

STATE OF TEXAS §

COUNTY OF SMITH §

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**INTERLOCAL COOPERATION AGREEMENT BY AND BETWEEN  
THE COUNTY OF SMITH AND THE CITY OF TYER  
REGARDING  
PLAT APPROVAL JURISDICTION IN THE CITY'S  
EXTRATERRITORIAL JURISDICTION**

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This Interlocal Agreement is made and entered into this 11<sup>th</sup> day of February 2009, by and between **Smith County, Texas**, a political subdivision of the State of Texas, (hereinafter "**County**") and the **City of Tyler**, a municipality located within Smith County, Texas, (hereinafter "**City**"), as required by § 242.001 of the Texas Local Government Code, and under the authority granted and pursuant to Chapter 791 of the Texas Government Code and as authorized by Chapter 212 and Chapter 232 of the Texas Local Government Code and other statutes and laws applicable to counties and municipalities for the express purpose of *unified platting and subdivision review* within the City's extraterritorial jurisdiction (hereinafter "**ETJ**").

**RECITALS**

**WHEREAS**, it is the intent of the County and City to protect the public health, safety, and welfare; and

**WHEREAS**, the regulation of subdivisions of property is a governmental function as set forth in Chapters 212 and 232 of the Texas Local Government Code and as defined in § 791.003 of the Texas Government Code; and

**WHEREAS**, pursuant to Chapter 212 of the Texas Local Government Code, the City has statutory authority to adopt rules governing plats and subdivisions of land both within the limits and in the extraterritorial jurisdiction of the municipality; and

**WHEREAS**, pursuant to Chapter 232 of the Texas Local Government Code, the County has statutory authority to adopt rules governing plats and subdivisions of land in the areas of the county lying outside the limits of a municipality, including the area within the ETJ of a municipality; and

**WHEREAS**, Texas Local Government Code Chapter 242.001 requires a municipality and county to enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and to approve related

permits in the ETJ *for the purpose of streamlining the initial platting and subdivision of land*; and

**WHEREAS**, Texas Local Government Code Chapter 242.001 allows the City and County to apportion the area within the applicable ETJ with the City regulating subdivision plats and approving related permits in the area assigned to the City and the County regulating subdivision plats and approving related permits in the area assigned to the County; and

**WHEREAS**, Tyler City Code § 10-143 currently divides the City and its ETJ into four zones (4) zones in accordance with a map labeled "Extraterritorial Jurisdiction Exhibit "A," which is part of Tyler City Code § 10-143 and which is available for review in the City Clerk's Office and City Planning and Zoning Department; and

**WHEREAS**, Zone 1, "Urban Standards," currently includes all area inside the City limits; and

**WHEREAS**, Zone 2, "Suburban Standards," currently includes all areas within the City of Tyler City's ETJ lying beyond Zone 1, except for areas in the ETJ which exists solely due to the extension of the ETJ created by the highway right-of-way annexations along U.S. Highway 69 North, and U.S. Highway 271 North; and

**WHEREAS**, Zone 3, "Rural Standards," includes all areas within the City's ETJ which exists solely due to the extension of the ETJ created by the highway right-of-way annexations along U.S. Highway 69 North, and U.S. Highway 271 North; and

**WHEREAS**, under the City of Tyler Unified Development Code, Zone 4, "City-owned ETJ lands", is limited to City-owned land contiguous to Lake Tyler and within the City of Tyler extraterritorial jurisdiction; and

**WHEREAS**, the County and City desire and agree to streamline initial platting and permitting and to authorize the City to accept plat applications, collect application fees, and provide one response to applicants indicating approval or denial of a plat application for subdivision property located in Zone 2 of the City's ETJ; and

**WHEREAS**, the County and City desire and agree to streamline initial platting and permitting and to authorize the County to accept plat applications, collect application fees, and provide one response to applicants indicating approval or denial of a plat application for subdivision property located in Zone 3 of the City's ETJ; and

**WHEREAS**, it is also the intent of the parties that this agreement is intended to establish and streamline initial platting and permitting guidelines and does not authorize the City to accept dedications of property on behalf of the County into the County's maintenance inventory; and

**WHEREAS**, it is important and in the best interest of both parties to continue cooperative efforts between Smith County and the City of Tyler, including but not limited to sharing of information regarding development and growth within the City's ETJ; and

**NOW, THEREFORE**, the parties to this Interlocal Agreement agree as follows:

**ARTICLE 1.  
AUTHORIZATION AND TERM**

- 1.1 **Authorization.** This agreement is authorized and approved by the governing body of Smith County, Texas and the City and constitutes a binding obligation on the County and City.
- 1.2 **Term.** The initial term of this agreement shall be for a period of 4 years from ~~February 11~~ 2009 to ~~February 11~~ 2013, and thereafter the agreement shall continue to renew automatically for two (2) additional four-year terms unless either party provides advance written notice not to renew at least 120 days prior to the expiration of the initial or renewal term, as applicable. This agreement shall continue in full force and effect until modified by mutual consent of the governing bodies to this Agreement, but its terms may be reviewed annually for proposed modifications by the governing bodies of the County and City.
- 1.3 **Modification.** Changes in the terms of this Agreement can be made only by written amendment executed by both parties and approved by the governing bodies of each prior to changes going into effect. No preconditions such as legal opinion letters or engineering studies may be imposed as a requirement for proposed amendments to be considered by either governing body, although such information may be allowed.
- 1.4 **Termination.** Either party may terminate this agreement for cause upon written notice to the other party. As used in this section, the phrase "for cause" shall mean a substantial failure by either party to perform in accordance with the terms of this Agreement through no fault of the terminating party, and the failure of the violating party to correct such failure within thirty (30) days after receiving written notice of such failure from the terminating party. If the parties fail to resolve any disputes related to this Agreement by negotiation, then the parties agree to seek resolution through non-binding mediation prior to the filing of any lawsuit related to this Agreement.

**ARTICLE 2.  
SCOPE OF AGREEMENT AND APPLICABLE PLATS**

- 2.1 **Plats Subject to this Agreement.** All plats will be subject to this agreement, including preliminary, amended, revised or final plats where any portion of the plat property is inside the City's ETJ.
- 2.2 **Plats Not Subject to this Agreement.** No plats for which the fees paid and the application for plat approval was presented to either the County or City before the initial effective date of January 5, 2004 of that Interlocal Agreement entered into between the parties and finally approved on January 5, 2004 by the Smith County Commissioners Court (after approval by the City Council on December 10, 2003).
- 2.3 **Other Authority of Parties Not Affected.** This Agreement only relates to the regulation of subdivision plats (and related plats) and subdivision permitting in the ETJ of the City. This Agreement shall not affect the authority of CITY and COUNTY to exercise in the ETJ of the City such other powers as are granted to the parties under State law. This Agreement shall not affect the authority of County to exercise subdivision and plat regulation outside of the ETJ of City, nor shall this agreement affect the authority of City to exercise subdivision and plat regulation within the city limits of Tyler, Zone 1 or in Zone 4 (City-owned land contiguous to Lake Tyler and within the City of Tyler ETJ).
- 2.4 **Subdivisions Located In Both Zone 2 and Zone 3.** If a portion of a subdivision lies within Zone 2 and a portion lies within Zone 3, then the requirements of Zone 2 will be required for the entire subdivision, and the City shall be responsible for all subdivision plat and permitting regulations relating to such subdivision.
- 2.5 **Subdivisions of Land In ETJ Into Parts Greater Than 5 Acres.** Under Texas Local Government Code § 212.004 and City Code § 10-101, City approval is not required for the division of land into two (2) or more parts where all parts are larger than five (5) acres, where each part has access, and where no new building or improvement is proposed and no required public improvements is to be dedicated. When any tract in Zone 2 of the ETJ is divided into 2 or more parts, and each of the parts of the subdivision are greater than five (5) acres in an area, the County shall be responsible for reviewing the related plat to the extent permitted by Texas Local Government Code §§ 232.001 and 232.0015, or successors. The County shall be responsible for all plat review and permitting in Zone 3.
- 2.6 **Notes on Plat.** The face of all applicable plats under this Agreement shall contain a notice that: "Plat is for recording purposes only until such time that dedicated property is formally accepted into Smith County's maintenance inventory by the County's Commissioners Court."

- 2.7 **Street Naming Authority.** The County reserves, subject to non-binding consultation with and advice of City in advance, its control with regard to naming authority over county roads in the county inventory that are existing as of the date of this Agreement, including control over naming and changing names of existing county roads located within any municipal ETJ in the unincorporated areas of the county. City shall retain naming authority on all new roads within in new subdivisions in the ETJ constructed after the date of this Agreement.

**ARTICLE 3.  
DEDICATIONS OF PROPERTY IN THE ETJ**

- 3.1 **Acceptance by County of Dedications of Public Property.** Nothing in this Agreement shall be construed as granting to the City the authority to accept dedications of property on behalf of the County. Individuals or entities desiring to dedicate property to the County, including but not limited to streets, alleys and parks, must clearly indicate such intentions on all plats and other documents submitted in the application. No property, facilities or structures will be accepted for dedication by the County without formal approval of the County Commissioners Court with signature of the Smith County Judge on the appropriate plat(s) *plus* any and all other requirements for acceptance required by the County.

**ARTICLE 4.  
RESPONSIBILITIES OF THE PARTIES**

- 4.1 **Apportionment of ETJ Platting and Permitting Regulation in Zones 2 and 4 of City's ETJ.** As authorized by State law, the County and City agree to apportion the area of the ETJ of City with regard to subdivision platting and permitting regulation, with the City regulating subdivisions and plats within Zones 2 and 4, and the County regulating subdivisions and plats within Zone 3. The County and the City agree that, except to the extent that this Agreement expressly provides otherwise, the City is hereby authorized to exercise exclusive jurisdiction to regulate subdivision development, to regulate subdivision plats, and to approve related applications and permits, within Zones 2 and 4 of the ETJ of the City of Tyler within Smith County, Texas. The City shall regulate subdivisions and plats within Zones 2 and 4 of the ETJ under Chapter 212 of the Texas Local Government Code and other laws applicable to municipalities. City shall be responsible for accepting, reviewing, commenting on, approving and/or disapproving any such plats, applications and/or permits and for establishing any procedures associated with any of the foregoing. Except to the extent that this Agreement expressly provides otherwise, County shall not regulate, approve or disapprove, and shall not in any way be responsible for

regulating, approving or disapproving any subdivision plats, related applications or related permits, within Zones 2 and 4 of the ETJ of City. Zone 4 applies only to City-owned land contiguous to Lake Tyler and located within the City of Tyler Extraterritorial Jurisdiction, which is governed by City Code Chapter 19 and other City rules and regulations.

- 4.2 **Apportionment of ETJ Platting and Permitting Regulation in Zone 3 of City's ETJ.** Except to the extent that this Agreement expressly provides otherwise, the County is hereby authorized to exercise exclusive jurisdiction to regulate subdivision development, to regulate subdivision plats, and to approve related applications and permits, within Zone 3 of the ETJ of the City. The County shall regulate subdivisions within Zone 3 of the ETJ under Chapter 232 of the Texas Local Government Code and other laws applicable to counties. County shall be responsible for accepting, reviewing, commenting on, approving and/or disapproving any such plats, applications and/or permits and for establishing any procedures associated with any of the foregoing. Except to the extent that this Agreement expressly provides otherwise, City shall not regulate, approve or disapprove, and shall not in any way be responsible for regulating, approving or disapproving any subdivision plats, related applications or related permits, within Zone 3 of the ETJ of City.
- 4.3 **Mutual Notice of Changes to Rules or Regulation Relating to Subdivision of Property.** The parties mutually agree to make copies of their respective current rules and regulations applicable to subdivision of property within the ETJ available to each other. Additionally, the parties agree to provide each other with reasonable notice of at least fifteen (15) days prior to amending rules and regulations applicable to subdivision of property within the ETJ. County shall provide such notice to the City Development Services Engineer or designee, and City shall provide such notice to the County's head of its Road & Bridge Department or another individual assigned by the County pursuant to Section 6.10. City may also elect to provide a courtesy notice to the respective County Commissioner for a particular precinct or designee, as designated in writing in March of each year. The purpose of this subsection is to allow the parties time to discuss proposed changes that may impact this Agreement. Upon the adoption of any such change, the parties agree to provide each other with copies of the change upon approval by their respective governing body.
- 4.4 **Mutual Notice of Requests for Variances.** The parties mutually agree to give notice to each other of any application or request for variance or exception to a rule or regulation applicable to subdivision of property in the zones they are regulating under this Agreement. County shall

provide such notice to the City Development Services Engineer or designee, and City shall provide such notice to the County's head of its Road & Bridge Department or another person assigned by the County pursuant to Section 6.10. City may also elect to provide a courtesy notice to the respective County Commissioner for a particular precinct, as designated in writing in March of each year. The purpose of the notice is to give the parties an opportunity to comment on the application or request before it is considered for approval.

- 4.5 **Adequacy of Consideration.** City specifically agrees that, because it desires to have authority to regulate subdivisions within Zones 2 and 4 of the ETJ of City, the authority to do so is adequate consideration for the performance of City's obligations under this Agreement. County specifically agrees that, because it desires to have authority to regulate subdivisions within Zone 3 of the ETJ of City, the authority to do so is adequate consideration for the performance of County's obligation under this Agreement. City also agrees that, because it does not desire the responsibility of regulating subdivision development within Zone 3 of the ETJ, being relieved of this responsibility is adequate consideration for City's relinquishing of any statutory right to do so. County also agrees that, because it does not desire the responsibility of regulating subdivision development within Zones 2 and 4 of the ETJ, being relieved of this responsibility is adequate consideration for County's relinquishing of any statutory right to do so.
- 4.6 **Construction Bonds to City Within Zone 2.** For roadway construction occurring within a subdivision in Zone 2 of the City's ETJ, the City agrees to require a Construction Bond or Letter of Credit made payable to the City in the amount of \$20.00 per linear foot of roadway, which will be in effect until road construction is completed.
- 4.7 **Maintenance Bonds Within Zones 2 and Zone 3.** For roadway construction occurring within a subdivision in Zone 2 of the City's ETJ, the City agrees to require a one-year Maintenance Bond or Letter of Credit made payable to the County in the amount of \$10.00 per linear foot of roadway, which will be in effect after acceptance of construction. For roadway construction occurring within a subdivision in Zone 3 of the City's ETJ, the County shall require a Maintenance Bond or Letter of Credit made payable to the County in the amount of \$10.00 per linear foot of roadway. Said Maintenance Bond or Letter of Credit for Zone 3 shall be obtained upon completion of construction and at the time of formal acceptance of the dedication by the County, and will be in effect for a minimum period of one year. Formal acceptance into County's inventory would be governed by County's own procedures, as noted in Section 3.1

- 4.8 **Copies of Testing and Inspection Reports.** City agrees to furnish copies of testing and inspection reports on all road construction, including property intended to be dedicated as a right-of-way, to the County upon the City's acceptance of roadway construction within Zone 2 of the ETJ. City shall provide such notice to the County's head of its Road & Bridge Department or designee.
- 4.9 **Required Letter of Approval for On-Site Sewage Disposal System Installations.** City agrees to require the developer of a subdivision in Zone 2 of the ETJ to obtain from the County-designated agent a letter regarding whether or not the subdivision complies with the requirements of Chapter 8 of the Smith County Ordinance regulating the installation of on-sight sewage disposal systems per the Texas Commission on Environmental Quality (or successor's) On-Site Sewage Facility Enforcement Program. Such letter of approval may be combined with any other necessary letter of approval from County.
- 4.10 **Enforcement of Texas Water Code and TCEQ Rules.** This Agreement is not abdicating the County's jurisdiction to enforce the Texas Water Code to the City or Texas Commission on Environmental Quality ("TCEQ") Rules (unless City somehow becomes an authorized-agent of the TCEQ under Texas Administrative Code Chapter 285 and is permitted to act as an authorized agent inside the ETJ). The County shall provide copies of rules and regulations of on-site septic systems to the City for distribution. The County shall issue all permits and perform inspection services of such facilities and plats for compliance with applicable law.
- 4.11 **Mutual Copies of Subdivision Plats.** City agrees to forward copies of all proposed subdivision plats in Zone 2 of the City's ETJ to the head of the County's Road & Bridge Department for review and comment. County agrees to forward copies of all proposed subdivision plats in Zone 3 of City's ETJ to the City's Development Services Engineer or designee for review and comment.
- 4.12 **Mutual Notice of Public ETJ Plat Discussions.** The parties mutually agree to give notice to each other of any official meeting to publicly discuss a plat in City's ETJ, including regular plat review sessions with the applicant and public meetings involving City's Planning & Zoning Commission. The party holding the meeting shall give notice. County shall provide such notice to the City Development Services Engineer or designee, and City shall provide such notice to the County's head of its Road & Bridge Department or another person assigned by the County

pursuant to Section 6.10. City may also elect to provide a courtesy notice to the respective County Commissioner for a particular precinct or designee, as designated in writing in March of each year. The purpose of the notice will be to give the parties an opportunity to comment on the application or request before it is considered for approval.

- 4.13 City's Subdivision Review Committee.** The head of the County's Road & Bridge Department shall be a member of the City Subdivision Review Committee and shall be notified of all Committee meetings.
- 4.14 Installation and Inspections.** The parties agree to allow each other to advise and assist in coordination of infrastructure installation and final inspections in the ETJ. Under this Agreement, the City will have final plat and permitting approval in Zones 2 and 4, while County will have final plat and permitting approval in Zone 3.
- 4.15 Homeowner's Associations or Other Legal Entities in Zone 2.** Subdivisions developed with private streets and alleys in Zone 2 are governed by Tyler City Code Section 10-202 or successor and are required to have a Homeowner's Association which must own and will be directly responsible for the operation and maintenance of private streets and appurtenances, including common areas and facilities and sidewalks. *County shall not be required to maintain or provide any services beyond those services or maintenance generally provided throughout unincorporated areas of the county, including expenses incurred for storm sewers, fire hydrants, drains, lighting, parks, green belt areas and other structures or facilities.*

## ARTICLE 5. DETERMINATION OF ETJ

- 5.1 Extraterritorial Jurisdiction ("ETJ").** The ETJ of City is determined in accordance with Texas Local Government Code Chapter 42, is further described in a map maintained by the City's Planning Department, and for all purposes is made a part hereof. Upon either an expansion or reduction in the area of City's ETJ, City shall notify County of the expansion or reduction in within thirty (30) days by sending a copy to the County, at no cost to the County, of the applicable ordinance and new map indicating the new ETJ boundaries to City. If available to City, the ordinance and new ETJ map shall be sent in a CD-Rom or electronic format. However, if the County requests that City provide the ordinance and ETJ map in a specific format that will require either the City or County to upgrade its system in order for the City and County systems to be compatible, then County shall be responsible for paying the costs of such upgrade(s).

- 5.2 **ETJ Map Exhibit "A"**. The ETJ Map Exhibit "A" adopted in Tyler City Code §10-143 and establishing the boundaries of the four (4) zones of the City and ETJ is hereby incorporated by reference and is made part of this Agreement.
- 5.3 **Agreement Automatically Applies to New and Disannexed Areas.** This Agreement shall automatically apply to any new areas that become part of or are deleted from the City's ETJ without the necessity of any amendment to this Agreement. This Agreement does not apply to any area annexed into the City.
- 5.4 **Annexation of County Right-of-Way.** City shall comply with § 43.106 of the Texas Local Government Code or successor.

**ARTICLE 6.  
GENERAL PROVISIONS**

- 6.1 **Complete Agreement.** This Agreement, and its exhibits, contains the entire agreement of the parties with respect to the matters covered by its terms. No other agreement, statement, or promise made by any party, or to any employee, officer, or agent of any party, that is not contained in this contract shall be any force or effect, including prior agreements signed before the effective date of this Agreement. This Agreement supersedes any prior understanding or written or oral agreement between the parties respecting the subject matter.
- 6.2 **Severability.** In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remainder of the Agreement shall remain in full force and effect.
- 6.3 **No Waiver of Immunity or Defenses.** This Agreement does not extend the liability of the parties. Neither the City nor the County waives any immunity or defenses available to it against claims made by third parties.
- 6.4 **Controlling Law.** This Agreement shall be expressly subject to the participating parties' Sovereign Immunity, Title V of the Texas Civil Practice and Remedies Code, or successor statute. This Agreement shall be governed by all applicable Federal and State law. This Agreement shall be construed in accordance with the laws of the State of Texas.
- 6.5 **Venue.** Proper venue of dispute resolution before the Courts in Texas shall lie exclusively in Smith County, State of Texas.

6.6 **Agency; Independent Contract.** The parties agree and acknowledge that each entity is not an agent of the other entity, and that each entity is responsible for its own acts, forbearance, negligence and deeds, and those of its agents and employees in conjunction with this Interlocal Agreement. The Agreement does not and shall not be construed to entitle any party or any party's respective employees, if applicable, to any benefit, privilege or other amenities of employment applicable to the other party.

6.7 **Duty of Good-Faith and Fair-Dealing.** The parties expressly agree to comply with all reasonable requests made by each other and will cooperate in good-faith and fair-dealing.

6.8 **Additional Documents and Acts.** Each party agrees to execute and deliver additional documents and instruments and to perform all additional acts necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

6.9 **Effective Date and Certification.** This Agreement shall become effective immediately upon the date of adoption by the last governing body to approve and execute same. County and City certify that this Agreement complies with requirements of Texas Local Government Code Chapter 242.

6.10 **Notice.** All notices required under this Agreement shall be addressed as follows:

Michael Wilson  
Development Services Engineer  
City of Tyler Development Services  
P.O. Box 2039  
Tyler, Texas 75710

Smith County Road & Bridge Department  
Attn: Department Head  
21700 W. Claude St.  
Tyler, Texas 75702

**APPROVED AND ADOPTED** by the City Council of the City of Tyler, Texas, on the 11th day of February, 2009.

City of Tyler, Texas

For the City:

Approved as to form:

  
Tyler City Manager

  
Tyler City Attorney

**APPROVED AND ADOPTED** by the Commissioners Court of Smith  
County, Texas, on the 24<sup>th</sup> day of February, 2009.

**Smith County, Texas**

For the County:



**County Judge**

Recommended:

Approved as to form:

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**Smith County Road & Bridge  
Administrator**



\_\_\_\_\_  
**Smith County Civil Assistant  
District Attorney**

**APPROVED AND ADOPTED** by the Commissioners Court of Smith County, Texas, on the 21st day of February, 2009.

**Smith County, Texas**

For the County:

  
**County Judge**

Recommended:

  
**Smith County Road & Bridge  
Administrator**

Approved as to form:

  
**Smith County Civil Assistant  
District Attorney**

