

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

THIS INTERLOCAL COOPERATION AGREEMENT (the "Agreement") is made and entered into by and between the City of Tyler ("Tyler"), a municipal corporation of Smith County, Texas, by and through its City Manager pursuant to City Council authority at a regularly scheduled City Council meeting on the 13th day of February, 2008, and Smith County, Texas ("Smith County"), a political subdivision of the State, acting by and through a County Judge pursuant to Commissioners Court authority at a regularly scheduled Commissioners Court meeting on the 24th day of January, 2008.

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

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

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

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

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

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

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

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

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

I. EFFECTIVE DATE

The effective date of this Agreement shall be the 8th day of February, 2008.

II. TERM

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

III. DUTIES OF PARTIES

The following outlines the duties of the parties to implement the requirements of the TPDES General Permit for Regulated Small MS4s and specifically to address the six Minimum Control Measures ("MCMs") identified in the TPDES General Permit for Regulated Small MS4s. The various Best Management Practices ("BMPs") are referenced with respect to Smith County's Storm Water Management Program ("SWMP"), and the related BMPs in Tyler's SWMP are also provided for reference.

A. PUBLIC EDUCATION AND OUTREACH ON STORM WATER IMPACTS.

1. Smith County BMP PE-1 – Public Service Announcements: In order to address the Public Education and Outreach MCM, Tyler plans to utilize storm water public service announcements. (See Tyler BMP PE-4.) Because the public service announcements are broadcast throughout Smith County, Tyler shall recognize Smith County's role in addressing storm water issues in all storm water public service announcements broadcast each year during the term of this Agreement.
2. Smith County BMP PE-2 – Storm Water Web Site: In order to address the Public Education and Outreach MCM, Tyler plans to develop and maintain a storm water web site. (See Tyler BMP PE-3.) Tyler shall work with Smith County to develop one static storm water web page for the Smith County web site. The storm water web page developed for Smith County shall have a link to Tyler's

storm water web site. For Year 1, Smith County shall provide Tyler with all reasonably necessary information for the development of the Smith County storm water web page by May 12, 2008. The initial development of the Smith County storm water web page shall be completed during the first year of the five year term of the TPDES General Permit for Regulated Small MS4s, but no later than August 12, 2008. For Year 2, the City of Tyler shall develop a storm water resource link page, and the Smith County webmaster will establish a link to the City's web page to make this information available to the public, no later than August 12, 2009. For Years 3 through 5, Smith County will provide information to Tyler to update the Smith County storm water web page as necessary.

3. Smith County BMP PE-3 – School Book Covers: In order to address the Public Education and Outreach MCM, Tyler plans to purchase book covers for schoolbooks that incorporate graphic designs and messages related to storm water. (See Tyler BMP PE-5.) Tyler will distribute these book covers to schools throughout the Tyler Independent School District (“ISD”). In order to address the Public Education and Outreach MCM, Smith County plans to purchase similar book covers to distribute throughout the Whitehouse ISD and the Chapel Hill ISD. Tyler and Smith County shall work together to assure that the book covers include messages related to storm water that are appropriate for both Smith County and Tyler. Tyler shall purchase an adequate number of book covers for the Tyler ISD, the Whitehouse ISD, and the Chapel Hill ISD. Smith County shall reimburse Tyler for the costs of the book covers for the Whitehouse ISD and the Chapel Hill ISD within 30 days after Tyler submits an invoice to Smith County for the purchase of such book covers. Book covers will be provided to the Tyler ISD, the Whitehouse ISD, and the Chapel Hill ISD during Years 3 through 5 of the TPDES General Permit for Regulated Small MS4s.
4. Smith County BMP PE-4 – Storm Water Brochures: In order to address the Public Education and Outreach MCM, Tyler will continue to develop brochures addressing such topics as pesticides and fertilizer use, household hazardous waste, and Tyler's recycling program. (See Tyler BMP PE-2.) In addition, Tyler plans to develop brochures addressing storm water topics. Tyler shall include Smith County's logo on applicable storm water brochures printed each year during the term of this Agreement as requested by Smith County. Tyler will provide to Smith County the number of brochures requested by Smith County during Years 2 through 5 of the TPDES General Permit for Regulated Small MS4s. Within 30 days after Tyler submits an invoice to Smith County for the purchase of such brochures, Smith County shall reimburse Tyler for the printing costs of those brochures provided to Smith County during Years 2 through 5 of the TPDES General Permit for Regulated Small MS4s. Smith County shall make the brochures available throughout the urbanized areas of Smith County outside Tyler's corporate limits.

B. PUBLIC INVOLVEMENT/PARTICIPATION.

1. Smith County BMP PI-1 – Stream Cleanup Projects: In order to address the Public Involvement/Participation MCM, Tyler plans to perform City-sponsored public/volunteer stream cleanup events on a regular basis through coordination with “Keep Tyler Beautiful” and participation of various volunteer groups and organizations. (See Tyler BMP PI-2.) Tyler shall advertise scheduled cleanup events both within Tyler’s corporate limits and within its extraterritorial jurisdiction (“ETJ”). In the event that a scheduled cleanup event occurs in the urbanized area outside Tyler’s corporate limits, Smith County shall provide personnel to oversee volunteers.
2. Smith County BMP PI-2 – Storm Drain Marking: In order to address the Public Involvement/Participation MCM, Tyler plans to utilize storm drain marking through which plastic buttons with a “Don’t Dump” type message will be affixed to storm drain inlets. (See Tyler BMP PI-1.) Such marking will be completed through coordination with various volunteer groups and community organizations. Tyler shall advertise scheduled marking events both within Tyler’s corporate limits and within its ETJ. Tyler shall purchase the required buttons for each marking event. In the event that a storm drain marking event occurs in the urbanized area outside of Tyler’s corporate limits, Smith County shall provide personnel to oversee the volunteers, and Smith County shall reimburse Tyler for the materials for that marking event within 30 days after Tyler submits an invoice to Smith County for the purchase of the materials for the marking event.

C. ILLICIT DISCHARGE DETECTION AND ELIMINATION.

1. Smith County BMP ID-1 – Storm Drain System Mapping: In order to address the Illicit Discharge Detection and Elimination MCM, Tyler is implementing a city-wide GIS storm drain system map. (See Tyler BMP ID-1.) Tyler will be developing the GIS storm drain system map on a watershed basis – one watershed per year during the five-year term of the TPDES General Permit for Regulated Small MS4s. Tyler will also develop a GIS storm drain system map for those portions of the urbanized area outside of Tyler’s corporate limits. Tyler shall provide all information developed as part of the GIS storm drain system map for those portions of the urbanized area outside of Tyler’s corporate limits to Smith County without cost to Smith County.
2. Smith County BMP ID-2 – Dry Weather Screening: In order to address the Illicit Discharge Detection and Elimination MCM, Tyler plans to conduct dry weather screening along creeks in four watersheds. (See Tyler BMP ID-2.) As part of the dry weather screening, Tyler will perform limited chemical analyses with field test kits both within its corporate limits and those portions of its ETJ within the urbanized area. Tyler shall perform extra field tests outside its corporate limits but within the urbanized area for each of the four watersheds. Smith County shall reimburse Tyler for the costs of the extra field tests per watershed included in the

dry weather monitoring program within 30 days after Tyler submits an invoice to Smith County for the costs associated with the extra field tests.

3. Smith County BMP ID-3 – Illicit Discharge Investigations: In order to address the Illicit Discharge Detection and Elimination MCM, Tyler plans to conduct illicit discharge investigations throughout the storm sewer system on an as needed basis. (See Tyler BMP ID-3.) These investigations utilize fluorescent dye testing, smoke testing, and remote TV camera inspection to track down illicit connections to the MS4. Smith County shall work with Tyler to coordinate such illicit discharge investigations within the urbanized area outside of Tyler’s corporate limits when such investigations are necessary. Smith County shall reimburse Tyler on a case-by-case basis for illicit discharge investigations requested by Smith County and performed by Tyler in the urbanized area outside Tyler’s corporate limits. Smith County shall reimburse Tyler for the costs associated with the requested investigations within 30 days after Tyler submits an invoice to Smith County for such investigations.
4. Smith County BMP ID-6 – Reduce Failing Septic Systems: In order to address the Illicit Discharge Detection and Elimination MCM, Smith County plans to continue its permitting and regulation of septic systems through the TCEQ On-site Sewage Facility Program (“OSSF”). To enhance the effectiveness of this program, Smith County plans to develop a brochure, which will address proper septic system care, for septic system pumping companies to distribute to septic system owners. Smith County shall include Tyler’s logo on all septic tank brochures printed each year during the term of this Agreement. Tyler shall reimburse Smith County for the printing costs of brochures provided to Tyler during years two through five of the TPDES General Permit for Regulated Small MS4s within 30 days after Smith County submits an invoice to Tyler for such brochures. Smith County shall make the brochures available to septic system pumping companies for distribution to the owners of septic systems within Tyler’s corporate limits.
5. Smith County BMP ID-7 – Smith County Cleanup Day: In order to address the Illicit Discharge Detection and Elimination MCM, Smith County plans to initiate a Smith County Cleanup Day. Smith County shall hold a Smith County Cleanup Day on an annual basis during the term of the TPDES General Permit for Regulated Small MS4s. Tyler shall allow Smith County to deliver acceptable materials collected as part of Smith County Cleanup Day to the Allied Greenwood Farm landfill for disposal, with Smith County paying for the cost as established by the City at the time of service.

D. CONSTRUCTION SITE STORM WATER RUNOFF CONTROL

1. Smith County BMP C-1 – Construction General Permit Training: In order to address the Construction Site Storm Water Runoff Control MCM, Tyler plans to

conduct training classes for contractors and developers in the Tyler urbanized area to increase compliance with the TPDES General Permit No. TXR150000, the Construction General Permit. (See Tyler BMP C-5.) Smith County shall coordinate with Tyler to co-sponsor one training class during the first year of the TPDES General Permit for Regulated Small MS4s and two training classes during the second year of the TPDES General Permit for Regulated Small MS4s. Smith County shall reimburse Tyler for 20% of the cost of each training class it co-sponsors within 30 days after Tyler submits an invoice to Smith County for the costs associated with each class.

2. Smith County BMP C-2 – Developer’s Stakeholder Committee: In order to address the Construction Site Storm Water Runoff Control MCM, Tyler plans to conduct a series of meetings with a Developer Stakeholder Committee to review possible structural and non-structural BMPs for the Tyler area. (See Tyler BMP C-4.) Since these same developers also develop sites throughout Smith County, Smith County shall be a member of and active participant in Tyler’s Developer Stakeholder Committee process.
3. Smith County BMP C-3 – Plan Review Procedures: In order to address the Construction Site Storm Water Runoff Control MCM, Tyler plans to review plans for construction projects within Tyler’s corporate limits and ETJ as allowed by State law and City ordinances. (See Tyler BMP C-2.) As allowed by State law, Smith County shall only review plans for construction projects that take place in areas inside the urbanized area within Zone 3 of Tyler’s ETJ.
4. Smith County BMP C-4 – Construction Inspection: In order to address the Construction Site Storm Water Runoff Control MCM, Tyler plans to continue to conduct construction inspections of residential and commercial sites within Tyler’s corporate limits as allowed by State law and City ordinances. (See Tyler BMP C-3.) Tyler is currently considering whether to extend its construction inspection program for public improvements in subdivisions outside of its corporate limits in its ETJ. If the construction inspections are extended into its ETJ, for construction inspections within Zone 2 of its ETJ, Tyler shall provide all information relative to storm water management found on such inspections to Smith County. Smith County, if it has the authority to do so pursuant to State and local law, shall conduct construction inspections within those areas of the urbanized area that are outside of Zone 2 of Tyler’s ETJ.
5. Smith County BMP C-5 – Storm Water Hotline for Receipt of Public Comments: Since it will be difficult for the public to know whether Tyler or Smith County has jurisdiction over a particular construction site, Smith County will publicize Tyler’s Storm Water Hotline (See Tyler BMP C-6) for receipt and consideration of public comments regarding construction sites. For those construction sites that are located outside of Tyler’s corporate limits, the Tyler Code Enforcement personnel will log the information and notify Smith County for follow up investigations.

E. POST-CONSTRUCTION STORM WATER MANAGEMENT IN NEW DEVELOPMENT AND REDEVELOPMENT

1. Smith County BMP PC-1 – Developer’s Stakeholder Committee: In order to address the Post-Construction Storm Water Management in New Development and Redevelopment MCM, Tyler plans to conduct a series of meetings with a Developer Stakeholder Committee to review possible post-construction BMPs for the Tyler area. (See Tyler BMP PC-1.) Smith County shall be a member of and active participant in Tyler’s Developer Stakeholder Committee in order to identify the BMPs most applicable to the urbanized area outside Tyler’s corporate limits.
2. Smith County BMP PC-2 – Post Construction Ordinance: In order to address the Post-Construction Storm Water Management in New Development and Redevelopment MCM, once the post-construction BMPs that are most appropriate for the Tyler area have been identified by the Developer Stakeholder Committee, as part of Tyler’s SWMP, Tyler is required to develop and enact the necessary city ordinances to require the use of such BMPs. (See Tyler BMP PC-2.) For each post-construction BMP, Tyler shall evaluate the possibility that a City ordinance can also require use of the BMP within Tyler’s ETJ. If Tyler elects not to extend applicability of the post-construction BMPs identified to areas within its ETJ, Smith County, if it has authority to do so, shall develop and enact an ordinance to require the use of post-construction BMPs in Year 5 of the TPDES General Permit for Regulated Small MS4s.
3. Smith County BMP PC-3 – Long Term Operation and Maintenance of BMPs: In order to address the Post-Construction Storm Water Management in New Development and Redevelopment MCM, Tyler plans to conduct inspections to determine the effectiveness of post-construction BMPs. (See Tyler BMP PC-3.) Tyler shall conduct these inspections within its ETJ inside the urbanized area at Smith County’s request. Smith County shall reimburse Tyler on a case-by-case basis for those inspections within Tyler’s ETJ requested by Smith County and performed by the City within 30 days after the City submits an invoice to Smith County for the costs associated with such inspection. Tyler shall notify the Smith County Road and Bridge Department if conditions are observed that require maintenance.

F. POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR MUNICIPAL OPERATIONS.

1. Smith County BMP GH-10 – Roadway Cleaning: In order to address the Pollution Prevention/Good Housekeeping for Municipal Operations MCM, Tyler plans to continue performing street sweeping operations throughout its corporate limits. (See Tyler BMP GH-6.) Tyler shall perform street sweeping operations

on those areas of the urbanized area identified by Smith County. Within Year 1 of the TPDES General Permit for Regulated Small MS4s, but no later than March 15, 2008, Smith County shall identify the length and location of streets with curbs and gutters for such street sweeping operations. Tyler shall perform street sweeping operations once per year during each of the five years of the TPDES General Permit for Regulated Small MS4s on streets identified by Smith County. Smith County shall reimburse Tyler \$150.00 per mile for the street sweeping services identified by Smith County.

2. Smith County BMP GH-11 – Storm Drain System Cleaning. In order to address the Pollution Prevention/Good Housekeeping for Municipal Operations MCM, Smith County plans to continue to perform maintenance on drains at the Smith County Base Facility that discharge into the adjacent creek. Such creeks shall be cleaned on an as needed basis. Depending on the extent of the maintenance required, Smith County may need to utilize Tyler’s Water Utilities vacuum truck. Smith County may coordinate with Tyler for use of the vacuum truck when maintenance of the drains requires. Smith County shall reimburse Tyler for each use of the vacuum truck at a price to be negotiated at the time of each request.

PAYMENT/FUNDING

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

MISCELLANEOUS PROVISIONS

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

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

Smith County: County Judge
 Smith County Commissioners Court
 200 E. Ferguson, Suite 100

Tyler, Texas 75702
(903) 590-4600 (Telephone)
(903) 590-4615 (Facsimile)

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

- B. **CURRENT REVENUES.** Tyler and Smith County will pay for services rendered pursuant to this Agreement from current revenues.
- C. **RENEWAL.** The renewal of this Agreement shall be contingent upon the availability of current revenue funds and annual budget allocations and appropriations by the parties.
- D. **HOLD HARMLESS.** Each party to this Agreement does hereby agree to waive all claims against, release and hold the other party and its respective officials, officers, agents, and employees, both in their official capacity and individual capacity, harmless from and against any and all liability, claims, suits, demands, losses, damages (including court costs and attorneys' fees) or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement.
- E. **MUTUAL COOPERATION.** Tyler and Smith County agree to cooperate with each other, in good faith, at all times during the term hereof in order to effectuate the purpose and intent of this Agreement.
- F. **AUTHORITY TO CONTRACT.** Each party acknowledges and represents that this Agreement has been duly authorized by their respective governing body.
- G. **NO PARTNERSHIP.** Nothing contained herein shall be deemed or construed by the parties hereto or by any third party, as creating the relationship of employer-employee, principal-agent, partners, joint ventures, or any other similar such relationships, between the parties hereto.
- H. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement contains the entire Agreement of the parties respecting the subject matter and supersedes all prior negotiations, representations and/or agreements, either written or oral, between the parties. This Agreement may not be modified or amended except by written Agreement duly executed by both parties.

- I. INTERPRETATION. This Agreement has been entered into and under the authority granted under the Act. All terms and provisions are to be construed and interpreted consistently with that Act. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

- J. SEVERABILITY. The provisions of this Agreement are severable. In the event that any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement shall be found to be contrary to law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this Agreement; however, upon the occurrence of such event, either party may terminate this Agreement by giving the other party thirty days written notice of its intent to terminate.

- K. ASSIGNMENT AND SUBLETTING. This Agreement shall not be assigned in whole or in part without the written consent of both parties.

- L. WAIVER. The waiver by either party of a breach of this Agreement shall not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision.

- M. REMEDIES. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

- N. APPLICABLE LAWS. This Agreement will be construed in accordance with the laws and Constitution of the State of Texas. All obligations are performable in Smith County, Texas. Exclusive venue shall be in Smith County, Texas.

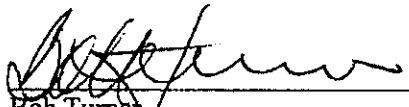
- O. CAPTIONS. Title and headings of Sections or Paragraphs hereof have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent.


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

IN WITNESS OF WHICH this Agreement has been executed on this the 4th day of February, 2008.

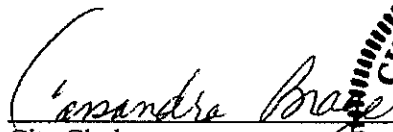
CITY OF TYLER,
a Texas municipal corporation

SMITH COUNTY, TEXAS
a political subdivision of Texas

By: 
Bob Turner
City Manager

By: 
Joel P. Baker
County Judge

ATTEST:


City Clerk




County Clerk

