



City of Tyler, Texas

REQUEST FOR QUALIFICATIONS
FOR ARCHITECTURAL and ENGINEERING SERVICES
FOR
Fire Station #2 Replacement

DEADLINE FOR THE SUBMISSION OF QUALIFICATIONS:
2:00 P.M. on May 26, 2026

CITY OFFICIALS

Mayor: Don Warren

City Council

District 1: Central	Stuart Hene	District 4: Northeast	James Wynne
District 2: West	Petra Hawkins	District 5: East	Lloyd Nichols
District 3: Northwest	Shonda Marsh	District 6: South	Brad Curtis
	City Manager	Edward Broussard	

The City of Tyler is an Equal Opportunity Employer and encourages all Minority-Owned, Historically Underutilized, and Women-Owned Businesses to participate. A copy of the City's Policy Statement on Equal Employment Opportunity is enclosed.

REQUEST FOR QUALIFICATIONS FOR ARCHITECTURAL AND ENGINEERING SERVICES FOR FIRE STATION #2 Demolition & Replacement

The City of Tyler (City) is soliciting Statements of Qualifications (SOQs) for Architectural and Engineering (AE) Services, including Project Management Services, until 2:00 P.M., May 26, 2026. The City of Tyler is seeking the services of qualified AE firms to provide a full variety of services for the replacement of Fire Station #2. Due to the nature of this project, the City seeks specialized expertise, experience, and availability to perform and complete the services in a timely manner at a fair and reasonable price. The purpose of this RFQ process is to identify the most qualified respondent. The firm chosen by the City as being the most qualified firm will be requested to negotiate a fee for the work and execute a General Services Agreement (GSA).

The City will request a fee proposal from the selected consultant, then negotiate and establish the agreed scope of services, personnel resources, project schedule, conditions, restrictions, and compensation to meet the project's goals. The selected firm may be asked to supply supporting information demonstrating that the requested fee is justified by the level of effort (and related personnel costs) required to provide the services necessary for the project.

Consulting firms or a team led by the consultant (Firm) are being solicited and will be considered at the award of this RFQ request. The City reserves the ability to review the prime firm's sub-consultants and approve them at the time of negotiating the Work Order.

The City reserves the right to accept or reject any or all submittals as a result of this request, to negotiate with all qualified sources, or to cancel in part or entirety if found to be in the best interest of the City. This RFQ does not commit the City to award a contract or to reimburse for any costs incurred in the preparation, presentation, interviews, or negotiation in response to this solicitation.

At its discretion, the City may decide to conduct interviews with several of the highest-qualified Respondents. However, the City may authorize contract negotiations to begin without further discussion with the Firm. Each Statement of Qualifications should be submitted as completely as possible. Contracts shall be awarded on the basis of the best interest of the City, content and other factors being considered in the RFQ.

OBJECTIVE

The objective of this RFQ is to select a qualified firm or team to perform architectural and engineering services for the demolition of the existing Fire Station No. 2 and the construction of a new Fire Station on the same site at 5505 Old Bullard Rd and the newly acquired adjacent lot located at 420 W. Reick Rd.

The consultant will work with representatives of the City of Tyler Engineering and Fire Departments. The City will use a Construction Manager at Risk (CMAR) for the contractor on

this project. The consultant will work closely with the CMAR during the design and construction phases and the establishment of a Guaranteed Maximum Price (GMP) for this project.

The AE services to be provided may include (but are not limited to): architectural planning and design, civil engineering, environmental reviews; utilities, lighting and infrastructure design; stormwater and drainage system design, surveying; preparation of plans, specifications, and reports, cost estimating and scheduling, technical studies, permitting, bidding and award, construction administration and resident project representative (RPR) inspection services, project record-keeping and close-out services, and all other related services.

This project will include the demolition of the existing Fire Station No. 2 and construction of a new Fire Station No. 2 on the same site at 5505 Old Bullard Rd, Tyler, Texas 75703, and additional property adjacent to the existing fire station at 420 W. Rieck Rd, Tyler, Texas 75703. Exhibit C includes an aerial of the existing Fire Station #2 site and the additional property. Services may include the following:

1. Preparation of specialized architectural and engineering plans with specifications specifically focused on fire stations. The projects involve designing and constructing a new fire station that will include apparatus bays, living quarters, offices, training areas, fitness spaces, a maintenance area, adequate storage, a decontamination area, and storage for personal protective equipment. The selected firm will collaborate with the Owner to ensure the final design meets operational requirements while staying within budgetary constraints.
 - a. At least 15,000 SF – will need to be 2-story to accommodate this size
 - b. The new station must fit on the existing property.
 - c. A total of 16 parking spaces – 13 for personnel and 3 for the public.
 - d. A three- or four-bay apparatus room, drive-through, 75 to 80 feet deep.
 - e. One battalion chief suite – office, bedroom, and three-piece bath.
 - f. Two officer bedroom mini-suites – bedroom and three-piece bath.
 - g. Sleeping rooms for eight fire personnel, including a desk and three lockers.
 - h. A day room to seat 12 people.
 - i. A kitchen and eating area for 12 people.
 - j. One physical fitness room – at least 25 ft by 25 ft.
 - k. One battalion classroom – to accommodate 28 people.
 - l. An air compressor room with bottle and SCBA storage.
 - m. An isolated Personal Protective Equipment (PPE) room with outside exhaust.
 - n. A workshop area for minor equipment repairs.
 - o. Storage space.
 - p. A full kitchen with stainless steel countertops.
 - q. Three commissary rooms – one for each shift.
 - r. Men's and women's bathrooms, or at least three private restrooms with showers.
 - s. Mechanical systems – including HVAC and exhaust systems.
 - t. A storage building located on the 420 W. Rieck Rd property.

2. Scope of Services – The scope of services for the selected firm will include, but not be limited to:
 - a. Planning Services
 - i. Replatting of the two (2) lots into one lot. This will require the approval of the Planning & Zoning Commission with its associated process.
 - b. Pre-Design Services:
 - i. Site analysis and evaluation
 - ii. Programming and space planning
 - iii. Conceptual design options
 - iv. Coordination with CMAR
 - c. Design Services:
 - i. Schematic design and design development
 - ii. Construction drawings and specifications
 - iii. Coordination with civil, structural, mechanical, electrical, and plumbing engineering disciplines
 - iv. Sustainable design practices (LEED certification or equivalent, if applicable)
 - v. Coordination with the CMAR for constructability reviews of plans, preparation of cost estimates, and GMP
 - vi. Value engineering
 - vii. Evaluation of bids and recommendations for award
 - d. Construction Administration:
 - i. Regular site visits and construction oversight
 - ii. Review and approval of submittals and shop drawings
 - iii. Respond to Requests for Information (RFIs)
 - iv. Ensure compliance with project specifications and timelines
 - v. Final inspections and punch list preparation and oversight
 - vi. Final project closeout

PERTINENT INFORMATION

1. Submit 2 bound copies of the Statement of Qualifications (SOQ) with a flash drive containing a full copy of the submittal in PDF Format. Statements should not exceed 24 pages total, excluding tabs/dividers and cover letter. Qualification statements must be submitted to:

City of Tyler Purchasing Department
304 North Border
Tyler, Texas 75702

2. Submit all documentation in a sealed envelope marked on the outside “Proposal for Fire Station No. 2 Replacement – Bid No. 26-024” SOQs will be received until 2:00pm, May 26, 2026.
3. The Statement of Qualifications shall have a **maximum of 26 pages**, excluding the cover letter, dividers, and section tabs. Any revisions to Exhibit B shall not be included in the page count.

4. The Consultant, at its discretion, may partner with subconsultants to provide the highest qualified team for this project.
5. If submitting as a team, a lead firm must be established with the responsibility to manage the project and be the City's primary point of contact and with whom the City will contract.
6. The City's General Services Agreement (GSA) that will be used for this project is included as Exhibit B. The Consultant must be willing to sign the contract. Any revisions to the standard agreement that the Consultant desires shall be marked up on Exhibit B and submitted with the SOQ. Revisions to Sections xx, x, and x of the GSA will not be approved. Any revisions to other sections will be reviewed by the City Attorney's office, but are not guaranteed to be approved.

SCHEDULE/TIME FRAME

The expected time for the Consultant to complete the project is nine (9) months (?) which shall commence upon receipt of a signed and dated contract agreement from both parties. The schedule for this project is as follows:

• RFQ Advertisement	April 29, 2026
• Pre-Submittal Meeting	May 12, 2026
• Deadline for Questions	May 19, 2026
• RFQ Due	May 26, 2026
• Review & Initial Ranking	June 12, 2026
• Interviews – if desired	July 6-10, 2026
• Ranking Finalized	July 13, 2026
• Firm Selection	July 14, 2026
• Contract approval	August 12, 2026
• Notice to Proceed	August 24, 2026
• Design Phase	9 months

The schedule listed above is subject to change at the discretion of the City of Tyler.

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The selection of a firm shall be based upon a review of qualifications provided in response to this RFQ. The SOQ must include, at a minimum, the following:

1. Cover Letter – Two (2) Pages Maximum (Not included in page count)
 - a. A cover letter to include the firm name, address, phone number, e-mail address, and primary contact person.
 - b. The primary contact person's professional background and experience.
 - c. History and size of the firm. Brief relevant experience and availability to commit services immediately after successfully negotiating a contract for services.
2. Firm Experience and Professional Qualifications – Six (6) Pages Maximum
 - a. Firm history and relevant experience in fire station design.
 - b. Firm experience on CMAR projects.

- c. Ability, if needed, to provide qualified project inspectors for construction inspection.
 - d. Include an organizational chart.
 - e. Description of the firm's QA/QC procedures, including the practice for all stages of the design process.
 - f. Description of the firm's cost control process in place to minimize extra expenses, while still providing a quality product.
 - g. List a minimum of five area references. Reference information must include the name, address, e-mail address, and phone number of the person most closely associated with the firm's prior project performance on preferably similar projects.
 - h. Statement of the firm's availability to provide services.
3. Key Personnel Relevant Experience and Qualifications – Twelve (12) Pages Maximum
- a. Identification of the Firm's project manager. The project manager should remain the same throughout design and construction. This person may be replaced during the selection process only by another person proposed by the firm and approved by the City.
 - b. A minimum one-page resume for the project manager showing experience with similar projects within the last five (5) years.
 - c. If applicable, provide a one-page resume for the task leaders showing experience with similar projects and their role within the last three (3) years.
 - d. Identify either the project manager's or task leader's specific role and work for the projects.
 - e. Availability of key personnel to commit to this project.
 - f. Identify a minimum of five similar projects within the past eight (8) years for all team members listed in the team organizational chart. The project information should include a brief description of the project, team members who worked on the project, project budget, final project cost, and owner reference with contact information.
4. Project Approach – Four (4) Pages Maximum
- a. Provide a narrative for the design of a fire station. Include any special considerations needed when replacing an existing fire station at the same site.
 - b. Include information showing the team's general understanding and approach for Fire Station No. 2 planning and design.
 - c. Any applicable flowcharts, diagrams, etc., that will help with
5. Quality Assurance/Quality Control – Two (2) Pages Maximum
- a. Identify the QA/QC Manager for this project.
 - b. A description of the firm's Quality Assurance/Quality Control (QA/QC) program.

- c. Any specific additional QA/QC procedures applicable to fire stations.

Tabs and section dividers should be used to separate each major section and/or category. These tabs and dividers will not be included in the page count.

EVALUATION PROCEDURES

1. The RFQ Evaluation Team will review the submittals on the basis of the Consultant's documented competence, technical qualifications, and understanding of the proposed scope of work.
2. At its discretion, the Evaluation Committee may elect to interview the highest ranking Consultants to gain further knowledge of the Consultants' qualifications and determine the most qualified team for this project.
3. The RFQ Evaluation Team reserves the right to contact respondents for clarification of information submitted. The City also reserves the right to contact references to obtain information regarding past performance, reliability, and integrity.

EVALUATION CRITERIA

The proposal evaluation criteria for the selection of the Consultant will include:

1. Firm Experience and Professional Qualifications (25%): The Consultant team must demonstrate experience on similar fire station projects with favorable performance and results. References will be checked.
2. Key Personnel Relevant Experience and Qualifications (30%): The Project Manager must demonstrate adequate experience on similar projects, a thorough knowledge of projects of a similar type and scope, a demonstrated ability to manage project budgets and schedules, and the ability to convey technical and complex concepts effectively to the public. Other Key Personnel should demonstrate adequate experience for their respective positions.
3. Project Approach (30%): The responding Consultant team shall demonstrate a thorough grasp of the required tasks and a clear understanding of any work on similar type projects may be listed to validate this understanding. The response will include a proposed schedule.
 - a. Demonstrates a clear understanding of the project scope.
 - b. Demonstrate a thorough grasp of the required tasks.
 - c. Demonstrate the ability to anticipate issues and proactively address them.
4. Quality Assurance/Quality Control (10%): The Consultant's QA/QC program must be thorough and applicable to a project of this type and scope. The overall process and methods presented must demonstrate a good understanding and approach to deliver the required oversight and quality control for this project.
5. Quality and Comprehensiveness of the SOQ (5%): The SOQ must be complete and include all the requested information, free from grammatical errors and inconsistent formatting. Attention must be paid to the details, presentation, and the ease of reviewing it.

City of Tyler Engineering Services

511 W. Locust St., Tyler, Tx 75702

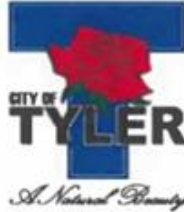


While personal visits are typically welcomed, individual meetings with City Staff related to this process will not be allowed during the advertising period, interviews and scoring phase. All questions and inquiries should be submitted through CIVCAST. The deadline for submitting questions and inquiries is 4:00pm on May 19, 2026. Questions submitted to the City of Tyler Engineering Department will be sent to all known recipients of this RFQ.

The City of Tyler reserves the right to reject any or all proposals received and may choose to conduct a new selection of engineering services at any time.



Edward Broussard
City Manager



The City of Tyler
Office of the City Manager
P.O. Box 2039
Tyler, Texas 75710-2039

Phone: (903) 531-1250
Fax: (903) 531-1166
www.cityoftyler.org

POLICY STATEMENT ON EQUAL EMPLOYMENT OPPORTUNITY

The City of Tyler takes positive steps to maintain and promote equal opportunity for all individuals. The following policy statement is to keep you advised of the commitment of the City of Tyler, Texas, toward equal employment opportunity and to ensure that none of its personnel policies, procedures, or practices unlawfully discriminate against any individual.

You are urged to share this commitment in your employment practices and procedures.

Need for a policy

Equal opportunity for all people without regard to race, color, religion, sex, age, disability, national origin or other protected status, is part of the American ideal. Local governments, as a mirror of public policy, can make vital contributions toward this ideal by taking affirmative action to provide equal employment opportunities for all.

Statement of Policy

It is the policy of the City to recruit, employ and to provide compensation, promotion and other conditions of employment without regard to race, color, religion, sex, age, national origin, disability, genetic information or status as a Vietnam era or special disabled veteran, recently separated veteran, and other protected veteran. The City affirms that employment decisions shall be made only on the basis of a person's ability to perform the essential functions of the job. The City shall continually review its employment practices and personnel procedures and take positive steps to ensure that equality of employment opportunity in the City of Tyler, Texas is a fact as well as an ideal.

Application

Susan Steen (ssteen@tylertexas.com) (903-533-2050), has been designated as EEO Coordinator, with authority and responsibility to develop and recommend strategies to ensure the achievement of the intent of the Policy. This Policy shall be uniformly applied by all levels of management in every department, work unit, and other component of the City.

Responsibility

Each Department Leader and Supervisor is responsible for the application of this Policy within his/her component. This includes all supporting programs and practices developed in accordance with this Policy. All employees of the City are responsible for cooperating with any reviews, investigations, and other activities initiated within the framework of this Policy. To achieve ultimate effectiveness in the application of this Policy, the cooperation, support and commitment of every employee is essential.

Edward Broussard
City Manager



EXHIBIT A
CITY OF TYLER
GENERAL SERVICES AGREEMENT



Insert the General Services Agreement here



STATE OF TEXAS

§

STANDARD FORM OF AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

COUNTY OF SMITH

§

This AGREEMENT is entered into, with an Effective Date of _____, _____ [insert date of last party's signature], by and between the CITY OF TYLER, in Smith County, Texas (OWNER), acting therein by and through its duly authorized City Manager, and Consultant or Firm (ENGINEER or ARCHITECT), hereinafter referred to as "E/A," for the purpose of acquiring all professional engineering and/or architectural services required for the project known as "Project name" (hereinafter called the Project).

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

SECTION 1—BASIC SERVICES OF ENGINEER OR ARCHITECT

conflict between this Agreement and Exhibit "F", provisions in Exhibit "F" shall control.

1.1. General.

1.2. Study and Report Phase.

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

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

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

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

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

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

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

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

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

1.1.4. If Exhibit "F" is applicable and there is a

1.2.6. Prepare a Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable requirements of governmental authorities having

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

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

1.3. Preliminary Design Phase.

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

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

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

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

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

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

1.3.6. Derive right-of-way (ROW) data and easement documents as needed for the OWNER to begin land acquisition.

1.4. Final Design Phase.

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

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

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

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

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

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

1.5. Bidding or Negotiating Phase.

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

1.5.1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services; and, where applicable,

maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences and receive and process deposits for Bidding Documents.

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

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

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

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

1.6. Construction Phase.

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

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

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

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

of the progress of the work.

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

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

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

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

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

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

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

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

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

1.6.11. *Limitation of Responsibilities.* E/A shall not be responsible to OWNER for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor's or supplier's agents or employees or any other persons (except E/A's own employees and agents) whether at

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

1.7. Operational Phase.

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

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

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

SECTION 2—ADDITIONAL SERVICES OF E/A

2.1. Services Requiring Authorization in Advance.

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

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

2.1.2. Services to make measured drawings of or to

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

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

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

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

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

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

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

2.1.9. Assistance in connection with bid protest,

rebidding, or renegotiating contracts for construction, materials, equipment or services when E/A did not create or contribute to the event or situation requiring said assistance, rebidding, renegotiating, materials, equipment, or services.

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

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

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

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

2.2. Required Additional Services.

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

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

2.2.2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or

excessive number of substitutions proposed by Contractor.

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

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

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

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

SECTION 3—OWNER'S RESPONSIBILITIES

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

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

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

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

3.4. Furnish to E/A, as required for performance of E/A's Basic Services (except to the extent provided

otherwise in this Agreement) the following:

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

3.4.2. appropriate professional interpretations of all of the foregoing;

3.4.3. environmental assessment and impact statements;

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

3.4.5. property descriptions;

3.4.6. zoning, deed and other land use restrictions;

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

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

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

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

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

3.9. Provide such accounting, independent cost

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

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

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

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

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

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

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

3.16. E/A shall not be obligated to bear any of the

costs of compliance with this Section 3.

SECTION 4—PERIODS OF SERVICE

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

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

SECTION 5—PAYMENTS TO ENGINEER AND/OR ARCHITECT CONSULTANT

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

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

5.2. Times of Payment.

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

SECTION 6—CONSTRUCTION COST AND

OPINIONS OF COST

6.1. Construction Cost.

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

6.2. Opinions of Cost.

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

SECTION 7—GENERAL CONSIDERATIONS

7.1. Termination.

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

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

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

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

7.2. Reuse of Documents.

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

by State law.

7.3. Insurance.

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

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

- **Commercial General Liability:** E/A agrees to maintain Commercial General Liability at a limit of liability not less than one million dollars (\$1,000,000) Each Occurrence, two million dollars (\$2,000,000) General Aggregate per project. E/A agrees its coverage will not contain any restrictive endorsement(s) excluding or limiting Products - Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage (X = Explosion Hazard; C = Collapse Hazard; U = Underground Damage), Contractual Liability or Cross Liability. The E/A agrees any Self-Insured-Retention or deductible shall not exceed twenty-five thousand dollars (\$25,000).
- **Business Automobile Liability:** E/A agrees to maintain Business Automobile Liability at a limit of liability not less than one million dollars (\$1,000,000) Each Occurrence. Coverage shall include bodily injury and property damage liability arising out of the operation, maintenance and use of Any Auto, or All Owned Autos, and Hired Autos, and Non-Owned automobiles. In the event E/A does not own automobiles, E/A agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- **Professional Errors and Omissions Liability:** E/A agrees to maintain Professional Errors and Omissions Liability at a limit of liability not less than one million dollars (\$1,000,000) Each Claim, two million dollars (\$2,000,000) Annual Aggregate. The E/A agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that

equals or precedes the effective date of the Agreement, or the performance of services hereunder. The E/A agrees the Self-Insured-Retention shall not exceed twenty-five thousand dollars (\$25,000). This coverage may be provided on a Per-Project Basis.

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

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

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

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

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

7.4. Additional Insured Endorsements.

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

The form of the endorsement(s) shall be:

Option 1:

CG 20 10 10 01
Additional Insured - Owners, Lessees, or Contractor – Scheduled Person or Organization

AND, the additional endorsement of

CG 20 37 07 04
Additional Insured – Owners, Lessees, or Contractors – Completed Operations

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

Option 2:

CG 20 10 07 04
Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization

AND, the additional endorsement of

CG 20 37 07 04
Additional Insured – Owners, Lessees, or Contractors – Completed Operations

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

Option 3:

GA 4113 11 99
Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization – Your Work

AND, the additional endorsement of

GA 233 02 07
Contractors' Commercial General Liability Broadened – with coverage for Completed Operations in conformance to specific written contract

E/A shall attach actual copies of the endorsements.

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

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

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

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

7.6. Waiver of Subrogation.

E/A agrees by entering into this written Agreement to a Waiver of Subrogation in favor of the OWNER for each required policy providing coverage during the life of this Agreement. E/A agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement and provide such endorsement to OWNER. This Waiver of Subrogation requirement shall not apply to any

policy, which includes a condition that specifically prohibits such an endorsement, or voids coverage should the E/A enter into such an agreement on a pre-loss basis.

7.7. Subconsultants' Insurance.

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

7.8. Insurance Effective Until Completion.

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

7.9. Right to Revise or Reject Insurance.

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

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

7.10. Certificate of Insurance.

7.10.1 Before commencement of any work, the E/A agrees to provide OWNER with **Certificate(s) of Insurance and Endorsements** that clearly evidence that E/A's insurance contains the minimum coverages, limits, and endorsement requirements set

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

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

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

7.11. Insurance - No Limit on Obligation to Pay.

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

7.12. Non-compliance; Breach.

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

7.13. Indemnity.

E/A AGREES TO INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST

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

7.14. Certificate of Interested Parties.

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

7.15. Controlling Law.

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

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

7.16. Successors and Assigns.

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

successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

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

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

SECTION 8—SPECIAL PROVISIONS, SCHEDULES, AND EXHIBITS

8.1. Special Provisions.

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

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

8.1.2. OWNER reserves the right, with E/A's agreement, to consolidate any and all phases of performance set out in the standard form contractual documents. The consolidation of said services shall not in any way affect the E/A's responsibilities to perform the services set out therein.

8.2. Exhibits.

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

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

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

8.3. Entire Agreement.

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

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

8.4. Effective Date.

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

8.5. Severability.

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

8.6. Waiver.

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

8.7. Notices.

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

E/A:

Insert name of firm
Attn: Insert name of contact person
Insert mailing address
Insert City, State, Zip

OWNER:

City of Tyler
Attn: Insert name of contact person
P.O. Box 2039
Tyler, TX 75710

8.8. Venue.

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

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

FOR THE E/A:

By:

Enter title of signer

Date

Enter printed name

Printed Name

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, who is known to me, or who was proved to me through _____ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 20_____.

Notary Public In and For The State of Texas

My Commission Expires: _____

Notary's Printed Name

INDEX OF EXHIBITS

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

Exhibit B – E/A's Project Schedule

Exhibit C – E/A's Fee Schedule and Hourly Fees

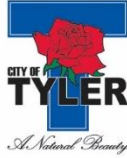
Exhibit D - Certificates of Insurance and Endorsements

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

Exhibit F – Procedure for Correcting Construction Defects

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

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



WORK ORDER FOR PROFESSIONAL SERVICES
PROJECT NO. _____
WORK ORDER NO. _____

PROJECT NAME

This Work Order constitutes authorization by the City of Tyler, Texas (OWNER) for _____ (ENGINEER) to provide engineering services for the above titled project (hereinafter called the PROJECT). The PROJECT includes the following Services:

ENGINEER shall provide engineering services for the OWNER in accordance with the STANDARD FORM OF AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES (hereinafter called the CONTRACT) dated _____. The scope of services for this part of the work is generally as follows:

- 1) SECTION 1.2 - During the Preliminary Report Phase the ENGINEER shall: Provide the services described in SECTION 1.2 of the CONTRACT.
- 2) SECTION 1.3 - During the Preliminary Design Phase the ENGINEER shall: Provide the services described in SECTION 1.3 of the CONTRACT.
- 3) SECTION 1.4 - During the Final Design Phase the ENGINEER shall: Provide the services described in SECTION 1.4 of the CONTRACT.
- 4) SECTION 1.5 - During the Bidding and Negotiation Phase the ENGINEER shall: Provide the services described in SECTION 1.5 of the CONTRACT.
- 5) SECTION 1.6 - During the Construction Phase the Engineer shall: Provide the services described relating to bidding in SECTION 1.6 of the CONTRACT.
- 6) Project Specific Scope:

Includes the development of a preliminary engineering report, plans, and specifications for the PROJECT and includes the following items:

- a. Coordination with the Owner, and sub-consultants in preparing a listing of the proper design criteria;
 - b. Prepare preliminary project cost estimates and pavement sections based on _____; and
 - c. Coordination with the Owner, local contractors, and sub-consultants in preparing preliminary project phasing plan, design, and construction schedule
- 7) Additional Services of ENGINEER: The ENGINEER is hereby authorized to perform the following additional services:

- a. Design surveying for the PROJECT.
- b. Perform a geotechnical investigation and develop a proposed
- c. Printing and postage for the design documents.

8) OWNER's Responsibilities: The OWNER's responsibilities shall be as described in SECTION 3 of the CONTRACT.

9) Engineering Fees: The fees for the various services to be provided by the ENGINEER are as follows (subject to the conditions of the Agreement): See Attached Fee Schedule.

10) Method of payment for various project components:

OWNER shall pay the ENGINEER for services rendered as provided for in SECTION 5 of the said ENGINEERING CONTRACT unless modified herein and agree to by both parties to said contract.

11) Schedule: The ENGINEER shall perform services for each the project in accordance with the following schedule:

Preliminary Engineering Report Phase	__ weeks following NTP
Preliminary Design Phase	__ weeks following NTP
Final Design Phase	__ weeks following NTP
Bidding Phase	as required

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. to the CONTRACT dated _____ on this the _____ day of _____, 2022.

OWNER:

ENGINEER:

CITY OF TYLER, TEXAS

BY: _____

BY: _____

ATTEST: _____

ATTEST: _____

DATE: _____

DATE: _____

Half Cent Sales Tax Board Approval Date _____

City Council Approval Date: _____

Exhibit B - E/A's Project Schedule

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

Exhibit D - Certificates of Insurance and Endorsements

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

CERTIFICATE(S) OF INSURANCE
[Certificate of Liability Insurance Shall Be Inserted Here]

INSURANCE COVERAGE REQUIRED		* Endorsement Required
TYPE	AMOUNT	
<p>1) COMMERCIAL GENERAL LIABILITY * Policy shall include (but not limited to) the following:</p> <ul style="list-style-type: none"> a) Products - Completed Operations b) Independent Contractors c) Broad Form Property Damage d) X-C-U Coverage X = Explosion Hazard C = Collapse Hazard U = Underground Damage e) Contractual Liability or Cross Liability 	<p>Not Less than: \$1,000,000 (1 million) Each Occurrence \$2,000,000 (2 million) General Aggregate Per Project</p> <p>Any Self-Insured-Retention or Deductible shall not exceed \$25,000.</p>	
<p>2) BUSINESS AUTOMOBILE LIABILITY Policy shall include (but not limited to) bodily injury and property damage liability for the following:</p> <ul style="list-style-type: none"> a) Any Auto; OR b) All Owned Autos, and c) Hired Autos, and d) Non-Owned Autos. 	<p>Not Less than: \$1,000,000 (1 million) Each Occurrence</p>	
<p>3) PROFESSIONAL ERRORS & OMISSIONS LIABILITY Policy shall include (but not limited to) the following:</p> <ul style="list-style-type: none"> a) A minimum three (3) year Discovery (tail) Reporting period, and b) A Retroactive Date that equals or precedes the effective date of the Contract, or the performance of services hereunder. 	<p>Not Less than: \$1,000,000 (1 million) Each Claim \$2,000,000 (2 million) Annual Aggregate</p> <p>Any Self-Insured-Retention or Deductible shall not exceed \$25,000.</p>	
<p>4) ♦ POLLUTION LIABILITY INSURANCE *</p>	<p>♦ <input type="checkbox"/> Check Here If Coverage is Required by a City Operational Department</p> <p>Not Less than: \$1,000,000 (1 million) Each Claim \$2,000,000 (2 million) Annual Aggregate</p>	
<p>5) COMMERCIAL UMBRELLA / EXCESS LIABILITY *</p>	<p>Not Less than: \$5,000,000 (5 million) Each Occurrence \$5,000,000 (5 million) General Aggregate</p> <p>Any Self-Insured-Retention or Deductible shall not exceed \$25,000.</p>	
<p>6) WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY</p>	<p>Statutory Limits for Workers' Compensation TEX. LAB. CODE ANN. Title 5, Subtitle A, Chapter 401 TEX. ADMIN. CODE, Title 28, Part 2</p> <p>Employer's Liability Limits \$1,000,000 (1 million) Bodily Injury by Accident \$1,000,000 (1 million) Bodily Injury by Disease Each Occurrence \$1,000,000 (1 million) Bodily Injury by Disease Aggregate Limit</p>	

Checklist: Certificate(s) of Insurance

*** Provided only as a courtesy ***

[See generally Section 7.3 Insurance for contract insurance requirements]

1.	All pages of the <i>Certificate of Liability Insurance</i> shall be attached. <i>See</i> lower right corner of certificate for <i>ex toto</i> pagination. E.g. Page 1 of 2
2.	Policy Effective and Expiration Dates (for each type of coverage) Policy effective date is ON or BEFORE Contract date, and Policy expiration date should extend at least 6 months into the future OR for the estimated project length, whichever is greater.
3.	Commercial General Liability [<i>See</i> Section 7.3.2] <input checked="" type="checkbox"/> Occurrence Box is Checked <input checked="" type="checkbox"/> Per Project Box is Checked for General Aggregate Limit.
4.	Business Automobile Liability [<i>See</i> Section 7.3.2] At a minimum each of the following boxes should be checked: <input checked="" type="checkbox"/> Any Auto OR <input checked="" type="checkbox"/> All Owned Autos, and <input checked="" type="checkbox"/> Hired Autos, and <input checked="" type="checkbox"/> Non-Owned Autos.
5.	Professional Errors and Omissions Liability [<i>See</i> Section 7.3.2]
6.	Commercial Umbrella / Excess Liability [<i>See</i> Section 7.3.2] <input checked="" type="checkbox"/> Occurrence Box is Checked
7.	Workers Compensation and Employers Liability [<i>See</i> Section 7.3.2] <input checked="" type="checkbox"/> WC Statutory Limits Box is Checked
	Look at the “Description of Operations . . . Special Provisions” Box. [<i>See</i> Section 7.4] [<i>See also</i> Section 7.6] Clearly indicate the CITY has been endorsed by using this language: “The City of Tyler (i.e. Certificate Holder) shall be named as Additional Insured as respects to Commercial General Liability, Commercial Umbrella / Excess Liability and Pollution Liability Insurance, if required, and shall have a Waiver of Subrogation as respects to Commercial General Liability, Business Automobile Liability, Professional Errors and Omissions Liability, Commercial Umbrella / Excess Liability and Workers’ Compensation all as required by written contract subject to policy terms, conditions and exclusions. Coverage is primary, non-contributory as respects to General Liability and Auto as required by written contract.”
8.	Clearly identify each policy’s limits, flat & percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.
9.	Certificate Holder: [<i>See generally</i> Section 7.4] City of Tyler P.O. Box 2039 Tyler, TX 75710

ENDORSEMENTS

[Endorsements Shall Be Inserted Here]

* ENDORSEMENT(S) REQUIRED	
Name of Additional Insured Person(s) or Organization(s): City of Tyler P.O. Box 2039 Tyler, TX 75710	Location(s) of Covered Operations: Project <i>[insert project name]</i> , Dated <i>[insert month and year of contract]</i> .
E/A shall choose one of the three Endorsement Option stated below. All Endorsements shall be in the form required. All pages of the Endorsement(s) shall be attached.	
COMMERCIAL GENERAL LIABILITY	
E/A agrees to endorse the CITY as an “Additional Insured” on the Commercial General Liability with: <i>[Select Option 1, Option 2 or option 3 below]</i> <i>[See Section 7.3.2 and 7.4]</i>	
Option 1	<p>FORM: CG 20 10 10 01 <u>Additional Insured - Owners, Lessees, or Contractors – Scheduled Person or Organization</u></p> <p style="text-align: center;">AND</p> <p>FORM: CG 20 37 07 04 <u>Additional Insured – Owners, Lessees, or Contractors – Completed Operations</u></p>
OR	
Option 2	<p>FORM: CG 20 10 07 04 <u>Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization</u></p> <p style="text-align: center;">AND</p> <p>FORM: CG 20 37 07 04 <u>Additional Insured – Owners, Lessees, or Contractors – Completed Operations</u></p>
OR	
Option 3	<p>FORM: GA 4113 11 99 <u>Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization – Your Work</u></p> <p style="text-align: center;">AND</p> <p>FORM: GA 233 02 07 <u>Contractors’ Commercial General Liability Broadened – with coverage for Completed Operations in conformance to specific written contract</u></p>
COMMERCIAL UMBRELLA / EXCESS LIABILITY	
E/A agrees to endorse the CITY as an “Additional Insured” under the Commercial Umbrella / Excess Liability as also provided herein. <i>[See Section 7.3.2 and 7.4]</i>	
POLLUTION LIABILITY INSURANCE	
♦ If applicable E/A agrees to endorse the CITY as an “Additional Insured” under the Pollution Liability Insurance as also provided herein. <i>[See Section 7.3.2 and 7.4]</i>	

Exhibit E- Certificate of Interested Parties (Form 1295)

(If Required)

Check Here if this Section is NOT Used

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

Exhibit F - Procedure for Correcting Construction Defects

Check Here if this Section IS Applicable to This Contract

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

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

I. DEFINITIONS

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

II. NOTIFICATION OF DEFECT

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

III. PROCEDURE TO CORRECT CONSTRUCTION DEFECTS

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

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

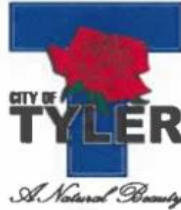


EXHIBIT B

CITY OF TYLER POLICY STATEMENT ON EQUAL EMPLOYMENT OPPORTUNITY



Edward Broussard
City Manager



The City of Tyler
Office of the City Manager
P.O. Box 2039
Tyler, Texas 75710-2039

Phone: (903) 531-1250
Fax: (903) 531-1166
www.cityoftyler.org

POLICY STATEMENT ON EQUAL EMPLOYMENT OPPORTUNITY

The City of Tyler takes positive steps to maintain and promote equal opportunity for all individuals. The following policy statement is to keep you advised of the commitment of the City of Tyler, Texas, toward equal employment opportunity and to ensure that none of its personnel policies, procedures, or practices unlawfully discriminate against any individual.

You are urged to share this commitment in your employment practices and procedures.

Need for a policy

Equal opportunity for all people without regard to race, color, religion, sex, age, disability, national origin or other protected status, is part of the American ideal. Local governments, as a mirror of public policy, can make vital contributions toward this ideal by taking affirmative action to provide equal employment opportunities for all.

Statement of Policy

It is the policy of the City to recruit, employ and to provide compensation, promotion and other conditions of employment without regard to race, color, religion, sex, age, national origin, disability, genetic information or status as a Vietnam era or special disabled veteran, recently separated veteran, and other protected veteran. The City affirms that employment decisions shall be made only on the basis of a person's ability to perform the essential functions of the job. The City shall continually review its employment practices and personnel procedures and take positive steps to ensure that equality of employment opportunity in the City of Tyler, Texas is a fact as well as an ideal.

Application

Susan Steen (ssteen@tylertexas.com) (903-533-2050), has been designated as EEO Coordinator, with authority and responsibility to develop and recommend strategies to ensure the achievement of the intent of the Policy. This Policy shall be uniformly applied by all levels of management in every department, work unit, and other component of the City.

Responsibility

Each Department Leader and Supervisor is responsible for the application of this Policy within his/her component. This includes all supporting programs and practices developed in accordance with this Policy. All employees of the City are responsible for cooperating with any reviews, investigations, and other activities initiated within the framework of this Policy. To achieve ultimate effectiveness in the application of this Policy, the cooperation, support and commitment of every employee is essential.

Edward Broussard
City Manager



EXHIBIT C
PROJECT LOCATION MAP

