOs, establish the probable cause, repair method and estimated costs. Task may also include preparation of SOPs, staff training, software/hardware upgrades, software integration for monitoring and compliance reporting, and support in minimizing SSO occurrences.

I. GIS Mapping and Database Support

The City has invested in an enterprise GIS architecture capable of addressing the spatial and asset management needs for all municipal government services. CONSULTANT may aid the City in pursuing a complete, new inventory of their utility infrastructure to be used within the City's GIS for asset management, modeling, and other functions. CONSULTANT may provide updated survey data of existing utilities in GIS format, digitization of project record drawings, updating of the geodatabases based on rehabilitation/replacement associated with this Project, assist in the development of a GIS management/update plan, etc. CONSULTANT may be tasked with evaluation of spatial data for identifying critical infrastructure and problem areas which can be used for prioritizing needs or to aid in reporting Program compliance. Exhibits may be created for public meetings or for communication with City Council or City management.

J. Asset Risk Analysis and Prioritization

The CONSULTANT may assist the City in a comprehensive risk of failure analysis and prioritization of its wastewater system assets. This analysis builds on the City's CMOM and condition assessment program to develop Likelihood of Failure, Consequence of Failure, and Risk of Failure analysis and rankings for all wastewater system assets. This analysis can be developed for manholes, pipes, lift stations and treatment facility assets. Using a common scoring approach, the risk results can be compared for assets in different asset groups. This analysis results in a quantitative risk score and ranking for all wastewater assets as the basis for determining the priority and funding requirements for system improvements.

K. Funding Strategy Development

The CONSULTANT may assist the City in assessing the funding requirements associated with compliance and the associated capital improvement program. The CONSULTANT may assist the City in evaluating funding options for near term capital improvements and the long term system rehabilitation needs.

L. Capital Improvement Planning

The CONSULTANT may assist the City in prioritizing wastewater system improvements consistent with the requirements of the Program. Wastewater system improvements and rehabilitation needs will be organized into capital improvement projects and programmed into the City's Capital Improvement Program (CIP). The City's Indefinite Delivery Indefinite Quantity (IDIQ) program may be utilized to complete applicable system rehabilitation projects. The CONSULTANT may assist the City in capital improvement planning and ongoing CIP progress reporting and may assist in the preparation of bid specifications for IDIQ contracting and outsourcing.

M. Long Term Asset Renewal Forecasting

The CONSULTANT may assist the City in developing a long-term sustainability forecasts for wastewater system assets. The long term sustainability forecast is designed to predict the level of asset repair, rehabilitation or replacement required to maintain the City's standards of customer service and system performance over the coming decades. The long-term sustainability analysis looks at broad categories of assets that have similar useful lives and degradation profiles.

IV. Remedial Measures

A. IDIQ Implementation

The City may authorize CONSULTANT to provide guidance and technical data in support of IDIQ contracts (by others). Data prepared by the CONSULTANT may be used to initiate remedial measures activities under the IDIQ contract(s). This scope of work may require coordination with the IDIQ consulting engineer and preparation of supporting maps, databases, preliminary remedial measures and cost estimates.

B. Rehabilitation/Replacement Alternatives Analysis

Remedial measures analysis may be authorized to provide engineering evaluation of system deficiencies identified during condition assessment and capacity assessment activities. Defects identified during manhole inspection, smoke-testing, CCTV, FOG, etc. may be authorized for further analysis to establish the least cost remedial measure for each asset or additional investigations to establish best repair strategy.

C. Collection System Rehabilitation or Replacement

City may authorize CONSULTANT to evaluate mainline sewer rehabilitation alternatives including pipe bursting and cured in place pipe (CIPP) lining. Data from the condition assessment and/or capacity assessment work tasks may be used for preparing detailed remedial measures plans establishing the suitability for pipe bursting and/or CIPP lining of sewers. Provide staff support in contracting rehabilitation efforts including preparation of maps, plans, specifications, attribute database update and inspection if requested. Open cut alternatives may be authorized for detailed analysis to prepare engineering report(s), for use

in preparing design plans, development of specifications, attribute database update and construction inspection if requested. CONSULTANT may be authorized to analyze data collected during manhole inspection and prepare remedial measures plan for manhole rehabilitation. Task may include evaluation of manhole defects, develop prioritized listing of repairs, prepare database of recommended repairs, prepare design plans, maps and specifications for contractor use, construction inspection and asset attribute database update.

D. Construction Administration/Observation

The CONSULTANT may provide Construction Administrative and Observation services to assist the City in confirming that construction of a project is carried out in accordance with the requirements of the Contract Documents and the requirements of the City and regulatory agencies, within the project schedule, and with a minimum of disruption to ongoing activities. CONSULTANT will consult with and advise the City and act as its representative during construction. The construction services effort will have the goal of facilitating the construction to enable the work to progress in an efficient and cost-effective manner, while maintaining operations. CONSULTANT will not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor(s) (except as otherwise specified in the Contract Documents) or the safety precautions and programs incident to the Work of the Contractor(s). CONSULTANT may also provide a presence on the site through scheduled coordination meetings and inspections to provide quality control and monitoring for conformance with the design intent.

E. Construction Scheduling

CONSULTANT may be authorized to assist staff in scheduling the timing of various construction projects to comply with the Program requirements and funding limitations.

V. Permitting and Regulatory

A. Regulatory Compliance

One critical outcome of monitoring and reporting may be the need to respond to new SSOs and other potential non-compliance events. A protocol for evaluating non-compliance may be developed under this task. Such evaluation may include a repeat-SSO analysis and risk assessment to determine the likelihood of failure and appropriate response mechanisms. The CONSULTANT would assist the City with meetings and communications with the EPA and TCEQ on the progress of the Program and other regulatory compliance issues. This task may also include assessment of responses to non-compliance and identification of areas of improvement, as needed. This tool is designed to assist the City with demonstrating that not only are improvements to the management of SSOs being accomplished, but a methodology for continuous improvement to the response mechanism is in place.

B. Health and Safety

City may authorize CONSULTANT to assist in preparation of updated health and safety manuals, SOPs, training and support for the health and safety of City staff, residents and contractors.

VI. Capacity Assessment

A. Field Verification

CONSULTANT may be authorized to perform field verification to confirm site conditions, elevations, defect location(s), map update, sizes, materials, lengths, dimensions, etc. to confirm critical data. Field verification of potential capacity constraints may be authorized and may include installation of flow meters, rain gauges, level measurements, etc. to collect data for hydraulic model input, analysis and report.

B. Flow and/or Rainfall Monitoring

CONSULTANT may be authorized to install, operate and maintain temporary and/or permanent flow and/or rainfall monitors at key locations within the City. Task may include analysis of data and preparing report(s) on findings and recommendations. CONSULTANT may be authorized to assist in preparing a permanent flow/rainfall meter network plan with recommendations for meter site locations, equipment, estimated costs and staff training.

C. Pump Performance Testing

CONSULTANT may be authorized to perform pump performance tests to determine the performance of each pump and combination of pumps and prepare a report(s) on findings that may include comparison with design operating points, recommendations and estimated cost of improvements. Analysis may be authorized to include force main C factor tests, flow tests, operating pressures, valve O&M, etc. necessary to evaluate lift station pumps.

D. Gravity Line Capacity Analyses

CONSULTANT may be authorized to perform various levels of capacity analysis depending on subsequent use and level of accuracy requested by the City. Depending on the level of accuracy required, CONSULTANT may use the existing hydraulic model, perform site flow monitoring to gather specific flows or perform simple calculations based on existing system data to determine existing and future capacity. CONSULTANT may prepare a report(s) describing the methodology and assumptions used in preparing the capacity analysis.

E. SSO Root Cause Analysis

CONSULTANT may be authorized to gather data to establish the root cause for SSOs. Such analysis may include performing CCTV or reviewing cleaning and CCTV data, determining if structural deficiencies, grease, debris, are contributing to the SSO, elevation survey, confirmation of pipe sizes, elopes, etc. and prepare report(s) identifying the probable cause with recommendations and estimated costs if requested.

VII. General Engineering

A. Topographic Survey

CONSULTANT may be tasked with providing topographic survey services to determine location and/or elevation data of various City infrastructure or property. CONSULTANT will provide field surveys, as required, including the necessary control points, coordinates and elevations of points. Establish base survey controls for line and elevation staking (not detailed setting of lines and grades for specific structures or facilities). All work must be tied to and conform with the City's Global Positioning System (GPS) control network and comply with Category 5, Condition I specifications of the Texas Society of Professional Surveyors' Manual of Practice for Land Surveying in the State of Texas, Ninth Edition. Include reference to a minimum of two (2) found boundary monuments from the project area.

B. Subsurface Utility Engineering (SUE)

The CONSULTANT may perform engineering services which will result in accurately identifying the location of subsurface utilities that have a high potential for conflicts with the proposed improvements, and for acquiring and managing that level of information during the development of the project. These services shall conform to standards and guidelines as described in FHWA and ASCE Subsurface Utility Engineering publications. The final work shall be completed such that all known utilities with potential conflicts are graphically depicted in both a digital and hard copy/plan sheet format. For the purpose of this agreement, "locate" means to obtain precise horizontal and vertical position of the utility line by excavating a test hole. The test holes shall be done using vacuum excavation or comparable nondestructive equipment in a manner as to cause no damage to the utility line. After excavating a test hole, the CONSULTANT shall perform a field survey to determine the exact location and position of the utility line.

C. Planning & Integrated Planning Support

The City is considering how best to incorporate the principals of Integrated Planning into the Program. This task assumes that at least some elements of integrated planning may be developed by the City for compliance. The task may include a review of the City's permitting requirements and management program in order to identify potential integration issues with the Program.

D. Infrastructure Design - Plans & Specifications

CONSULTANT may study, verify, and implement recommendations including construction sequencing, connections to the existing facilities, and restoration of property and incorporate these recommendations into a set of construction plans. Development of the construction sequencing will be coordinated with the City and CONSULTANT staff. Prepare a set of the construction bid and contract documents (electronic and full-size hard copies using City Standards as applicable), including contract agreement forms, general conditions and supplemental conditions, notice to bidders, instruction to bidders, insurance, bond requirement, and preparation of other contract and bid related items; specifications and drawings to fix and describe, for bid, the size and character of the entire project; description of materials to be utilized; and such other essentials as may be necessary for construction and cost analysis.

E. City Standard Specifications and Details

CONSULTANT may support City staff by providing review of documents prepared by others and/or recommendations for modifications to the documents. One goal may be to ensure all specifications and details conform to the various agency requirements and that they provide the guidance necessary for long-term compliance.

F. Value Engineering

CONSULTANT may be tasked with studying a project's functional relationships and cost of the project elements, identify and evaluate potential alternative concepts, and develop conceptual-level cost estimates for the "best-few" alternatives considered worthy of consideration for project value improvement. It is expected that the City's focus on sustainability will be reflected in the recommendations. CONSULTANT may recommend value engineering options (alternative design, construction methods, procurement, etc.) that may improve efficiency, expedite the schedule, or reduce project costs for the City.

VIII. FEE FOR BASIC AND ADDITIONAL SERVICES

This project has a budget cap of \$1,000,000 per year. For services authorized by the Managing Director of Utilities and Public Works the City will pay the CONSULTANT a not to exceed fee per the negotiated cost for those services requested in each Work Order. The negotiated fee will be based on agreed to hourly rates, equipment charges, unit prices and/or lump sum costs provided in each Work Order Fee Schedule. CONSULTANT rates for FY 2017-2018 are summarized in Attachment B. These rates may be negotiated for each contract renewal period. The Environmental Compliance Engineer is responsible for assigning tasks to the CONSULTANT and approving monthly invoices.

VIX. TERM

Work Order shall have a term of one (1) year with the option to renew for nine (9) additional terms of one (1) year each. Each additional term renewal will be subject to the approval of the Tyler City Council.

Attachment A - Scope of Services Task Description Summary

Basic Services Code	Task Description	Work Order Item
1	Action Plan	I.A.
2	Program Coordination	I.B.
3	QA/QC - Advisory	I.C.
4	Project Scheduling	I.D.
5	Cost Estimating	I.E.
6	Information System Assessment	II.A
7	CityWorks/GIS Integration	II.B.
8	CityWorks Custom Programming	II.B.
9	CityWorks Reporting Templates	II.C.
10	Data Management	II.D.
11	TCEQ/EPA Reporting and Documentation	III.A
Additional Services Code	Task Description	Work Order Item
12	Public Relations and Outreach	I.A.
13	Presentation Support	I.B.
14	CIP/O&M Budget Planning	I.C.
15	Procurement/Contracts Management	I.D.
16	Program Modifications	I.E.
17	Transition Planning and Training	I.F.
18	CCTV & Line Cleaning Support	II.A.
19	Line & Manhole Inspections and Assessment	II.B.
20	Smoke Testing	II.C.
21	PACP Coding/Training	II.D.
22	Lift Station Assessment	II.E.
23	Force Main/ARV Assessment	II.F.
24	III Prioritization and Reduction	II.G.
25	Software Upgrades	III.A.
26	CityWorks Data Migration	III.B.
27	Mobile Solutions	III.C.
28	Information Systems Integration	III.D.
29	CMOM Development and Implementation	III.E.
30	FOG Program Support	III.F.
31	SSORP Program Support	III.G.
32	SSO Verification and Analysis	III.H.
33	GIS Mapping and Database Support	III.I.
34	Asset Risk Analysis and Prioritization	III.J.
35	Funding Strategy Development	III.K.
36	Capital Improvement Planning	III.L.
37	Long Term Asset Renewal Forecasting	III.M.
38	IDIQ Implementation	IV.A.
39	Rehab/Replacement Alternatives Analysis	IV.B.
40	Collection System Rehabilitation/Replacement	IV.C.
41	Construction Administration/Observation	IV.D.
42	Construction Scheduling	IV.E.
43	Regulatory Compliance	V.A.
44	Health & Safety	V.B.
45	Field Verification	VI.A.
46	Flow and/or Rainfall Monitoring	VI.B.
47	Pump Performance Tests	VI.C.
48	Gravity Line Capacity Analyses	VI.D.
49	SSO Root Cause Analysis	VI.E.
50	Topographic Survey	VII.A.
51	Subsurface Utility Engineering (SUE)	VII.B.
52	Planning & Integrated Planning Support	VII.C.
53	Infrastructure Design - Plans and Specifications	VII.D.
54	City Standard Specifications and Details	VII.E.
55	Value Engineering	VII.F.

WORK ORDER MANAGER

The Environmental Compliance Engineer, or designee, will be the Work Order Manager and will be the primary City contact person during performance of this work. The Work Order Manager may be changed at the City's sole discretion by notifying Pipeline Analysis LLC of the change through email or written notification (see below). All correspondence or inquiries should be addressed to the Work Order Manager.

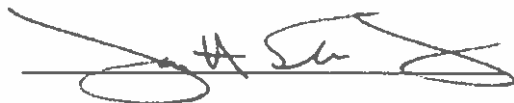
This work task will be coordinated by:

Kate Dietz, P.E., Environmental Compliance Engineer
Work Order Manager
P.O. Box 2039
Tyler, TX 75710
903-531-1085

APPROVALS

The undersigned have reviewed and approved this Work Order and authorizes Pipeline Analysis LLC, through this Notice to Proceed, to perform the work as presented:

Authorized by:
Pipeline Analysis LLC:
1115 Main Street
Garland, Texas 75040
800-637-0164
jforbes@pipelineanalysis.com



March 27, 2018 (Date)

James H. Forbes, Jr., P.E. – President
TBPE Firm No. F-6538

Authorized by:
City of Tyler



04/16/18 (Date)

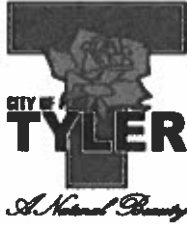
Edward Broussard, City Manager
212 N Bonner Ave, Tyler, TX 75702
(903) 531-1250

FY2018-2019 Rates

This section defines the rates for compensation for services that may be included as part of this project. Pipeline Analysis LLC will not begin work without specific approval of the scope and fee. Fees for Services associated with each Work Order are an allowance with a not to exceed maximum fee. The Work Order fee may be lump sum, time and materials, unit price or a combination. Monthly billings will provide the backup quantities completed, time records, materials and direct costs in support of the billing. The hourly rates may be adjusted annually with City approval.

Pipeline Analysis LLC Fully Burdened Hourly Rates

Principal/Sr. Project Manager	\$198
Senior Engineer	\$174
Field Operations Manager	\$163
Crew Leader	\$62
Technician	\$49
GIS Technician	\$78
TV Operator	\$68
TV Technician	\$49
General Labor/Clerical	\$40



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: M-2

Date: April 12, 2017

Subject: Request that the City Council consider authorizing the City Manager to execute an engineering services contract with Pipeline Analysis, LLC and execute Work Order No. 1, with a maximum cost of \$1,000,000 per year, for Staff Support Services.

Page: 1 of 2

Item Reference:

In 2009, Tyler Water Utilities (TWU) was contacted by the Environmental Protection Agency (EPA) regarding sanitary sewer overflows (SSOs) going back to 2005 and staff has been negotiating an agreement, known as a Consent Decree, to address the City's aging wastewater collection system and resulting discharges since then. Currently, TWU is awaiting receipt of the fully executed Consent Decree back from the EPA, at which time the Consent Decree will be effective and TWU will be required to comply with all of the requirements.

Pipeline Analysis, LLC has been assisting TWU for the past several years with our negotiations with the EPA. Therefore, TWU selected Pipeline Analysis to provide Staff Support Services to help us comply with the requirements of the Consent Decree and avoid further penalties and fines. These services will include, but are not limited to:

- An evaluation of TWU's existing procedures, staffing levels and equipment availability to determine which tasks under the Consent Decree are best handled by City staff and which should be handled by outside engineers or contractors.
- Assistance with writing Requests for Qualifications and evaluating consultants and contractors to provide long-term sewer cleaning services, pipeline testing and inspection services, and engineering and design services for sewer repair and rehabilitation projects.
- An evaluation of our data collection and recordkeeping procedures to ensure that we are collecting and maintaining the types and amount of data required for the quarterly and annual reports to the EPA.
- Assistance with compiling data, identifying trends, and writing quarterly and annual reports to the EPA.
- Assistance with developing a Sewer Overflow Response Program, Fats, Oils and Grease (FOG) Program and Staff Training Program as required by the Consent Decree.

Individual tasks outlined by the Scope of Services in Work Order No. 1 will be assigned to Pipeline Analysis on an as needed basis and may either be performed directly by Pipeline Analysis or by other consultants, with Pipeline Analysis providing assistance to City staff to procure those consultants. Payment will be made as tasks are completed and will not exceed \$1,000,000 per year.

Agenda Number: M-2

Page 2 of 2

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute an engineering services contract with Pipeline Analysis, LLC and execute Work Order No. 1, with a maximum cost of \$1,000,000 per year, for Staff Support Services.

ATTACHMENTS:

1. Engineering Contract
2. Work Order No. 1

Drafted/Recommended By:
Department Leader



Lisa Crossman, P.E., Director of Utilities

Edited/Submitted By:
City Manager



**Professional Services
Work Order 1.0
Sanitary Sewer System
Consent Decree
Staff Support & Augmentation**



City of Tyler

James H. Forbes, Jr., P.E.



Pipeline Analysis, LLC
1115 Main Street
Garland, Texas 75040
972-470-0655
TBPE Firm No 8538

Work Order No. 1.0

Staff Support & Augmentation Services

BACKGROUND

This project will provide the necessary support assistance as requested by the City of Tyler staff to ensure compliance with the terms and timelines as outlined in the EPA consent decree. The proposed scope of services outlines the work tasks that may be requested by City staff as a result of specific Work Orders approved by the City of Tyler Director of Utilities.

The approach is organized around the City's objectives for this project.

- Fulfill anticipated Consent Decree Requirements
- Reduction in Sanitary Sewer Overflows (SSO's) as defined in the Consent Decree
- Cost controls and Least Cost Alternatives for Compliance
- Attainment of long-term Infiltration/Inflow solutions
- Collection System Capacity Assurance
- Regulatory compliance
- Sustainability of Program Elements
- Customer satisfaction

Pipeline Analysis, LLC will perform professional services, when requested, for the City of Tyler. Specific assignments to be performed by the consultant under each numbered Work Order will consist of engineering services to address requirements of the EPA Consent Decree. These services will consist of engineering analysis to address requirements of wastewater collection system inspection, evaluation, planning, information management, training, preventative maintenance, hydraulic modeling and reporting needed for regulatory compliance.

Tyler Water Utilities (TWU) has been negotiating with the Environmental Protection Agency (EPA) since 2009 to develop a Consent Decree to address the city's aging wastewater collection system and resulting unauthorized discharges. The intent of this project will be to provide City staff with technical support and assistance as they move forward with the implementation of the requirements of the Consent Decree. In some cases, Pipeline Analysis LLC (the CONSULTANT) and/or sub-consultants to Pipeline Analysis LLC may be tasked with performing services as described in Basic and Additional Services and in other cases the CONSULTANT may be tasked with assisting City staff with preparing Request for Proposals, bid specifications, or other contract documents so that the services described below may be contracted directly to other firms. In those cases, the CONSULTANT may assist City staff with contract management.

The Program – The Program is the comprehensive multi-year effort by the City to effectively improve the wastewater collection and treatment system's performance and regulatory compliance. The City will be the Program Manager for this effort. Pipeline Analysis LLC and its sub-consultants will support the City, as needed and requested, to set the Program goals and objectives, organizational charts, systems, policies, procedures, standards, etc. for efficient

program implementation and will provide staff when areas of need are identified. Other engineering firms, consultants, construction contractors, etc. will be involved in implementing the City's Program. There will be corresponding Program progress reports, staffing plans, Program schedules, etc. that Pipeline Analysis may help the City produce in support of staff.

The Project – The Project is the individual Work Orders. This includes the specific tasks that Pipeline Analysis is authorized to perform in support of the City staff.

James H. Forbes, Jr. will serve as Project Manager. Depending on the specific needs of the City, there may also be a number of assigned Work Order Managers.

Basic and Additional Services

This section defines the scope for services (summarized in Attachment A) that may be requested as part of a Work Order, but the CONSULTANT will not begin work on this section without specific written approval by the Director of Utilities. The CONSULTANT will, with written authorization by the Director of Utilities, perform the following services:

BASIC SERVICES

I. Project Coordination

A. Action Plan:

1. **Project Kick-off Meeting** - A project kick-off meeting will be conducted CONSULTANT with core City staff that will have the day-to-day responsibility for implementation of the Program and managing the City's wastewater system. The 90 day action plan will be prepared, reviewed and adjusted to meet the specific needs of the City. Data and information needs will be identified along with project organization, management and communication plans.
2. **Stakeholder Interviews** - Key stakeholders in the overall regulatory compliance and wastewater management Program will be identified in the Project Kick-off meeting. Stakeholders may include other City department personnel involved or impacted by the Program, administrative staff, City elected officials, and others identified by the City. The CONSULTANT may conduct individual interviews with available stakeholders in preparation for the Program Goals and Objectives meeting. The interviews will be used to define the overall Program issues, concerns, strategic goals and objectives from the perspective of each individual stakeholder.
3. **Program Goals and Objectives Workshop** - The CONSULTANT may facilitate a workshop to establish the strategic goals and objectives of the overall Program. The workshop will include the core City team and stakeholders identified in the Project Kick-off meeting. The workshop will define the Program success factors and establish the overriding strategic goals and objectives that set the framework for the Program tactical initiatives which will also be identified at the workshop. Key service levels or measurable performance indicators will be identified at this workshop. Strategic goals and objectives can guide a compliance program through completion.
4. **Management Plan Development** - The CONSULTANT may assist the City in the development of a comprehensive Management Plan. The Management Plan will establish necessary program functions, systems, polices, and procedures to be

implemented, and the protocols by which the City will achieve its strategic goals and objectives over the life of the Program. The Management and Implementation Plan may include the following:

- a. Program Organization Structure and Staffing
- b. Program Facilities and Office
- c. Communication Management
- d. Document Management
- e. Contract Management
- f. Management Information Systems
- g. Cost Management
- h. Schedule Management
- i. Change Management
- j. QA/QC Management Plan
- k. Risk Management
- l. Regulatory and Progress Reporting
- m. Land and Easement Acquisition
- n. Customer Communication and Service
- o. Inter-Department and Inter-Agency Coordination
- p. Design Management
- q. Construction Management
- r. CONSULTANT Transition Plan

5. Information Management Plan (IMP) – The CONSULTANT may develop an Information Management Plan (IMP) based on the data and information needs assessment initiated in the Project Kick-off Meeting. This plan will define the asset inventory, capacity, management, operation, maintenance and customer service data and information required for effectively managing the City's wastewater system. The IMP will define the sources and owners of the required information and provide recommendations to add additional data identified in a data gap analysis. The IMP will provide an action for hardware, software, data management and business process improvements to effectively manage the large amount of data required for successful completion of the Program.
6. Reporting Plan – The CONSULTANT may prepare a detailed Reporting Plan that aligns the various sources of data and information identified in the IMP with the specific regulatory monitoring and reporting requirements. This plan will provide the specific business processes and procedures to routinely compile required data and information for compliance reporting. Specific roles and responsibilities for data collection, compilation and reporting will be identified along with routine schedules for date and report deliverables. The reporting plan will rely heavily on the IMP to maximize the use of the City's Asset Management and Work Order systems for routine compliance reporting. Compliance report formats and templates will be developed as part of this plan to establish a reliable reporting process at the onset of the Program.

B. Project Coordination

CONSULTANT may plan and assign proper qualified and experienced personnel to Project activities and provide other required equipment and material resources and maintain availability for proper Program execution. The CONSULTANT may coordinate the efforts of CONSULTANT and any SUB-CONSULTANTS assigned to the Project to maintain budget, schedule, scope, and quality compliance. The CONSULTANT may prepare and submit

monthly progress/status reports for the Project. Monthly Progress Reports shall include a narrative of activities performed during the subject billing period, an updated schedule, and identification of proposed resolution of issues, Project change management log, and a cost estimate to complete the Work. Based on the overall Program staffing, the CONSULTANT may provide staff support requested by the City. In addition to the functions identified throughout this scope of work, the CONSULTANT may assist with the following representative Program functions:

1. Document Control
2. Program Progress Reporting
3. Information System Management
4. Risk Mitigation
5. Cost and Schedule Management
6. Design Review
7. Construction Inspection
8. Quality Management

C. QA/QC Advisory

The CONSULTANT may assist the City in the development of a Quality Assurance and Quality Control (QA/QC) Plan to check, as a minimum, document management systems compliance, planning methods, design methods, calculations, engineering and design documents, construction documents, cost estimates, field investigations, measurements, and other technical issues associated with Program and Project planning and execution. The QA/QC plan may be designed to be expanded and modified as the Program needs change.

D. Program Scheduling

The CONSULTANT may assist the City in preparing and maintaining an integrated electronic Program schedule that will include all aspects of the Compliance Program. Periodically update the schedule at all phases of the Program. Schedule shall include critical activity start and/or completion dates as milestones, including monthly progress meetings, proposed engineering design, and all deliverable due dates.

E. Cost Estimating

The CONSULTANT may assist the City in developing cost estimating guides and standards for Program related field surveys and inspections, design and construction of system rehabilitation and replacement and other related Program elements. The CONSULTANT may assist the City in preparing planning and design level construction cost estimates and in the review of cost estimates completed by others.

II. Asset Management

A. Information System Assessment

The CONSULTANT may conduct an assessment of the City's wastewater system information management systems including CityWorks, GIS, Bentley Hydraulic Model and other supporting software in use by the City staff. While the focus of this assessment will be on the reporting requirements, the assessment will also consider improved efficiencies in the long term management of the wastewater system. The information system assessment will include related hardware, software, data management, systems integration, procedures and business practices for wastewater system information management. The results and

recommendations of the assessment will be documented in a Technical Memorandum and summarized in the Information Management Plan.

B. CityWorks/GIS Integration

City may authorize CONSULTANT to perform various tasks associated with the integration of CityWorks, GIS and other software systems. Tasks may include evaluation of existing software/hardware and recommending needed improvements, upgrades, custom programming and support of other software to enhance CityWorks Spatial reporting requirements, and develop automated reports, custom reports, and programming in support of regulatory compliance.

C. CityWorks Reporting Templates

The City may authorize the CONSULTANT to assist in the development of various reporting templates and forms for the data and information stored in the City's CityWorks Asset Management Software System. Reporting tools like IBM COGNOS for CityWorks may be implemented to provide the required compliance reporting.

D. Data Management

The CONSULTANT may assist the City in data collection, formatting, compilation, review, analysis, and reporting in accordance with the Information Management Plan. The CONSULTANT may work with the City to format and input data into the appropriate information management system to support compliance and better manage the overall wastewater system. The CONSULTANT may assist the City with routine updates of the data and information needs assessment and data management business processes. The CONSULTANT may also assist the City in the acquisition of any additional data identified in data gap analyses and perform routine quality control of the data in the information management systems.

III. Permitting and Regulatory

A. TCEQ/EPA Reporting and Documentation

The Program will identify a significant number of periodic reporting requirements that must be submitted to the EPA. Likewise, TCEQ reporting requirements already in place within the TPDES permitting framework will continue to be necessary. This task implements the recommendations of the Reporting Plan to provide the routine required regulatory reports and correspondence to provide: 1) that the required reports are generated and submitted on time; 2) the various required reports are consistent with one another in terms of the information reported; and 3) that the resources expended to generate these reports is managed to reduce project costs. Potential elements of this task include:

1. Update required monitoring and reporting requirements of the Program and other regulatory reports required by the TCEQ or EPA. Report requirements will be cross-referenced to identify report information needs in one report that may be common to other reports.
2. Development of a report schedule for the initial two-years of the Program.
3. Development of a tracking system to ensure that required reports are generated on time.

This task will support the regulatory compliance requirements of the program. Over time, other tasks may result in the need to modify the reporting schedule, tracking system, or report templates.

ADDITIONAL SERVICES

I. Project Coordination

A. Public Relations and Outreach

The CONSULTANT may assist the City in providing information to and to educate the public about Program goals and objectives through various outreach techniques to gather and maintain public support for the Program and for individual projects. The public information program may be designed to make direct contact, and nurture and maintain positive relationships with those individuals who reside, own businesses, work, and attend school in those areas affected by project construction as well as the community as a whole. The CONSULTANT may assist the City in the development of presentations, newsletters, press releases and other media materials required for the public information and participation program.

B. Presentation Support

The CONSULTANT may assist the City in the development of presentation material to communicate Program progress and explain technical and non-technical aspects of the Program to various stakeholder groups.

C. CIP/O&M Budget Planning

The CONSULTANT may assist the City in preparing annual Compliance Program budgets including capital improvement and operation and maintenance budgets.

D. Procurement/Contracts Management

The CONSULTANT may assist the City in the evaluation of various project delivery alternatives for wastewater system improvements, preparing procurement documents for field services, planning, design, and construction projects associated with the Program.

E. Program Modifications

The CONSULTANT may assist the City in identifying changes in the work to be completed under the Program to reduce costs and improve the Program effectiveness. The CONSULTANT may assist in preparing the necessary documentation in support of regulatory reporting requirements and assist when potential Program modifications are requested.

F. Transition Plan and Training

The CONSULTANT may provide temporary staff support requested by the City to initiate a variety of regulatory functions. Short term Program assignments may be completed by the CONSULTANT and delivered to the City. Longer term assignments may be initiated with CONSULTANT staff support and transition to City staff. The CONSULTANT may develop a transition plan and provide required training to transition Program functions to City staff.

II. Condition Assessment

A. CCTV/Line Cleaning Support

Perform CCTV as required to inspect designated pipelines and provide data in PACP format for each pipeline inspected. Scope of work may only require delivery of PACP CCTV digital data and may also include analysis of the collected data to determine cause of obstructions, condition assessment of pipeline, establish preliminary repair methods and estimated costs. Cleaning may be requested to facilitate CCTV inspection, debris removal, or to facilitate the annual cleaning goals and schedules established by the City.

B. Line and Manhole Inspections and Assessment

City may authorize the inspection of each line entering and exiting the manhole. Normally performed in conjunction with manhole inspection, data on each pipe rim to invert distance, size, material, condition, photograph, observed defects, etc. is obtained and documented. City may authorize analysis of this data to establish prioritized remedial measures necessary to restore integrity along with estimated costs. Manhole inspections may be authorized to establish the existing condition and remedial measures necessary to prioritize and rehabilitate these assets. Inspection personnel will use digital cameras during the inspection of all manholes. All photographs will be included in the field inspection database so that a permanent electronic record can be maintained. During the preliminary and final data analysis, these photographs will provide detailed backup information on site conditions, observed defects and condition of the asset to assist in preparing recommended remedial action and estimated costs. The City may authorize the delivery of the manhole inspection data with or without analysis.

C. Smoke Testing

Smoke Testing may be authorized to locate both public and private sector defects contributing to wet weather inflow, trace sewer connections or identify illicit connections with the storm sewer system. Smoke testing will normally include public notification using door hangers and coordination with fire and other city departments. Documentation of the tests will include digital database, photographs and defect location sketches. City may authorize analysis of collected data to include prioritized remedial measures and estimated costs.

D. PACP Coding/Training

City may authorize QA/QC of CCTV data including review of PACP codes and/or coding of defects to meet PACP standards. CONSULTANT may be authorized to provide PACP training and certification.

E. Lift Station Assessment

The City may authorize the CONSULTANT to perform a condition and/or capacity assessment(s) of designated lift stations. The assessment may require specialized staff to evaluate and prioritize structural, electrical, mechanical, instrumentation, site conditions, hydraulics, pump performance, O&M history, SOPs, flow monitoring, etc. and recommend remedial measures to address observed deficiencies and estimated costs.

F. Force Main/ARV Assessment

The City may authorize the CONSULTANT to undertake an assessment of the lift station force main(s) and ARV. The assessment would include the walking of force mains and

documenting observed depressions, wet soils, leaks, map location of ARV's, ARV condition, prioritized remedial measures and estimated costs.

G. I/I Prioritization and Reduction

City may authorize CONSULTANT to prioritize areas of the city for I/I reduction efforts and develop documentation to establish the baseline I/I and subsequent percentage reduction in I/I following remedial measures. This scope may include analysis of flow data or installing flow meters to obtain detailed flow data for I/I prioritization. Analysis may include evaluating the cost effectiveness of transport treatment options, flow equalization, I/I reduction, etc.

III. Asset Management

A. Software Upgrades

Based on the recommendations in the Information Management Plan for the Program, the City may authorize the CONSULTANT to assist with the procurement, installation, implementation and training for software upgrades and additions to maintain compliance and improve overall wastewater system management.

B. CityWorks Data Migration

Wastewater system data may be developed through any number of different source and information management systems. The City may authorize the CONSULTANT to migrate system inventory, performance, compliance, condition, risk, operations and maintenance data from different software systems into the City's CityWorks Asset Management System.

C. Mobile Solutions

The City may authorize the CONSULTANT to assist with the implementation and enhancement of mobile technology devices and the migration of data from the mobile field devices into the City's CityWorks Asset Management System. This effort may include the development of custom data input templates for mobile devices and intranet or Web based solutions for data migration.

D. Information Systems Integration

CONSULTANT may be authorized to facilitate integration of various software programs or databases from or to GIS and/or CityWorks. Such integration may include linking data from other software, such as Bentley, CityWorks, etc., for use in generating standardized reports for internal or regulatory compliance. Wastewater system asset inventory, performance, compliance condition assessment, risk assessment, operations, and maintenance, rehabilitation and improvement data may be located in a number of different information management systems. The City may authorize the CONSULTANT to develop protocols, common asset identification system, software and hardware to integrate various wastewater information management systems within the City's overall Information Technology framework.

E. CMOM Plan Development and Implementation

CONSULTANT may be authorized to assist the City in the development and implementation of the CMOM (Capacity, Management, Operations and Maintenance) provisions. Tasks may include development of databases to track required progress, programing support to generate required reporting metrics, software/hardware upgrades, estimating least cost alternatives, training, SOP development, SSORP Plan development, FOG Plan development and updating narrative sections of the CMOM Plan.

F. FOG Program Support

CONSULTANT may be authorized to assist the City in the support and/or implementation of the FOG requirements that may include FOG Manual updates, software integration for monitoring and compliance reporting, software/hardware upgrades, inspection staff support, SOP development, training, cost estimating, public relations programs and program evaluation.

G. SSORP Program Support

CONSULTANT may be authorized to assist the City in support and/or implementation of the SSO Response Plan and/or Lift Station Overflow Response Plan requirements. Task may include SSORP Manual updates, development of SOPs, software/hardware upgrades, SSO root cause analysis, CCTV in support of the SSORP, data analysis, training, cost estimating, software integration for monitoring and compliance reporting, Lift Station Overflow Response Plan (LSORP) support and implementation assistance.

H. SSO Verification and Analysis

CONSULTANT may be authorized to perform inspections and analysis to verify occurrences of SSOs, establish the probable cause, repair method and estimated costs. Task may also include preparation of SOPs, staff training, software/hardware upgrades, software integration for monitoring and compliance reporting, and support in minimizing SSO occurrences.

I. GIS Mapping and Database Support

The City has invested in an enterprise GIS architecture capable of addressing the spatial and asset management needs for all municipal government services. CONSULTANT may aid the City in pursuing a complete, new inventory of their utility infrastructure to be used within the City's GIS for asset management, modeling, and other functions. CONSULTANT may provide updated survey data of existing utilities in GIS format, digitization of project record drawings, updating of the geodatabases based on rehabilitation/replacement associated with this Project, assist in the development of a GIS management/update plan, etc. CONSULTANT may be tasked with evaluation of spatial data for identifying critical infrastructure and problem areas which can be used for prioritizing needs or to aid in reporting Program compliance. Exhibits may be created for public meetings or for communication with City Council or City management.

J. Asset Risk Analysis and Prioritization

The CONSULTANT may assist the City in a comprehensive risk of failure analysis and prioritization of its wastewater system assets. This analysis builds on the City's CMOM and condition assessment program to develop Likelihood of Failure, Consequence of Failure, and Risk of Failure analysis and rankings for all wastewater system assets. This analysis can be developed for manholes, pipes, lift stations and treatment facility assets. Using a common scoring approach, the risk results can be compared for assets in different asset groups. This analysis results in a quantitative risk score and ranking for all wastewater assets as the basis for determining the priority and funding requirements for system improvements.

K. Funding Strategy Development

The CONSULTANT may assist the City in assessing the funding requirements associated with compliance and the associated capital improvement program. The CONSULTANT may assist the City in evaluating funding options for near term capital improvements and the long term system rehabilitation needs.

L. Capital Improvement Planning

The CONSULTANT may assist the City in prioritizing wastewater system improvements consistent with the requirements of the Program. Wastewater system improvements and rehabilitation needs will be organized into capital improvement projects and programmed into the City's Capital Improvement Program (CIP). The City's Indefinite Delivery Indefinite Quantity (IDIQ) program may be utilized to complete applicable system rehabilitation projects. The CONSULTANT may assist the City in capital improvement planning and ongoing CIP progress reporting and may assist in the preparation of bid specifications for IDIQ contracting and outsourcing.

M. Long Term Asset Renewal Forecasting

The CONSULTANT may assist the City in developing a long-term sustainability forecasts for wastewater system assets. The long term sustainability forecast is designed to predict the level of asset repair, rehabilitation or replacement required to maintain the City's standards of customer service and system performance over the coming decades. The long-term sustainability analysis looks at broad categories of assets that have similar useful lives and degradation profiles.

IV. Remedial Measures

A. IDIQ Implementation

The City may authorize CONSULTANT to provide guidance and technical data in support of IDIQ contracts (by others). Data prepared by the CONSULTANT may be used to initiate remedial measures activities under the IDIQ contract(s). This scope of work may require coordination with the IDIQ consulting engineer and preparation of supporting maps, databases, preliminary remedial measures and cost estimates.

B. Rehabilitation/Replacement Alternatives Analysis

Remedial measures analysis may be authorized to provide engineering evaluation of system deficiencies identified during condition assessment and capacity assessment activities. Defects identified during manhole inspection, smoke-testing, CCTV, FOG, etc may be authorized for further analysis to establish the least cost remedial measure for each asset or additional investigations to establish best repair strategy.

C. Collection System Rehabilitation or Replacement

City may authorize CONSULTANT to evaluate mainline sewer rehabilitation alternatives including pipe bursting and cured in place pipe (CIPP) lining. Data from the condition assessment and/or capacity assessment work tasks may be used for preparing detailed remedial measures plans establishing the suitability for pipe bursting and/or CIPP lining of sewers. Provide staff support in contracting rehabilitation efforts including preparation of maps, plans, specifications, attribute database update and inspection if requested. Open cut alternatives may be authorized for detailed analysis to prepare engineering report(s), for use

in preparing design plans, development of specifications, attribute database update and construction inspection if requested. CONSULTANT may be authorized to analyze data collected during manhole inspection and prepare remedial measures plan for manhole rehabilitation. Task may include evaluation of manhole defects, develop prioritized listing of repairs, prepare database of recommended repairs, prepare design plans, maps and specifications for contractor use, construction inspection and asset attribute database update.

D. Construction Administration/Observation

The CONSULTANT may provide Construction Administrative and Observation services to assist the City in confirming that construction of a project is carried out in accordance with the requirements of the Contract Documents and the requirements of the City and regulatory agencies, within the project schedule, and with a minimum of disruption to ongoing activities. CONSULTANT will consult with and advise the City and act as its representative during construction. The construction services effort will have the goal of facilitating the construction to enable the work to progress in an efficient and cost-effective manner, while maintaining operations. CONSULTANT will not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor(s) (except as otherwise specified in the Contract Documents) or the safety precautions and programs incident to the Work of the Contractor(s). CONSULTANT may also provide a presence on the site through scheduled coordination meetings and inspections to provide quality control and monitoring for conformance with the design intent.

E. Construction Scheduling

CONSULTANT may be authorized to assist staff in scheduling the timing of various construction projects to comply with the Program requirements and funding limitations.

V. Permitting and Regulatory

A. Regulatory Compliance

One critical outcome of monitoring and reporting may be the need to respond to new SSOs and other potential non-compliance events. A protocol for evaluating non-compliance may be developed under this task. Such evaluation may include a repeat-SSO analysis and risk assessment to determine the likelihood of failure and appropriate response mechanisms. The CONSULTANT would assist the City with meetings and communications with the EPA and TCEQ on the progress of the Program and other regulatory compliance issues. This task may also include assessment of responses to non-compliance and identification of areas of improvement, as needed. This tool is designed to assist the City with demonstrating that not only are improvements to the management of SSOs being accomplished, but a methodology for continuous improvement to the response mechanism is in place.

B. Health and Safety

City may authorize CONSULTANT to assist in preparation of updated health and safety manuals, SOPs, training and support for the health and safety of City staff, residents and contractors.

VI. Capacity Assessment

A. Field Verification

CONSULTANT may be authorized to perform field verification to confirm site conditions, elevations, defect location(s), map update, sizes, materials, lengths, dimensions, etc. to confirm critical data. Field verification of potential capacity constraints may be authorized and may include installation of flow meters, rain gauges, level measurements, etc. to collect data for hydraulic model input, analysis and report.

B. Flow and/or Rainfall Monitoring

CONSULTANT may be authorized to install, operate and maintain temporary and/or permanent flow and/or rainfall monitors at key locations within the City. Task may include analysis of data and preparing report(s) on findings and recommendations. CONSULTANT may be authorized to assist in preparing a permanent flow/rainfall meter network plan with recommendations for meter site locations, equipment, estimated costs and staff training.

C. Pump Performance Testing

CONSULTANT may be authorized to perform pump performance tests to determine the performance of each pump and combination of pumps and prepare a report(s) on findings that may include comparison with design operating points, recommendations and estimated cost of improvements. Analysis may be authorized to include force main C factor tests, flow tests, operating pressures, valve O&M, etc. necessary to evaluate lift station pumps

D. Gravity Line Capacity Analyses

CONSULTANT may be authorized to perform various levels of capacity analysis depending on subsequent use and level of accuracy requested by the City. Depending on the level of accuracy required, CONSULTANT may use the existing hydraulic model, perform site flow monitoring to gather specific flows or perform simple calculations based on existing system data to determine existing and future capacity. CONSULTANT may prepare a report(s) describing the methodology and assumptions used in preparing the capacity analysis.

E. SSO Root Cause Analysis

CONSULTANT may be authorized to gather data to establish the root cause for SSOs. Such analysis may include performing CCTV or reviewing cleaning and CCTV data, determining if structural deficiencies, grease, debris, are contributing to the SSO, elevation survey, confirmation of pipe sizes, eaves, etc. and prepare report(s) identifying the probable cause with recommendations and estimated costs if requested.

VII. General Engineering

A. Topographic Survey

CONSULTANT may be tasked with providing topographic survey services to determine location and/or elevation data of various City infrastructure or property. CONSULTANT will provide field surveys, as required, including the necessary control points, coordinates and elevations of points. Establish base survey controls for line and elevation staking (not detailed setting of lines and grades for specific structures or facilities). All work must be tied to and conform with the City's Global Positioning System (GPS) control network and comply with Category 5, Condition I specifications of the Texas Society of Professional Surveyors' Manual of Practice for Land Surveying in the State of Texas, Ninth Edition. Include reference to a minimum of two (2) found boundary monuments from the project area.

B. Subsurface Utility Engineering (SUE)

The CONSULTANT may perform engineering services which will result in accurately identifying the location of subsurface utilities that have a high potential for conflicts with the proposed improvements, and for acquiring and managing that level of information during the development of the project. These services shall conform to standards and guidelines as described in FHWA and ASCE Subsurface Utility Engineering publications. The final work shall be completed such that all known utilities with potential conflicts are graphically depicted in both a digital and hard copy/plan sheet format. For the purpose of this agreement, "locate" means to obtain precise horizontal and vertical position of the utility line by excavating a test hole. The test holes shall be done using vacuum excavation or comparable nondestructive equipment in a manner as to cause no damage to the utility line. After excavating a test hole, the CONSULTANT shall perform a field survey to determine the exact location and position of the utility line.

C. Planning & Integrated Planning Support

The City is considering how best to incorporate the principals of Integrated Planning into the Program. This task assumes that at least some elements of integrated planning may be developed by the City for compliance. The task may include a review of the City's permitting requirements and management program in order to identify potential integration issues with the Program.

D. Infrastructure Design - Plans & Specifications

CONSULTANT may study, verify, and implement recommendations including construction sequencing, connections to the existing facilities, and restoration of property and incorporate these recommendations into a set of construction plans. Development of the construction sequencing will be coordinated with the City and CONSULTANT staff. Prepare a set of the construction bid and contract documents (electronic and full-size hard copies using City Standards as applicable), including contract agreement forms, general conditions and supplemental conditions, notice to bidders, instruction to bidders, insurance, bond requirement, and preparation of other contract and bid related items; specifications and drawings to fix and describe, for bid, the size and character of the entire project, description of materials to be utilized; and such other essentials as may be necessary for construction and cost analysis.

E. City Standard Specifications and Details

CONSULTANT may support City staff by providing review of documents prepared by others and/or recommendations for modifications to the documents. One goal may be to ensure all specifications and details conform to the various agency requirements and that they provide the guidance necessary for long-term compliance.

F. Value Engineering

CONSULTANT may be tasked with studying a project's functional relationships and cost of the project elements, identify and evaluate potential alternative concepts, and develop conceptual-level cost estimates for the "best-few" alternatives considered worthy of consideration for project value improvement. It is expected that the City's focus on sustainability will be reflected in the recommendations. CONSULTANT may recommend value engineering options (alternative design, construction methods, procurement, etc.) that may improve efficiency, expedite the schedule, or reduce project costs for the City.

VIII. FEE FOR BASIC AND ADDITIONAL SERVICES

This project has a budget cap of \$1,000,000 per year. For services authorized by the Director of Utilities the City will pay the CONSULTANT a not to exceed fee per the negotiated cost for those services requested in each Work Order. The negotiated fee will be based on agreed to hourly rates, equipment charges, unit prices and/or lump sum costs provided in each Work Order Fee Schedule. CONSULTANT rates for FY 2017-2018 are summarized in Attachment B. These rates may be negotiated for each contract renewal period. The Director of Utilities is responsible for assigning tasks to the CONSULTANT and approving monthly invoices.

VIX. TERM

This Work Order shall have a term of one (1) year with the option to renew for nine (9) additional terms of one (1) year each. Each additional term renewal will be subject to the approval of the Tyler City Council.

**Attachment A - Scope of
Services Task Description
Summary**

Basic Services Code	Task Description	Work Order Item
1	Action Plan	I A
2	Program Coordination	I B
3	QA/QC - Advisory	I C
4	Project Scheduling	I D
5	Cost Estimating	I E
6	Information System Assessment	II A
7	CityWorks/GIS Integraton	II B
8	CityWorks Custom Programming	II B
9	CityWorks Reporting Templates	II C
10	Data Management	II D
11	TCEQ/EPA Reporting and Documentation	III A
Additional Services Code	Task Description	Work Order Item
12	Public Relations and Outreach	I A
13	Presentation Support	I B
14	CIP/O&M Budget Planning	I C
15	Procurement/Contracts Management	I D
16	Program Modifications	I E
17	Transition Planning and Training	I F
18	CCTV & Line Cleaning Support	II A
19	Line & Manhole Inspections and Assessment	II B
20	Smoke Testing	II C
21	PACP Coding/Training	II D
22	Lift Station Assessment	II E
23	Force Main/ARV Assessment	II F
24	III Prioritization and Reduction	II G
25	Software Upgrades	III A
26	CityWorks Data Migration	III B
27	Mobile Solutions	III C
28	Information Systems Integration	III D
29	CMOM Development and Implementation	III E
30	FOG Program Support	III F
31	SSORP Program Support	III G
32	SSO Verification and Analysis	III H
33	GIS Mapping and Database Support	III I
34	Asset Risk Analysis and Prioritization	III J
35	Funding Strategy Development	III K
36	Capital Improvement Planning	III L
37	Long Term Asset Renewal Forecasting	III M
38	IDIQ Implementation	IV A
39	Rehab/Replacement Alternatives Analysis	IV B
40	Collection System Rehabilitation/Replacement	IV C
41	Construction Administration/Observation	IV D
42	Construction Scheduling	IV E
43	Regulatory Compliance	V A
44	Health & Safety	V B
45	Field Verification	VI A
46	Flow and/or Rainfall Monitoring	VI B
47	Pump Performance Tests	VI C
48	Gravity Line Capacity Analyses	VI D
49	SSO Root Cause Analysis	VI E
50	Topographic Survey	VII A
51	Subsurface Utility Engineering (SUE)	VII B
52	Planning & Integrated Planning Support	VII C
53	Infrastructure Design - Plans and Specifications	VII D
54	City Standard Specifications and Details	VII E
55	Value Engineering	VII F

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WORK ORDER MANAGER

The Director of Utilities, or designee, will be the Work Order Manager and will be the primary City contact person during performance of this work. The Work Order Manager may be changed at the City's sole discretion by notifying Pipeline Analysis LLC of the change through email or written notification(see below). All correspondence or inquiries should be addressed to the Work Order Manager.

This work task will be coordinated by:

Lisa Crossman, P.E., Director of Utilities
Work Order Manager
P.O. Box 2039
Tyler, TX 75710
903-531-1234

APPROVALS

The undersigned have reviewed and approved this Work Order and authorizes Pipeline Analysis LLC, through this Notice to Proceed, to perform the work as presented:

Authorized by:
Pipeline Analysis LLC:
1115 Main Street
Garland, Texas 75040
800-637-0164
jforbes@pipelineanalysis.com


_____ 3-29-17 (Date)

James H. Forbes, Jr., P.E. – President
TBPE Firm No. F-6538

Authorized by:
City of Tyler


_____ 04/17/17 (Date)

SP
4.17.17

Edward Broussard, City Manager
212 N Bonner Ave, Tyler, TX 75702
(903) 531-1250

RECEIVED

APR 11 2018

ATTACHMENT B

LEGAL

FY2017-2018 Rates

This section defines the rates for compensation for services that may be included as part of this project. Pipeline Analysis LLC will not begin work without specific approval of the scope and fee. Fees for Services associated with each Work Order are an allowance with a not to exceed maximum fee. The Work Order fee may be lump sum, time and materials, unit price or a combination. Monthly billings will provide the backup quantities completed, time records, materials and direct costs in support of the billing. The hourly rates may be adjusted annually with City approval.

**Pipeline Analysis LLC
Fully Burdened Hourly Rates**

Sr. Project Manager	\$175
Senior Engineer	\$155
Field Operations Manager	\$140
Crew Leader	\$58
Technician	\$46
GIS Technician	\$73
TV Operator	\$60
TV Technician	\$46
General Labor/Clerical	\$38

**Professional Services
Work Order 1.0
Sanitary Sewer System
Consent Decree
Staff Support & Augmentation**



City of Tyler

James H. Forbes, Jr., P.E.



Pipeline Analysis, LLC
1115 Main Street
Garland, Texas 75040
972-470-0655
TBPE Firm No. 6538

Work Order No. 1.0

Staff Support & Augmentation Services

BACKGROUND

This project will provide the necessary support assistance as requested by the City of Tyler staff to ensure compliance with the terms and timelines as outlined in the EPA consent decree. The proposed scope of services outlines the work tasks that may be requested by City staff as a result of specific Work Orders approved by the City of Tyler Director of Utilities.

The approach is organized around the City's objectives for this project:

- Fulfill anticipated Consent Decree Requirements
- Reduction in Sanitary Sewer Overflows (SSO's) as defined in the Consent Decree
- Cost controls and Least Cost Alternatives for Compliance
- Attainment of long-term Infiltration/Inflow solutions
- Collection System Capacity Assurance
- Regulatory compliance
- Sustainability of Program Elements
- Customer satisfaction

Pipeline Analysis, LLC will perform professional services, when requested, for the City of Tyler. Specific assignments to be performed by the consultant under each numbered Work Order will consist of engineering services to address requirements of the EPA Consent Decree. These services will consist of engineering analysis to address requirements of wastewater collection system inspection, evaluation, planning, information management, training, preventative maintenance, hydraulic modeling and reporting needed for regulatory compliance.

Tyler Water Utilities (TWU) has been negotiating with the Environmental Protection Agency (EPA) since 2009 to develop a Consent Decree to address the city's aging wastewater collection system and resulting unauthorized discharges. The intent of this project will be to provide City staff with technical support and assistance as they move forward with the implementation of the requirements of the Consent Decree. In some cases, Pipeline Analysis LLC (the CONSULTANT) and/or sub-consultants to Pipeline Analysis LLC may be tasked with performing services as described in Basic and Additional Services and in other cases the CONSULTANT may be tasked with assisting City staff with preparing Request for Proposals, bid specifications, or other contract documents so that the services described below may be contracted directly to other firms. In those cases, the CONSULTANT may assist City staff with contract management.

The Program – The Program is the comprehensive multi-year effort by the City to effectively improve the wastewater collection and treatment system's performance and regulatory compliance. The City will be the Program Manager for this effort. Pipeline Analysis LLC and its sub-consultants will support the City, as needed and requested, to set the Program goals and objectives, organizational charts, systems, policies, procedures, standards, etc. for efficient program implementation and will provide staff when areas of need are identified. Other

engineering firms, consultants, construction contractors, etc. will be involved in implementing the City's Program. There will be corresponding Program progress reports, staffing plans, Program schedules, etc. that Pipeline Analysis may help the City produce in support of staff.

The Project – The Project is the individual Work Orders. This includes the specific tasks that Pipeline Analysis is authorized to perform in support of the City staff.

James H. Forbes, Jr. will serve as Project Manager. Depending on the specific needs of the City, there may also be a number of assigned Work Order Managers.

Basic and Additional Services

This section defines the scope for services (summarized in Attachment A) that may be requested as part of a Work Order, but the CONSULTANT will not begin work on this section without specific written approval by the Director of Utilities. The CONSULTANT will, with written authorization by the Director of Utilities, perform the following services:

BASIC SERVICES

I. Project Coordination

A. Action Plan:

1. Project Kick-off Meeting - A project kick-off meeting will be conducted CONSULTANT with core City staff that will have the day-to-day responsibility for implementation of the Program and managing the City's wastewater system. The 90 day action plan will be prepared, reviewed and adjusted to meet the specific needs of the City. Data and information needs will be identified along with project organization, management and communication plans.
2. Stakeholder Interviews - Key stakeholders in the overall regulatory compliance and wastewater management Program will be identified in the Project Kick-off meeting. Stakeholders may include other City department personnel involved or impacted by the Program, administrative staff, City elected officials, and others identified by the City. The CONSULTANT may conduct individual interviews with available stakeholders in preparation for the Program Goals and Objectives meeting. The interviews will be used to define the overall Program issues, concerns, strategic goals and objectives from the perspective of each individual stakeholder.
3. Program Goals and Objectives Workshop - The CONSULTANT may facilitate a workshop to establish the strategic goals and objectives of the overall Program. The workshop will include the core City team and stakeholders identified in the Project Kick-off meeting. The workshop will define the Program success factors and establish the overriding strategic goals and objectives that set the framework for the Program tactical initiatives which will also be identified at the workshop. Key service levels or measurable performance indicators will be identified at this workshop. Strategic goals and objectives can guide a compliance program through completion.
4. Management Plan Development - The CONSULTANT may assist the City in the development of a comprehensive Management Plan. The Management Plan will establish necessary program functions, systems, polices, and procedures to be implemented, and

the protocols by which the City will achieve its strategic goals and objectives over the life of the Program. The Management and Implementation Plan may include the following:

- a. Program Organization Structure and Staffing
 - b. Program Facilities and Office
 - c. Communication Management
 - d. Document Management
 - e. Contract Management
 - f. Management Information Systems
 - g. Cost Management
 - h. Schedule Management
 - i. Change Management
 - j. QA/QC Management Plan
 - k. Risk Management
 - l. Regulatory and Progress Reporting
 - m. Land and Easement Acquisition
 - n. Customer Communication and Service
 - o. Inter-Department and Inter-Agency Coordination
 - p. Design Management
 - q. Construction Management
 - r. CONSULTANT Transition Plan
5. Information Management Plan (IMP) – The CONSULTANT may develop an Information Management Plan (IMP) based on the data and information needs assessment initiated in the Project Kick-off Meeting. This plan will define the asset inventory, capacity, management, operation, maintenance and customer service data and information required for effectively managing the City’s wastewater system. The IMP will define the sources and owners of the required information and provide recommendations to add additional data identified in a data gap analysis. The IMP will provide an action for hardware, software, data management and business process improvements to effectively manage the large amount of data required for successful completion of the Program.
6. Reporting Plan – The CONSULTANT may prepare a detailed Reporting Plan that aligns the various sources of data and information identified in the IMP with the specific regulatory monitoring and reporting requirements. This plan will provide the specific business processes and procedures to routinely compile required data and information for compliance reporting. Specific roles and responsibilities for data collection, compilation and reporting will be identified along with routine schedules for date and report deliverables. The reporting plan will rely heavily on the IMP to maximize the use of the City’s Asset Management and Work Order systems for routine compliance reporting. Compliance report formats and templates will be developed as part of this plan to establish a reliable reporting process at the onset of the Program.

B. Project Coordination

CONSULTANT may plan and assign proper qualified and experienced personnel to Project activities and provide other required equipment and material resources and maintain availability for proper Program execution. The CONSULTANT may coordinate the efforts of CONSULTANT and any SUB-CONSULTANTS assigned to the Project to maintain budget, schedule, scope, and quality compliance. The CONSULTANT may prepare and submit monthly progress/status reports for the Project. Monthly Progress Reports shall include a narrative of activities performed during the subject billing period, an updated schedule, and identification

of proposed resolution of issues, Project change management log, and a cost estimate to complete the Work. Based on the overall Program staffing, the CONSULTANT may provide staff support requested by the City. In addition to the functions identified throughout this scope of work, the CONSULTANT may assist with the following representative Program functions:

1. Document Control
2. Program Progress Reporting
3. Information System Management
4. Risk Mitigation
5. Cost and Schedule Management
6. Design Review
7. Construction Inspection
8. Quality Management

C. QA/QC Advisory

The CONSULTANT may assist the City in the development of a Quality Assurance and Quality Control (QA/QC) Plan to check, as a minimum, document management systems compliance, planning methods, design methods, calculations, engineering and design documents, construction documents, cost estimates, field investigations, measurements, and other technical issues associated with Program and Project planning and execution. The QA/QC plan may be designed to be expanded and modified as the Program needs change.

D. Program Scheduling

The CONSULTANT may assist the City in preparing and maintaining an integrated electronic Program schedule that will include all aspects of the Compliance Program. Periodically update the schedule at all phases of the Program. Schedule shall include critical activity start and/or completion dates as milestones, including monthly progress meetings, proposed engineering design, and all deliverable due dates.

E. Cost Estimating

The CONSULTANT may assist the City in developing cost estimating guides and standards for Program related field surveys and inspections, design and construction of system rehabilitation and replacement and other related Program elements. The CONSULTANT may assist the City in preparing planning and design level construction cost estimates and in the review of cost estimates completed by others.

II. Asset Management

A. Information System Assessment

The CONSULTANT may conduct an assessment of the City's wastewater system information management systems including CityWorks, GIS, Bentley Hydraulic Model and other supporting software in use by the City staff. While the focus of this assessment will be on the reporting requirements, the assessment will also consider improved efficiencies in the long term management of the wastewater system. The information system assessment will include related hardware, software, data management, systems integration, procedures and business practices for wastewater system information management. The results and recommendations of the assessment will be documented in a Technical Memorandum and summarized in the Information Management Plan.

B. CityWorks/GIS Integration

City may authorize CONSULTANT to perform various tasks associated with the integration of CityWorks, GIS and other software systems. Tasks may include evaluation of existing software/hardware and recommending needed improvements, upgrades, custom programming and support of other software to enhance CityWorks Spatial reporting requirements, and develop automated reports, custom reports, and programming in support of regulatory compliance.

C. CityWorks Reporting Templates

The City may authorize the CONSULTANT to assist in the development of various reporting templates and forms for the data and information stored in the City's CityWorks Asset Management Software System. Reporting tools like IBM COGNOS for CityWorks may be implemented to provide the required compliance reporting.

D. Data Management

The CONSULTANT may assist the City in data collection, formatting, compilation, review, analysis, and reporting in accordance with the Information Management Plan. The CONSULTANT may work with the City to format and input data into the appropriate information management system to support compliance and better manage the overall wastewater system. The CONSULTANT may assist the City with routine updates of the data and information needs assessment and data management business processes. The CONSULTANT may also assist the City in the acquisition of any additional data identified in data gap analyses and perform routine quality control of the data in the information management systems.

III. Permitting and Regulatory

A. TCEQ/EPA Reporting and Documentation

The Program will identify a significant number of periodic reporting requirements that must be submitted to the EPA. Likewise, TCEQ reporting requirements already in place within the TPDES permitting framework will continue to be necessary. This task implements the recommendations of the Reporting Plan to provide the routine required regulatory reports and correspondence to provide: 1) that the required reports are generated and submitted on time; 2) the various required reports are consistent with one another in terms of the information reported; and 3) that the resources expended to generate these reports is managed to reduce project costs. Potential elements of this task include:

1. Update required monitoring and reporting requirements of the Program and other regulatory reports required by the TCEQ or EPA. Report requirements will be cross-referenced to identify report information needs in one report that may be common to other reports.
2. Development of a report schedule for the initial two-years of the Program.
3. Development of a tracking system to ensure that required reports are generated on time.

This task will support the regulatory compliance requirements of the program. Over time, other tasks may result in the need to modify the reporting schedule, tracking system, or report templates.

ADDITIONAL SERVICES

I. Project Coordination

A. Public Relations and Outreach

The CONSULTANT may assist the City in providing information to and to educate the public about Program goals and objectives through various outreach techniques to gather and maintain public support for the Program and for individual projects. The public information program may be designed to make direct contact, and nurture and maintain positive relationships with those individuals who reside, own businesses, work, and attend school in those areas affected by project construction as well as the community as a whole. The CONSULTANT may assist the City in the development of presentations, newsletters, press releases and other media materials required for the public information and participation program.

B. Presentation Support

The CONSULTANT may assist the City in the development of presentation material to communicate Program progress and explain technical and non-technical aspects of the Program to various stakeholder groups.

C. CIP/O&M Budget Planning

The CONSULTANT may assist the City in preparing annual Compliance Program budgets including capital improvement and operation and maintenance budgets.

D. Procurement/Contracts Management

The CONSULTANT may assist the City in the evaluation of various project delivery alternatives for wastewater system improvements, preparing procurement documents for field services, planning, design, and construction projects associated with the Program.

E. Program Modifications

The CONSULTANT may assist the City in identifying changes in the work to be completed under the Program to reduce costs and improve the Program effectiveness. The CONSULTANT may assist in preparing the necessary documentation in support of regulatory reporting requirements and assist when potential Program modifications are requested.

F. Transition Plan and Training

The CONSULTANT may provide temporary staff support requested by the City to initiate a variety of regulatory functions. Short term Program assignments may be completed by the CONSULTANT and delivered to the City. Longer term assignments may be initiated with CONSULTANT staff support and transition to City staff. The CONSULTANT may develop a transition plan and provide required training to transition Program functions to City staff.

II. Condition Assessment

A. CCTV/Line Cleaning Support

Perform CCTV as required to inspect designated pipelines and provide data in PACP format for each pipeline inspected. Scope of work may only require delivery of PACP CCTV digital data and may also include analysis of the collected data to determine cause of obstructions, condition assessment of pipeline, establish preliminary repair methods and estimated costs. Cleaning may be requested to facilitate CCTV inspection, debris removal, or to facilitate the annual cleaning goals and schedules established by the City.

B. Line and Manhole Inspections and Assessment

City may authorize the inspection of each line entering and exiting the manhole. Normally performed in conjunction with manhole inspection, data on each pipe rim to invert distance, size, material, condition, photograph, observed defects, etc. is obtained and documented. City may authorize analysis of this data to establish prioritized remedial measures necessary to restore integrity along with estimated costs. Manhole inspections may be authorized to establish the existing condition and remedial measures necessary to prioritize and rehabilitate these assets. Inspection personnel will use digital cameras during the inspection of all manholes. All photographs will be included in the field inspection database so that a permanent electronic record can be maintained. During the preliminary and final data analysis, these photographs will provide detailed backup information on site conditions, observed defects and condition of the asset to assist in preparing recommended remedial action and estimated costs. The City may authorize the delivery of the manhole inspection data with or without analysis.

C. Smoke Testing

Smoke Testing may be authorized to locate both public and private sector defects contributing to wet weather inflow, trace sewer connections or identify illicit connections with the storm sewer system. Smoke testing will normally include public notification using door hangers and coordination with fire and other city departments. Documentation of the tests will include digital database, photographs and defect location sketches. City may authorize analysis of collected data to include prioritized remedial measures and estimated costs.

D. PACP Coding/Training

City may authorize QA/QC of CCTV data including review of PACP codes and/or coding of defects to meet PACP standards. CONSULTANT may be authorized to provide PACP training and certification.

E. Lift Station Assessment

The City may authorize the CONSULTANT to perform a condition and/or capacity assessment(s) of designated lift stations. The assessment may require specialized staff to evaluate and prioritize structural, electrical, mechanical, instrumentation, site conditions, hydraulics, pump performance, O&M history, SOPs, flow monitoring, etc. and recommend remedial measures to address observed deficiencies and estimated costs.

F. Force Main/ARV Assessment

The City may authorize the CONSULTANT to undertake an assessment of the lift station force main(s) and ARV. The assessment would include the walking of force mains and documenting

observed depressions, wet soils, leaks, map location of ARV's, ARV condition, prioritized remedial measures and estimated costs.

G. I/I Prioritization and Reduction

City may authorize CONSULTANT to prioritize areas of the city for I/I reduction efforts and develop documentation to establish the baseline I/I and subsequent percentage reduction in I/I following remedial measures. This scope may include analysis of flow data or installing flow meters to obtain detailed flow data for I/I prioritization. Analysis may include evaluating the cost effectiveness of transport treatment options, flow equalization, I/I reduction, etc.

III. Asset Management

A. Software Upgrades

Based on the recommendations in the Information Management Plan for the Program, the City may authorize the CONSULTANT to assist with the procurement, installation, implementation and training for software upgrades and additions to maintain compliance and improve overall wastewater system management.

B. CityWorks Data Migration

Wastewater system data may be developed through any number of different source and information management systems. The City may authorize the CONSULTANT to migrate system inventory, performance, compliance, condition, risk, operations and maintenance data from different software systems into the City's CityWorks Asset Management System.

C. Mobile Solutions

The City may authorize the CONSULTANT to assist with the implementation and enhancement of mobile technology devices and the migration of data from the mobile field devices into the City's CityWorks Asset Management System. This effort may include the development of custom data input templates for mobile devices and intranet or Web based solutions for data migration.

D. Information Systems Integration

CONSULTANT may be authorized to facilitate integration of various software programs or databases from or to GIS and/or CityWorks. Such integration may include linking data from other software, such as Bentley, CityWorks, etc., for use in generating standardized reports for internal or regulatory compliance. Wastewater system asset inventory, performance, compliance condition assessment, risk assessment, operations, and maintenance, rehabilitation and improvement data may be located in a number of different information management systems. The City may authorize the CONSULTANT to develop protocols, common asset identification system, software and hardware to integrate various wastewater information management systems within the City's overall Information Technology framework.

E. CMOM Plan Development and Implementation

CONSULTANT may be authorized to assist the City in the development and implementation of the CMOM (Capacity, Management, Operations and Maintenance) provisions. Tasks may include development of databases to track required progress, programing support to generate required reporting metrics, software/hardware upgrades, estimating least cost alternatives, training, SOP development, SSORP Plan development, FOG Plan development and updating narrative sections of the CMOM Plan.

F. FOG Program Support

CONSULTANT may be authorized to assist the City in the support and/or implementation of the FOG requirements that may include FOG Manual updates, software integration for monitoring and compliance reporting, software/hardware upgrades, inspection staff support, SOP development, training, cost estimating, public relations programs and program evaluation.

G. SSORP Program Support

CONSULTANT may be authorized to assist the City in support and/or implementation of the SSO Response Plan and/or Lift Station Overflow Response Plan requirements. Task may include SSORP Manual updates, development of SOPs, software/hardware upgrades. SSO root cause analysis, CCTV in support of the SSORP, data analysis, training, cost estimating, software integration for monitoring and compliance reporting, Lift Station Overflow Response Plan (LSORP) support and implementation assistance.

H. SSO Verification and Analysis

CONSULTANT may be authorized to perform inspections and analysis to verify occurrences of SSOs, establish the probable cause, repair method and estimated costs. Task may also include preparation of SOPs, staff training, software/hardware upgrades, software integration for monitoring and compliance reporting, and support in minimizing SSO occurrences.

I. GIS Mapping and Database Support

The City has invested in an enterprise GIS architecture capable of addressing the spatial and asset management needs for all municipal government services. CONSULTANT may aid the City in pursuing a complete, new inventory of their utility infrastructure to be used within the City's GIS for asset management, modeling, and other functions. CONSULTANT may provide updated survey data of existing utilities in GIS format, digitization of project record drawings, updating of the geodatabases based on rehabilitation/replacement associated with this Project, assist in the development of a GIS management/update plan, etc. CONSULTANT may be tasked with evaluation of spatial data for identifying critical infrastructure and problem areas which can be used for prioritizing needs or to aid in reporting Program compliance. Exhibits may be created for public meetings or for communication with City Council or City management.

J. Asset Risk Analysis and Prioritization

The CONSULTANT may assist the City in a comprehensive risk of failure analysis and prioritization of its wastewater system assets. This analysis builds on the City's CMOM and condition assessment program to develop Likelihood of Failure, Consequence of Failure, and Risk of Failure analysis and rankings for all wastewater system assets. This analysis can be developed for manholes, pipes, lift stations and treatment facility assets. Using a common scoring approach, the risk results can be compared for assets in different asset groups. This analysis results in a quantitative risk score and ranking for all wastewater assets as the basis for determining the priority and funding requirements for system improvements.

K. Funding Strategy Development

The CONSULTANT may assist the City in assessing the funding requirements associated with compliance and the associated capital improvement program. The CONSULTANT may assist the City in evaluating funding options for near term capital improvements and the long term system rehabilitation needs.

L. Capital Improvement Planning

The CONSULTANT may assist the City in prioritizing wastewater system improvements consistent with the requirements of the Program. Wastewater system improvements and rehabilitation needs will be organized into capital improvement projects and programmed into the City's Capital Improvement Program (CIP). The City's Indefinite Delivery Indefinite Quantity (IDIQ) program may be utilized to complete applicable system rehabilitation projects. The CONSULTANT may assist the City in capital improvement planning and ongoing CIP progress reporting and may assist in the preparation of bid specifications for IDIQ contracting and outsourcing.

M. Long Term Asset Renewal Forecasting

The CONSULTANT may assist the City in developing a long-term sustainability forecasts for wastewater system assets. The long term sustainability forecast is designed to predict the level of asset repair, rehabilitation or replacement required to maintain the City's standards of customer service and system performance over the coming decades. The long-term sustainability analysis looks at broad categories of assets that have similar useful lives and degradation profiles.

IV. Remedial Measures

A. IDIQ Implementation

The City may authorize CONSULTANT to provide guidance and technical data in support of IDIQ contracts (by others). Data prepared by the CONSULTANT may be used to initiate remedial measures activities under the IDIQ contract(s). This scope of work may require coordination with the IDIQ consulting engineer and preparation of supporting maps, databases, preliminary remedial measures and cost estimates.

B. Rehabilitation/Replacement Alternatives Analysis

Remedial measures analysis may be authorized to provide engineering evaluation of system deficiencies identified during condition assessment and capacity assessment activities. Defects identified during manhole inspection, smoke-testing, CCTV, FOG, etc. may be authorized for further analysis to establish the least cost remedial measure for each asset or additional investigations to establish best repair strategy.

C. Collection System Rehabilitation or Replacement

City may authorize CONSULTANT to evaluate mainline sewer rehabilitation alternatives including pipe bursting and cured in place pipe (CIPP) lining. Data from the condition assessment and/or capacity assessment work tasks may be used for preparing detailed remedial measures plans establishing the suitability for pipe bursting and/or CIPP lining of sewers. Provide staff support in contracting rehabilitation efforts including preparation of maps, plans, specifications, attribute database update and inspection if requested. Open cut alternatives may be authorized for detailed analysis to prepare engineering report(s), for use

in preparing design plans, development of specifications, attribute database update and construction inspection if requested. CONSULTANT may be authorized to analyze data collected during manhole inspection and prepare remedial measures plan for manhole rehabilitation. Task may include evaluation of manhole defects, develop prioritized listing of repairs, prepare database of recommended repairs, prepare design plans, maps and specifications for contactor use, construction inspection and asset attribute database update.

D. Construction Administration/Observation

The CONSULTANT may provide Construction Administrative and Observation services to assist the City in confirming that construction of a project is carried out in accordance with the requirements of the Contract Documents and the requirements of the City and regulatory agencies, within the project schedule, and with a minimum of disruption to ongoing activities. CONSULTANT will consult with and advise the City and act as its representative during construction. The construction services effort will have the goal of facilitating the construction to enable the work to progress in an efficient and cost-effective manner, while maintaining operations. CONSULTANT will not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor(s) (except as otherwise specified in the Contract Documents) or the safety precautions and programs incident to the Work of the Contractor(s). CONSULTANT may also provide a presence on the site through scheduled coordination meetings and inspections to provide quality control and monitoring for conformance with the design intent.

E. Construction Scheduling

CONSULTANT may be authorized to assist staff in scheduling the timing of various construction projects to comply with the Program requirements and funding limitations.

V. Permitting and Regulatory

A. Regulatory Compliance

One critical outcome of monitoring and reporting may be the need to respond to new SSOs and other potential non-compliance events. A protocol for evaluating non-compliance may be developed under this task. Such evaluation may include a repeat-SSO analysis and risk assessment to determine the likelihood of failure and appropriate response mechanisms. The CONSULTANT would assist the City with meetings and communications with the EPA and TCEQ on the progress of the Program and other regulatory compliance issues. This task may also include assessment of responses to non-compliance and identification of areas of improvement, as needed. This tool is designed to assist the City with demonstrating that not only are improvements to the management of SSOs being accomplished, but a methodology for continuous improvement to the response mechanism is in place.

B. Health and Safety

City may authorize CONSULTANT to assist in preparation of updated health and safety manuals, SOPs, training and support for the health and safety of City staff, residents and contractors.

VI. Capacity Assessment

A. Field Verification

CONSULTANT may be authorized to perform field verification to confirm site conditions, elevations, defect location(s), map update, sizes, materials, lengths, dimensions, etc. to confirm critical data. Field verification of potential capacity constraints may be authorized and may include installation of flow meters, rain gauges, level measurements, etc. to collect data for hydraulic model input, analysis and report.

B. Flow and/or Rainfall Monitoring

CONSULTANT may be authorized to install, operate and maintain temporary and/or permanent flow and/or rainfall monitors at key locations within the City. Task may include analysis of data and preparing report(s) on findings and recommendations. CONSULTANT may be authorized to assist in preparing a permanent flow/rainfall meter network plan with recommendations for meter site locations, equipment, estimated costs and staff training.

C. Pump Performance Testing

CONSULTANT may be authorized to perform pump performance tests to determine the performance of each pump and combination of pumps and prepare a report(s) on findings that may include comparison with design operating points, recommendations and estimated cost of improvements. Analysis may be authorized to include force main C factor tests, flow tests, operating pressures, valve O&M, etc. necessary to evaluate lift station pumps.

D. Gravity Line Capacity Analyses

CONSULTANT may be authorized to perform various levels of capacity analysis depending on subsequent use and level of accuracy requested by the City. Depending on the level of accuracy required, CONSULTANT may use the existing hydraulic model, perform site flow monitoring to gather specific flows or perform simple calculations based on existing system data to determine existing and future capacity. CONSULTANT may prepare a report(s) describing the methodology and assumptions used in preparing the capacity analysis.

E. SSO Root Cause Analysis

CONSULTANT may be authorized to gather data to establish the root cause for SSOs. Such analysis may include performing CCTV or reviewing cleaning and CCTV data, determining if structural deficiencies, grease, debris, are contributing to the SSO, elevation survey, confirmation of pipe sizes, evelopes, etc. and prepare report(s) identifying the probable cause with recommendations and estimated costs if requested.

VII. General Engineering

A. Topographic Survey

CONSULTANT may be tasked with providing topographic survey services to determine location and/or elevation data of various City infrastructure or property. CONSULTANT will provide field surveys, as required, including the necessary control points, coordinates and elevations of points. Establish base survey controls for line and elevation staking (not detailed setting of lines and grades for specific structures or facilities). All work must be tied to and conform with the City's Global Positioning System (GPS) control network and comply with Category 5, Condition I specifications of the Texas Society of Professional Surveyors' Manual of Practice for Land Surveying in the State of Texas, Ninth Edition. Include reference to a minimum of two (2) found boundary monuments from the project area.

B. Subsurface Utility Engineering (SUE)

The CONSULTANT may perform engineering services which will result in accurately identifying the location of subsurface utilities that have a high potential for conflicts with the proposed improvements, and for acquiring and managing that level of information during the development of the project. These services shall conform to standards and guidelines as described in FHWA and ASCE Subsurface Utility Engineering publications. The final work shall be completed such that all known utilities with potential conflicts are graphically depicted in both a digital and hard copy/plan sheet format. For the purpose of this agreement, "locate" means to obtain precise horizontal and vertical position of the utility line by excavating a test hole. The test holes shall be done using vacuum excavation or comparable nondestructive equipment in a manner as to cause no damage to the utility line. After excavating a test hole, the CONSULTANT shall perform a field survey to determine the exact location and position of the utility line.

C. Planning & Integrated Planning Support

The City is considering how best to incorporate the principals of Integrated Planning into the Program. This task assumes that at least some elements of integrated planning may be developed by the City for compliance. The task may include a review of the City's permitting requirements and management program in order to identify potential integration issues with the Program.

D. Infrastructure Design - Plans & Specifications

CONSULTANT may study, verify, and implement recommendations including construction sequencing, connections to the existing facilities, and restoration of property and incorporate these recommendations into a set of construction plans. Development of the construction sequencing will be coordinated with the City and CONSULTANT staff. Prepare a set of the construction bid and contract documents (electronic and full-size hard copies using City Standards as applicable), including contract agreement forms, general conditions and supplemental conditions, notice to bidders, instruction to bidders, insurance, bond requirement, and preparation of other contract and bid related items; specifications and drawings to fix and describe, for bid, the size and character of the entire project; description of materials to be utilized; and such other essentials as may be necessary for construction and cost analysis.

E. City Standard Specifications and Details

CONSULTANT may support City staff by providing review of documents prepared by others and/or recommendations for modifications to the documents. One goal may be to ensure all specifications and details conform to the various agency requirements and that they provide the guidance necessary for long-term compliance.

F. Value Engineering

CONSULTANT may be tasked with studying a project's functional relationships and cost of the project elements, identify and evaluate potential alternative concepts, and develop conceptual-level cost estimates for the "best-few" alternatives considered worthy of consideration for project value improvement. It is expected that the City's focus on sustainability will be reflected in the recommendations. CONSULTANT may recommend value engineering options (alternative design, construction methods, procurement, etc.) that may improve efficiency, expedite the schedule, or reduce project costs for the City.

VIII. FEE FOR BASIC AND ADDITIONAL SERVICES

This project has a budget cap of \$1,000,000 per year. For services authorized by the Managing Director of Utilities and Public Works the City will pay the CONSULTANT a not to exceed fee per the negotiated cost for those services requested in each Work Order. The negotiated fee will be based on agreed to hourly rates, equipment charges, unit prices and/or lump sum costs provided in each Work Order Fee Schedule. CONSULTANT rates for FY 2017-2018 are summarized in Attachment B. These rates may be negotiated for each contract renewal period. The Environmental Compliance Engineer is responsible for assigning tasks to the CONSULTANT and approving monthly invoices.

VIX. TERM

Work Order shall have a term of one (1) year with the option to renew for nine (9) additional terms of one (1) year each. Each additional term renewal will be subject to the approval of the Tyler City Council.

Attachment A - Scope of Services Task Description Summary

Basic Services Code	Task Description	Work Order Item
1	Action Plan	I.A.
2	Program Coordination	I.B.
3	QA/QC - Advisory	I.C.
4	Project Scheduling	I.D.
5	Cost Estimating	I.E.
6	Information System Assessment	II.A
7	CityWorks/GIS Integration	II.B.
8	CityWorks Custom Programming	II.B.
9	CityWorks Reporting Templates	II.C.
10	Data Management	II.D.
11	TCEQ/EPA Reporting and Documentation	III.A
Additional Services Code	Task Description	Work Order Item
12	Public Relations and Outreach	I.A.
13	Presentation Support	I.B.
14	CIP/O&M Budget Planning	I.C.
15	Procurement/Contracts Management	I.D.
16	Program Modifications	I.E.
17	Transition Planning and Training	I.F.
18	CCTV & Line Cleaning Support	II.A.
19	Line & Manhole Inspections and Assessment	II.B.
20	Smoke Testing	II.C.
21	PACP Coding/Training	II.D.
22	Lift Station Assessment	II.E.
23	Force Main/ARV Assessment	II.F.
24	I/I Prioritization and Reduction	II.G.
25	Software Upgrades	III.A.
26	CityWorks Data Migration	III.B.
27	Mobile Solutions	III.C.
28	Information Systems Integration	III.D.
29	CMOM Development and Implementation	III.E.
30	FOG Program Support	III.F.
31	SSORP Program Support	III.G.
32	SSO Verification and Analysis	III.H.
33	GIS Mapping and Database Support	III.I.
34	Asset Risk Analysis and Prioritization	III.J.
35	Funding Strategy Development	III.K.
36	Capital Improvement Planning	III.L.
37	Long Term Asset Renewal Forecasting	III.M.
38	IDIQ Implementation	IV.A.
39	Rehab/Replacement Alternatives Analysis	IV.B.
40	Collection System Rehabilitation/Replacement	IV.C.
41	Construction Administration/Observation	IV.D.
42	Construction Scheduling	IV.E.
43	Regulatory Compliance	V.A.
44	Health & Safety	V.B.
45	Field Verification	VI.A.
46	Flow and/or Rainfall Monitoring	VI.B.
47	Pump Performance Tests	VI.C.
48	Gravity Line Capacity Analyses	VI.D.
49	SSO Root Cause Analysis	VI.E.
50	Topographic Survey	VII.A.
51	Subsurface Utility Engineering (SUE)	VII.B.
52	Planning & Integrated Planning Support	VII.C.
53	Infrastructure Design - Plans and Specifications	VII.D.
54	City Standard Specifications and Details	VII.E.
55	Value Engineering	VII.F.

WORK ORDER MANAGER

The Environmental Compliance Engineer, or designee, will be the Work Order Manager and will be the primary City contact person during performance of this work. The Work Order Manager may be changed at the City’s sole discretion by notifying Pipeline Analysis LLC of the change through email or written notification (see below). All correspondence or inquiries should be addressed to the Work Order Manager.

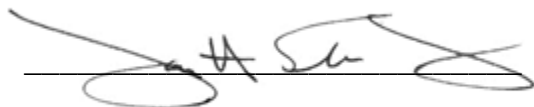
This work task will be coordinated by:

~~Kate Dietz~~ Paul Neuhaus, P.E., Environmental Compliance Engineer
Work Order Manager
P.O. Box 2039
Tyler, TX 75710
903-531-1085

APPROVALS

The undersigned have reviewed and approved this Work Order and authorizes Pipeline Analysis LLC, through this Notice to Proceed, to perform the work as presented:

Authorized by:
Pipeline Analysis LLC:
1115 Main Street
Garland, Texas 75040
800-637-0164
jforbes@pipelineanalysis.com



~~March 27, 2018~~ May 9, 2019 (Date)

James H. Forbes, Jr., P.E. – President
TBPE Firm No. F-6538

Authorized by:
City of Tyler

_____ (Date)

Edward Broussard, City Manager
212 N Bonner Ave, Tyler, TX 75702
(903) 531-1250

FY20198-2019 Rates

This section defines the rates for compensation for services that may be included as part of this project. Pipeline Analysis LLC will not begin work without specific approval of the scope and fee. Fees for Services associated with each Work Order are an allowance with a not to exceed maximum fee. The Work Order fee may be lump sum, time and materials, unit price or a combination. Monthly billings will provide the backup quantities completed, time records, materials and direct costs in support of the billing. The hourly rates may be adjusted annually with City approval.

Pipeline Analysis LLC Fully Burdened Hourly Rates

Principal/Sr. Project Manager	\$198
Senior Engineer	\$174
Field Operations Manager	\$163 <u>172</u>
Crew Leader	\$66 <u>2</u>
Technician	\$49
GIS Technician	\$91 <u>78</u>
TV Operator	\$68
TV Technician	\$49
General Labor/Clerical	\$40



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: M-3

Date: June 26, 2019

Subject: Request that the City Council award the first major manhole rehabilitation package “Western Seal”, City of Tyler Bid Number 19-034, to Quadex Lining Systems, LLC for \$947,824.00.

Page: 1 of 2

Item Reference:

The first phase of the Consent Decree rehabilitation work is beginning with the sealing of 224 manholes, located roughly in the western portion of the City of Tyler wastewater collection system. This remediation is the result of the year one (1) assessment work performed in 2017.

After investigation of manholes for wastewater (sanitary sewer) lines 10-inch in diameter and larger, 897 manholes were identified as meeting the United States Environmental Protection Agency (EPA) requirements for necessary rehabilitation. These manholes were broken down into more manageable packages of 224 (Western Seal), 258 (Eastern Seal), and 415 (Repair and Replace), in an attempt to produce more manageable packages, and spread the risk to the City out over more crews and/or contractors.

Sealed bids were evaluated according to the following criteria.

	Weight (%)
1. Proposal Unit Prices and Total Price	40
2. Company Profile and General Experience	20
3. Experience with Projects of this Type and Scope, 5 min.	20
4. Experience and References of Key Personnel, 3 min.	10
5. Safety Record/Financial Profile	10
Total	100%

The cost estimations for this first phase of work have varied. The initial cost estimation from Pipeline Analysis from early 2018, put the manhole rehabilitation cost at \$2,776,495 for all of Phase 1 manhole rehabilitation work (897 manholes). The average cost per manhole, including work as expensive as sealing a manhole, down to installing a new lid, was \$3,905 per manhole; the estimated average for sealing a manhole was \$5,109 per manhole. Lockwood, Andrews, and Newnam, Inc. (LAN), the design engineers for the first phase of rehabilitation, conservatively estimated the cost for this Western Seal Package (224 manholes), at \$1,541,880, or \$6,883 per manhole, based on the maximum available BuyBoard cost. Neither of these estimates included

Agenda Number: M-3

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contingency.

Based on the winning qualified proposal price, bids are tracking more in-line with the original cost schedule. The estimated costs, after only one (1) manhole, are not tracking higher. In addition, the winning qualified proposal was from a seasoned and experienced manhole rehabilitation company, and staff feels very strongly that quality work will be performed at a very competitive price.

RECOMMENDATION:

It is recommended that the City Council award the first major manhole rehabilitation package “Western Seal”, City of Tyler Bid Number 19-034, to Quadex Lining Systems, LLC for \$947,824.00.

ATTACHMENTS:

1. Bidder Rating
2. Manhole Map



Drafted/Recommended By: Dr. Jimmie Johnson, Director of Utilities
Department Leader

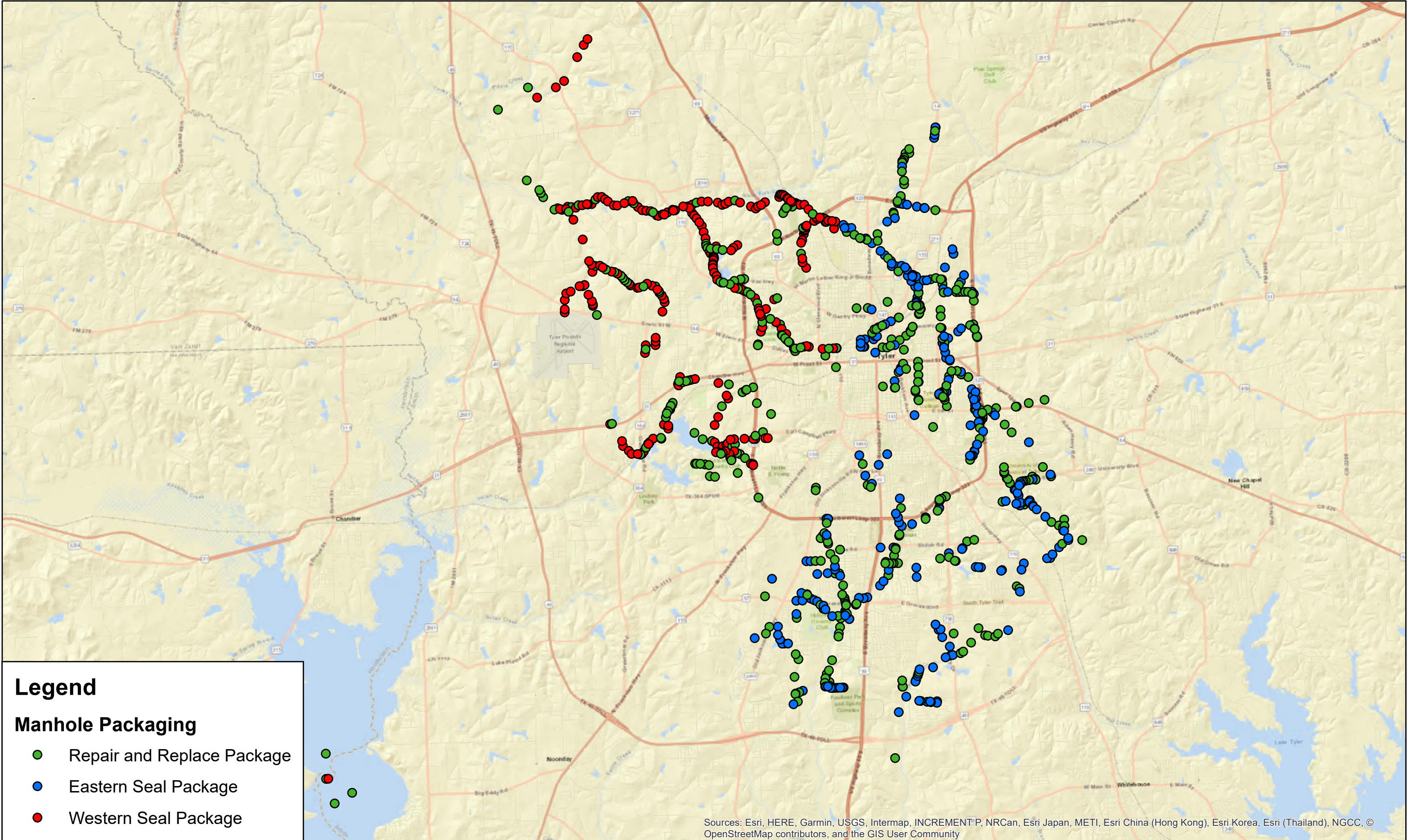
Edited/Submitted By:
City Manager



Criteria / Company		AAA	Quadex			
Proposal Units Prices and Total Price	40	21.6	38.0			
Company Profile and General Experience	20	17.0	16.6			
Experience with Projects of this Type and Scope, 5 min.	20	9.6	18.2			
Experience and References of Key Personnel, 3 min.	10	8.0	9.6			
Safety Record/Financial Profile	10	10.0	9.6			
	100	66.2	92.0	0.0	0.0	0.0

Total	\$ 1,971,836.00	\$ 947,824.00	\$ -	\$ -	\$ -
Total (\$/MH)	\$ 8,802.84	\$ 4,231.36	\$ -	\$ -	\$ -

MANHOLE EXHIBIT



Legend

Manhole Packaging

- Repair and Replace Package
- Eastern Seal Package
- Western Seal Package

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community



Lockwood, Andrews & Newnam, Inc.
A LEO A DALY COMPANY



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: M-4

Date: June 26, 2019

Subject: Request that the City Council consider authorizing the City Manager to apply for and to accept a FAA Grant totaling approximately \$855,000 to fund 90 percent of the costs to update the Airport's Master Plan and design security fencing upgrades and improvements at Tyler Pounds Regional Airport.

Page: 1 of 2

Item Reference: City Code Sec. 12-2.3

City Code Sec. 12-2.3 provides that the Airport Advisory Board may make recommendations to the City Council with respect to airport construction, improvements, maintenance and operation. As part of the airport's selection of engineering services, the scope of future work included updating the airport's master plan. KSA Engineers was selected; they have a planning staff with years of experience in performing airport master plan updates. Typically master plans are updated about every ten years. Tyler's master plan was last updated in 2005/2006.

With the reopening and improvements of runway 4-22, the airport has and will continue to see a different mix of aircraft using the airport. New economic development opportunities are also very likely at the airport. In order to keep the airport maintained properly and utilize the facility to fulfill as many aviation needs as possible, proper planning should be done soon. Planning can include expansion planning, land use plans and air service development.

Additionally the airport has been approved by Federal Aviation Administration (FAA) to begin design to improve the security fencing around the airport. The goal is to centralize and modernize all access control of the automated gates around the airport. Surveillance improvements will be considered as well.

The estimated cost to perform the masterplan and fence design is about \$950,000. The FAA grant would pay about 90 percent of these costs totaling \$855,000.00 and the 10 percent local share equates to \$95,000.00

The Airport Advisory Board considered this request on June 17, 2019, and the Airport Staff will be prepared to announce the results of their vote.

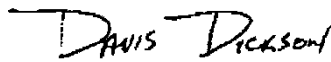
Agenda Number M-4

Page: 2 of 2

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to apply for and to accept a FAA Grant totaling approximately \$855,000 to fund 90 percent of the costs to update the Airport's Master Plan and design security fencing upgrades and improvements at Tyler Pounds Regional Airport.

**Drafted/Recommended
By:
Department Leader**



Davis Dickson, Airport Manager

**Edited/Submitted By:
City Manager**





**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: M-5

Date: June 26, 2019

Subject: Request that the City Council consider authorizing the City Manager to execute a new Commercial Airline Operating Lease with Frontier Airlines, Inc.

Page: 1 of 2

Item Reference: Commercial Airline Operating Permit between Frontier Airlines and City of Tyler

A new Commercial Airline Operating Lease is being proposed for the two-year period beginning on July 1, 2019 and ending on June 30, 2021. The lease was sent to Frontier Airlines for their review and execution. The Commercial Airline Lease has a two-year lease period with an option to renew the lease for two additional two-year periods upon the expiration of the initial lease term at rates to be negotiated. The new lease contains the same provisions as the most recent Commercial Airline Lease. Rates and fees as a signatory airline in the new permit are as follows:

- Rent of \$3,070.08 per month for their exclusive office and counter space;
- Landing Fees of \$0.65 per thousand pounds of certificated landing weight or a minimum of \$50.00 per month; and
- Common Space Fees of \$0.25 per enplaned passenger
- A Security Deposit of \$3,070.08 due upon signing of the lease or the day on which possession of the Lease Premises is delivered to Tenant.

All fees were set in accordance with Chapter 12-31 of the Tyler Code of Ordinances

The Airport Advisory Board considered this request on June 17, 2019 and the Airport Staff will be prepared to announce the results of their vote.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute a new Commercial Airline Operating Lease with common use space agreement with Frontier Airlines.

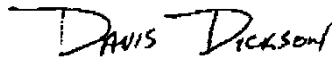
Agenda Number: M-5

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ATTACHMENT:

Frontier Airlines Commercial Airline Lease

Drafted/Recommended By:
Department Leader



Davis Dickson, Airport Manager

Edited/Submitted By:
City Manager



TYLER POUNDS REGIONAL AIRPORT

The State of Texas
County of Smith

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FOR QUESTIONS CALL:			
Airport Manager, Davis Dickson, (903) 531-9825			

THE STATE OF TEXAS

∃

COMMERCIAL AIRLINE LEASE

COUNTY OF SMITH

∃

∃

THIS LEASE is made between the CITY OF TYLER, TEXAS, a home-rule municipality and political subdivision of the State of Texas, (hereinafter "City"), and FRONTIER AIRLINES, (hereinafter "Lessee").

WITNESSETH:

WHEREAS, City owns and operates the Tyler Pounds Regional Airport, located in Smith County, State of Texas, (hereinafter "Airport"); and

WHEREAS, the City has certain airport space available for Lease to Lessee; and

WHEREAS, Lessee desires to Lease space for uses described herein; and

WHEREAS, Lessee has indicated a willingness and ability to keep, maintain and improve said Leased Premises in accordance with standards established by City, if granted a Lease of sufficient term on said premises.

NOW, THEREFORE, for and in consideration of the mutual agreements, the parties agree as follows:

ARTICLE I - PREMISES AND PRIVILEGES

A. **DESCRIPTION OF PREMISES.** For and in consideration of the terms of this Lease to be performed by Lessee, all of which Lessee accepts, City hereby leases to Lessee the following premises (hereinafter referred to as Lessee’s “Leased Premises” and “Exclusive Use Space”), as shown on the attached Exhibit A. Exclusive Use Space shall include the ticket counter, queuing space, ticket offices, ticket lobby, and bag storage areas.

Lessee accepts the Leased Premises in their present condition subject to and including all defects, **and Lessee will, without expense to City, repair and maintain any installations thereon and remove, or cause to be moved, any debris, buildings or improvements to the extent required for Lessee's use thereof.**

B. **ACCESS.** Upon paying the rental hereunder and performing the requirements of this Lease, Lessee shall have the right of access to and from the Leased Premises over such roadway(s), as may be designed for that purpose and the right of access to and from the landing area for aircraft over taxiways and aircraft parking ramps provided by City. Said roadway(s), aircraft parking ramps and taxiways shall be used jointly with other Airport tenants, but not for the conduct of business on another Lessee's premises and Lessee shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as the City Council deems necessary.

C. **OBJECTS AND PURPOSE OF LEASE.** Lessee is hereby granted the right and privilege to use the Leased Premises for commercial airline related activities, including:

1. The operation of a transportation system by aircraft for the carriage of persons, property, cargo and mail, including all activities reasonably necessary to such operation (hereinafter "Air

- Transportation");
2. The landing, taking off, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing and testing of aircraft or other equipment, including the use of a reasonable amount of conveniently located ramp area which is provided by City, which City will keep in good repair;
 3. The sale of tickets, documentation of shipments, handling of reservations, and the loading and unloading of persons, property and mail at said Airport by such motor vehicles or other means of conveyance as Lessee may desire or require in the operation of its Air Transportation system;
 4. The purchase at Airport of Lessee's requirement of fuel, lubricating oil, grease, food and other passenger supplies, and any other materials and supplies from any person or company of Lessee's choice and the making of agreements with any person or company of Lessee's choice for work to be done for Lessee. All such activities shall be subject to applicable Federal, State and City laws, Federal regulations, rules of the Northeast Texas Public Health District, and terms of this Lease;
 5. The installation, maintenance and operation of such radio, communication, meteorological and aerial navigation equipment and facilities in, on and about the premises herein leased at Airport as may be necessary or convenient in the opinion of the Lessee for its operations; provided that the location of such equipment and facilities as might interfere with the use of the Airport shall be subject to approval of the Federal Aviation Administration, as well as the Airport Manager, said Airport Manager approval not to be arbitrarily withheld;
 6. Except for the ticket counter shells, baggage conveyors and flight information systems, which the Lessee acknowledges to be the property of City, all improvements, fixtures, equipment and other property purchased, installed, erected or placed by Lessee in, on or about the Airport and the Leased Premises shall be deemed to be personalty and remain the property of the Lessee, subject to the provisions of Article VI.
 7. The general use, in common with others authorized to do so, of all public airport facilities and improvements which are now or may hereafter be connected with or appurtenant to Airport, except as hereinafter provided.

Lessee shall not use the Leased Premises for any purposes other than those authorized herein without the prior written consent of City, which shall not be arbitrarily withheld.

It is understood and agreed that nothing herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958, [49 USCA §1349(a), or successor statute].

D. **CITY'S RESERVED RIGHTS.**

1. **Development.** N/A

2. **Oil, Gas, Mineral Interests.** It is understood and agreed that this Lease is made subject and subordinate to the terms of any oil, gas, and other mineral interest, leases, or right-of-way easements of any nature which may have been executed heretofore.

If third persons owning or claiming any interest in minerals in, under, or upon the Leased Premises, cause a permanent or temporary disruption of Lessee's operations upon the premises, Lessee expressly agrees not to sue City, nor City's agents, for any loss to Lessee caused by such event. Said disruption of possession is a risk, which Lessee expressly assumes herein.

City agrees that (1) if it should, as a mineral owner under the premises, develop the Airport area, or a portion thereof, for oil, gas or other mineral purposes, no well will be drilled or other operations conducted on the Leased Premises while this Lease is in effect; and (2) in the event it should hereafter execute an oil, gas or other mineral Lease in favor of a third party covering the Airport area, or a portion thereof, it will cause such lease to contain a provision that the Lessee therein will not conduct any of its drilling or other operations on the land governed by this Lease, or in a manner which would unreasonably interfere with Lessee's use and enjoyment of the premises while this Lease is in effect.

3. **Other Contracts.** This Lease shall be subordinate to the provisions of any existing or future agreement between City and the United States, relative to the operation or maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to City of federal funds for the development of the Airport. In the event this Lease is subordinated due to City's election to receive federal funds and that action results in reduction of Lessee's revenue producing activities, City and Lessee shall negotiate reasonable compensation to Lessee for such reduction.
4. **Other Leases.** Nothing herein contained shall limit City with respect to granting of leases to other aviation tenants under more restrictive terms as herein set forth or to granting of leases for non-commercial aviation or non-aviation purposes at terms different from those set forth herein.

City agrees not to enter into any agreement with any other similar Lessee with respect to the Airport containing more favorable terms than this Lease or to grant to any other air transport operator rights, privileges, or concessions with respect to the said Airport unless the same terms are made available to Lessee.

E. **PROHIBITED USES.** Lessee shall not use or knowingly permit the use of any part of the premises in any other manner than set out in Article I, Section C of this Lease. Some specific activities prohibited are as follows:

1. Auto rental service.
2. Food sales (except foods prepared and packaged off the Leased Premises for food trays for private or charter flights) at the Leased Premises.
3. Sales of alcoholic beverages at the Leased Premises.

4. Sales or advertisement of non-aviation products other than those items by third parties that are tied to Lessee's promotion of service.
5. Any use prohibited by applicable Federal, State or City laws, federal regulations, or Northeast Texas Public Health District rules.
6. Storage, transfer, or sale of fuel.

F. **WESTSIDE TERMINAL BUILDING.** The provisions of this Section shall apply to the West Side Airport Terminal Building if improvements are performed.

1. Lessee shall design and construct office and up fit requirements as proposed by Lessee and subject to approval and acceptance by City.
2. The Lessee shall accept such premises "as is".
3. Lessee shall provide all improvements, which are necessary to operate said commercial airline activities to the reasonable satisfaction of City.
4. All construction work done, equipment supplied and installed, and interior design and decor furnished by Lessee pursuant to this Section shall be at its sole cost and expense, free and clear of liens for labor and material and Lessee shall hold City harmless from any liability in respect thereto.
5. Prior to the commencement of construction by Lessee, Lessee shall furnish, at its sole cost and expense, **where required by State law**, both Performance and Payment Bonds or an acceptable letter of credit for the full amount of the proposed improvements proposed by Lessee herein, or a security deposit for said amount acceptable to the Airport Manager, to guarantee compliance with this Section. This Bond shall be in a form reasonably acceptable to City and be issued by a surety company authorized and licensed to transact business in the State of Texas and be for the full amount of the proposed improvements with City of Tyler as obligee conditioned upon full, faithful and satisfactory performance by Lessee of its obligations to construct and install the aforementioned facilities and improvements. The principal amount of said Bond or other security deposit, however, may be reduced during the term hereof as Lessee completes the improvements contemplated thereby.
6. Prior to any work being done, Lessee shall obtain City's written approval of all plans, and shall obtain other Permits and approvals required by law.
7. Prior to the construction and installation of improvements including furniture, furnishings, and equipment, Lessee shall first prepare an overall program including a time schedule for same, which shall be subject to approval of City.
8. Lessee shall provide distribution of any additional utilities **within the Leased**

Premises as required at Lessee's sole expense.

9. For projects that exceed \$15,000 the City and City's Design Architects may review each submittal and may reject any such submittal and require Lessee to resubmit design proposals until they meet with City's approval. Lessee shall include in the project schedule the following minimum review times:

- Overall Program.....7 Calendar Days
- Conceptual Design.....7 Calendar Days
- Design Development.....14 Calendar Days
- Construction Documents.....14 Calendar Days

City shall return one set of plans and specifications to Lessee with written comments within the above timeframe. Lessee shall incorporate these comments. Lessee shall obtain written approval from City and shall obtain approvals from applicable City departments before letting of contracts for the construction of said improvements.

10. All structural or other improvements, equipment and interior design and decor constructed or installed by Lessee in the Leased Premises, including the plans and specifications therefore, shall in all respects conform to and comply with all applicable federal, state, Northeast Texas Public Health District, and City statutes, ordinances, building codes, orders, rules and regulations governing the Leased Premises and Lessee's operations therein. The approval by City provided above shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain in Lessee.

11. Lessee shall require by any contract that it awards in connection with the structural or other improvements, the installation of any and all equipment and the interior designing and decor, that the contractor doing, performing or furnishing the same shall comply with all applicable Federal, State, Northeast Texas Public Health District, and City statutes, ordinances, codes, orders, rules and regulations, and shall submit to City evidence of required insurance coverage.

12. Upon completion of the leased improvements, Lessee shall, within sixty (60) days furnish City, at no charge: (1) a certificate certifying that the improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all applicable Federal, State, Northeast Texas Public Health District, and City laws, rules, ordinances and governmental rules, regulations and orders; (2) two [2] complete, reproducible sets of as-built drawings covering the structural and other improvements installed by Lessee in the Leased Premises plus the location and details of installation of all equipment, utility lines, heating, ventilating, air-condition ducts and related matters. (3) Lessee shall keep said drawings current by updating the same in order to reflect thereon any changes or modifications which may be made in or to the Leased Premises; and as installation of the structural and equipment items, counters, partitions, furnishing and the interior design and decor is completed.

G. **IMPROVEMENTS ON LEASED PREMISES.** No material improvement on the Leased Premises shall be made or installed by Lessee without the prior written consent of the Airport Manager, which consent

will not be arbitrarily withheld. Lessee agrees that prior to the installation or construction of any such fixture, structure addition, or improvement, it shall submit the general plan, location design and character thereof to the Airport Manager for approval, and that all construction will be in conformity with such plans and specifications. Approval of Lessee's plans by City shall not constitute a representation or warranty as to such conformity; responsibility for such conformity shall at all times remain in Lessee.

Lessee understands that all development shall conform to Airport Master Plan Guidelines and other Airport Rules and Regulations then in existence as approved by City Council, which are available in the Airport Manager's Office. Intentional failure to conform development to approved plans as scheduled shall be cause for termination of this Lease upon failure to conform within thirty (30) days of City's written notice to Lessee of its failure to conform.

Title to all improvements constructed or installed by Lessee, including trade fixtures, personal property and other equipment on the Leased Premises shall throughout the term of this Lease remain in Lessee, subject to the provisions of Article VI.

H. **MORTGAGE OF LEASEHOLD INTEREST.** N/A This paragraph is not applicable in this agreement.

ARTICLE II - OBLIGATIONS OF LESSEE

A. **NET LEASE; MAINTENANCE AND OPERATION.** The use and occupancy of the Leased Premises by Lessee will be without cost or expense to City. It shall be the sole responsibility of Lessee to construct, maintain, repair and operate the entirety of the Leased Premises and any improvements and facilities constructed thereon at Lessee's sole cost and expense except as specifically set forth in this Article.

Lessee shall maintain the Leased Premises at all times in a safe, neat and attractive condition and shall not permit the accumulation of any trash or debris on the premises. Lessee shall repair all damages to said premises caused by its employees, patrons, or its operation thereon.

City reserves the right to make periodic inspection of Leased Premises and improvements and equipment therein during normal business hours after reasonable notice.

City, in its reasonable discretion, shall be the sole judge of the quality of maintenance, which shall uniformly apply to all airport tenants. Upon written notice by City to Lessee, Lessee shall be required to perform whatever reasonable maintenance City deems necessary. If said maintenance is not undertaken by Lessee within ten business (10) days after receipt of written notice, City shall have the right to enter upon the Leased Premises and perform the necessary maintenance, the reasonable cost of which shall be borne by Lessee.

Lessee agrees to install and maintain such fire equipment and fire extinguishers as may be reasonably designated or requested by the City of Tyler Fire Marshal or in accordance with applicable safety standards.

B. **ALTERATIONS TO AND CONDITION OF PREMISES.** Lessee shall not remove or demolish, in whole or in part, any improvements upon the premises without the prior written consent of City which may, at its discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement

specified in such consent.

Lessee shall not add, modify or replace electrical plugs, outlets or fittings without written approval of City. Any additions, modifications or replacements shall be at the sole expense of the Lessee. All parts removed from Airport owned Jetways or airport premises by Lessee must be returned to City. Lessee agrees to replace all removed parts/components back to original condition upon expiration or termination of this Lease.

Lessee further agrees that upon the expiration of the term or renewal period of this Lease or sooner cancellation thereof, said premises will be delivered to City in good condition, reasonable wear and tear excepted, subject to the provisions of Article VI.

C. **TRASH, GARBAGE.** Lessee shall provide a complete and proper arrangement of the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused by the operation of Lessee's business. Lessee shall provide and use approved receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels or other similar items in an unattractive or unsafe manner, on or about the Leased Premises, is prohibited.

D. **SIGNS.** The installation and operation of identifying signs on the Leased Premises, as well as the general type, number, design and method of installation and removal and location of such signs, is subject to the approval of the Airport Manager, such approval not to be arbitrarily withheld.

E. **UTILITIES.** Lessee shall assume and pay for all costs or charges for utilities services furnished to Lessee during the term hereof; provided, however, that Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; and Lessee shall pay for any and all service charges incurred therefor.

F. **FIELD USE CHARGES.** Nothing herein shall be deemed to relieve Lessee, sub lessees, and others from landing fees, as are described in the Tyler Code.

G. **WORK STOPPAGES.** In the event of a strike or work stoppage by employees of Lessee, Lessee will continue to pay, during the entire period of any such strike or work stoppage, the rentals as set forth in Article IV, due in this Lease.

H. **PAYMENTS DUE.** Lessee agrees that no payments due and owing by Lessee of any nature whatsoever to City, including payment in advance for service charges (such as garbage collection), or any other sums of any character whatsoever, shall become delinquent or in arrears.

I. **COMPLIANCE WITH RULES.** Lessee will comply with any and all federal, state and City laws, rules and regulations, Northeast Texas Public Health District rules, and all regulations made by the Airport Manager and approved by the City Council, provided, however, such rules and regulations do not materially interfere or abrogate any of the rights afforded Lessee under this Lease.

J. **NONDISCRIMINATION/FEDERALLY REQUIRED ASSURANCES.** Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby agree that "as a covenant running with the land" (1) no person on the grounds of race, color, sex, creed,

national origin, or disabled status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, or in the construction of any improvements on, or under such land, or the furnishing of services thereof ; and (2) that Lessee shall use the premises in compliance with and conduct its operations in accordance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, or Section 504 of the Rehabilitation Act of 1973 (23 USC 794) and 49 CFR Part 27 and as said regulations may be amended, and that Lessee will comply with such enforcement procedures as the federal government might demand that City take.

K. **FAA AND OTHER APPROVAL OF USE.** Lessee agrees to secure approval from the Federal Aviation Administration concerning the height and location of all buildings or improvements or modifications thereof which may be constructed or installed by Lessee on the Leased Premises and to satisfy any applicable environmental or other requirements of federal, state, and local authorities as to noise, smoke, fumes emissions, or other hazards or potential hazards or other offensive uses, if any, which may occur as a result of Lessee's operations on the Leased Premises.

L. **NON-INTERFERENCE WITH OPERATION OF AIRPORT/EASEMENTS.**

1. Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not use the premises in any manner which might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. If Lessee violates this provision, City reserves the right to enter upon the Leased Premises and remove the interference at the expense of the Lessee.
2. City shall maintain and keep in good repair the landing area of the Airport, and shall have the right to direct and control all activities of the Lessee in this regard. It is understood that City will attempt to coordinate such activities with Lessee in advance.
3. Easements. City retains the use and enjoyment of all utility and other easements located on, in or about the hereinabove described Leased Premises. City shall retain the right to take, without compensation to Lessee, any additional easements as are necessary on the hereinabove described Leased Premises for installation or maintenance of utilities, whether they be to supply service to the Lessee hereunder or other Airport lessees, provided, that such additional easements do not interfere with Lessee's use of the Leased Premises.
4. City shall retain an easement over, above and on the Leased Premises in relation to aircraft noise and the utilization of the air space for the operation of Airport.

M. **LESSEE AUTHORITY.** The officers of the Lessee, which execute this Lease, represent and promise that they are duly authorized by corporate resolution or other appropriate authorization to execute same on behalf of Lessee.

N. **EMPLOYEES.** Lessee shall at all times retain, or its subcontractor shall retain, an active, qualified, competent and experienced manager to supervise the operations and to represent and act for Lessee in matters pertaining to the day-to-day operation of its Air Transportation business.

Lessee shall be required to uniform or dress its employees or contracted agents properly. An appropriate badge, cap or other standard item of apparel shall identify the service. Employees shall be clean, courteous and professional in appearance at all times. Lessee shall not employ any person(s) in or about the Leased Premises who use improper language or fail to comply with applicable airport rules and regulations.

Lessee shall maintain a close check over attendants and employees to insure a high standard of service to the public. Upon written notice by City to Lessee that any person employed by Lessee at Airport is, in City's opinion, detrimental to the best interests of Airport, Lessee will respond in writing to Airport Manager within five business days of its response and any action Lessee decides to take with regard to such person. No request by City should cause Lessee to violate employee privacy laws or statutes.

O. **ACCOMODATION OF NEW AND/OR EXISTING AIRLINES.** Lessee and City agree that every reasonable effort will be made to accommodate any other new entrant or incumbent airline, hereinafter referred to as **Requesting Airline**. The City will make every effort to accommodate a **Requesting Airline** by executing a lease of premises between **Requesting Airline and City, subject to City Council approval**. Should there be no terminal space available to accommodate the **Requesting Airline** for lease from the CITY, the parties hereto recognize that it may become necessary to share the use of the Leased Premises and/or Exclusive Use Space described herein, with other airlines to reasonably accommodate new and/or additional Air Transportation service at Tyler Pounds Regional Airport. Lessee agrees to cooperate with the City by giving appropriate response and action to any requests by the City to accommodate a **Requesting Airline** in Lessee's Leased Premises and/or Exclusive Use Space, provided, however, if a Requesting Airline uses the Licensed Premises or Exclusive Use Space, Requesting Airlines will agree to indemnify Lessee and City including agreeing to provide the same levels and amounts of insurance as Lessee is required to maintain under this Lease.

ARTICLE III - TERM

The term of this Lease shall be for a period of about two (2) years beginning on July 1, 2019 and ending on June 30, 2021.

Lessee shall have an option to renew this Lease for two (2) additional two-year period(s) upon the expiration of the initial Lease term at rates to be negotiated.

Lessee's election to exercise an option shall be set forth in writing to the Airport Manager no later than three (3) months before the expiration of the primary term of this Lease or option period. Lessee's failure to supply written request voids any renewal options.

It is specifically agreed that Lessee's option to extend the original term of this Lease shall be subject to a finding and determination by the City Council, subsequent to the receipt of the exercise of said option to renew by Lessee, as follows:

1. That the operations of Lessee upon the premises have not resulted in a disruption of normal Airport aviation activities; and that,
2. The continued use of said premises by Lessee will be consistent with the normal

functioning of the Airport for the extended term.

If Lessee continues to occupy the Leased Premises beyond the term of the Lease period or any extension thereof, such holding over shall not constitute a renewal of this Lease but shall be a day-to-day tenancy only, which may be terminated at any time by City.

ARTICLE IV - RENTALS/SECURITY DEPOSIT

A. **TERMINAL**. As required by Tyler City Code Section 12-31, Lessee shall, during the term of this Lease, pay to the City as follows:

EXCLUSIVE USE SPACE

Airline Office Areas	<u>144</u> sq. ft.
Ticketing	<u>576</u> sq. ft.
Hall	<u>168</u> sq. ft.
Belt	<u>168</u> sq. ft.
Baggage Make-Up	<u>192</u> sq. ft.
Total:	<u>1,248</u> sq. ft.
Bag Storage	<u>0</u> sq. ft.

Total Exclusive Use **1,248 sq. ft. @ \$29.52 per sq. ft.**
\$36,840.96 / Annually
\$3,070.08 / Monthly

B. **LANDING FEES/COMMON SPACE FEES**: Landing fees shall be **\$.65** per thousand pounds of certificated landing weight or a minimum of \$50.00 per month. Common Space Fees shall be \$.25 per enplaned passenger. Lessee shall calculate and report such fees no later than the third (3rd) business day after the end of each month for which landing fees and common space fees are due. Such report shall be in writing and in a form approved by the Airport Manager. Payment of landing fees/common space fees are due no later than the tenth (10th) business day after the end of each month for which landing fees are due. Landings of aircraft operated by Lessee engaged in training flights shall be included in landing counts for purposes of calculating landing fees.

C. **OTHER FEES**. Telephone service shall be the financial responsibility of Lessee.

D. **SECURITY DEPOSIT**. Lessee shall pay a security deposit of \$3,070.08 to City due upon signing of the lease or the day on which possession of the Lease Premises is delivered to Tenant, whichever is sooner. This deposit shall be kept in an airport secured account. If Lessee surrenders the Lease Premises at the end of the Lease Term in good and broom-clean condition, the deposit shall be returned in full to Tenant no later than 21 days after surrender of the Lease Premise.

UTILITIES: All

E. **FUEL DELIVERY FEE**. N/A This paragraph is not applicable to this agreement.

F. **CRASH/FIRE/RESCUE SURCHARGE**. No charge at this time. Refer to Article IV, Section H.

G. **PAYMENT.** Payment of all amounts due in accordance with Article IV, except landing fees, are due in advance no later than the tenth (10th) business day of the month for which payment is due.

(Example: No later than the tenth (10th) business day of February, Lessee shall pay February rental, plus January landing fees (including landings during training flights) and common space fees that were reported by the third (3rd) business day in February.)

Since all amounts except landing fees/common use fees are set out herein, it shall not be necessary for City to bill Lessee, although City may choose to do so.

All payments are to be made at the Airport Manager's Office, Tyler Pounds Regional Airport, either in person or mailed to the address shown in Article VII, Section F.

City reserves the right to assess and collect Passenger Facility Charges subject to terms and conditions and such methods of collections as set forth in the Federal Aviation Safety and Capacity Expansion Act of 1990, (the "PFC Act"), as amended, and Tyler City Code Chapter 12, Article VI.

H. **RENTAL RATE OR FEE ADJUSTMENT.** Upon City Council approval and two (2) months advance written notice, City may decrease or increase the rates as set provided that they shall not exceed the rates then being charged at similar-sized airports in the United States at comparable facilities. Should such rates increase, Lessee may choose to either comply with the increase or at any time after such increase cancel this Lease with no penalty.

I. **DELINQUENT RENTALS.** If sums due to City are not received by the twentieth (20th) day of the month for which payment is due, the City shall send written notice to Lessee indicating amounts that are overdue and requesting that payment be made within ten (10) days of receipt of the notice. If payment is not received for amounts due and owing within the ten (10) day period following written notice, then a delinquent fee of **\$20.00 per day** shall be assessed against Lessee in addition to the unpaid balance for each day following the ten (10) day notice period that the overdue amount remains unpaid.

ARTICLE V - INSURANCE AND INDEMNITY BY LESSEE

A. **TYPE AND AMOUNT.** Lessee shall provide and maintain, at its own expense, the following types and amounts of insurance, during the term of this Lease:

<u>TYPE</u>	<u>AMOUNT</u>
1. Comprehensive General (Public) Liability - to include (but not limited to) the following: a. Premises/operations b. Independent contractors c. Personal injury liability/contractual liability (insuring indemnity provision within this Lease) AND, where the exposure exists, coverage for:	Combined Single Limit (or equivalent) for Bodily Injury and Property Damage: \$2,000,000 per occurrence

- d. Products/Completed operations
 - e. Explosion, Collapse and Underground Property Damage
2. Worker's Compensation and Employer's Liability
Statutory (where required by state law) \$500,000 per occurrence

The preceding amounts notwithstanding, the City Council reserves the right to increase the minimum required insurance to be effective thirty (30) days after written notice is sent to the address provided herein. If City exercises the right to increase minimum insurance amounts, Lessee may choose to either comply with the increase or cancel this Lease in whole with no penalty.

The procuring of such policy of insurance shall not be construed to be a limitation upon Lessee's liability or as a full performance on its part of the indemnification provisions of the Lease. Lessee's obligations to the City are, notwithstanding said policy of insurance, for the full and total amount of any damage, injury or loss as provided under the terms of the Lease.

B. OTHER INSURANCE REQUIREMENTS. *Prior to the Lease effective date*, Lessee shall furnish to City Clerk certificates or copies of the policies, plainly and clearly evidencing required insurance and thereafter new certificates *prior to the expiration date of any prior certificate*. Lessee understands that it is its sole responsibility to provide this necessary information and that failure to comply timely with the requirements of this article shall be a cause for termination of this Lease, under the provisions of the termination clause.

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 for their adequacy as to form, content, form of protection, and providing company.

Insurance required by this Lease for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Lessee further agrees that with respect to the above required insurance, the City shall:

- 1. Be named as additional insured/or an insured, as its interest may appear; and
- 2. Be provided with a waiver of subrogation; and
- 3. Be provided with 30 days advance notice, in writing, of cancellation or adverse material change (10 days notice of cancellation for non-payment of premium).

If either requirement #1 or #2 requires the payment of additional premium by Lessee, Lessee may present such information to the City Council for its reconsideration. City will not be responsible for any of Lessee's insurance costs.

C. FAILURE TO PROVIDE INSURANCE, SUSPENSION OF ACTIVITIES. WHENEVER A LESSEE IS UNABLE TO SHOW PROOF OF INSURANCE REQUIRED AND AFTER TEN (10)

DAYS PRIOR WRITTEN NOTICE, THEN THE CITY MANAGER SHALL HAVE THE AUTHORITY TO SUSPEND TEMPORARILY LESSEE'S AIRPORT ACTIVITIES ON A DAILY, OR PORTION OF A DAY BASIS UNTIL PROOF OF REQUIRED INSURANCE IS PROVIDED. THIS REMEDY IS IN ADDITION TO ALL OTHERS HEREIN AND IS INTENDED TO OBTAIN COMPLIANCE WITHOUT AND BEFORE TERMINATION OF THE LEASE.

D. **INDEMNITY.** It is agreed for all purposes hereunder, Lessee is and shall be an independent contractor and shall not, with respect to its acts or omissions be deemed an agent or employee of City.

Lessee agrees to indemnify, hold harmless and defend City, its officers, agents and employees, from and against all liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's fees and other reasonable costs occasioned by Lessee's occupancy or use of the Leased Premises and/or activities conducted in connection with or incidental to this Lease and arising out of or resulting from the intentional acts or negligence of Lessee, its officers, agents or employees, including all such causes of action based on common, constitutional, or statutory law, or based upon the negligent or intentional acts or omissions of Lessee, its officers, agents, employees, or visitors.

Lessee further agrees that it shall at all times exercise reasonable precautions for the safety of its officers, agents, employees, customers, and visitors, as well as their property, while in or on the Leased Premises. It is expressly understood and agreed that City shall not be liable or responsible for the negligence of Lessee, its agents, servants, employees, customers, and visitors. Provided, however, nothing herein shall be construed to create a duty owed by Lessee to third persons where no such duty exists by law.

Further, City assumes no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premises defects in improvements constructed by Lessee which may now exist or which may hereafter arise upon the premises., any and all such defects being expressly waived by Lessee. Lessee understands and agrees that this indemnity provision shall apply to any and all claims, suits, demands, and/or actions based upon or arising from any such premise defects or conditions, including but not limited to any such claim asserted by or on behalf of Lessee or any of its members, agents, employees, customers, or visitors.

It is further agreed with respect to the above indemnity, that City and Lessee will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Lessee or City, and City shall have the right to compromise and defend the same to the extent of its own interests if it pays for and retains its own counsel. Provided, however, nothing in this Lease shall be construed as obligating Lessee to indemnify the City for the negligence or actions of the City, its agents, servants, or employees, or third parties over whom Lessee has no right of control.

ARTICLE VI - TERMINATION OF LEASE, CANCELLATION, ASSIGNMENT AND TRANSFER

A. **TERMINATION; RECAPTURE BY CITY.** This Lease shall terminate at the end of the full term hereof, at the end of any full term of any renewal period, OR AS EARLIER TERMINATED AS PROVIDED ELSEWHERE IN THIS LEASE and Lessee shall have no further right or interest in the

premises, except as provided by the other provisions herein relating to improvements.

If City requires the Leased Premises for expansion or developing of the Airport, City reserves the right, on three (3) months advanced written notice, to relocate or replace Lessee's improvements at City's cost and expenses in substantially similar form at another generally comparable location on Airport, provided, such relocation does not materially interfere or impact Lessee's operations. During such period of relocation, City will use its best efforts to assist Lessee in obtaining temporary shelter and rent payments will be abated.

During time of war or national emergency, City shall have the right to Lease the Airport or any part thereof to the United States Government for military or naval use, and if any such Lease is executed, the provisions of this instrument insofar as they are inconsistent with the Lease to the Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated.

B. CANCELLATION BY CITY. This Lease shall be subject to cancellation by City if Lessee fails to rectify the following within ten (10) business days of written notice to do same from City.

1. Default in the performance of any of the terms required herein to be kept and performed by Lessee.
2. Material failure to abide by all valid and enforceable laws of the United States or State of Texas or any ordinances or other Airport Rules and Regulations approved by the City Council, or any applicable rules of the Northeast Texas Public Health District.
3. Failure to request approval of an amended design plan, within six (6) weeks before the date of proposed destruction of improvements within the leased premises, airport owned jet bridges or airport passenger terminal area.
4. Abandonment of the Leased Premises for thirty (30) days.
5. Bankruptcy; being in arrears in the payment of the benefit of creditors; or making a general assignment for the benefit of creditors; or filing a voluntary petition of bankruptcy, or, if the proceedings in bankruptcy shall be instituted against Lessee and thereafter adjudicated a bankrupt pursuant to such proceedings; or if a receiver shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.
6. Cancellation of all regularly scheduled airline service into the Airport.

If, after ten (10) days from the date of such notice, the default, failure to perform, or breach complained of shall not have been corrected in manner reasonably satisfactory to City, then City shall have the right, without further notice to Lessee, to take immediate possession of the Leased Premises and remove Lessee's effects, forcibly, if necessary, without being deemed guilty of trespassing. Upon said default, all rights of Lessee shall be forfeited; provided, however, City shall have and reserve all of its available remedies at law as a result of said breach of this Lease.

Failure of either party to declare this Lease terminated upon the default of either party for any reasons set out shall not operate to bar, destroy or waive the right of such party to cancel this Lease by reason of any subsequent violation of the terms hereof. The acceptance of rentals and fees by City for any period(s) after a default of any of the terms herein contained to be performed, kept and observed by Lessee shall not be deemed a waiver of any rights on the part of City to cancel this Lease for failure by Lessee to so perform, keep or observe any of the terms hereof. (The actual termination of this Lease under the provisions of Article VI shall occur when approved by the City Council.)

C. **WAIVER OF STATUTORY NOTICE TO QUIT.** If City exercises its option to cancel this Lease upon the happening of any or all of the events set forth in Section B (Cancellation by City) and the failure of Lessee to correct any such breach within the time allowed, a notice of cancellation given pursuant to Section B and sent to the address specified in Article VII Section F (or subsequent address provided in writing to Airport Manager) and City Council approval of the termination shall be sufficient to cancel this Lease; **and upon such cancellation, Lessee hereby agrees that it will surrender up possession of the Leased Premises to the City, subject to Lessee's rights in the improvements as provided for elsewhere herein.**

D. **PERSONAL PROPERTY.** City shall have a lien as security for the rent aforesaid upon all of the goods, wares, chattels, implements, fixtures, furniture, tools and other personal property excluding aircraft and Information Technology Equipment containing confidential information of Lessee's customers which are or may be put or caused to be put on the leased premises by Lessee. City may elect to retain possession of such property or may sell the same and keep the proceeds after first applying them to any payments in arrears, or may have such property removed at the expense of Lessee. **Upon termination of this Lease, Lessee shall remove all property from the Leased Premises within ten (10) business days after said termination, provided that Lessee may not remove any improvements for which it will receive a rental credit or rebate.**

Lessee shall repair, at its own expense, any damage resulting from said removal of personal property and shall leave the Leased Premises in a neat and clean condition with all other improvements in place, wear and tear excepted.

E. **CANCELLATION BY LESSEE.** This Lease shall be subject to cancellation by Lessee, at Lessee's option, after one or more of the following:

1. The permanent abandonment of the Airport as a public airport.
2. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport or any substantial part(s), in such a manner as substantially to restrict Lessee for a period of at least ninety (90) days from operating thereof.
3. Damage to Lessee's improvements, by any instrumentality that renders such improvements unacceptable for the purpose for which they were intended.
4. Lessee's determination that its continued occupancy or use has become uneconomical.
5. The breach by City of any of the terms herein contained and the failure of City to remedy such breach for a period of thirty (30) days after receipt of a written notice of the existence of such

breach.

Lessee may exercise such rights of termination upon ninety (90) days prior written notice to City and this Lease shall terminate as of that date. Rentals due hereunder shall be payable only to the date of said termination.

F. **SUBLETTING AND ASSIGNMENT.** Except to a parent, code share partner, alliance partner or corporation(s) owned or controlled by Lessee or under the same parental control as Lessee, Lessee shall not rent or sublease or assign all or any part of such premises or the improvements located thereon without the prior written consent of the City Council, which consent shall not be unreasonably withheld. Any sublessees shall be subject to the same terms as set forth herein. Lessee shall be responsible for the observance by its tenants and sublessees of the terms of this Lease.

As a condition of and as consideration for approving any assignment, transfer or sublease, City may require amendment of the terms of this Lease to conform to any different terms of the Lease form then currently approved and adopted by City for new leases, provided, in the event of such amendment, transferee, assignee, or sub lessee shall be given the option of taking over the unexpired balance of this Lease or entering into a new Lease for such term as may then be approved by City for new Leases for Lease assignees. It is not the intention of the City that the subleases or other tenant situations be misused as a method to avoid compliance with the minimum standards herein.

In the event of approved assignment, Lessee shall be relieved of any further obligation hereunder, and the City will look solely to such approved assignee for performance of this Lease subsequent to the date of such approved assignment. Said assignee shall not assign said Lease except with the prior written approval of the City, and any assignment by the Lessee shall contain a clause to this effect.

All of the terms herein contained shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.

ARTICLE VII - GENERAL PROVISIONS

A. **APPLICABLE LAW AND VENUE.** This Lease and all transactions made hereunder shall be construed and governed according to the laws of the State of Texas. Venue for any legal proceedings shall be in Smith County, Texas.

B. **INVALID PROVISIONS.** If any provision herein is held to be invalid by a court of competent jurisdiction, the invalidity of such provision shall in no way affect any other provision.

C. **PARAGRAPH HEADINGS.** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

D. **DEFINITION OF LESSEE.** The term "Lessee" shall include Lessee, its heirs or executors, and any corporations now or hereafter owned or controlled by Lessee, its heirs and executors, who are operating on the Leased Premises.

E. **FEDERAL AVIATION ADMINISTRATION.** Whenever the term "Federal Aviation

Administration" is used in this Lease, it shall be construed as referring to the Federal Aviation Administration created by the federal government or to such other agencies of the federal government having from time to time similar jurisdiction over Lessee or its business.

F. **NOTICES.** Whenever any notice or payment is required by this Lease to be made, given or transmitted to the parties hereto, such notice or payment shall be enclosed in an envelope with sufficient postage attached to ensure delivery and deposited in the United States Mail, addressed to:

Tyler Pounds Regional Airport
700 Skyway Blvd., Ste. 201
Tyler, TX 75704
(903) 531-2343

and notices, consents and approval to Lessee addressed to:

Name
Address
Phone

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed this _____ day of _____, _____.

CITY OF TYLER, TEXAS

LESSEE, _____

BY: _____
EDWARD BROUSSARD, CITY MANAGER
Council approved: _____
Agenda Item No.: _____

BY: _____

ATTEST:

ATTEST:

CITY CLERK

RECOMMENDED: _____
AIRPORT MANAGER

(Airport Advisory Board considered on _____
and recommended approval/denial)

APPROVED: _____
CITY ATTORNEY

THE STATE OF TEXAS

COUNTY OF SMITH

This instrument was acknowledged before me on _____, _____, by _____, Lessee.

Notary Public in and for the State of Texas

EXHIBIT "A"



A-1





CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: M-6

Date: June 26, 2019

Subject: Request that the City Council consider authorizing the City Manager to execute an agreement with Habitat for Humanity of Smith County to administer the Critical Home Repair Program funded with Community Development Block Grant (CDBG) funds.

Page: 1 of 2

Item Reference: Council Item H-1 on 01/23/2019 and Habitat for Humanity of Smith County Critical Home Repair Program Agreement

As part of the City initiative to assist eligible low-income homeowners with bringing existing substandard housing units up to minimum standards of local housing and building codes, the City will fund a Critical Home Repair program with Community Development Block Grant (CDBG) funds and which will be administered by Habitat for Humanity of Smith County.

On January 23, 2019, City Council approved amendment to the CDBG Program 2017 Annual Plan and the reprogramming of funds. A portion of the funds reprogrammed were used to develop a partnership with Habitat for Humanity of Smith County to administer a Critical Home Repair Program utilizing \$110,000.00 of CDBG funds.

The Habitat for Humanity of Smith County Critical Home Repair Program is designed to expand the supply of decent, safe, sanitary and affordable housing, to correct health and safety hazards in deteriorated housing and to extend the useful life of existing housing units. The program is open to low and moderate income, owner-occupied households within the city limits of Tyler and addresses disrepair that threatens the health and/or safety of the occupants or limits disabled accessibility to and from or within the home. The owner must reside in the home in which repair is requested. Repairs are capped at \$10,000.00 per address.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute an agreement with Habitat for Humanity of Smith County to administer the Critical Home Repair Program funded with Community Development Block Grant (CDBG) funds.

Agenda Number: M-6

Page: 2 of 2

ATTACHMENTS:

1. Habitat For Humanity of Smith County Critical Home Repair Program Agreement

**Drafted/Recommended By:
Department Leader**

Raynesha Hudnell
Neighborhood Services Manager

**Edited/Submitted By:
City Manager**

Edward Bousard

THE STATE OF TEXAS ♣

COUNTY OF SMITH ♣

COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT

THIS AGREEMENT, entered into this ___ day of _____, 2019 by and between the City of Tyler, a Texas home-rule municipality (herein called "CITY") and Habitat for Humanity of Smith County (herein called "SUBRECIPIENT").

WHEREAS, CITY has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, CITY wishes to engage SUBRECIPIENT to assist CITY in utilizing such funds;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein the parties agree as follows:

**SECTION I:
SCOPE OF SERVICES**

1.1. Activities

SUBRECIPIENT will be responsible for administering a Community Development Block Grant ("CDBG") Year 2018-2019 program known as the provision of Critical Home Repair Program of twelve single-family homes consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the CDBG Program:

Program Delivery

Activity:

Funding will be provided for home repairs to persons who fulfill homeowner eligibility requirements: income, residency, willingness to partner, homeownership and property taxes and insurance. Work to be performed through repairs or replacement of the following: windows, doors, countertops, cabinets, floors, HVAC, weather stripping, and other related minor repairs.

General Administration

The Executive Director of SUBRECIPIENT ("Executive Director") will provide administrative oversight for the program.

1.2 National Objectives

SUBRECIPIENT certifies that the activities carried out under this Agreement shall meet the national objective of benefiting low-and moderate-income persons by providing home repair. As such the SUBRECIPIENT shall be responsible for ensuring that all activities and beneficiaries meet the definition of:

- LMA – Low/Mod Area Benefit
- LMC – Low/Mod Clientele Benefit or presumed Low Mod Clientele
- LMH – Low/Mod Housing Benefit
- LMJ – Low/Mod Job Benefit

1.3. Levels of Accomplishment – Goals and Performance Measures

In addition to normal administrative services required as part of this Agreement, SUBRECIPIENT agrees to provide the following program services:

Activity	Unduplicated Clients Receiving Program Services Per Year
Funds will be used to assist low-to moderate-income residents with home repairs.	12 unduplicated clients

Duplicate services to a unique client are permissible in order to maintain continuity with current client cases and insure service completion. Duplicate clients shall not be counted towards SUBRECIPIENT’s goals and performance measures.

Goal	Outcome
To assist 12 homeowners with home repair assistance through repairs or replacement of the following: windows, doors, countertops, cabinets, floors, HVAC, weather stripping, and other related minor repairs.	12 homeowners will receive minor repair to address housing issues.

Program deliverables shall be submitted as follows:

Program Deliverable	Deliverable Supporting Documentation	Submission Schedule
Special Grant Condition Policies (Section VI)	Policies as stated in this agreement	Within thirty (30) days of agreement execution
Insurance	Insurance Certificate	Annually within thirty (30) days of renewal
Detailed project Schedule	Project Schedule	Within thirty (30) days of agreement execution and annually thereafter (if applicable)
Submission of Progress Report	Exhibit A	Monthly
Financial and Compliance Audit	N/A	Annually one hundred eighty (180) days after FY end until 2020

Monthly Progress Reports are to be submitted to CITY using the form provided at Exhibit A.

1.4. Staffing

To undertake the activity described above and accomplish the levels of service described above, SUBRECIPIENT will allocate staff time in support of the program funded under this Agreement as follows:

Title	Hrs. per Week	# of Weeks	=	Estimated Hours
Executive Director			=	
Construction Coordinator				
Community Involvement Director			=	
Volunteers			=	

Timeframe: June 7, 2019 through September 30, 2020

Any changes in the key personnel assigned or their general responsibilities under this program are subject to the prior approval of CITY.

SECTION II: TIME OF PERFORMANCE

2.1 Services of SUBRECIPIENT shall start on the June 7, 2019. This Agreement shall expire on September 30, 2020, unless extended in writing by SUBRECIPIENT and CITY, except as provided below. SUBRECIPIENT shall complete all services contemplated by this Agreement prior to its expiration, as more specifically set forth in the following timetable:

Home Repair Timeline	
Month	Completed Home Repair
July 2019	
August 2019	
September 2019	1
October 2019	1
November 2019	1
December 2019	1
January 2020	1
February 2020	1
March 2020	1
April 2020	1
May 2020	1
June 2020	1
July 2020	1
August 2020	1
September 2020	

2.2 Notwithstanding Section 2.1, the term of this Agreement shall automatically be extended for as long as SUBRECIPIENT has control over CDBG funds, including program income.

2.3 If the term of this Agreement is extended pursuant to Section 2.2, the term of this Agreement shall expire upon the disposition of the CDBG funds by SUBRECIPIENT, or remittance of the CDBG funds, including program income, to CITY by SUBRECIPIENT.

**SECTION III:
BUDGET**

All funds expended by SUBRECIPIENT pursuant to this agreement shall be expended in accordance with the following budget:

EXPENDITURE CATEGORY	DESCRIPTION	CDBG FUNDS	PROJECT TOTAL
Home Repair	Costs associated with the purchase of materials that will be used by sub-contractors to perform repairs.	\$100,000.00 (PY 18/19)	\$100,000.00
Administration	Staff time on administration of Critical Home Repair Program	\$10,000.00	\$10,000.00
Total Improvement Costs		\$110,000.00	\$110,000.00
Total Project Expenses		\$110,000.00	\$110,000.00

The SUBRECIPIENT will accomplish the following checked project tasks:

- Pay all closing costs related to property conveyance
- Maintain and provide to the City as requested beneficiary income certification documentation (at least 20% of unduplicated clients)
- Maintain National Objective Documentation
- Provide Monthly reports on National Objectives and project progress
- Required attendance by a representative from executive management at quarterly partnership meetings, as requested by Community Development Division
- Provide monthly construction and rehabilitation progress reports until completion of construction and rehabilitation
- Identify Lead Project Manager
- Provide Site Design and Specifications
- Comply with Davis Bacon Labor Standards
- Provide certified payroll weekly throughout construction and rehabilitation
- Comply with Uniform Relocation Act (URA), if necessary
- Ensure applicable numbers of units are Section 504/ADA accessible
- Ensure the applicable affordability period for the project is met

Any indirect costs charged must be consistent with the conditions of Paragraph 8.3(B) of this Agreement. In addition, CITY may require a more detailed budget breakdown than the one contained herein, and SUBRECIPIENT shall provide such supplementary budget information in a timely fashion in the form and content prescribed by CITY. SUBRECIPIENT may reallocate funds from one budget line-item above to another budget line-item provided that the level of program services does not decrease and provided that the CITY's Director of Finance approves such reallocation in writing.

SECTION IV: PAYMENT

It is expressly agreed the total amount to be paid by CITY under this Agreement shall not exceed **\$110,000.00 (ONE HUNDRED AND TEN THOUSAND DOLLARS AND 00 CENTS)**. Draw-downs for the payment of eligible expenses shall be made against the line item budgets provided above and incorporated herein and in accordance with performance as follows:

Payment Deliverable	Payment Supporting Documentation	Submission Schedule
Funds will be used to assist low-to moderate-income residents through home repair.	Cancelled checks/Exhibit B and any additional documentation as requested	Monthly

Expenses for general administration shall also be paid against the line item budgets provided above and in accordance with performance Payments will be contingent upon certification of SUBRECIPIENT's financial management system in accordance with the standards specified in 24 CFR 84.21. SUBRECIPIENT shall submit payment request information on the form provided at EXHIBIT B, Pay Request Form.

SECTION V: NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Notices made pursuant to this Agreement shall be directed to the following representatives:

CITY:

Raynesha Hudnell
Neighborhood Services Director
City of Tyler
900 W. Gentry Blvd.
Tyler, Texas 75702
Telephone: 903-530-1303
Fax: 903-595-7292
e-mail: rhudnell@tylertexas.com

SUBRECIPIENT:

Jack Wilson
Executive Director
Habitat for Humanity of Smith Co.
822 W. Front St.
Tyler, TX 75702
Telephone: 903-595-6690
Fax: 903-595-2745
e-mail: ceo@smithcountyhabitat.org

SECTION VI: SPECIAL CONDITIONS

SUBRECIPIENT agrees to comply with the requirements of Title 24 Code of Federal Regulations, Part 570 of the Housing and Urban Development (HUD) regulations concerning Community Development Block Grants and all federal regulations and policies issued pursuant to these regulations, except that: (1) SUBRECIPIENT does not assume CITY's environmental responsibilities, if any, described in 24 CFR § 570.604; and (2) SUBRECIPIENT does not assume CITY'S responsibility, if any, for initiating the review process under the provision of 24 CFR Part 52. SUBRECIPIENT further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available. Furthermore:

- A. Within thirty (30) calendar days of the execution of this agreement, the SUBRECIPIENT must deliver for approval to City of Tyler, Neighborhood Services Department a detailed project schedule for the completion of the project.

B. The following resolutions and policies must be adopted by the SUBRECIPIENT'S governing body within thirty (30) days of award of this agreement:

- Affirmative Fair Housing Policy
- Affirmative Action/ Equal Opportunity Policy
- Conflict of Interest Policy
- Procurement Policy
- Uniform Relocation Act Policy
- Sexual Harassment Policy
- Procedure for meeting the requirements set forth in Section 3 of the Housing and Urban Development Act of 1968, as amended (12U.S.C. 794 1 u)
- Procedures for meeting the requirements set forth in Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794)
- Fraud Policy

*Included in the Certification and Assurances attached as Exhibit B

SECTION VII: GENERAL CONDITIONS

7.1. General Compliance

SUBRECIPIENT agrees to comply with all applicable federal, state and local laws, regulations and policies governing the funds provided under this Agreement.

7.2. Independent Contractor

It is understood and agreed that SUBRECIPIENT is an independent contractor and shall not be considered an employee of CITY. SUBRECIPIENT shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. CITY shall be exempt from payment of all unemployment compensation, FICA and retirement benefits to SUBRECIPIENT, its employees, officers, or other agents, as SUBRECIPIENT is an independent contractor. SUBRECIPIENT shall not be within protection or coverage of CITY'S Workers' Compensation insurance, Health Insurance, Liability Insurance or any other Insurance that CITY from time to time may have in force and effect.

7.3. Hold Harmless

SUBRECIPIENT shall indemnify, save harmless and exempt CITY, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims,

demands, damages, costs, expenses, attorney fees and any and all other costs or fees incident to any work done as result of this Agreement and arising out of a willful or negligent act or omission of SUBRECIPIENT, its officers, agents, servants, and employees; provided, however, that SUBRECIPIENT shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of a willful or negligent act or omission of CITY, its officers, agents, servants and employees, or third parties.

7.4. Worker's Compensation

SUBRECIPIENT shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

7.5. Insurance and Bonding

SUBRECIPIENT shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from CITY.

7.6. Amendments

The terms and conditions of this Agreement constitute the entire agreement between the parties and supersede all previous communications, representations, or agreements, either written or oral, with respect to the subject matter hereof. No modification or amendment to this Agreement will be binding on either party unless acknowledged in writing by their duly authorized representatives.

7.7. Suspension or Termination

Partial terminations of the Scope of Services in Paragraph 1.1 above may only be undertaken with the prior approval of CITY. The award made pursuant to this agreement may be terminated for convenience in accordance with 24 CFR § 85.44 by either CITY or SUBRECIPIENT by setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, CITY determines that the remaining portion of the award will not accomplish the purpose for which the award was made, CITY may terminate the award in its entirety. In the event of any termination for convenience, all finished or unfinished documents, data, reports or other materials prepared by SUBRECIPIENT under this Agreement shall, at the option of CITY, become property of CITY.

In accordance with 24 CFR § 85.43, the CITY may also suspend or terminate this Agreement, in whole or in part, if SUBRECIPIENT materially fails to comply with any term of this Agreement, such material failures include, but are not limited to the following:

- A. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;

- B. Failure, for any reason, of SUBRECIPIENT to fulfill in a timely and proper manner its obligations under this Agreement;
- C. Ineffective or improper use of funds provided under this Agreement; or
- D. Submission by SUBRECIPIENT to CITY reports that are incorrect or incomplete in any material respect.

CITY may declare SUBRECIPIENT ineligible for any further participation in CITY contracts, in addition to other remedies as provided by law. Should SUBRECIPIENT fail to cure or correct such defects or failures identified by CITY within the fifteen (15) days after notification of deficiencies, and such breach of contract relate to a violation of federal law or regulations which results in a demand for reimbursement from the Department of Housing and Urban Development (HUD) or its successor, CITY may seek reimbursement of all funds paid from CITY to SUBRECIPIENT under this Agreement.

SUBRECIPIENT shall not be relieved of the liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement by SUBRECIPIENT and CITY may withhold any payments to SUBRECIPIENT for the purpose as set out and until such time as the exact amount of damages due CITY from SUBRECIPIENT is determined. Should CITY become aware of any activity by SUBRECIPIENT which would jeopardize CITY's position with HUD which would cause a payback of CDBG funds or other CITY federal funds then CITY may take appropriate action including injunctive relief against SUBRECIPIENT to prevent the transaction as aforesaid. The failure of CITY to exercise this right shall in no way constitute a waiver by CITY to demand payment or seek any other relief in law or in equity to which it may be justly entitled.

7.8. Pending Litigation

SUBRECIPIENT agrees to inform CITY about any litigation SUBRECIPIENT is, or becomes, involved in.

7.9. Background Checks

SUBRECIPIENT agrees to conduct a criminal background check on all employees working directly with youth.

7.10 Participant Eligibility

SUBRECIPIENT shall only provide services that benefit from this Agreement to families that qualify as a "low-and moderate-income household," as that term is defined in 24 CFR § 570.3. SUBRECIPIENT shall require all families served by SUBRECIPIENT pursuant to this Agreement to establish that such families are a low-and moderate-income household through the use of documentation such as pay stubs, tax returns, social security statements or other readily verifiable financial documentation. Pursuant to 24 CFR § 570.3, a low-and moderate-income household is a household having an income equal to or less than the Section 8 low-income limit

established from time to time by HUD. The current HUD Section 8 income limits are contained in Exhibit “C”, attached hereto and incorporated herein for all purposes. SUBRECIPIENT acknowledges that the Section 8 income limits are subject to amendment from time to time and that the income limits in place at the time SUBRECIPIENT receives an application for service determine participant eligibility under this Agreement.

Pursuant to 24 CFR § 570.208 (a)(2)(A), an activity benefits low and moderate-income persons if it benefits a clientele who are generally presumed to be principally low and moderate income persons, which includes but is not limited to abused children, battered spouses and homeless persons. SUBRECIPIENT acknowledges that the criteria found in 24 CFR § 570.208 (a) (2) (B) are subject to amendment from time to time and that the criteria in place at the time SUBRECIPIENT receives an application for service determine participant eligibility under this Agreement.

SECTION VIII: ADMINISTRATIVE REQUIREMENTS

8.1. Financial Management

A. Accounting Standards

SUBRECIPIENT agrees to comply with 24 CFR § 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Cost Principles

SUBRECIPIENT shall administer its program in conformance with 2 CFR Part 230 (previously OMB Circular A-122), “Cost Principles for Non-Profit Organizations,” or 2 CFR Part 220 (previously OMB Circular A-21), “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

8.2. Documentation and Record Keeping

A. Record Keeping

SUBRECIPIENT shall maintain all records required by the federal regulations specified in 24 CFR § 570.506 and that are pertinent to the activities to be funded under this Agreement. Such records shall include, but are not be limited to:

1. Records providing a full description of each activity undertaken;
2. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program under 24 CFR § 570.208;
3. Records required to determine the eligibility of activities under 24 CFR §§ 570.201 - 570.206;

4. Financial records as required by 24 CFR § 570.502, 24 CFR §§ 84.21-28 and 2 CFR Part 215 (previously OMB Circular A-110); and
5. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

B. Retention

SUBRECIPIENT shall retain all financial records, supporting documents, statistical records and all other records pertinent to this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

C. Client Data

SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address and annual household income level as shown in Exhibit "C", attached hereto and incorporated herein. Any other basis for determining eligibility must be approved by CITY in advance in writing, and description of services provided. Such information shall be made available to CITY monitors or their designees upon request.

D. Disclosure

SUBRECIPIENT understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of CITY's or SUBRECIPIENT's responsibilities with respect to services provided under this contract is prohibited by the U.S. Privacy Act of 1974 unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

E. Close-Outs

SUBRECIPIENT's obligation to CITY shall not end until all closeout requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to CITY), and determining custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that SUBRECIPIENT has control over CDBG funds, including program income.

F. Audits & Inspections

All SUBRECIPIENT's records with respect to any matters covered by this Agreement shall be made available to CITY, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as CITY or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by SUBRECIPIENT within thirty (30) days after receipt by SUBRECIPIENT. Failure of SUBRECIPIENT to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. SUBRECIPIENT hereby agrees to have an annual agency audit conducted in accordance with current CITY policy concerning SUBRECIPIENT's audits and Section C: Subpart F Audit Requirements in 2 CFR Part 200 (formerly OMB Circular A-133).

If SUBRECIPIENT expends less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) a year in federal awards, then they are exempt from 2 CFR Part 200 Subpart F of the audit requirements for that year; however, records must be available for review or audit by appropriate officials of the federal agency, pass-through entity and the General Accounting Office.

However, if SUBRECIPIENT expends Seven Hundred Fifty Thousand Dollars (\$750,000.00) a year or more in federal funds, SUBRECIPIENT must, within nine (9) months from the end of its fiscal year, supply CITY with an audit of revenues and expenditures conducted by a certified public accountant. Grant funds will automatically be forfeited to CITY if SUBRECIPIENT fails to submit an audit within the allotted time.

8.3. Reporting and Payment Procedures

A. Indirect Costs

If indirect costs are charged, SUBRECIPIENT will develop an indirect cost allocation plan for determining SUBRECIPIENT's appropriate share of administrative costs and shall submit such plan to CITY for approval.

B. Payment Procedures

CITY will pay to SUBRECIPIENT funds available under this Agreement based on information submitted by SUBRECIPIENT and consistent with an approved budget and CITY policies concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by SUBRECIPIENT, and not to exceed actual cash requirements. Payments will be adjusted by CITY in accordance with advance fund and program income balances available under this contract for costs incurred by CITY on the behalf of SUBRECIPIENT.

C. Progress Reports

SUBRECIPIENT shall submit regular Monthly Progress Reports to CITY in the form, content, and frequency as required by CITY. These shall include but not be limited to summary of expenditures, list of beneficiaries and a brief narrative of accomplishments. Monthly Progress

Reports should be submitted on Exhibit "A", attached hereto and incorporated herein unless an alternative report is approved by CITY in advance and in writing and provided to SUBRECIPIENT with notice that the new form is to be used.

D. Budgets

CITY and SUBRECIPIENT may agree to revise the budget, provided in Section III above, from time to time in accordance with existing CITY policies. Any amendments to the budget must be approved in writing by both CITY and SUBRECIPIENT.

8.4. Procurement

A. Compliance

SUBRECIPIENT shall maintain inventory records, which clearly identifies any real or personal property purchased, improved or sold using funds provided under this Agreement. Property retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR § 570.503(b)(8). All program assets (unexpended advanced funds) shall revert to CITY upon termination of this Agreement. The only authorized expenditures of funds shall be those items and indirect costs provided in Section III of this Agreement.

B. OMB Standards

SUBRECIPIENT shall procure materials in accordance with the requirements of 24 CFR 84.40-48.

8.5. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR §§ 570.502, 570.503 and 570.504, as applicable, which include but are not limited to the following:

A. SUBRECIPIENT agrees that should it discontinue the services as provided for herein, or upon the expiration or termination of this Agreement, then SUBRECIPIENT shall transfer to CITY all unexpended CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement, as determined at the time of the expiration, discontinuance or termination of this Agreement, within ten (10) days from the time of expiration, discontinuance, or termination of services. The funds remaining will be appropriated to eligible CDBG activities in keeping with CITY's budgetary process.

B. Real property under SUBRECIPIENT's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR § 570.208 until five (5) years after expiration of this Agreement. If SUBRECIPIENT fails to use CDBG-assisted real property in a

manner that meets a CDBG National Objective for the prescribed period of time, SUBRECIPIENT shall pay CITY an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to CITY. SUBRECIPIENT may retain real property acquired or improved under this Agreement after the expiration of the five-year period.

C. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by SUBRECIPIENT for activities under this Agreement shall be (a) transferred to CITY for the CDBG program or (b) retained after compensating CITY an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

**SECTION IX:
RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING
REPLACEMENT**

9.1. SUBRECIPIENT agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR § 570.606(b); (b) the requirements of 24 CFR § 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and 9c) the requirements in 24 CFR § 570.606(d) governing optional relocation policies. SUBRECIPIENT shall provide relocation assistance to displaced persons as defined by 24 CFR § 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. SUBRECIPIENT also agrees to comply with applicable CITY ordinances, resolutions and policies concerning the displacement of persons from their residences.

**SECTION X:
PERSONNEL & PARTICIPANT CONDITIONS**

10.1. Civil Rights

A. Compliance

SUBRECIPIENT agrees to comply with city and state civil rights acts and ordinances, and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, as amended the Americans with Disabilities Act of 1990, as amended the Age Discrimination Act of 1975, as amended Executive Order

11063, and with Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

B. Nondiscrimination

SUBRECIPIENT will not cause any person to be excluded from participation in, denied the benefits of, or subjected to discrimination under any of the program's activities receiving assistance under this Agreement based on the grounds of race, color, religion, sex, ancestry, national origin age, veteran status, genetic information or disability. In order to allow CITY to monitor non-discrimination, SUBRECIPIENT will at minimum maintain records regarding the race of persons or households assisted under this contract and whether households assisted have a female head of household.

SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, national origin, age, marital status, genetic information, veteran status or status with regard to public assistance. SUBRECIPIENT will take affirmative action to ensure all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

SUBRECIPIENT agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulation, and executive orders referenced in 24 CFR § 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act (42 U.S.C. 5301 *et seq.*) are still applicable.

C. Land Covenants

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR §§ 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, SUBRECIPIENT shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that CITY and the United States are beneficiaries of and entitled to enforce such covenants. SUBRECIPIENT, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

D. Compliance with Section 504

SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or applicable

updates which prohibits discrimination against persons with disabilities in any federally assisted program. CITY shall provide SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

10.2. Affirmative Action

A. Approved Plan

SUBRECIPIENT agrees that it shall be committed to carry out pursuant to CITY's specifications an Affirmative Action Program in keeping with the principles as provided in Presidents Executive Order 11246 of September 24, 1966. CITY shall provide Affirmative Action guidelines to SUBRECIPIENT to assist in the formulation of such program. SUBRECIPIENT shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

B. Women- and Minority-Owned Businesses (W/MBE)

SUBRECIPIENT will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. SUBRECIPIENT may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

C. Access to Records

SUBRECIPIENT shall furnish and cause each of its own subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by CITY, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

D. Notifications

SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of SUBRECIPIENT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of SUBRECIPIENT, state that it is an Equal Opportunity or Affirmative Action employer.

F. Subcontract Provisions

SUBRECIPIENT will include Sec. 10.1 Civil Rights, Sec. 10.2, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors.

10.3. Employment Restrictions

A. Prohibited Activity

SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

B. Labor Standards

SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. SUBRECIPIENT agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. SUBRECIPIENT shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to CITY for review upon request.

SUBRECIPIENT agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by CITY pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve SUBRECIPIENT of its obligation, if any, to require payment of the higher wage. SUBRECIPIENT shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirement of this paragraph.

C. “Section 3” Clause

1. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon CITY, SUBRECIPIENT and any of SUBRECIPIENT’s subcontractors. Failure to fulfill these requirements shall subject CITY, SUBRECIPIENT and any of SUBRECIPIENT’s subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. SUBRECIPIENT certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

SUBRECIPIENT further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

SUBRECIPIENT further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

SUBRECIPIENT certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

2. Notifications

SUBRECIPIENT agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places to employees and applicants for employment or training.

3. Subcontracts

SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

10.4. Conduct

A. Assignability

SUBRECIPIENT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY.

B. Subcontracts

1. Approvals

SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this contract without written consent of CITY prior to the execution of such Agreement.

2. Monitoring of Subcontractors

SUBRECIPIENT will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with evidence of follow-up actions taken to correct areas of noncompliance.

3. Content

SUBRECIPIENT shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

4. Selection Process

SUBRECIPIENT shall undertake to ensure that all subcontracts let in the performance of this agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to CITY along with documentation concerning the selection process.

C. Hatch Act

SUBRECIPIENT agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

D. Conflict of Interest

SUBRECIPIENT understands and agrees to abide by the provisions of 24 CFR §§ 84.42 and 570.611, which include, but are not limited to the following:

1. SUBRECIPIENT shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

2. No employee, officer or agent of SUBRECIPIENT shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

3. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter.

These conflict of interest provisions apply to “covered persons” which shall include any person who is an employee, agent, consultant, officer, or elected official of CITY, SUBRECIPIENT or any designated public agencies which are receiving funds under the CDBG Entitlement program.

E. Lobbying

SUBRECIPIENT hereby certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and

the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. It will require that the language of paragraph (4) of this certification be included in the award documents for all subawards at all tiers including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements and that all subrecipients shall certify and disclose accordingly:

4. Lobbying Certification

This certification is a material representation of a fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

F. Copyright

If this Agreement results in any copyrightable material or inventions, CITY and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

G. Religious Organization

SUBRECIPIENT agrees that funds provided under this Agreement will not be utilized for inherently religious activities, such as worship, religious instruction, or proselytization; to promote religious interests; or for the benefit of a religious organization as specified in 24 CFR § 570.200(j).

**SECTION XI:
ENVIRONMENTAL CONDITIONS**

11.1. Air and Water

SUBRECIPIENT agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

A. Clean Air Act, 42 U.S.C., 7401, *et seq.*;

B. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and

C. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

11.2. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), SUBRECIPIENT shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes including rehabilitation.

11.3. Lead-Based Paint

SUBRECIPIENT agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR § 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

11.4. Historic Preservation

SUBRECIPIENT agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

SECTION XII: SEVERABILITY

12.1. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**SECTION XIII:
SECTION HEADINGS AND SUBHEADINGS**

13.1. The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**SECTION XIV:
WAIVER**

14.1. CITY's failure to act with respect to a breach by SUBRECIPIENT does not waive its right to act with respect to subsequent or similar breaches. The failure of CITY to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**SECTION XV:
ASSURANCES AND CERTIFICATIONS**

15.1 **Exhibit D**, Non-Profit Sub-Grantee Assurances and Certifications, attached and fully incorporated herein, shall be signed and dated by SUBRECIPIENT.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the date indicated above.

CITY:
City of Tyler

SUBRECIPIENT:
Habitat for Humanity of Smith County

Edward A. Broussard, City Manager

By: _____

Name: _____

Title: _____

Approved as to Form:

Deborah Pullum, City Attorney

Exhibit B Pay Request

PY:	18-19						
Exhibit A							
CITY OF TYLER: CDBG PROGRAM							
SUB-RECIPIENT/REQUEST FOR PAYMENT							
SUB-RECIPIENT INFORMATION							
Name:	Habitat for Humanity			Federal Tax ID Number:			
Address:				Draw Number:			
				Final Draw:	<input type="radio"/> Yes		<input type="radio"/> No
				Reference:	IDIS #		
CDBG	PROGRAM AWARD SUMMARY			Vendor ID Number:			
Total Funds Awarded for This Program				\$ 110,000.00	Account Number:		
Total Funds Requested to Date					P.O. Number:		
Total Funds Available				\$ 110,000.00			
Total Funds This Request							
Total Funds Remaining After this Request				\$ 110,000.00			
Task/Activity:		Critical Home Repair Expenses					
DIRECT BENEFITS SUMMARY							
Section I:							
Total households/persons served							
New households/persons served							
Section II:							
(New Only)				Part B. Race/Ethnic Group			
Part A. Financial Status				1. Ethnicity:			
1. Very Low Income				Hispanic or Latino			
2. Low Income				Not Hispanic or Latino			
3. Moderate Income				2. Race			
				White			
Part C. Family Status				Black or African American			
1. Female Head of Household				Asian			
				American Indian/Alaskan Native			
				Native Hawaiian or Other Pacific Islander			
				American Indian/Alaska Native & White			
				Asian & White			
				Black/African American & White			
				Am. Indian/Alaskan Native & Black/African Am.			
				Other Multi-Racial			
Signature of Sub-recipient's Authorized Official				Date of Request			
City of Tyler Approval							
CDBG Monitor Approval:				Date Approved:			
H/CD Manager Approval:				Date Approved:			
DELIVER PAY REQUEST TO:				City of Tyler		Amount Expended: \$	
				Neighborhood Services Office		-	
				900 W. Gentry			
				Tyler, Texas 75702			

EXHIBIT C



**HUD
Income Limits**

Effective FY 2019

Family Size	80% (Low Income)	50% (Very Low Income)	30%
1	\$39,450	\$24,650	\$14,800
2	\$45,050	\$28,200	\$16,910
3	\$50,700	\$31,700	\$21,330
4	\$56,300	\$35,200	\$25,750
5	\$60,850	\$38,050	\$30,170
6	\$65,350	\$40,850	\$34,590
7	\$69,850	\$43,650	\$39,010
8	\$74,350	\$46,500	\$43,430

Exhibit D

Non-Profit Subgrantee

Certifications and Assurances

The Department of Housing and Urban Development (HUD) requires that all non-profit Subgrantees on Community Development Block Grant (CDBG) projects sign this “Certifications and Assurances” form certifying that they will comply with the specific federal requirements described below. The parties who must sign a “Certifications and Assurances” form are defined below:

- Subgrantees: These are non-profit organizations to which the City of Tyler, Neighborhood Services Department has awarded a grant from the Community Development Block Grant (CDBG) that the City of Tyler received from HUD. The subgrantee is accountable to the City of Tyler for the use of the funds provided, but the City of Tyler is ultimately accountable to HUD.

Certification and Assurance: The subgrantee executing this certification hereby assures and certifies that it will comply with all of the applicable requirements of the following, as the same may be amended from time to time, including adding appropriate provisions to all contracts between Grantee and Subgrantees in accordance with 24CFR Part 84 and Appendix A to Part 84.

- 1) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- 2) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- 3) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, HUD may accept the bonding policy and requirements of the recipient, provided HUD has made a determination that the Federal Government’s interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
 - i) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other

negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

ii) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

iii) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

iv) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, “Surety Companies Doing Business with the United States.”

4) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

5) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A, as follows:

6) Equal Employment Opportunity-All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

7) Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)-All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to HUD.

8) Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)-When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not

less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

9) Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333)-Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

10) Rights to Inventions Made Under a Contract or Agreement- Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

11) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended-Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).

12) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)- Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

13) Debarment and Suspension (E.O.s 12549 and 12689)-No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

14) Drug-Free Workplace Requirements-The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

The information contained in this certification is true and accurate, to the best of my knowledge.

Name of Subgrantee: Habitat for Humanity Smith County

Name: Jack Wilson

Signature of Authorized Certifying Official:

Title: Executive Director

Date:

WARNING: Section 1001 of the Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat.967) applies to this certification. 18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing knowing the same to contain any false, fictitious or fraudulent statement or entry, in any matter within jurisdiction of any department or agency of the United States, shall be fined no more than \$10,000 or imprisoned for not more than five years, or both.



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: B-1
Date: June 26, 2019
Subject: Request that the City Council consider approving nominations to the Tyler One Half Cent Sales Tax Corporation Board from District Nos. 1, 5 and 6, and the Member At-Large.
Page: 1 of
Item Reference: Code of Ordinances, Article III, Sec. 1-20 e. Vacancies

Nominations to the Half Cent Sales Tax Corporation Board of Directors

The Mayor and Councilmembers each nominate a member to the Half Cent Sales Tax Corporation Board, with the entire City Council voting to approve nominations. The terms of Half Cent Sales Tax Corporation Board members coincide with the terms of the Mayor and Councilmembers, however no member may serve more than six (6) years of consecutive service.

RECOMMENDATION:

It is recommended that the City Council approve the nominations by Councilmember Sellers for District No. 1, Mayor Pro Tem Westbrook for District No. 5, Councilmember Sudduth for District No. 6, and Mayor Heines for the Member At-Large.

It is also recommended that the City Council approve the nomination of Chair to serve on the Half Cent Sales Tax Corporation Board.

ATTACHMENTS:

1. Half Cent Sales Tax Board Roster

Drafted/Recommended By:
Department Leader

Concordia Brager

Edited/Submitted By:
City Manager

Edward Brussard



Tyler One-Half Cent Sales Tax Corporation Board of Directors

2 year terms (Created 9-4-96)

City Liaison: Kyle Dykes Meets 2nd Tuesday each month at 4:00 p.m., Tyler Development Center Large conference Room. (more than advisory)

Single Member District	Place	* Chair	Board Member Mailing Address & Email Address	Telephone Numbers	Terms Completed	Date Appointed	Date Term Expires
At Large <small>(Mayor's Appointment)</small>		*	Mark Whatley - President 3826 Brighton Creek Circle Tyler, Texas 75707	H W M 903-530-0955	1	06-05-2013	05-2019
Central	1		Jeff Buie 309 S. Palace Tyler, Texas 75702 jeffbuie@gmail.com	H 903-561-4465 W 903-521-5766 M	0	01-11-2017	05-2019
West	2		Darryl Bowdre 711 S. Vine St. Tyler, Texas 75701 pastor@@sctyler.com	H 903-352-2415 W M	0	06-13-2018	05-2020
N.W.	3		Ralph Caraway – V. President 3007 Club Lake Dr. Tyler, Texas 75702 Revcarawaysr@gmail.com	H 903-595-4645 W M 903-258-1577	2	05-22-2013	08-31-2019
N. East Fill unex term until 2018	4		Nicanor (Nick) Pesina Jr. 118 W. Fourth Street Tyler, Texas 75701 nick@robertslawfirm.com	H 903-920-7042 W 903-597-6655 M	1	04-12-2017	05-2020
East	5		Aubrey Sharpe 1530 S SW Loop 323 Tyler, Texas 75701 Brian@Coreinsightsleadership.com	H 903-565-6049 W 903-510-2901 M 903-521-6332	0	06-14-2017	05-2019
South	6		Jason Trimble 6530 S. Broadway Tyler, Texas 75703 jtrimble@texasbankandtrust.com	H 903-521-6652 W 903-266-3633 M	1	05-22-2013	05-2019



CITY OF TYLER CITY COUNCIL COMMUNICATION

Agenda Number: C-A-1

Date: June 26, 2019

Subject: Request that the City Council consider authorizing the City Manager to sign an Easement Agreement between Pinnacle Racing LLC and Cavender Investment Properties F, LTD at Tyler Pounds Regional Airport.

Page: 1 of 2

Item Reference: Easement Agreement for Utilities at Tyler Pounds Regional Airport.

On December 17, 2008, the City of Tyler approved the Assignment of a Fixed Based Operator Lease with Tyler Executive Hangars, LLC for a term through December 31, 2027, covering a tract of land known as Tract 7 at Tyler Pounds Regional Airport. In 2018, Tyler Executive Hangars, LLC (now known as Pinnacle Racing, LLC) sold a portion of the improvements on that Tract to Cavender Investment Properties F, Ltd. Tract 7 was divided into Tract 7A and Tract 7B. Two new lease agreements were executed as a result of this sale.

The Airport Manager received a proposed easement agreement from Pinnacle Racing, LLC and Cavender Investment Properties F, LTD, for the purpose of operation, maintenance, replacement, repair, upgrade, and removal of a generator and propane tank owned by Pinnacle Racing, LLC, including the right of ingress and egress to and from the easement property. This small area of land lies between the two hangars and crosses over the lease line into the Cavender lease. The lessees have agreed to execute an easement to preserve access and upkeep of the generator by Pinnacle Racing, LLC.

The Airport Advisory Board considered this request on June 17, 2019, and the Airport staff will be prepared to announce the results of their vote.

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager sign an Easement Agreement between Pinnacle Racings LLC, and Cavender Investment Properties F. LTD, at Tyler Pounds Regional Airport.

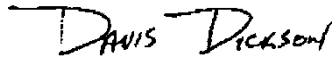
ATTACHMENT:

1. Easement Agreement between Pinnacle Racing LLC and Cavender Investment Properties F, LTD.

Agenda Number: C-A-1

Page: 2 of 2

Drafted/Recommended By:
Department Leader

Handwritten signature of Davis Dickson in black ink.

Davis Dickson, Airport Manager

Edited/Submitted By:
City Manager

Handwritten signature of Edward Bousard in black ink.

Easement Agreement for Utilities at Tyler Pounds Regional Airport

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: _____, 2019

Grantor: City of Tyler, Texas

Grantor's Mailing Address: 700 Skyway Blvd., Suite 201, Tyler, Texas 75704 (Smith County)

Grantee: Pinnacle Racing, LLC, a Texas limited liability company

Grantee's Mailing Address: 8346 CR 1161, Tyler, Texas 75703 (Smith County)

Dominant Estate Property: Property described in Exhibit "A" attached hereto and made a part hereof. The Dominant Estate Property is subject to a Corporate Hangar/Fixed Base Operator Lease between the City of Tyler, Texas and Pinnacle Racing, LLC dated May 23, 2018 and recorded in Smith County Clerk's File No. 20180100021786 (as applicable, the "Pinnacle Lease").

Easement Property: Property described in Exhibit "B" attached hereto and made a part hereof.

Easement Purpose: For the operation, maintenance, replacement, repair, upgrade, and removal of a generator and propane tank owned by Grantee, including the right of ingress and egress to and from the Easement Property (collectively, the "Facilities").

Consideration: Good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor.

Reservations from Conveyance: None.

Exceptions to Warranty: This conveyance is subject to any and all mineral reservations, conveyances, rights-of-way, easements and restrictions of record affecting said property in the office of the County Clerk of Smith County, Texas. This conveyance is also subject to that certain Hangar/Operator Lease between the City of Tyler, Texas and Cavender Investment Properties F, Ltd. dated May 23, 2018 and recorded in Smith County Clerk's File No. 20180100021784 (as applicable, the "Cavender Lease"). Furthermore, this conveyance is subject to all applicable rules, regulations and ordinances of the City of Tyler, Texas, governing Tyler Pounds Regional Airport.

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement over, on, and across the Easement

Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the “Easement”), to have and to hold the Easement to Grantee and Grantee’s heirs, successors, and assigns. Grantor binds Grantor and Grantor’s heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee’s heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and Exceptions to Warranty.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is appurtenant to, runs with, and inures to the benefit of all or any portion of the Dominant Estate Property, whether or not the Easement is referenced or described in any conveyance of all or such portion of the Dominant Estate Property. The Easement is nonexclusive. The Easement is for the benefit of Grantee and Grantee’s heirs, successors, and assigns who at any time own any interest in the Dominant Estate Property (as applicable, the “Holder”).

2. *Duration of Easement.* The duration of the Easement is perpetual. However, the parties hereto recognize and acknowledge that the City, as owner of the property, has the right and authority to cancel leasehold(s) at Tyler Pounds Regional Airport for specified reasons. If the Pinnacle Lease is cancelled by official action of Grantor, or if the Facilities are permanently removed from the Easement Property, then the Easement(s) granted hereunder shall terminate and be of no further force and effect. The parties hereto understand and recognize that in the event of termination, Grantee agrees to execute and file for record a Release of this Easement.

3. *Reservation of Rights.* Holder’s right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor’s heirs, successors, and assigns the right to use all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor’s heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement. The reservation of rights by Grantor includes, but is not limited to, the rights of Grantor as set forth in Article I, Section D, and Article VI., of both the Pinnacle Lease and Cavender Lease.

4. *Secondary Easement.* Holder has the right (the “Secondary Easement”) to use as much of the surface of the property that is adjacent to the Easement Property (“Adjacent Property”) as may be reasonably necessary to maintain the Facilities within the Easement Property that are reasonably suited for the Easement Purpose. However, Holder must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.

5. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property. Holder must

maintain the Easement Property in a neat and clean condition. Holder has the right to maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are subject to performance of Holder's obligations under this agreement, and are also subject to Article I, Section G and Article II, Sections A and B of the Pinnacle Lease and Cavender Lease.

6. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

7. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

8. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns. The grant of this easement in no way restricts the right and interest of the Grantor to grant other easements.

9. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

10. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

11. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

12. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

13. *Indemnity.* GRANTEE AGREES TO INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS GRANTOR AND CAVENDER INVESTMENTS PROPERTIES F, LTD. (THE LESSEE OF THE EASEMENT PROPERTY) FROM ANY CLAIMS, LOSSES, EXPENSES, DAMAGES, DEMANDS, JUDGEMENTS, CAUSES OF ACTION, SUITS,

LIABILITY LOSS AND ATTORNEY'S FEES, OF EVERY KIND AND CHARACTER WHATSOEVER, FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE, WHICH ARISE OUT OF GRANTEE'S USE OF THE EASEMENT WHEN SUCH CLAIMS RESULT FROM GRANTEE'S NEGLIGENCE OR WILLFUL MISCONDUCT.

14. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.

15. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

16. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

17. *Recitals.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

18. *Time.* Time is of the essence. Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

[Signature pages to follow]

GRANTOR:

CITY OF TYLER, TEXAS

By: _____
EDWARD BROUSSARD, City Manager

Council Approved: _____

ATTEST:

CASSANDRA BRAGER, City Clerk

RECOMMENDED:

AIRPORT MANAGER
(Airport Advisory Board considered on _____
And recommended approval / denial)

APPROVED:

CITY ATTORNEY

THE STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on the ____ day of _____, 2019
by EDWARD BROUSSARD, City Manager, on behalf of the CITY OF TYLER, TEXAS.

NOTARY PUBLIC - STATE OF TEXAS

GRANTEE:

PINNACLE RACING, LLC, a Texas limited liability company

By: _____
TRAVIS LANCE FENTON, Manager/
Member

THE STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on the ____ day of _____, 2019 by TRAVIS LANCE FENTON, as Manager/Member, on behalf of PINNACLE RACING, LLC, a Texas limited liability company.

NOTARY PUBLIC - STATE OF TEXAS

AGREED TO AND ACCEPTED BY:

CAVENDER INVESTMENTS PROPERTIES F,
LTD., a Texas limited partnership

BY: CAVENDER INVESTMENTS F, LLC, a
Texas limited liability company, General Partner

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me on the ____ day of _____, 2019
by _____, as _____, on behalf of
CAVENDER INVESTMENTS F, LLC, a Texas limited liability company, General Partner of
CAVENDER INVESTMENTS PROPERTIES F, LTD., a Texas limited partnership.

NOTARY PUBLIC - STATE OF TEXAS



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: C-A-2

Date: June 26, 2019

Subject: Request that the City Council consider approving an Information Systems Facilities Management ten (10) year Interlocal Agreement for Computer Support Services with City of Whitehouse.

Page: 1 of 1

Item Reference: Interlocal Agreement for Computer Support Services

The City of Whitehouse and the City of Tyler have been in an Interlocal Agreement since October 24, 2018 for the provision of Computer Support Services. Representatives from both cities met on May 28, 2019 during the City of Whitehouse City Council meeting and agreed to extend the required services for a period of ten (10) years. The Interlocal Agreement for the City of Tyler Information Technology Department to provide these services to the City of Whitehouse will become effective on October 1, 2019 for a ten-year term for a total amount of \$155,000 per year and a possible renewal afterward.

RECOMMENDATION:

It is recommended that the City Council approve an Information Systems Facilities Management Interlocal Agreement for Computer Support Services with the City of Whitehouse.

ATTACHMENTS:

1. Interlocal Agreement

Drafted/Recommended By:
Department Leader

Benny Yazdanpanahi, Chief Information Officer

Edited/Submitted By:
City Manager

STATE OF TEXAS §

§

COUNTY OF SMITH §

KNOW ALL BY THESE PRESENTS:

INTERLOCAL AGREEMENT FOR COMPUTER SUPPORT SERVICES

Pursuant to authority granted by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, this INTERLOCAL AGREEMENT is made and entered into as of the 24th day of October, 2018, by and between the City of Tyler, Texas, a municipal corporation, hereinafter called "Tyler," and the City of Whitehouse, a municipal corporation of Texas, hereinafter called "Whitehouse."

WITNESSETH:

WHEREAS, Whitehouse seeks assistance in the area of information technology support and maintenance; and,

WHEREAS, Tyler's Information Technology Services staff supports and maintains a large network of computers and components; and,

WHEREAS, cooperation between Tyler and Whitehouse in the provision of information technology services to both entities is mutually beneficial;

NOW, THEREFORE, BE IT RESOLVED THAT:

In consideration of the premises and of the mutual covenants herein contained, Tyler and Whitehouse agree as follows:

Article I. Definitions

In this agreement, the following terms shall have the meanings assigned to them in this article unless otherwise required by the context:

"Force Majeure Events" means any event or events beyond the control and without the default or negligence of Tyler. Such events may include but are not limited to acts of God or of the public

enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, riots, acts of terrorism, and unusually severe weather.

“Individual Stop Work Issue” means a problem in the Whitehouse System that results in an individual User being unable to perform any functions of the User’s job that rely on the Whitehouse System.

“Individual Critical Function Issue” means a problem in the Whitehouse System that result in an individual User being unable to perform a core function of the User’s job that relies on the Whitehouse System.

“Whitehouse” means the City of Whitehouse, Texas.

“Whitehouse System” means any computer hardware owned and controlled by Whitehouse, including servers, personal computers, and electronic devices networked with such servers or personal computers; including software owned or controlled by Whitehouse and used on said hardware in full compliance with any required license or other permission required for the use of said software. The term does not include landline telephone (POTS) equipment or systems.

“Whitehouse System Stop Work Issue” means a problem in the Whitehouse System that results in a workgroup being unable to perform a core function of the workgroup that relies on the Whitehouse System.

“Tyler” means the City of Tyler, Texas.

“Maximum Resolution Time” means the maximum time that Tyler will take to resolve a request for troubleshooting services under this agreement, starting from the time at which notification of the request is first provided to Tyler in accordance with the terms of this agreement.

“Maximum Response Time” means the maximum time that Tyler will take to respond to a request for troubleshooting services under this agreement, starting from the time at which notification of the request is first provided to Tyler in accordance with the terms of this agreement.

“Normal Hours of Operation” means Monday through Friday, 8:00 AM to 5 PM, Central Time.

“Other Whitehouse System Issue” means any problem in the Whitehouse System that is not a Whitehouse System Stop Work Issue, an Individual Stop Work Issue, or an Individual Critical Function Issue.

“User” means an employee of Whitehouse who uses any hardware or software that is part of the Whitehouse System.

Article II. Scope of Services

A. Services to be Provided. Tyler and Whitehouse agree that the services to be provided by Tyler pursuant to this agreement will be provided by employees of Tyler’s Information Technology Services Division. Such employees will never be considered to be Whitehouse’s employees, or even on loan to Whitehouse.

Pursuant to this agreement, Tyler will provide the following computer support services to Whitehouse for the Whitehouse System:

1. Provide Information Technology Infrastructure as a Service (IaaS) including hosting services for virtual and physical servers, network switches and security, internet service and Voice over IP (VoIP) equipment. VoIP service does not include long distance services. Charges for long distance will be billed separately to Whitehouse.
2. Direct fiber-optic network connection between Tyler and Whitehouse. If Whitehouse terminates the contract, Whitehouse will be responsible for any prorated contract charges from Suddenlink for the fiber connection. The fiber connection is contracted with Suddenlink for a period of ten years.
3. Installation of server and desktop software upgrades for existing supported software
4. Incident-based troubleshooting for supported computer hardware, software and operating systems
5. Regular daily backups of data and applications

6. Function as liaison between Whitehouse and any vendor for software and hardware purchasing, repairs and installation
7. System administration and network monitoring services
8. Provide an agreed upon number of PCs, monitors, printers, laptops, VoIP phones and virtual hosting server hardware. All equipment provided will remain the property of the City of Tyler. Additional hardware will increase the cost of service. All Whitehouse data remains the property of Whitehouse and will be provided in electronic form upon termination of the contract.
9. Administration of system improvements or special projects as agreed by both Tyler and Whitehouse. System improvements or special projects may include, but are not limited to, network reconfiguration, hardware and software inventories, security improvements, and new technology implementations. This is included in the flat annual rate provided in Article IV of this agreement. System improvements and special projects will be scheduled around the availability of personnel from Tyler's Information Technology Services Division.

Network cabling materials and installation are not covered under this agreement. Software maintenance and new software application costs are not covered under this agreement. If Tyler determines that new software licenses or applications are needed, Tyler will inform the appropriate department of Whitehouse and all costs of obtaining said licenses and applications shall be the responsibility of Whitehouse.

Whitehouse will provide all Whitehouse System passwords to Tyler. All new passwords for the Whitehouse System will be shared with Whitehouse. All administrative passwords will be provided to Whitehouse upon termination of this contract.

B. Service and Support Procedures. Tyler will provide the services set forth in this agreement during Normal Hours of Operation. After-hours emergency support will also be provided by Tyler as needed. A User must contact IT HelpDesk personnel at (helpdesk@tylertexas.com) or (903) 531-1128 and City of Tyler IT personnel will respond pursuant to this agreement. The User must specify that the

assistance being requested is for the Whitehouse System. When possible, problems will be addressed via the telephone or remote desktop support. If necessary, support cases may be escalated to Tyler's Help Desk Manager or Infrastructure Manager as appropriate. Initial response from Tyler will depend on the urgency of the problem as communicated to the HelpDesk.

C. Maximum Response Times and Maximum Resolution Times. Tyler will make commercially reasonable efforts to abide by the Maximum Response Times and Maximum Resolution Times set forth in this article. Tyler will classify each problem for which troubleshooting services are requested under this agreement as a Whitehouse System Stop Work Issue, an Individual Stop Work Issue, an Individual Critical Function Issue, or an Other Whitehouse System Issue. If Whitehouse disagrees with Tyler's classification of any such problem, Tyler and Whitehouse will negotiate in good faith in an effort to agree upon the classification of the problem or type of problem for purposes of determining the applicable Maximum Response Time and Maximum Resolution Time for future occurrences of the problem. In addition, Tyler and Whitehouse may agree in advance upon the classification of specific types of problems. With regard to any type of problem for which Tyler and Whitehouse have agreed upon a classification under this agreement, Tyler will make every reasonable effort and attempt to respond to requests for troubleshooting services for that type of problem in accordance with the agreed-upon classification.

1. Whitehouse System Stop Work Issue:

Maximum Response Time: 1 hour

Maximum Resolution Time: Until fixed

2. Individual Stop Work Issue

Maximum Response Time: 2 hours

Maximum Resolution Time: 12 hours

3. Individual Critical Function Issue

Maximum Response Time: 4 hours

Maximum Resolution Time: 48 hours

4. Other Whitehouse System Issue

Maximum Response Time: One business day

Maximum Resolution Time: Three business days

D. User Responsibilities. Tyler's ability to meet Maximum Response Times is contingent on a User providing notification as follows:

When Whitehouse personnel call the HelpDesk for assistance, the Whitehouse personnel must:

1. Provide the User's name and location; and
2. Specify that the assistance being requested is for the Whitehouse System; and
3. Provide a clear description of the problem; and
4. Provide a clear description of the impact of the problem; and
5. Provide an accurate and complete history of the problem.

E. Escalation. Whitehouse personnel can escalate issues to Tyler through the Whitehouse City Manager or his/her designate any time at (903) 839-4914 extension 225 or jlusk@whitehousetx.org and Cio@tylertexas.com or by telephone at (903) 531-1119.

Article III. Term, Termination, Notices

A. Term. The initial term of this agreement shall be from October 24th 2018 to September 30th 2019. Subsequent terms shall begin on October 1st. This agreement shall automatically renew each year for up to nine additional one-year terms unless terminated earlier as provided herein.

B. Termination. Either party may terminate this agreement at any time by giving the other party at least 90 days' advance notice in writing. Unless provided otherwise by law or by this agreement, each party shall be obligated to pay all charges incurred before any termination of this agreement.

C. Notice. All written notices or other communications under this agreement shall be directed to the following contact persons:

City of Tyler- Benny Yazdanpanahi, CIO, P.O. Box 2039, Tyler, Texas 75710;

City of Whitehouse- Jennifer Lusk, Finance and HR Director, 101 A Bascom Rd. Whitehouse, Texas 75791.

The parties agree to provide written notice to the other immediately upon a change to the primary contact person and/or address information set forth in this Article.

D. Agreement subject to availability of funds. This agreement shall not be construed as creating any debt by or on behalf of Tyler or Whitehouse and all obligations of each party to this agreement are subject to the availability of funds. Accordingly, and in addition to any other authority to terminate this agreement, if the governing body of either party does not appropriate funds to make payments pursuant to this agreement, that party may then terminate this agreement as of the last day for which funds were appropriated.

Article IV. Consideration and Payment

A. Consideration. In consideration for the services provided hereunder, Whitehouse agrees to pay Tyler the annual amount of \$155,000.00 to be paid in lump sum with the initial payment being due on or before October 31, 2019. Subsequent annual payments will be due on or before October 31st. Each party paying for the performance of governmental functions or services under this agreement must make those payments from current revenues available to the paying party.

B. Billing and Payment. Tyler will provide the following client equipment to Whitehouse: 30 VoIP phones, 29 client endpoints, 42 monitors, 10 printers, and 14 laptops. Tyler will bill Whitehouse on a monthly basis for services provided outside the scope of this contract. The rate billed for such services will be \$75 per hour per Tyler employee, and the cost of such services will be in addition to the annual payment to be paid to Tyler by Whitehouse under this agreement. Billing for services provided outside of scope will be based on the number of personnel-hours actually worked by Tyler personnel over and above their normal work hours, as defined by the Fair Labor Standards Act. Tyler will not bill for periods of time during which activities such as server reboots, backups, routine maintenance, and similar activities are not actively

monitored or otherwise performed by Tyler personnel. Tyler will notify Whitehouse via email of all calls that result in billing for services provided outside of the contract scope. In addition to any other amounts to be paid by Whitehouse pursuant to this agreement, Whitehouse agrees to pay any sales use, gross receipts, excise, access, bypass or other local, state and Federal taxes or charges, imposed on or based upon the provision, sale or use of the services provided by Tyler pursuant to this agreement.

C. Tyler's Right to Renegotiate Payment Amounts. Tyler reserves the right to renegotiate payment amounts and/or terms prior to each renewal term. If any increase in payment is requested by Tyler, all proposed increases shall be provided to Whitehouse at least 90 days prior to the renewal period for which Tyler seeks an increase. If the parties are unable to agree upon payment amounts and terms prior to any renewal term, this agreement shall terminate at the end of the then-current term.

Article V. Records

Tyler agrees to keep proper financial and accounting records and books of accounts, pursuant to law and in accordance with generally accepted accounting principles, pertaining to Tyler's performance of Tyler's obligations under this agreement, and such records and books of accounts shall be open to inspection and review by Whitehouse at all reasonable times.

Article VI. Purchasing Procedures

Tyler has adopted and shall observe purchasing procedures intended to assure that all purchases using funds provided under this agreement are made in full compliance with all applicable competitive purchasing procedures required by state or federal law. At any time, Whitehouse may, at the discretion of the Whitehouse City Manager, require Tyler to provide the Whitehouse City Manager with a copy of Tyler's purchasing procedure.

Article VII. Assignment

Neither party shall assign this agreement without the written consent of the other party. Any attempted assignment without the written consent of the other party shall be null and void, and of no effect.

Article VIII. Applicable Law and Venue

Without regard to any rules on conflicts of law, this agreement shall be subject to and interpreted in conformance with the laws of the State of Texas unless expressly provided otherwise by federal law or regulations. 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.

Article IX. Amendments

Changes in the terms and conditions of this agreement can be made only by written amendment executed by the parties hereto prior to the changes being made.

Article X. Third-party Beneficiaries

Nothing under this agreement shall be construed to give any rights or benefits in this agreement to anyone other than Tyler and Whitehouse, and all duties and responsibilities undertaken pursuant to this agreement will be for the sole and exclusive benefit of Tyler and Whitehouse and not for the benefit of any other party.

Article XI. Severability

If any provision of this agreement is held invalid, illegal or unenforceable in any jurisdiction, for any reason, then, to the full extent permitted by law, (a) all other provisions hereof will remain in full force and effect in such jurisdiction and will be liberally construed in order to carry out the intent of the parties hereto as nearly as may be possible, (b) such invalidity, illegality or unenforceability will not affect the validity, legality or enforceability of any other provision hereof, and (c) any court having jurisdiction will have the power to reform such provision to the extent necessary for such provision to be enforceable under applicable law.

Article XII. 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.

Article XIII. Effect of Authorship on Construction

The parties agree that this agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this agreement.

Article XIV. Counterparts

This agreement and any related documents and any amendments may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Article XV. Survival

Upon the expiration or termination of this agreement for any reason, the obligations of the parties hereunder shall thereupon cease, but the provisions of this agreement which confer rights upon either party and which limit or delineate the responsibility of either party shall remain in effect as to the parties' conduct prior to expiration or termination of this agreement.

Article XVI. Merger

This agreement constitutes the entire agreement between Tyler and Whitehouse regarding the subject matter contained herein and supersedes all prior written or oral understandings.

Article XVII. Interlocal Cooperation Act

This agreement is made pursuant to the authority granted by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, and is subject to the provisions of that act. In case of any conflict between the provisions of this agreement and the provisions of the Interlocal Cooperation Act, the provisions of the Interlocal Cooperation Act shall control.

Article XVIII. Limitation of Liability

Each party's entire liability to the other party, and the exclusive remedy for damages under this agreement, shall be limited as follows: for tangible property damage or for bodily injury or death to a person proximately caused by a party's or a party's employees or agents negligence or willful misconduct, the amount of proven, direct damages; and for any other claims, liability shall be limited to direct damages that are proven, in an amount not to exceed the amount of the charges to Whitehouse for the services provided by Tyler during the period affected by the mistake, omission, error, delay, interruption, or defect. Except for damages for personal injury or death or damages to or loss of personal property (excluding loss of data or programming) caused by Tyler, Tyler's aggregate liability for all direct damages shall not exceed the total amount paid by Whitehouse under this agreement. In no event shall either Tyler or Whitehouse be responsible for or liable for any special, indirect, incidental, consequential or exemplary damages arising in any way in connection with this agreement, even if said party has been advised of the possibility of such damages. Tyler shall not be liable for any failure of performance or failure to provide service under this agreement due to Force Majeure Events. Tyler shall not be liable for any interruptions or damages due to the fault or negligence of Whitehouse or due to the failure or malfunction of equipment or facilities provided by Whitehouse.

This article is intended only as a limitation and shall not be construed to expand the liability of either Whitehouse or Tyler beyond the liability that said party would have if this article had not been included in this agreement.

Article XIX. No Warranties

THERE ARE NO AGREEMENTS, WARRANTIES, OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

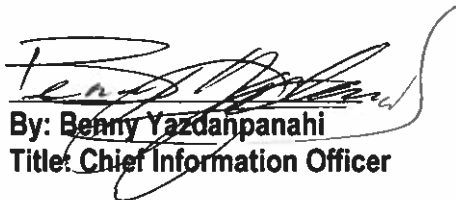
Article XX. Confidentiality

To the extent permitted by State and Federal law, Tyler will employ any such conceivable safeguards as is normally afforded matters of Tyler's own internal affairs to prevent disclosure of Whitehouse's records. In particular, Tyler and its agents and employees will not share any information, copies or other knowledge of Whitehouse's records or passwords or information deemed confidential by law without Whitehouse's specific permission in writing.

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

CITY OF TYLER, TEXAS

By: Edward Broussard
Title: City Manager


By: Benny Yazdanpanahi
Title: Chief Information Officer


ATTEST:

Cassandra Brager
City Clerk

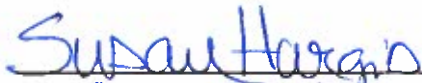
APPROVED AS TO FORM:


Deborah Pullam Sharon Roberts
City Attorney

CITY OF WHITEHOUSE, TEXAS


By: Jennifer Lusk
Finance and HR Director

ATTEST:


By: Susan Hargis
Title: City Secretary

APPROVED AS TO FORM:


City Attorney
City of Whitehouse