

RESOLUTION NO. R-2025-14

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER,
TEXAS APPROVING AN INTERLOCAL AGREEMENT REGARDING
UTILITY SERVICES WITH EAST TEXAS MUNICIPAL UTILITY
DISTRICT OF SMITH COUNTY**

STATE OF TEXAS
COUNTY OF SMITH
CITY OF TYLER

WHEREAS, the City of Tyler ("City") and the East Texas Municipal Utility District of Smith County ("District") are authorized to under the Interlocal Cooperation Act, Chapter 791, Texas Government Code, as amended, to enter into interlocal contracts for the provision of governmental services including the agreements relating to the provision of utility services and consent to annexations by special purpose districts in the City's extraterritorial jurisdiction ("ETJ");

WHEREAS, the City Council desires to enter into the Interlocal Agreement Regarding Utility Services Regarding Utility Services with the District ("Interlocal Agreement"), as attached as Exhibit A, which sets for the terms and conditions pursuant to which water utility service will be provided by the City and the District in the territory surrounding the current District boundaries and establishes a procedure for the City's consideration of requests for consent to the annexation of territory into the District's boundaries; and

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

Part 1. The City Council authorizes the execution of the Interlocal Agreement (attached and incorporated herein as Exhibit A).

Part 2. That this resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED on this 26th day of February, 2025.

DONALD P. WARREN, MAYOR
OF THE CITY OF TYLER

ATTEST:

APPROVED:

Cassandra Brager
CASSANDRA BRAGER CITY CLERK

DEBORAH PULLUM, CITY ATTORNEY

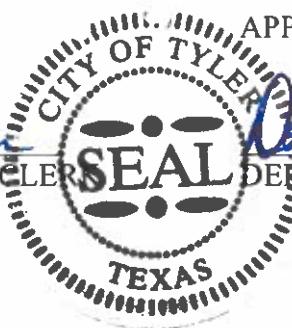


EXHIBIT A

Interlocal Agreement Regarding Utility Service

Exhibit A
INTERLOCAL AGREEMENT
REGARDING UTILITY SERVICES

This Interlocal Agreement Regarding Utility Services (the "Agreement") is made by and between the City of Tyler, ("City") and East Texas Municipal Utility District of Smith County ("District") (collectively, the "Parties"), pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and Texas Water Code § 13.248, to be effective on the date of the last signatory to this Agreement ("Effective Date").

RECITALS

WHEREAS, the City operates a retail public water utility and holds water Certificate of Convenience and Necessity ("CCN") No. 10772; and

WHEREAS, the District operates a retail public water utility and holds water CCN No. 11906, in Smith County; and,

WHEREAS, most of the District's water CCN service area is dually certified with the City's water CCN (the "Dually Certificated Area" as shown on Attachment 1) and part of the Dually Certificated Area is located inside the city limits of the City (the "City Limits Area" as shown on Attachment 1) and the District boundaries; and,

WHEREAS, the District is currently providing, or planning to provide, retail water utility service to properties located outside the District's water CCN and inside the City's water CCN (the "Encroachment Areas" as shown on Attachment 1); and,

WHEREAS, pursuant to Texas Water Code §13.248, contracts between retail public utilities designating areas to be served, when approved by the Public Utility Commission ("PUC"), are valid and enforceable and are incorporated into the appropriate CCNs; and,

WHEREAS, the City and the District mutually desire to enter into this Agreement setting forth the terms and conditions pursuant to which they will designate areas to be served, which utility will serve in the Dually Certificated Area, and to request the PUC to incorporate such designations into the CCNs held by the City and the District; and,

WHEREAS, the District annexed into the District a number of tracts, including a 79.841-acre tract located south of NE Loop 323 (the "Inside-the-Loop Tract"); and,

WHEREAS, the City and the District mutually desire to negotiate in good faith a separate agreement to resolve for the removal of the Inside-the-Loop Tract from the District, obtaining the City's consent to other tracts previously annexed by the District, and addressing procedures for future annexations by the District within the City's ETJ; and,

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the District hereby contract and agree as follows:

ARTICLE I **TERMS**

- 1.1. **Recitals.** The recitals set forth above are incorporated herein and shall compose together with the terms agreed upon herein, the Agreement.
- 1.2. **Term.** This Agreement shall remain valid and enforceable until superseded by subsequent written agreement.
- 1.3. **Agreements Regarding Retail Water Utility Service Area.**
 - A. **Encroachment Areas.** The City consents and agrees to allow the District to provide retail water utility service, on a dually certificated basis, to the properties located in the Encroachment Areas as they are annexed into the District
 - i. Properties Located Inside the District. The District may serve properties in the Encroachment Areas that have been annexed into the District as of the date of this Agreement.
 - ii. Served Properties Located Outside the District. The District may continue to serve properties currently being served by the District in the Encroachment Areas, which have not been annexed by the District as of the date of this Agreement, provided that the City consent to the annexation of these tracts under an agreement provided for in Paragraph 1.5.
 - iii. Unserved Properties Located Outside the District. The District may serve a property in the Encroachment Areas that is not being served as of the date of this Agreement once the property is annexed into the District and written notice of intent to serve is provided to the City.
 - B. **District Retail Water Utility Service.** The District will have the primary obligation to serve all customers located on properties that have been annexed into the District that are located within the Dually Certificated Area and the Encroachment Areas. The District will also be allowed to serve outside the Encroachment and Dually Certificated Areas and inside the City's water CCN area only in the following conditions:
 1. The District may provide retail water utility services if the City consents to the District providing retail water utility services and all necessary authorization is obtained from the PUC; or
 2. The District may provide retail water utility service to areas lawfully removed from the City's water CCN and all necessary authorization is obtained from the PUC.
 - C. **City Retail Water Utility Service.** The City will not provide retail water utility service within the City Limit Area before January 1, 2034, or the Encroachment Areas or the Dually Certificated Area (other than the City Limit Area) before January 1, 2040, with the following exceptions:
 1. The City may provide retail water utility service to properties if the District consents to the City providing retail water utility services and all necessary authorization is obtained from the PUC; or

2. The City may provide retail water utility service to properties lawfully removed from the District's water CCN and all necessary authorization is obtained from the PUC;
3. The City may provide retail water utility service to properties within the Encroachment Area that have not been annexed into the District; or
4. The City may provide retail water utility service to a property if the District has failed to provide, or is incapable of providing, continuous and adequate service, to all or part of the area, as determined by the Public Utility Commission of Texas ("PUC") or other appropriate regulatory agency.

1.4. **PUC Approval**. The parties agree to jointly submit this Agreement to the PUC pursuant to Texas Water Code § 13.248, using a written petition as required by 16 Texas Administrative Code § 24.253, and such other documents that may be required in order to request approval of the transfers of certificated service areas contemplated under this Agreement. In the event the PUC does not authorize the transfer of certificated service areas so contemplated, or requires additional evidence, documentation, maps, or action from the Parties, the Parties shall promptly and jointly prepare and submit such cures or additional applications as may be necessary to attain PUC Approval.

1.5. **Agreement to Negotiate Consents to Annexations**. Within 90 days after the effective date of this Agreement, the governing bodies of the City and the District will consider for approval an agreement including the following: (1) City consent to prior annexations by the District inside the City's ETJ (excluding the Inside-the-Loop Tract); (2) removal of the Inside-the-Loop Tract from the District; and (3) Agreement from District to not expand its boundaries inside the City's ETJ without prior approval by the City as required by the Texas Local Government Code § 42.0425 or in accordance with other applicable state law. The procedures under Texas Local Government Code §§ 42.042 and 42.0425(b) governing a municipality's refusal to consent to annex, or other applicable state law, shall apply to any future requests by the District to expand its boundaries in the City's ETJ.

1.6. **Cost of Service** The District shall engage a utility rate consultant to prepare a cost of service and rate design study to determine the District's necessary revenue requirements for providing retail water and sewer utility service to all of its customers. Revenues from *ad valorem* taxes shall be reflected as a revenue offset for the customer class subject to taxation to ensure that the customer class subject to taxation receives appropriate credit for the tax revenues. The rate consultant shall prepare a final written report within 180 days after being engaged, but if the rate consultant requires additional time, the City shall consent to a reasonable extension. Within ten (10) days of the consultant's release of the final report, the District shall provide a copy of the report to the City. The District shall review its then-current rates to determine whether its rates need to be revised to reflect the actual costs of providing water and sewer service to its customers based on the findings of the report.

1.7. **Withdraw of City Cease and Desist Action**. Within 30 days after approval of the written petition submitted to the PUC pursuant to Paragraph 1.4, the City will withdraw its Petition for a Cease-and-Desist Order in PUC Docket No. 53954.

- 1.8. Reservation of Rights. The Parties reserve, and nothing in this Agreement shall affect, any and all rights of the Parties to seek changes to water or sewer CCN areas in the Encroachment Areas, the Dually Certificated Area, or elsewhere through application to the PUC.

ARTICLE II **MISCELLANEOUS**

- 2.1. This Agreement shall be binding on the City and the District and shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement.
- 2.2. To the extent that the provisions of this Agreement are inconsistent with the provisions of the Compromise Settlement Agreement between the Parties, dated April 2, 2012, the provisions of this Agreement shall control.
- 2.3. No modifications of this Agreement shall be of any force or effect, whatsoever, except as by subsequent modification in writing signed by the Parties.
- 2.4. The Parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.
- 2.5. The provisions of this Agreement shall be governed by and construed and entered in accordance with the substantive laws of the State of Texas. Any action at law or in equity brought to enforce any provision of this Agreement that cannot be enforced by the PUC shall be brought in a court of competent jurisdiction with venue in Smith County, Texas.
- 2.6. This Agreement has been authorized by the governing body of each of the Parties. The individuals executing this Agreement on behalf of the respective parties below represent that all necessary and appropriate action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing, and that each individual affixing his or her signature is authorized to do so, and such authorization is valid and effective on the date hereof. If the authority of the individual executing this Agreement is subsequently challenged, the party for which the individual was acting shall take all steps necessary to ratify the authority of the individual.
- 2.7. This Agreement may be executed in multiple originals, either copy of which shall be considered an original.
- 2.8. This Agreement shall be effective on the date of execution below, the latter of which shall be the Effective Date.
- 2.9. No Party will be penalized for alleged authorship of a particular provision on judicial construction of this Agreement.

EXECUTED AND AGREED TO BY THE PARTIES:

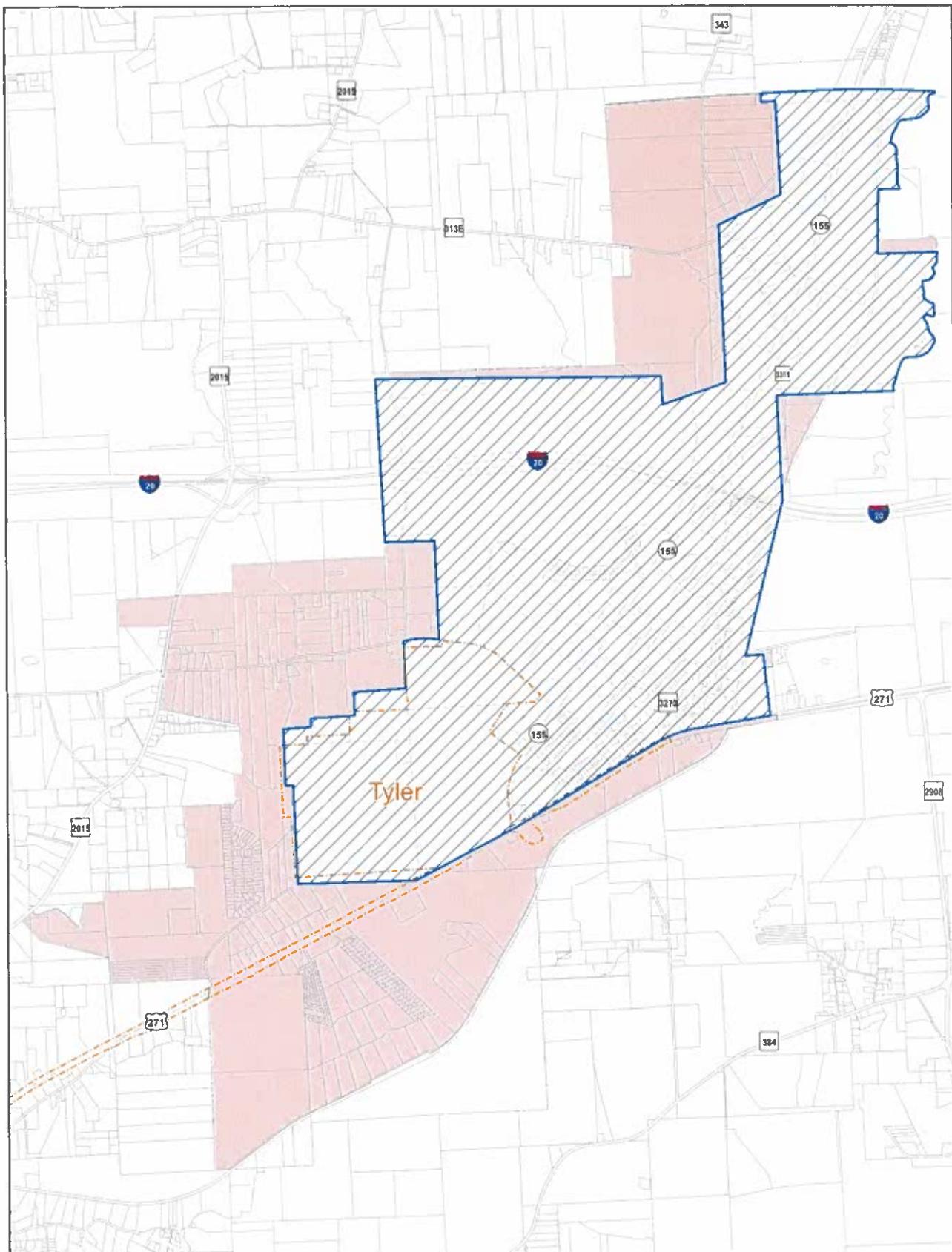
CITY OF TYLER:

Edward A. Broussard, City Manager

Date

EAST TEXAS MUNICIPAL UTILITY DISTRICT OF SMITH COUNTY:

Date



Interlocal Agreement Regarding Utility Services - Attachment 1

N

0 1,250 2,500 Feet

- Dually Certified Area
- Encroachment Area
- Tyler City Limits
- Parcels