

RESOLUTION NO. R-2010-11

A RESOLUTION FINDING A NECESSITY FOR THE ACQUISITION OF THE TALL TIMBERS UTILITY COMPANY, INC.'S SEWAGE SYSTEM AND RELATED PURPOSES; DECLARING SUCH ACQUISITION FOR A PUBLIC PURPOSE; AUTHORIZING CONDEMNATION FOR THE FEE SIMPLE INTEREST IN SAID PROPERTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, studies heretofore conducted have determined that acquisition of the hereinafter described property is necessary for the public purpose of the City operating the sewage system known as the Tall Timbers Sewage System, to provide for improved sewage system capabilities and for fair and equitable charges to the customers; and

WHEREAS, the City Council has found that a public necessity requires such acquisition; and

WHEREAS, the City Council has found and determined that the fee simple interest in and to the hereinafter described property is suitable for such purpose and that it is necessary to acquire same in order to improve the sewage system and to provide for fair and equitable charges for use of the system; and

WHEREAS, the City of Tyler, through its duly authorized representatives, has negotiated with Tall Timbers Utility Company, Inc., a Texas corporation (which is owned 100% by Algonquin Water Services of America, Inc., a Delaware corporation) as the owner(s) of such property and has been unable to agree with such owner(s) as to the fair cash market value thereof; and

WHEREAS, the City Counsel of the City of Tyler, passed Resolution No. R-2009-13 on May 13, 2009, resolving "that the value of the personal property and intangibles associated with Tall Timbers Utility Company, Inc.'s business as a going concern shall be determined by the Texas Commission on Environmental Quality ("TCEQ"), according to procedures and standards set forth in Texas Water Code Section 13.254;" and

WHEREAS, the City of Tyler has petitioned the TCEQ, and TCEQ has refused to evaluate Tall Timber Utility Company, Inc.'s business as a going concern pursuant to Texas Water Code Section 13.254 as set forth in the original Resolution;

NOW, THEREFORE, be it resolved by the City Council of the City of Tyler, Texas:

PART 1: The City of Tyler has offered \$768,300.00 to the owner(s), a final offer in writing of a reasonable sum of money to compensate the owner(s) for the value of the fee simple title to the property containing the sewage system and the damages to the remainder of this property, if any, the offer of which is hereby confirmed.

PART 2: The acquisition of fee simple title in and to the Tall Timbers Utility Company Inc.'s sewage system, including the real property, easements, lines, facilities, fixtures, improvements, above-ground and below-ground appurtenances, and related items associated

thereto, is hereby found to be necessary for the public purpose of improving, operating, and maintaining the sewage system and providing for fair and equitable charges for the use of the system by its customers.

PART 3: That it is hereby determined that the City of Tyler has in fact transmitted bona fide offers to the property owner(s), in accordance with the laws of the State of Texas, for the property described herein, and the owner(s) of the property and the City of Tyler have been unable to agree and cannot agree on the value of the sewage system, including the real property, improvements, appurtenances, and related items associated thereto for the damages to be paid and further settlement negotiations have become futile and impossible. A true and complete copy of the agreement to purchase the sewage system offered by the City of Tyler as its last and final offer is hereby attached hereto as Exhibit "A-1." The final monetary offer of the City of Tyler is hereby confirmed and approved.

PART 4: That the City Attorney for the City of Tyler or an attorney authorized by him be and is hereby authorized and directed to file and cause to be filed against the property owner(s), proceedings in eminent domain to acquire fee title in and to the above described property and to conduct all parts of the condemnation in accordance with the laws and procedures of the State of Texas.

PART 5: That the value of the real property owned and utilized by Tall Timbers Utility Company, Inc. for its facilities and the value of personal property and intangibles associated with Tall Timbers Utility Company, Inc.'s business as a going concern shall be determined:

- 1) per the standards set forth in Chapter 21 of the Texas Property Code, governing actions in eminent domain; and
- 2) per the express provisions set forth immediately below in Part 6 of this Resolution, said provisions taken directly from:
 - a) Texas Case law on generally accepted valuation methodologies, and the specific procedures for condemning a utility system in Texas; and
 - b) The Texas Legislator's sole mandate on the evaluation of utility systems in Texas, provided in Texas Water Code Section 13.254.

PART 6: The following valuation standards will be used as guidelines in the valuation of the utility and/or service area in question:

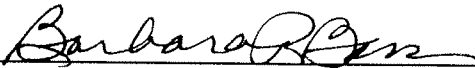
- 1) Where possible, the valuation should be conducted by a disinterested third party, and the valuation should be performed with unbiased impartiality, objectivity, and independence.
- 2) The valuation should use the most up-to-date information available, either obtained through public sources or provided directly to the City.
- 3) The valuation should be performed recognizing the Uniform Standards of Professional Appraisal Practice ("USPAP").
- 4) Use of extraordinary assumptions and/or hypothetical conditions should only be used

if required under specifically identified, limiting conditions.

- 5) In accordance with Texas Water Code (“TWC”) §13.254(g), the value of real property shall be determined in accordance with Chapter 21 of the Texas Property Code.
- 6) In accordance with TWC § 13.254(g) and TWC § 13.255(g), specific factors to be addressed within the valuation shall include:
 - a) The impact on the existing indebtedness of the utility and its ability to repay that debt;
 - b) The value of the service facilities of the retail public utility located within the area in question or those facilities being acquired;
 - c) The amount of any expenditures for planning, design, or construction of service facilities that are allocable to provide service to the area in question;
 - d) The amount of the utility’s contractual obligations allocable to the area in question;
 - e) Any demonstrated impairment of service or increase of cost to continuing customers of the utility;
 - f) The impact on future revenues lost from existing customers;
 - g) Necessary and reasonable legal expenses and/or professional fees; and/or,
 - h) Other relevant factors.
- 7) The valuation will be a retrospective valuation in accordance with USPAP Statement on Appraisal Standards No. 3. It should contain two dates, both the effective date of the appraisal and date of the report.
- 8) In the determination of impact on future revenues lost in accordance with TCEQ § 13.254(g) and § 13.255(g), Discounted Cash Flow (DCF) analysis should be used. The application of DCF analysis should be performed in consideration of the USPAP Statement on Appraisal Standards No. 2 (SMT-2) concerning DCF Analysis. In performing the DCF approach, the cost of capital or return on investment shall be the most recently authorized rate of return for the utility as approved by the Texas Commission on Environmental Quality (“TCEQ”) established in accordance with TWC § 13.183 - § 13.185 and 30 TAC 291.31.
- 9) In determining the value of service facilities, the valuation shall utilize the regulatory net book value of assets on the effective date of the appraisal. In calculating the book value of service facilities, the depreciable lives approved by the TCEQ and contained within the approved System of Accounts should be utilized.
- 10) Should information be available, and at the professional discretion of the chosen appraiser, a comparable analysis valuation method may also be utilized.

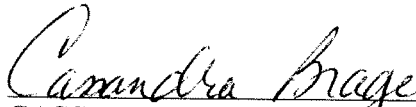
PART 7: That this Resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED this 12th day of May, 2010.



BARBARA BASS, MAYOR
CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK

APPROVED:



GARY C. LANDERS, CITY ATTORNEY

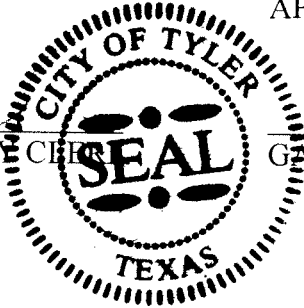
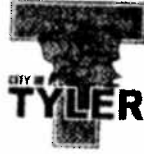


EXHIBIT "A-1" TO RESOLUTION NO. R-2010-11

DIRECTOR UTILITIES
AND PUBLIC WORKS



P. O. Box 2039
Tyler, Texas 75710

April 30, 2009

Tall Timber Utility Company, Inc.
c/o UT Corporation System
350 N. St. Paul Street
Dallas, Texas 75201

By Federal Express (8634 0922 3104)

Re: Final Offer Letter
Tall Timber Utility Company, Inc. Sewage System
City of Tyler, Texas

Dear Directors:

On March 23, 2009, I sent a letter to Mr. Sean Lonergan, Director, Central Division Algonquin Water Services, a copy of which is attached. While at one time I had been communicating with Mike Weber and Robert Dodds, I was given Mr. Lonergan's name as the proper person to whom to direct all communications. To ensure that Tall Timbers Utility Company, Inc., a Texas corporation (which is owned 100% by Algonquin Water Services of America, Inc., a Delaware corporation) has notice of the Final Offer Letter, I am sending it to all possible entities that are involved. If the Texas Secretary of State's records with regard to the status and ownership of Tall Timbers Utility Company, Inc. are inaccurate please notify me immediately.

As stated previously, for almost three (3) years, the City of Tyler has repeatedly attempted to obtain information in order for the City to formulate a fair and reasonable offer for the acquisition of Tall Timbers Utility Company System, a portion of which is located within the Tyler city limits. As of this date, the Tall Timbers Utility Company can only be described as "non-responsive."

On April 18, 2006, the City of Tyler proposed to purchase the portion of the Tall Timber Utility Company, which is located within the Tyler City Limits, less the treatment plant, for \$227,459. That offer was based on information compiled and submitted by Tall Timber Utility Company in June 2002 to the City of Tyler as part of a Tariff/Rate Change Application. Tall Timbers Utility Company officially rejected this offer on May 1, 2007, well over one (1) year later.

Please let this letter serve as the City of Tyler's final offer letter to purchase Tall Timber Utility Company, Inc.'s sewage system, in its entirety, including but not limited to the real property, easements, lines, facilities, fixtures, improvements, above-ground and below-ground appurtenances, and related items associated thereto, for an amount of **\$768,330**.

This final offer shall remain valid for five (5) days from date of this letter. At the end of five (5) days the City of Tyler shall begin condemnation proceedings in accordance with the City of Tyler Charter and applicable state laws and regulations.