

# Tyler, Minn. City Council

7 p.m. - Monday, March 7, 2016 - Tyler Fire Hall

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**1. Call Meeting to Order**

**2. Approve Agenda, Feb. 1 and Feb. 26 Meeting Minutes**

**3. Public Express**

Members of the public are invited to make comment during this portion of the meeting.

**4. Reports**

- Correspondence
- Council Comments / Committee Reports
- Police Report
- City Attorney's Report
- Utilities Report
- Administrator's Report

**5. Action Items**

- A. Variance Request - Garage
- B. ACE Volunteer Appreciation Day
- C. Commercial Recycling
- D. Fire Department Update
- E. John Spindler Natural Gas Request
- F. Street Agreement w/ Hope Township
- G. East River Line Agreement
- H. Airport Grant
- I. MSDS to SDS documents help
- J. Review Financial Statements
- K. Real Property Discussion (Closed Session)

**6. Adjourn**

*The next regular council meeting will be 7 p.m. on Monday, April 4, 2016 at the Tyler Fire Hall.*

# Memo

**To:** Tyler City Council  
**From:** Robert Wolfington – City Administrator  
**Date:** March 7, 2016  
**Re:** Item A – Variance Request

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## **Action Requested**

Approve Variance Permit for 20' sidewall garage located six inches from property line.

## **Background**

Mr. Joe Stiner has requested a variance to build a free standing two story garage adjacent to property owned by Mindi Gorden. Stiner owns the property at 114 Marsh Street with Allen Sik and they have split the property in half with each taking 25 feet of the 50 foot property.

Mr. Stiner and Mrs. Gorden are in a long term relationship and both parties agree to building the garage. The garage would be a few feet away from an existing house and Stiner has indicated their plans to put a sidewalk in between the two buildings so mowing grass would not be an issue.

## **Attachments:**

- Variance Request application
- Property Map

# CITY OF TYLER ZONING PERMIT APPLICATION

230 North Tyler Street, Tyler, MN 56178

Phone: 247-5556 Fax: 247-5557

|                           |                                    |
|---------------------------|------------------------------------|
| Name<br><i>Joe Stiner</i> | Date Received<br><i>Feb 2 2016</i> |
|---------------------------|------------------------------------|

Address  
*114 Marsh St*

|                   |   |
|-------------------|---|
| Home Phone Number | Other Phone Number<br><i>605-695-6781</i> |
|-------------------|---|

| Type of Construction (please check) |   | Zoning District (please check) |  |
|-------------------------------------|---|--------------------------------|--|
|                                     | <input type="checkbox"/> Addition                 |                                | <input type="checkbox"/> Residential                 |
|                                     | <input type="checkbox"/> Deck/Patio               |                                | <input type="checkbox"/> General Business            |
|                                     | <input type="checkbox"/> Fence (specify material) |                                | <input type="checkbox"/> Downtown                    |
| <i>X</i>                            | <input checked="" type="checkbox"/> Garage        |                                | <input type="checkbox"/> Commercial-Industrial       |
|                                     | <input type="checkbox"/> New or Manufactured Home |                                | <input type="checkbox"/> Agricultural                |
|                                     | <input type="checkbox"/> Storage Building         |                                | <input type="checkbox"/> New Commercial Construction |

| Size of Proposed Structure  | Setback from Property Lines |
|---|-----------------------------|
| Height:<br>(Accessory Bldg. Max. Sidewall 10') <i>20' two story</i> | Front: <i>25'</i>           |
| Width: <i>24'</i>   | Rear: <i>135'</i>           |
| Length:<br>(Accessory Bldg. Max. Length 40') <i>40'</i>             | Side: <i>6" both sides</i>  |

Estimated Cost of the Project *12,000*

I hereby certify that the information contained in this building permit application is correct. I agree to do the proposed work in accordance with all laws and ordinances. I understand that this permit is valid for a period of twelve months.

*Feb-2*

Applicant's Signature and Date

**FOR OFFICE USE ONLY-** *Must be reviewed by Utility Department and City Administrator*

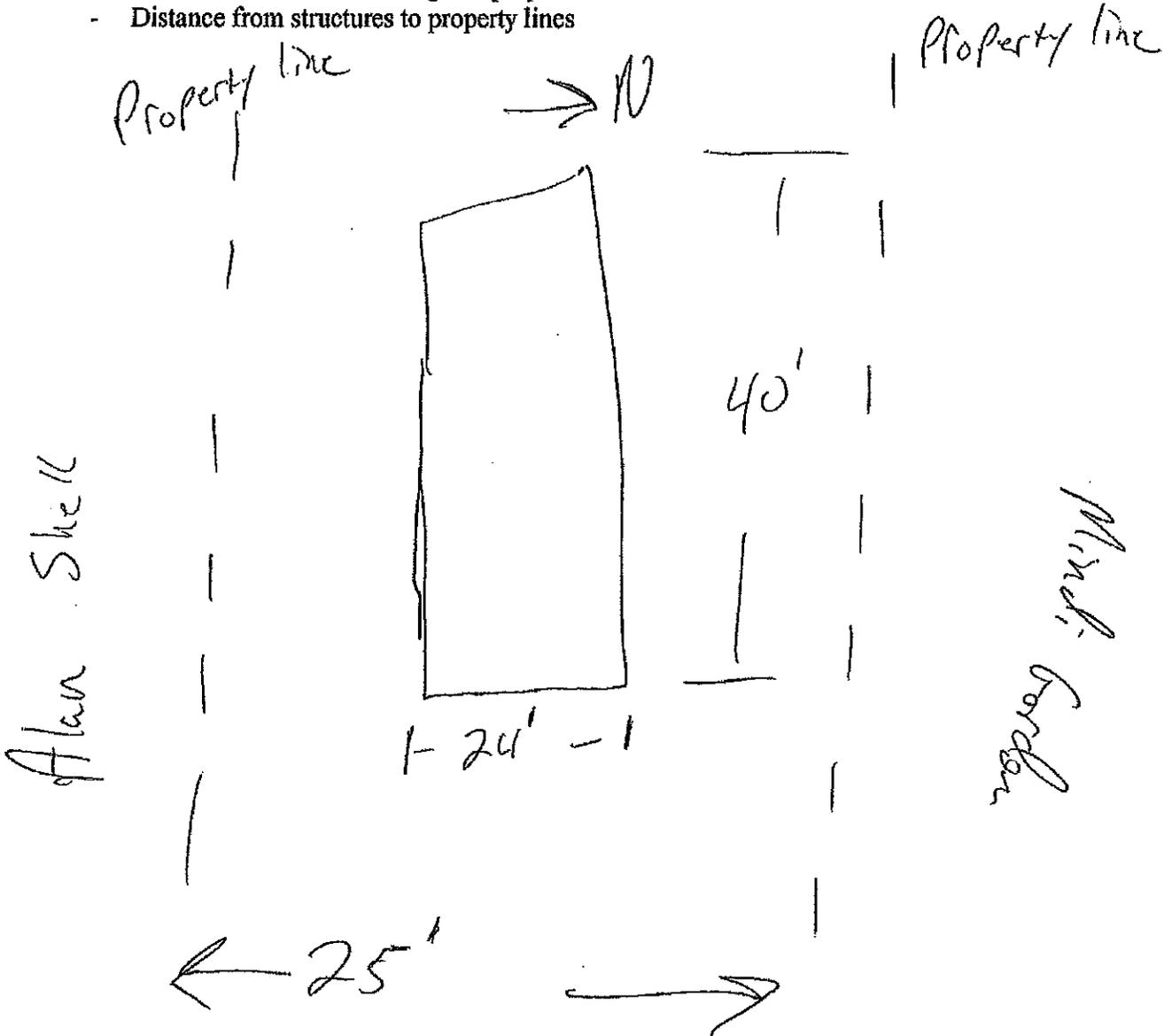
Recommend Approval: Water/Waste/Streets: \_\_\_\_\_ Electric: \_\_\_\_\_ N. Gas: \_\_\_\_\_

Approved by City Administrator: \_\_\_\_\_

# ZONING PERMIT APPLICATION SKETCH

Please sketch the following information below:

- North arrow
- Lot dimensions
- Property lines
- Location and size of existing and proposed structures
- Distance from structures to property lines



**IT WILL TAKE APPROXIMATELY 7 TO 10 BUSINESS DAYS TO GET A PERMIT ONCE THE PLANS AND APPLICATION HAVE BEEN SUBMITTED. YOU MAY NOT BEGIN CONSTRUCTION UNTIL A BUILDING PERMIT HAS BEEN ISSUED.**

APPLICATION VARIANCE PERMIT

APPLICANT Joe Stiner PHONE \_\_\_\_\_ DATE 2-2-16

STREET ADDRESS 114 Marsh st

LEGAL DESCRIPTION: ADDITION \_\_\_\_\_

LOT \_\_\_\_\_ BLOCK \_\_\_\_\_  
(If more space is required for legal description, please attach a typed copy)

REQUIRED EXHIBITS: Drawing showing the property and structure in question showing lot size and boundaries and buildings with dimensions.

DESCRIBE PROPOSED LOCATION OF STRUCTURE REQUIRING VARIANCE: \_\_\_\_\_  
would like to build a story garage  
so need to have a height of 20'

CERTIFICATION:

I hereby certify that I am the applicant named herein and that the information given above and on the exhibits submitted herewith is in all respects true and accurate to the best of my knowledge and belief, and further, if this permit is granted, said construction will conform to the project plan contained herewith. I further understand, if granted, the Variance Permit shall lapse and become null and void one year following the date on which the Variance Permit becomes effective, unless construction is commenced and diligently pursued toward completion.

I AM THE: OWNER  LESSEE \_\_\_\_\_ PURCHASER \_\_\_\_\_ AGENT \_\_\_\_\_

SIGNATURE OF APPLICANT Joe Stiner

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CONDITIONAL REQUIREMENT: (Zoning Board of Appeals use only)  
\_\_\_\_\_  
\_\_\_\_\_

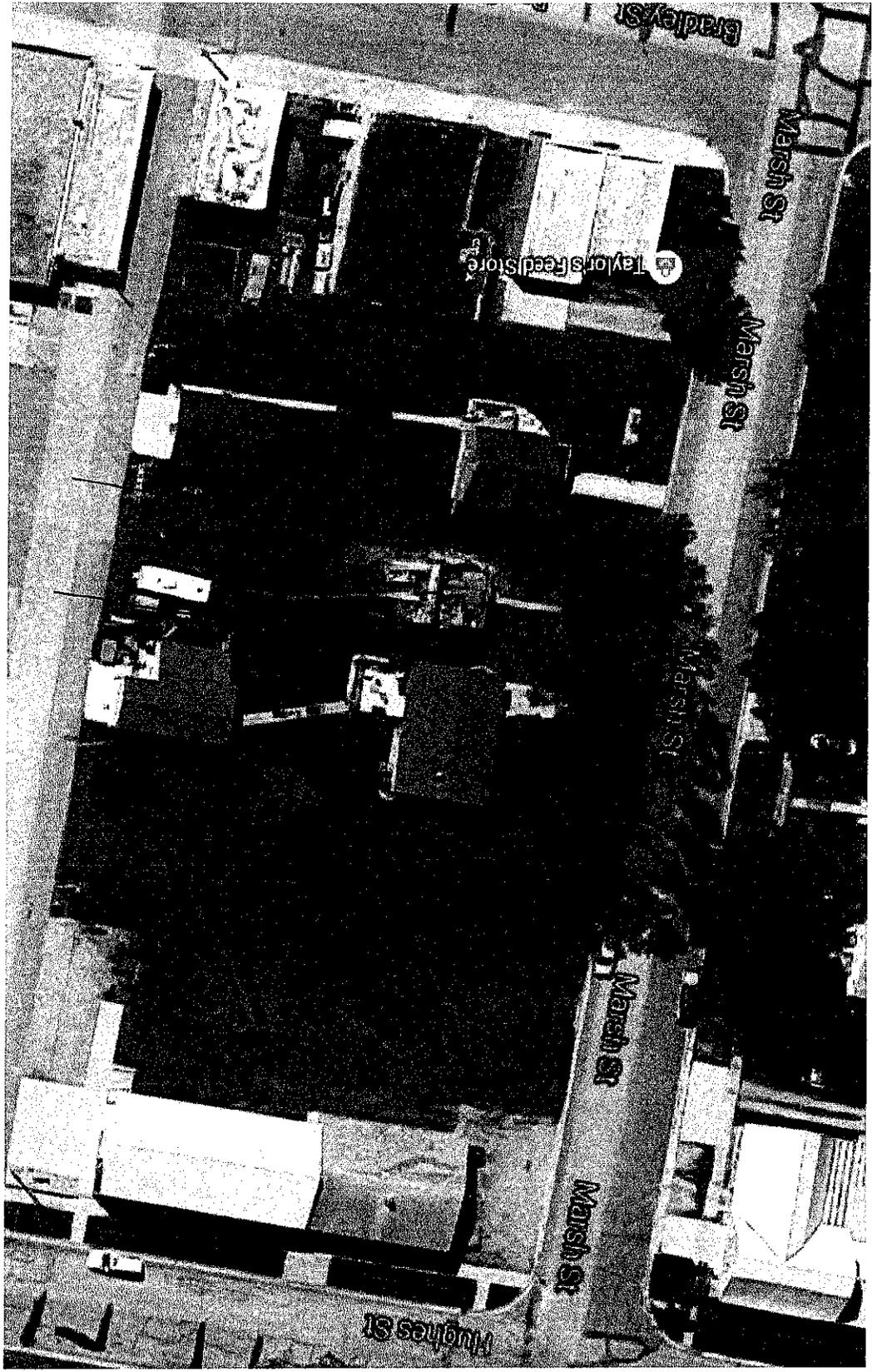
Zoning Board of Appeals Ruling:

APPROVE \_\_\_\_\_ DENY \_\_\_\_\_ APPROVE ON CONDITION \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Chairman, Board of Appeals

\_\_\_\_\_  
Zoning Administrator



# Memo

**To:** Tyler City Council  
**From:** Robert Wolfington – City Administrator  
**Date:** March 7, 2016  
**Re:** Item B – ACE Volunteer Program Appreciation Day

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## **Action Requested**

Approve support for ACE Volunteer Program Appreciation Day in Tyler

## **Background**

During the February Tyler City Council meeting, Lincoln County Commissioner Mic VanDeVere approached the council about supporting a volunteer appreciation day in the City of Tyler.

The following is a description of the ACE program from its website:

“The programs and services we offer are founded on Advocating, Connecting, and Educating the citizens of southwest Minnesota. Our resources and supports help to enable adults to live safely and independently for a longer period of time. We also help meet community needs by matching volunteers age 55 and older with activities that fit their interests, schedules, and experience.”

# Memo

**To:** Tyler City Council  
**From:** Robert Wolfington - City Administrator  
**Date:** March 7, 2016  
**Re:** Item C - Commercial Recycling

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## **Action Requested**

Review our Commercial Recycling program

## **Background**

At our last Council Meeting, Mic VanDeVere requested the City review its commercial recycling program. Through my research, the City's commercial recycling program was put in place as a way to encourage commercial properties to recycle instead of throwing away as regular garbage.

The program dates back to previous administrator's and when the county went to its recycling program.

# Memo

**To:** Tyler City Council  
**From:** Robert Wolfington – City Administrator  
**Date:** March 7, 2016  
**Re:** Item D – Fire Department Update

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## **Action Requested**

None

## **Background**

I have invited members of the Tyler Fire Department to our council meeting. We have discussed in the past having the council and representatives from the department to sit down and update each other on how things are going.

The last time I checked with City Clerk Barb Powell on the USDA Grant for the Fire Truck, we were still waiting to hear if we received the grant.

# Memo

**To:** Tyler City Council  
**From:** Robert Wolfington – City Administrator  
**Date:** March 7, 2016  
**Re:** Item E – John Spindler Natural Gas Request

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## **Action Requested**

To make a determination if the City will credit Mr. Spindler for the Natural Gas Charge

## **Background**

In January the Council voted to not approve a request by Mr. John Spindler of Tyler to credit charges he felt were undue from a time his Natural Gas line was removed from his home.

Mr. Spindler was not utilizing Natural Gas services for the last several years after it was removed from his house as it was being remodeled.

Last year Mr. Spindler had his Natural Gas re-connected. He approached the council about having the charge for connection credited to his account.

Mr. Spindler disagreed with the council's vote, feeling not enough information was presented to the council to make a full decision.

## **Attached**

- City's Utility Policy
- City's Utility Code

## **CITY OF TYLER UTILITY POLICY**

*Adopted and Approved by the Utility Board on February 1, 2006*

### **SECTION 1- RATES AND CHARGES**

**1.01 Rates.** The rates to be charged for utilities and the various classifications of service for which rates are charged, are established by the City of Tyler. These rates are subject to change from time to time.

**1.02 Other Charges.** Charges for material, equipment and labor that are furnished by the City of Tyler will be billed based on costs plus overhead incurred.

**1.03 Overtime Work.** All services requested by an owner or contractor outside of the City of Tyler's normal business hours will be billed at the overtime rate.

### **SECTION 2- BILLING**

**2.01.** Bills are rendered for all services (electric, water, sewer, garbage, natural gas, fixed charges, and material charges) so that they reach the customer on or about the same business day of each month. All bills for services and utilities are payable by the 5<sup>th</sup> day of the following month.

**2.02.** Readings of all meters used for determining charges to customers shall be made each month at or as nearly practicable to thirty (30) day intervals.

**2.03.** The City of Tyler will bill each customer as promptly as possible following the reading of the meters. Each bill will show the present and preceding meter readings and dates of readings, consumption for each meter, the class of service, the amount charged for each meter, the date when the bill is past due, any late payment penalties assessed and the amount of sales tax. Bills for services based on meter readings or estimated usage are computed in accordance with applicable rate schedules. Customers whose final reading is after the regular reading date shall receive a separate billing for the final period irregardless of the number of days provided there is some consumption of utility service. Monthly charge will not be prorated.

**2.04.** The City of Tyler will bill the owner of the premises unless the owner requests to transfer the bill to the occupant of the premises. The bill will not be transferred to the occupant of the premises until the occupant applies for utility service at Tyler City Hall, pays the deposit of one hundred dollars (\$100), and requests the meters to be read. Residents who reside at Morning Sun Apartments will be required to pay a deposit of twenty-five dollars (\$25).

**2.05.** The owner of the premises, the occupant of the premises and the user of the service shall be jointly liable to pay for the service to such premises; and the service is furnished to the premises by the City only upon the condition that the owner of the premises, occupant and user of the services are jointly liable therefore to the City.

## **SECTION 3- COLLECTIONS**

3.01. Payment must be received in the City of Tyler office by the due date stated on the bill. Payment may be made by cash or check. Utility payment checks must be made payable to the City of Tyler. Second party checks and post-dated checks will not be accepted. Failure to receive a bill or past due notice shall not relieve the responsibility to pay.

## **SECTION 4- PAYMENT PLANS**

In addition to the ordinary manner of making payments (first class mail, night depository or "in person") the City of Tyler also offers budget payment plans to qualifying customers.

### **4.01. Budget Plan**

4.01.01. A budget plan is available to any qualifying customer. Upon request by the customer, the City of Tyler will compute the previous 12 months charges to set an amount for a budget payment plan. The budget payment account will be reviewed from time to time by the City of Tyler and increased or decreased in accordance with current consumption patterns. A monthly billing showing the current month's consumption and cost will be prepared and sent to the customer.

4.01.02. A late payment charge of five percent (5%) of the outstanding balance will be added if not paid by the due date. If two payments are late within a twelve-month period the account may revert to normal bill procedure and any amount in the "arrears" column shall be subject to regular collection procedures.

### **4.02. Payment Agreement**

4.02.01. A payment agreement is available to any customer who has not utilized the payment agreement option in the past. Upon request by the customer, the City Attorney will prepare a repayment agreement following discussions with the customer and City personnel. The repayment agreement must be signed and returned to the Tyler City Hall within three (3) business days of the appointment with the City Attorney. If signed agreements are not received within three (3) business days, utility service will be disconnected immediately.

4.02.02. If a customer misses their scheduled appointment with the City Attorney, utility service will be disconnected immediately without notice.

4.02.03. In addition to installment payments agreed to in the repayment agreement, the customer is obligated to stay current on their monthly utility charges. If the customer fails to pay either the installment payment or the regular utility charges, a notice of disconnection will be printed immediately after the due date is passed. The customers are given an additional twenty-four (24) hours for payment after this final notice. Twenty-four hours after this notice goes out, the Utility Department will start disconnecting.

## **SECTION 5- RETURNED CHECKS**

5.01. For accounts on which a NSF check is received, the City of Tyler shall notify the customer immediately by mail that a check has been dishonored by the bank upon which it was drawn. Payment by cash, certified check or money order shall be required within five (5) days of the notice and demand for payment of a dishonored check. The City of Tyler will not accept two-party or payroll checks. The City of Tyler may add \$20.00 service charge for each NSF check returned to the City of Tyler.

5.02. If three (3) or more returned checks (NSF) are from the same customer within a twelve-month period, that customer shall be required to make all future payments in "cash or cashier's check only" until such customer has made twelve (12) consecutive "on time" payments.

## **SECTION 6- TRANSFER OF ACCOUNT BALANCES**

6.01. The City of Tyler may transfer unpaid balances from one account to another account provided the customer is the same individual or is under the same household. Collection efforts shall continue in the same manner on the new account as on the old account.

## **SECTION 7- LIEN ORDINANCE**

7.01. The City of Tyler shall have liens on all real estate served by it for all unpaid utility bills of the owner of the real estate. After notice and opportunity for hearing has been provided, the amount of any unpaid utility bill shall be certified to the county auditor for collection with the real estate taxes next coming due. The Council shall by ordinance make such detailed provisions as it may determine to be necessary to provide for enforcing the provisions of this subdivision. This section shall not be construed to limit the right of the City of Tyler to recover, in a civil action in any court, all utility charges which are not paid when due.

## **SECTION 8- BILLING ERRORS**

8.01. When a customer has been overcharged as a result of incorrect meter readings, incorrect application of the rate schedule, incorrect connection of the meter, faulty meter or other similar reasons, the amount of the overcharge shall be credited to the customer or refunded to "final" accounts. Billing adjustments shall be limited to a maximum three-year period from the time of discovery except for cases involving the misapplication of a rate schedule, which shall be limited to a maximum one-year period. Billing adjustments resulting in a credit balance that is greater than three (3) months' average billing will be refunded by check. Other billing adjustments will remain as a credit balance on the account.

8.02. When a customer has been undercharged as a result of the same reasons as in Section 8.01, the amount of undercharge shall be billed to the customer. The revised billing shall be incorporated with the regular bills and the charges explained in detail. These shall be for a maximum two-year period from the time of discovery allowed for recalculating undercharges except for cases involving fraud or misrepresentation. There shall be a one-year back-billing period for undercharges as the result of the misapplication of a rate schedule.

## **SECTION 9- CUSTOMER SERVICE**

9.01. Customer complaints shall first be directed to the City Administrator. Any and all complaints shall be discussed politely and without abuse. Upon receiving a complaint, all pertinent information shall be obtained, such as the name and address of the complainant, the date and nature of the complaint. This should be followed by the manner in which the complaint was disposed of.

9.02. If personnel receiving the complaint cannot effectively handle the problem; the complaint shall then be referred to the proper department or other City of Tyler personnel.

9.03. If a complaint is not resolved to the customer's satisfaction, the customer may request to be put on the agenda at the city council meeting.

## **SECTION 10- LATE CHARGES**

10.01. A late payment charge of five percent (5%) of outstanding charges will be added to all bills where full payment is not received by the penalty closing time of the due date stated on the bill.

10.02. Failure to receive a bill shall not necessarily entitle the customer to remission of any late payment charge.

10.03. Penalties may be waived upon order of the City of Tyler or by City of Tyler personnel only when extenuating circumstances are considered. A customer should have a payment habit of "on-time" payments for the past year before consideration is given.

## **SECTION 11- PAST DUE NOTICES**

11.01. A notice of delinquent payment will be printed on the following month's bill. If not received, a second notice will be sent stating service will be disconnected if payment is not received in full within five (5) business days. A notice of disconnection will be printed immediately after the due date is passed. The customers are given an additional twenty-four (24) hours for payment after this final notice. Twenty-four hours after this notice goes out, the Utility Department will start disconnecting.

## **SECTION 12- DISCONNECTION PROCEDURE**

12.01. Accounts subject to disconnection are those accounts receiving past due notices (see Section 4.1211) which have not paid or made arrangements to pay by the date of termination of service on the notice.

12.02. Accounts on which payment have not been received are given further consideration and take into account the following:

12.02.01. Warm weather months for residential accounts when the temperature exceeds 85 degrees. (April 16 and October 14). Commercial accounts are year-round with no temperature restriction.

12.02.02. If a delinquent customer contacts the City of Tyler office prior to the disconnect date for an extension of time, consideration may be given. Extensions may be granted for a period of seven (7) days if the customer makes arrangements with the City of Tyler to pay the total amount due. Extensions of less than seven days may be granted if the customer makes arrangements to pay the amount overdue and penalty due. At no time is an open-ended extension granted with no deadline given.

12.02.03. If a collection is not made, a City of Tyler utility employee will terminate the service. The City of Tyler will not reconnect the service, until arrangements for reconnection are made and the utility bill is paid including all hook-up charges.

12.03. Cold weather months (October 15 and April 15) pertain to residential accounts only. The City of Tyler will not disconnect the utility service of a residential customer if the disconnection affects the primary heat source for the residential unit when the following conditions are met:

- The disconnection would occur during the period between October 15 and April 15.
- The customer has declared inability to pay on forms provided by the utility.
- The customer's account is current for the billing period immediately prior to October 15 or the customer has entered into a payment schedule and is current with payments under the schedule. The City of Tyler will notify all residential customers of the provisions of the above four points.

12.04. Before disconnecting service to a residential customer during the period between October 15 and April 15, the City of Tyler will provide the following information to a customer:

- A notice of proposed disconnection will be mailed.
- A statement explaining the customer's rights and responsibilities.
- A statement explaining available time payment plans and other opportunities to secure continued utility service.

12.04.01. If a residential customer must be involuntarily disconnected between October 15 and April 15 for failure to comply with the provisions of the section above, the disconnection must not occur on a Friday or on the day before a holiday.

12.04.02. If, prior to disconnection, a customer appeals a notice of involuntary disconnection, as provided by the City of Tyler's established appeal procedure, the City of Tyler will not disconnect until the appeal is resolved.

12.05. Special circumstances and conditions affecting disconnections.

12.05.01. If a welfare agency states that they will be paying the account and how much they will be paying, the disconnection will not be made or reconnection will be made during business hours.

12.05.02. In special situations such as bank foreclosures, estate settlements, etc., extensions may be given based on the bankers' or attorneys' guarantee of payment.

12.05.03. If the City of Tyler, following a special hearing, allows extended terms, the normal disconnect policy will not apply.

12.05.04. If, following disconnection, the residential unit is found to be occupied, the utility must reconnect service if the residential customer agrees to pay the outstanding balance owed the utilities plus a reconnection charge or, in cold weather months, agrees to enter into a mutually agreed payment schedule.

12.05.05. A \$100.00 reconnection charge is required to be paid in order to restore utility service.

12.05.06. The City Administrator may grant fixed time extensions to disconnection dates under extenuating circumstances, provided arrangement is made with the customer for payment of the arrears and penalty due prior to the date of disconnection.

### **SECTION 13- FREE UTILITY SERVICE**

13.01. It shall be the policy of the City of Tyler to not provide free utility service to customers. Any exceptions to this policy (i.e., community service) must be approved by the City of Tyler in advance at a regular city council meeting.

**CHAPTER 4.  
MUNICIPAL UTILITIES**

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| 4.94. <b>Disconnection</b> .....   | <u>Ch. 4 Pg. 25</u> |
| 4.95. <b>Meter Required</b> .....  | <u>Ch. 4 Pg. 25</u> |
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| 4.97. <b>Electric Rates</b> .....  | <u>Ch. 4 Pg. 26</u> |
| 4.100. <b><u>Municipal Utility Billings</u></b> .....  | <u>Ch. 4 Pg. 26</u> |
| 4.101. <b>Delinquent Utility Bills, Shut-off, Property Lien &amp; Cold Wether Rule</b> ..... | <u>Ch. 4 Pg. 26</u> |
| 4.102. <b>Collection with Taxes</b> .....  | <u>Ch. 4 Pg. 27</u> |
| 4.103. <b>Owner Liable</b> .....   | <u>Ch. 4 Pg. 27</u> |
| 4.104. <b>Assessments</b> .....  | <u>Ch. 4 Pg. 27</u> |

4.105. **Civil Action** ..... Ch. 4 Pg. 27

4.108. **Municipal Service Disruptions** ..... Ch. 4 Pg. 27

4.109. **Ownership of Municipal Utilities** ..... Ch. 4 Pg. 27

4.110. **Penalties** ..... Ch. 4 Pg. 28

4.111. **Expenses** ..... Ch. 4 Pg. 28

4.112. **Validity** ..... Ch. 4 Pg. 28

4.01. **Definitions.** For the purpose of this Chapter, the following words and terms shall have the meanings set out below, unless the context specifically indicates otherwise.

4.01.01. "**Act**" The Federal Water Pollution Control Act also referred to as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

4.01.02. "**Administration**" Those fixed costs attributable to administration of the wastewater treatment works (i.e., billing and associated bookkeeping and accounting costs)."

4.01.03. "**BOD**" (denoting Biochemical Oxygen Demand) means the quantity of oxygen utilized in the biological oxidation of organic matter expressed in milligrams per liter, as determined in accordance with standard laboratory procedure as set out in the latest edition of Standard Methods for the Examination of Water and Wastewater.

4.01.04. "**Building drain**" means that part of the lower horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

4.01.05. "**Building sewer**" means the extension from the building drain to the public sewer or other place of disposal, also called house connection.

4.01.06. "**Capital costs**" means all reasonable and necessary costs and expenses incurred by the City in planning, designing, financing, and constructing disposal system facilities, including, but not limited to, costs and expenses for obtaining necessary permits, licenses, approvals and grants for design and construction costs; fees for legal and consulting services; or the acquisition of such facilities.

4.01.07. "**City**" is the area within the corporate boundaries of the City of Tyler as presently established or as amended by Code or other legal actions at a future time. The term "City" when used herein may also be used to refer to the City Council and its authorized representatives.

4.01.08. "**City Administrator**" means the regularly appointed City Administrator, City Water Clerk or such other person as the city shall appoint to serve in the capacity of City Administrator as defined by this Code.

4.01.09. "**Commercial user**" means any place of business including transient lodging, retail and wholesale establishments or places engaged in selling merchandise for personal, household, or industrial consumption which discharges sanitary waste as distinct from industrial wastewater.

4.01.10. "**Compatible pollutant**" Biochemical oxygen demand, suspended solids, ph., and fecal coliform bacteria, plus additional pollutants identified in the NPDES/SDS Permit if the treatment facilities are designed to treat such pollutants to a degree which complies with effluent concentration limits imposed by the permit.

4.01.11. "**ACOD**" (denoting Chemical Oxygen Demand) means the quantity of oxygen utilized in the chemical oxidation of organic matter, expressed in milligrams per liter, as determined in accordance with standard laboratory procedure as set out in the latest edition of Standard methods for the Examination of Water and Wastewater.

4.01.12. "**Combined sewer**" means a sewer originally designed and currently designated to receive both surface water runoff and sewage.

4.01.13. "**Curbstop**" means the stop box or valve connecting the municipal system to a private user's service entrance.

4.01.14. "**Debt service**" means the principal and interest necessary to pay bonded indebtedness.

4.01.15. "**Dwelling or residential unit**" means each separate home, each trailer, each apartment or each dwelling if the structure contains multiple dwellings, as in a duplex, four-plex or other multiple family dwelling.

4.01.16. "**Flow**" means the quantity of sewage expressed in gallons or cubic feet per twenty-four (24) hours.

4.01.17. "**Garbage**" means solid wastes resulting from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage, or sale of meat, fish, fowl, fruit, vegetables, or condemned food.

4.01.18. "**Governmental user**" includes those establishments whose function is the administration and/or execution of governmental programs as well as the offices of executives, legislative bodies, and agencies which provide general support services for government.

4.01.19. "**Incompatible pollutant**" Any pollutant that is not defined as a compatible pollutant including non-biodegradable dissolved solids.

4.01.20. "**Industrial user or industries**" are Entities that discharge into a publicly owned wastewater treatment works, liquid wastes resulting from the processes employed in industrial or manufacturing processes, or from the development of any natural resources. These are identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemental. For the purpose of this definition, domestic waste shall be considered to have the following characteristics:

|                  |                    |
|------------------|--------------------|
| BOD5             | less than 250 mg/l |
| Suspended Solids | less than 300 mg/l |

Any non-governmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids, or gases, in sufficient quantity either singly or by interaction with other wastes, to contaminate the sludge of any municipal systems, or to injure or to interfere with any sewage treatment process, or which constitutes a hazard to humans or animals, creates a public nuisance, or creates any hazard in or has an adverse effect on the waters receiving any discharge from the treatment works.

4.01.21. "**Industrial waste**" means the solid, liquid, or gaseous wastes resulting from any industrial or manufacturing processes, trade or business, or from the development, recovery, or processing of natural resources.

4.01.22. "**Interference**" The inhibition or disruption of the District's wastewater disposal system processes or operations which causes or significantly contribute to a violation of any requirement of the District NPDES and/or SDS permit.

4.01.23. "**Load**" means quantities of sewage characteristics such as BOD, TSS, and other constituents as expressed in milligrams per liter (mg/l) or pounds per twenty-four

(24) hours (lbs/24 hours).

4.01.24. "**May**" is permissive.

4.01.25. "**National categorial pretreatment standard**" federal regulations establishing pretreatment standards for introduction of pollutants in publicly-owned wastewater treatment facilities which are determined to be not susceptible to treatment by such treatment facilities or would interfere with the operation of such treatment facilities, pursuant to Section 307(b) of the Act.

4.01.26. "**National pollution discharge elimination system permit(NPDES permit)**" means the system for issuing, conditioning and denying permits for the discharge of pollutants from point sources into the navigable waters, the contiguous zone, and the oceans by the Administrator of the Environmental Protection Agency pursuant to Section 402 and 405 of the Federal Water Pollution Control Act Amendment of 1972.

4.01.27. "**Natural outlet**" means any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

4.01.28. "**Non-contact cooling water**" the water discharged from any use such as air conditioning, cooling or refrigeration, or during which the only pollutant added, is heat.

4.01.29. "**Normal domestic strength waste**" means wastes with a Biological Oxygen Demand Concentration not to exceed 250 milligrams per liter and a Total Suspended Solids Concentration not to exceed 300 milligrams per liter.

4.01.30. "**Other wastes**" shall mean garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, oil, tar, chemicals, offal, and other substances except sewage and industrial wastes.

4.01.31. "**Operation and maintenance costs**" (O & M Costs) means the expenses related to the costs of the operation, maintenance, replacement and administration of the City facilities.

4.01.32. "**Person**" means any individual, firm, company, association, Society, corporation, municipal corporation, governmental unit, or group.

4.01.33. "**Pretreatment**" the treatment of wastewater from industrial sources prior to the introduction of the waste effluent into a publicly - owned treatment works.

4.01.34. "**Properly shredded garbage**" the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than 1 inch (1.27 cm) in any dimension.

4.01.35. "**ph.**" means the logarithm of the reciprocal of the concentration of hydrogen ions in grams per liter of solution.

4.01.36. "**Process water**" means any water used in the manufacturing, preparation, or production of goods, materials, or food. Process water is an industrial waste.

4.01.37. "**Public sewer**" means any sewer owned or operated by a unit or agency of government.

4.01.38. "**Residential**" Shall mean all dwelling units such as detached, semi-detached, and row houses, mobile homes, garden and standard apartments, permanent multi-family dwellings (transient lodging, considered commercial in nature is not included).

4.01.39. "**Replacement costs**" means costs related to the expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary to maintain the capacity and performance during the useful life of the City facilities for which such facilities were designed and constructed. The term "Operation and Maintenance" includes replacement.

4.01.40. "**Sanitary sewer**" means a sewer which carries sewage and to which storm, surface, and ground water are not intentionally admitted

4.01.41. "**Sanitary wastes**" means the liquid and water carried wastes discharged from sanitary plumbing facilities.

4.01.42. "**Service**" means connection to the municipal water system and the right to use its facilities whether or not the facilities are, in fact, used.

4.01.43. "**Sewage**" or "**wastewater**" means the water carried waste products from residences, public buildings, institutions, industrial establishments or other buildings including the excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and storm and surface water as may be present.

4.01.44. "**Sewer**" means a pipe or conduit for carrying sewage, industrial waste, or other waste liquids.

4.01.45. "**Sewer service charge**" means the aggregate of all the charges including the user charge, debt service charges, and other sewer related charges that are billed periodically to users of the City facilities.

4.01.46. "**Sewer system**" means pipe lines or conduits, pumping stations, force mains, and all other devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes or other wastes to a point of ultimate disposal.

4.01.47. "**Shall**" is mandatory.

4.01.48. "**ASlug**" means any discharge of water, wastewater, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration of flows during the normal operation.

4.01.49. "**State disposal system (SDS) permit**" any permit (including any terms, conditions and requirements thereof) issued by the MPCA pursuant to Minnesota Statutes 115.07 for a disposal system as defined by Minnesota Statutes 115.01, Subdivision 8.

4.01.50. "**Storm sewer**" (sometimes termed "storm drain") means a sewer which carries storm and surface water and drainage but excludes sewage and industrial wastes, other than unpolluted cooling and process water.

4.01.51. "**Suspended solids**" means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids and which are removable by laboratory filtering, in accordance with the latest edition of Standard Methods of the Examination of Water and Wastewater.

4.01.52. "**Toxic pollutant**" the concentration of any pollutant or combination of pollutants which upon exposure to or assimilation into any organism will cause adverse affects as defined in standards issued pursuant to Section 307(a) of the Act.

4.01.53. "**TSS**" (denoting Total Suspended Solids) means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids and which are removable by laboratory filtering, in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater.

4.01.54. "**Unpolluted water**" means clean water uncontaminated by industrial wastes, other wastes, or any substance which renders such water unclean or noxious, or impure

so as to be actually or potentially harmful or detrimental or injurious to public health, safety, or welfare to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, birds, fish, or other aquatic life.

4.01.55. **"User"** means any person, or corporation, or other entity, whether municipal or otherwise, discharging sewage into the City disposal system facilities.

4.01.56. **"User charge"** means a charge levied on users of City facilities for the cost of operation, maintenance, and replacement of such facilities.

4.01.57. **"Wastewater facilities"** means the structures, equipment and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.

4.01.58. **"Wastewater treatment works"** or **"treatment works"** or **"waste water treatment plant"** shall mean an arrangement of devices and structures for treatment of wastewater, industrial waste, and sludge. Sometimes used as synonymous for "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant" or "sewage treatment plant".

#### 4.02. **Municipal Water System**

4.03. **Use of Water System Restricted.** No person shall make or use any water service installation connected to the city water system except pursuant to application and permit as provided in this Code. No person shall make or use any such installation contrary to the regulatory provisions of the Tyler City Code of 2006, as amended.

4.04. **Each Dwelling to Have Separate Curbstop and Meter.** Each dwelling or other residential unit shall have a separate curb stop valve (stop box) for the shut off of municipal water service. Each separate dwelling or other residential unit must be equipped with a municipal water use meter. Each separate dwelling or separate residential unit shall have a separate meter. The city shall own all meters used in this capacity and the property owner shall be required to place a meter deposit with the City Administrator for the use of said meter. The City Council may, by resolution, adopt, alter or modify the meter deposit fee from time to time. Each connection, disconnection or reconnection to the city water system by means of the curb stop or other means shall be subject to a connection, disconnection or reconnection fee in such an amount as the City Council may from time to time establish by resolution.

4.04.01. **Curbstops.** The curbstop shall be located at or near the property line or at such other reasonable location as shall be determined by the City. If located upon the property of the homeowner, the homeowner shall be responsible for

maintaining the property adjacent to the curbstop in such a manner as to avoid physical damage to the curbstop and city water lines. Damage occurring to the curbstop as a result of vehicle traffic or otherwise may be repaired by the City without notice to the homeowner, and the cost of such repair included in the utility billing for the premises. The owner or occupant shall not obstruct or allow anyone else to obstruct the access of the City to the curbstop.

**4.04.02. Connection Procedure.** The property owner seeking or utilizing a connection to the municipal water system shall be responsible for the costs of the installation of a waterline from a City main to the curbstop and from the curbstop to the water meter. The property owner utilizing the connection shall be responsible for all of the costs of connection, maintenance, and repair of such service line. The installation of such a service line shall be done at the expense of the owner using City personnel or personnel approved by the City for such undertaking. All supplies and materials utilized in such a connection shall be approved by the City in advance of installation.

**4.05. Charges for Service Connections.** No connection shall be made to the city water system without a permit from the City Administrator. The fee for each such permit shall be established and modified by the City Council by ordinance or resolution from time to time.

**4.06. Application and Owner-customer Responsibility.**

**4.06.01. Procedure.** By his or her signature, the applicant shall agree to conform to the Tyler City Code and to rules and regulations that may be established by the City as conditions for the use of water. All persons who are presently connected to municipal water service in conformity with the requirements of this Code are deemed to have filed an application and shall be bound by the terms and conditions of this Code.

**4.06.02. Unmetered Water:** The homeowner shall be responsible for the maintenance, repair, and upkeep of water lines between the curbstop and the water meter. The City may require the homeowner to install a suitable quantity and quality of water line between the curbstop and meter. The City may disconnect the water service in the event that the homeowner fails or refuses to provide an installation which, in the opinion of the City, is suitable.

**4.06.02.01.** The applicant and owner are responsible for any water lost or water leakage occurring as a result of damaged, defective, leaking, inadequate water line, or other unmetered water lost between the curbstop and the water meter. In the event of such a loss, the City may estimate the quantity of water lost from other records and information available to the City. Such reasonable estimate shall be paid by the applicant or owner or may, in the discretion of the

City, be treated as a delinquency in the utility billing payment for the subject premises.

**4.06.03. Utility Deposit:** All applicants shall submit a deposit with the completed application for services to the City Administrator. The amount of the deposit shall be established and may be modified by resolution of the City Council, as set forth in Chapter 18 of this code.

**4.07. Account in Name of Owner of Real Estate.** All accounts shall be carried in the name of the owner of the real estate served, who personally, or by his authorized agent, shall apply for such service. The owner shall be liable for water supplied to his real estate, whether he is occupying the real estate or not and any charge or bill unpaid shall be a lien upon the real estate. The owner may designate that a tenant or occupant of the property serve as the authorized agent for the receipt of all account information.

**4.08. Meter Readings.** Each owner and/or resident shall read his or her water meter on or before the 1st day of each month and report the usage on the utility bill provided by the City. The City Administrator shall determine the amount of the billing and bill that charge along with the other utility charges with the utility bill submitted to the owner or resident for the following month. In the event that a utility bill is not paid on or before the 5<sup>th</sup> day of the month, the payment penalty will apply and shall be added to the monthly billing. If the utility billing remains unpaid and utility services are disconnected to the premises, a late payment penalty shall be doubled, which payment shall be in addition to the reconnect charge that is provided in 4.05. The late payment penalty shall be determined by the City Council by resolution, as set forth in Chapter 18 of this Code.

**4.09. Inspection.** Each permit granted under Section 4.04. shall require an inspection by the city water inspector. The city may, for good cause, waive the inspection requirement. The city retains the right to inspect all water meters and hook-ups for compliance with state law and the terms of this Code. This includes, but is not limited to, the right to inspect water meters on an annual or other more frequent basis for the proper water meter reading.

**4.10. Code Requirement.** All piping, connections, and appurtenances shall be installed and performed strictly in accordance with the Minnesota Plumbing Code. Failure to install or maintain the same in accordance therewith, or failure to have or permit required inspection shall, upon discovery by the City, be an additional ground for termination of water service to the consumer.

**4.11. Opening Hydrants.** It is unlawful for any person, other than members of the Fire Department or other persons duly authorized by the City in pursuance of lawful purpose, to open any fire hydrant or attempt to draw water from the same or in any manner interfere therewith. It is also unlawful for any person so authorized to deliver or suffer to be delivered to any other person any hydrant key or wrench, except for the purpose strictly pertaining to their lawful use.

4.12. **City Personnel Only to Operate Curbstop.** It shall be a misdemeanor for any person other than an authorized municipal employee to turn on or off a curbstop or stop box connected to the municipal water system. Each such action shall constitute a separate offense.

4.13. **Repair of Leaks.** It is the responsibility of the consumer or owner to maintain the service pipe from the curb stop into the house or other building. In case of failure upon the part of any consumer or owner to repair any leak occurring in his or her service pipe within twenty-four (24) hours after oral or written notice has been give the owner or occupant of the premises, the water may be turned off and will not be turned on until a re-connection charge has been paid and the water service has been repaired. When the waste of water is great or when damage is likely to result from the leak, the water will be turned off if the repair is not proceeded with immediately.

4.14. - 4.19. **Reserved.**

4.20. **Municipal Sewer System**

4.21. **Use of Public Sewers.** The owner of any property abutting on or adjacent to any street in which sewer and water mains have been laid shall install a toilet in any dwelling or commercial establishment upon such property and connect it with the sewer and water mains, and in default thereof, the City shall provide for the installation of such toilet and charge the cost against the property as a special assessment. The property owner shall have a period of one year from the date that said public sewer is operational to complete the operation before the City shall proceed to make such installation and charge the same against the property tax.

4.21.01. It is unlawful to discharge wastewater or other polluted waters into any natural outlet or private wastewater disposal system within the City of Tyler or in any area under the jurisdiction of the City of Tyler except into the municipal wastewater facility; except discharge into a private wastewater disposal system is permitted for those properties which are not required, to connect to the municipal wastewater facilities.

4.22. **Permits Required** No person shall connect a private waste water disposal system or a building sewer to a public sewer and no person shall install, alter, repair, or extend any private wastewater disposal system in the City without first obtaining a permit therefor from the City Council or its authorized representative for the specific installation, alteration, repair, or extension. During the first one year that the sewer system is operational, there shall be no fee for such permit. Any person desiring or required to connect to a public sewer shall pay a connection fee as established by resolution or code of the Council, as set forth under Chapter 18 of this Code.

4.23. **Applications.** Applications for permits shall be made in writing upon printed blanks or forms furnished by the clerk and shall be signed by the applicant.

**4.24. Content of Application.** Each application for a permit shall have thereon the correct legal description of the property on which the proposed installation, alteration, repair, or extension is to take place, and each application for a permit shall be accompanied by a plot plan of the land showing the location of any proposed or existing buildings located on the property with respect to the boundary lines of the property and complete plans of the proposed system with substantiating data, if necessary, attesting to the compliance with the minimum standards of this code. A complete plan shall include the location, size and design of all parts of the system to be installed, altered, repaired, or extended. The application shall also show the recent or proposed location of water supply facilities and water supply piping, and the name of the person who is to install the system, and shall provide such further information as may be required by the City Council

4.24.01. Applications for permit shall be made by the owner or authorized agent and the party employed to do the work, and shall state the location, name of owner, street number of the building to be connected, and how occupied. No person shall extend any private building drain beyond the limits of the building or property for which the service connection permit has been given.

4.24.02. There shall be two (2) classes of building sewer permits:

4.24.02.01. for residential and commercial service, and

4.24.02.02. for service to establishments producing industrial wastes.

In either case, the application shall be supplemented by any plans, specifications, or any other information considered pertinent in the judgment of the City. The industry, as a condition of permit authorization, must provide information describing its wastewater constituents, characteristics, and type of activity.

4.24.03. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the City from any loss or damage that may be directly or indirectly occasioned by the installation of the building sewer.

4.24.04. A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway. The building sewer from the front building may be extended to the rear building and the whole considered one building sewer. The City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such connection aforementioned.

4.24.05. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent or his representative, to meet all requirements of this code.

4.25. **Construction Requirements.** Every individual sewage disposal system or connection to the City system installed after the effective date of this code and every alteration, extension, and repair to any system made after that date shall conform to the standards as adopted by the City Council by resolution from time to time.

4.26. **Inspection.** The City shall make such inspection or inspections as are necessary to determine compliance with this code. No part of the system shall be covered until it has been inspected and accepted by the City. It shall be the responsibility of the applicant for the permit to notify the City Administrator that the job is ready for inspection or reinspection, and it shall be the duty of the City to make the indicated inspection within forty-eight (48) hours after notice has been given. It shall be the duty of the owner or occupant of the property to give the City free access to the property at reasonable times for the purpose of making such inspections. Upon satisfactory completion and final inspection of the system, the City shall issue to the applicant a certificate of approval.

If upon inspection the City discovers that any part of the system is not constructed in accordance with the minimum standards provided in this code, the City shall give the applicant written notification describing the defects. The applicant shall pay an additional fee as set by the City Council from time to time for each reinspection that is necessary. The applicant shall be responsible for the correction or elimination of all defects, and no system shall be placed or replaced in service until all defects have been corrected or eliminated.

4.27. **Minnesota Rules.** The type, capacities, location, and layout of a private wastewater disposal system shall comply with all requirements of MN Rules Part 7080 entitled, "Individual Sewage Treatment System Standards" (as amended from time to time). No septic tank or cesspool shall be permitted to discharge to any natural outlet.

4.28. **Public Service Available.** At such time as public sewer service becomes available to a property not previously served, a direct connection shall be made to the public sewer within 90 days in compliance with the code and within ninety (90) days, any septic tanks, cesspools, and similar private wastewater disposal systems shall be cleaned of sludge, and the tank or pit filled with suitable material.

4.29. **Operation.** The owner(s) shall operate and maintain the private waste water disposal facilities in a sanitary manner at all times at no expense to the City.

4.30. **Non-interference.** No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the MPCA or the Department of Health of the State of Minnesota.

4.31 - 4.37. **Reserved.**

4.38. **Additional Costs.** Any additional costs caused by discharges to the treatment works of toxic or other incompatible wastes, including the cost of restoring wastewater treatment services, clean up, and restoration of the receiving waters and environs, and sludge disposal, shall be borne by the discharger(s) of said wastes, at no expense to the City.

4.39. **Charge System.** The City of Tyler hereby establishes a Sewer Service Charge System whereby all revenue collected from users of the wastewater treatment facilities will be used to affect all expenditures incurred for annual operation, maintenance, and replacement and for debt service on capital expenditure incurred in constructing the wastewater treatment works.

4.40. **User Fees.** Each user shall pay its proportionate share of operation maintenance and replacement costs of the treatment works, based on the users proportionate contribution to the total wastewater loading from all users. The administrative portion of the operation, maintenance, and replacement budget shall be recovered equally from all users.

4.41. **Debt Service.** Each user shall pay debt service charges to retire local capital costs as determined by the City Council.

4.42. **Sewer Rates.** Sewer Service rates and charges to users of the wastewater treatment facility shall be determined and fixed in a "Sewer Service Charge System" developed according to the provisions of this Code.

4.43. **Reserved**

4.44. **Charges for Wastewater Treatment Services.** Users of the City of Tyler wastewater treatment works shall be identified as belonging to one of the following user classes:

- a. Residential
- b. Commercial
- c. Industrial
- d. Institutional
- e. Governmental

The allocation of users to these categories for the purpose of assessing User Charges and Debt Service Charges shall be the responsibility of the City Administrator. Allocation of users to user classes shall be based on the substantive intent of the definitions of these classes contained herein.

Each user shall pay Operation, Maintenance, and Replacement costs in proportion to the user's proportionate contribution of wastewater flows and loadings to the treatment plant, with the minimum

rate for flows and loadings to the treatment plant, with the minimum rate for loadings of BOD and TSS being the rate established for concentrations of 250 mg/l BOD and 300 mg/l TSS (i.e. Normal Domestic Strength Wastewater).

Those "Industrial Users" discharging segregated "Normal Domestic Strength Wastewater" only, can be classified as "Commercial Users" for the purpose of rate determination.

**4.45. Normal Domestic Strength Wastewater.** The charges assessed residential users and those users of other classes discharging "Normal Domestic Strength Wastewater" shall be established proportionately according to billable wastewater volume. Billable wastewater volume shall be calculated as follows:

**4.45.01. Residential Users.** Water volume for residential users shall be calculated on the basis of metered water usage. The monthly billable wastewater volume shall be equal to monthly metered water usage.

**4.45.02. Nonresidential Users.** The billable wastewater volume of nonresidential users may be determined in the same manner as for residential users. Except that if the City determines that there are significant seasonal variations in the metered water usage of nonresidential users resulting in a proportionate increase or decrease in wastewater volume; then billable wastewater volume shall be:

**4.45.02.01.** Calculated on the basis of monthly metered water usage as recorded throughout the year, or

**4.45.02.02.** Calculated on the basis of wastewater flow meters.

**4.46. Meters.** Meters shall be read per 100 gallons or part thereof. The City may require any person not now having a water meter to have installed a water meter and to maintain the same as a basis for sewer use charges.

**4.47. Determination of User Charges.** That user charges for Normal Domestic Strength users shall be such amount as shall be set by the City Council by resolution from time to time.

**4.47.01.** Costs associated with administrative services shall be recovered through a per connection charge calculated as follows:

$$A_c = A_b / \#c$$

where:

$A_c$  = Administration Charge

$A_b$  = Administration Budget

$\#c$  = Number of Connection x Number of Billings

4.47.02. Calculation of Unit Costs for Treatment of Normal Domestic Strength Wastewater:

$$Uomr = Comr/Tbwv$$

where:

$$Uomr = \text{Unit cost for Operation, Maintenance and Replacement to treat Normal Domestic Strength, in \$/Kgal}$$
$$Comr = \text{(Total annual OM\&R costs) - (Administration costs)}$$
$$Tbwv = \text{Total annual billable wastewater volume in Kgal.}$$

4.47.03. Calculation of User Charge for Normal Domestic Strength Wastewater:

$$Uc = (Uomr \times bwv) + Ac$$

where:

$$Uc = \text{User Charge}$$
$$Uomr = \text{Unit cost for Operation, Maintenance and Replacement to treat Normal Domestic Strength, in \$/Kgal.}$$
$$bwv = \text{Billable wastewater volume of a particular user in kgal.}$$
$$Ac = \text{Administration charge}$$

4.48. **Additional Charges.** The Sewer Service charges established in this code shall not prevent the assessment of additional charges to users who discharge wastes with concentrations greater than Normal Domestic Strength or wastes of unusual character, or contractual agreements with such users, as long as the following conditions are met:

4.48.01. The user pays Operation, Maintenance, and Replacement costs in proportion to the user's proportionate contribution of wastewater flows and loadings to the treatment plant, and no user is charged at a rate less than that of "Normal Domestic Strength Wastewater."

4.48.02. The measurements of such wastes are conducted according to the latest edition of Standard Methods for the Examination of Water and Wastewater in a manner acceptable to the City as provided for in this Code.

4.49. **Sewer Study.** A study of unit costs of collection and treatment processes attributable to Flow, BOD, TSS, and other significant loadings shall be developed for determining the proportionate allocation of costs to flows and loadings for users discharging wastes of greater than normal domestic strength or wastes of unusual character.

4.50. **Tax Levy.** Debt service costs for the wastewater treatment facilities shall be recovered by an annual general property tax levy made by the City Council.

**4.51. Additional Fees.** In addition to the general property tax levy, those structures which connect to the municipal sewer system more than one year after the date that the system first becomes operational as required by this Code shall pay a fee, as and for a connection charge and an inspection permit to the City plus the actual costs of connection and the actual costs of extending the sewer service to their property line if such extension has not previously been installed by the City.

**4.51. Unlawful Discharge.** It shall be unlawful to discharge to any natural outlet within the City or in any area under the jurisdiction of the City any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Code.

**4.52. Private Septic Systems.** Except as provided in this Chapter, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

**4.53. Failure or Refusal to Connect.** In the event an Owner shall fail to connect to a public sewer in compliance with a notice given under this code, the City may undertake to have said connection made and shall assess the cost thereof against the benefitted property and said assessment shall be a lien against said property. Such assessment, when levied, shall bear interest at the legal rate for local improvements and shall be certified to the auditor of the County of Lincoln and shall be collected and remitted to the City in the same manner as assessments for local improvements. The rights of the City under this subdivision shall be in addition to any other remedial or enforcement provisions of this code.

**4.54. Unauthorized Discharge.** No person shall discharge or cause to be discharged directly or indirectly any storm water, surface water, ground water, roof runoff, subsurface drainage, waste from on-site disposal systems, unpolluted cooling or process water to any sanitary sewer except as authorized in writing.

4.54.01. No person(s) shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or indirectly to the wastewater disposal system.

4.54.02. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor in all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by a building drain too low to permit gravity flow to the public sewer shall be lifted by an approved means and discharged to the building sewer.

4.54.03. The connection of the building sewer into the public sewer shall conform to the requirements of the State of Minnesota Building and Plumbing Code or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such connections shall be made gastight and watertight, and verified by proper testing to prevent the inclusion of

infiltration/inflow. Any deviation from the prescribed procedures and materials must be approved by the City prior to installation.

4.54.04. All excavations for building sewer installation on any public property shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work, shall be restored in a manner satisfactory to the City.

**4.55. Unauthorized Substances.** No person shall discharge or cause to be discharged, directly or indirectly, any of the following described substances to any public sewer:

4.55.01. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquids, solids, or gases.

4.55.02. Any water or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the wastewater treatment works.

4.55.03. Any water or wastes having a ph. lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater treatment works.

4.55.04. Solid or viscous substances, either whole or ground, in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper continuation of the wastewater facilities, but not limited to ashes, cinders, disposable diapers, glass grinding or polishing wastes, stone cuttings or polishing wastes, sand, mud straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and sanitary napkins, paper dishes, cups, milk containers, and other paper products.

**4.56. Reserved.**

**4.57. Limited Discharges.** The following described substances, materials, water, or wastes shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either sewers, the wastewater treatment works treatment process or equipment, will not have an adverse effect on the receiving stream and/or soil, vegetation and ground water, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The City may set limitations lower than limitations established in the regulations below if, in his opinion, such more severe limitations are necessary to meet the above objectives. In forming his opinion as to the acceptability of wastes, the City will give consideration to such factors as the quantity of subject waste in reaction to flows and velocities in the

sewers, materials of construction of the sewers, nature of the sewage treatment process, the City's NPDES and/or SDS permit, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer which shall not be violated without approval of the City are as follows:

4.57.01. Noxious or malodorous liquids, gases or substances which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance and repair.

4.57.02. Any liquid or vapor having a temperature higher than one hundred fifty degrees F. (65 degrees C).

4.57.03. Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred(100) degrees F (0 degrees and 65 degrees C).

4.57.04. Any garbage that has not been ground or comminuted to such a degree that all particles will be carried freely in suspension under flow conditions normally prevailing in public sewers with no particles greater than one-half (2) inch in any dimension.

4.57.05. Any water or wastes containing strong acid, iron pickling wastes, or concentrated plating solutions, whether neutralized or not.

4.57.06. Any water or wastes containing phenols or other taste or odor producing substances which constitute a nuisance or hazard to the structures, equipment or personnel of the sewage works, or which interfere with the treatment required to meet the requirements of the State and Federal government and any other public agency with proper authority to regulate the discharge from the sewage treatment plant.

4.57.07. Radioactive wastes or isotopes of such half-life or concentration that they are in non-compliance with regulations issued by the appropriate authority having control over their use or which have caused or may cause damage or hazards to the treatment works or personnel operating it.

4.57.08. Any water or wastes having a ph. in excess of 9.5

4.57.09. Materials which exert or cause:

4.57.09.01. Unusual concentration of suspended solids (such as but not limited

to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).

4.57.09.02. Excessive discoloration (such as, but not limited to, dye wastes and vegetables tanning solutions).

4.57.09.03. Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment works.

4.57.09.04. Unusual volume of flow or concentration of wastes constituting slug.

4.57.09.05. Water or water containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of the NPDES Permit or requirements of other governmental agencies having jurisdiction over discharge from the sewage treatment plant.

**4.58-4.59. Reserved.**

**4.60. State and Federal Regulation.** Prohibited wastes shall be regulated in accordance with the City's NPDES Permit, Section 307(a) and 307(b) of the Clean Water Act and all other applicable State and Federal regulations.

**4.61. Discretion by City.** If any water or wastes are discharged, or are proposed to be discharged directly or indirectly to the public sewers, which water or wastes do not meet the standards set out in or promulgated under this Subsection or which in the judgment of the City may have a deleterious effect upon the treatment works, processes, equipment or receiving waters or which otherwise create a hazard to life or constitute a public nuisance, the City may take any or all of the following steps:

4.61.01. Refuse to accept the discharges, or

4.61.02. Require control over the quantities and rates of discharge, or

4.61.03. Require pretreatment to an acceptable condition for the discharge to the public sewer, or

4.61.04. Require payment to cover the added cost of handling and treatment of the wastes.

4.62. **Review and Approval.** The design and installation of the plant and equipment for pretreatment or equalization of wastes flows shall be subject to the review and approval of the City and subject to the requirements of Section 307(b) of the Clean Water Act and all applicable codes, ordinances, and laws.

4.63. **Interceptors.** Grease, oil, and sand interceptors shall be provided when they are necessary or required by the City for the proper handling of liquid wastes containing grease, or any flammable wastes, sand, or other harmful ingredients.

4.64. **Approval of Interceptors.** All interceptors required under this Subdivision shall be of a type and capacity approved by the City and shall be located as to be readily and easily accessible for cleaning and inspection. Such interceptors shall not be required for private living quarters or dwelling units.

4.65. **Inspection by City.** Where preliminary treatment, flow equalizing facilities or interceptors are provided for any water or wastes, they shall be effectively operated and maintained continuously in satisfactory and effective condition by the owner at his expense, and shall be available for inspection by the City at all reasonable times.

4.66. **Dilution.** No user shall increase the use of process water or, in any manner, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in this Code or contained in the National Categorical Pretreatment Standards or any state requirements.

4.67. **Industrial Waste.** When required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control structure, together with such necessary meters and other appurtenances in the building sewer to facilitate observation sampling, and measurement of the wastes. Such structures and equipment when required shall be construed at the owner's expense in accordance with plans approved by the City and shall be maintained by the owner so as to be safe and accessible at all times.

4.68. **Construction of Code.** No statement contained in this Article shall be construed as preventing any special agreement or arrangement between the City of Tyler and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore by the industrial concern, providing that National Categorical Pretreatment Standards and the City's NPDES and/or State Disposal System Permit limitations are not violated.

4.69. **Testing and Measurements.** All measurements, tests, and analyses of the characteristics of water and wastes to which reference is made in this Code shall be determined in accordance with Section 307(b) of the Clean Water Act; the latest edition of Standard Methods for the Examination of Water and Wastewater, and shall be determined at the control structure provided, or upon suitable samples taken at said control structures.

4.69.01. In the event that no special structure has been required, the control structure shall be considered to be the nearest downstream manhole in the public sewer from the point at which the building sewer is connected.

**4.70. Testing and Inspection.** The City may conduct such tests as are necessary to enforce this Code, and employees of the City may enter upon any property for the purpose of taking samples, obtaining information or conducting surveys or investigations relating to such enforcement. Entry shall be made during operating hours unless circumstances require otherwise. In all cases where tests are conducted by the City for the purpose of checking to determine if a previously found violation of this Code has been corrected, the cost of such tests shall be charged to the user and added to the user's sewer charge. In those cases where the City determines that the nature or volume of a particular user's sewage requires more frequent than normal testing, the City may charge such user for the test, after giving the user ten (10) days' written notice of its intention to do so, and the cost thereof shall be added to the user's sewer charge.

**4.71. Accidental Discharges.** Accidental discharges of prohibited waste into the sewage works, directly or through another disposal system, or to any place from which such waste may enter the treatment works, shall be reported to the City Administrator by the persons responsible for the discharge, or by the owner or occupant of the premises where the discharge occurred, immediately upon obtaining knowledge of the fact of such discharge.

**4.72. New Connections.** Any new connection(s) to the sanitary sewer system shall be prohibited unless sufficient capacity is available in all downstream facilities including, but not limited to capacity for flow, BOD5, and Suspended Solids, as determined by the Superintendent.

**4.73. Interference with Operation.** No unauthorized person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the City.

**4.74. Damage to Property.** No person(s) shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is part of the wastewater facilities. Any person violating this provision shall be subject to immediate arrest under the charge of a misdemeanor.

4.75- 4.79. **Reserved.**

**4.80. Municipal Gas Utility System**

**4.81. Connections.** No connection shall be made to the gas system in the City of Tyler without a written authorization received from the office of the City Administrator. The City Administrator shall not issue an authorization for a connection until the administrator has received the appropriate utility deposit

as set by the City Council by resolution from time to time. The utility deposit shall secure the payment of all utility services, including water, sewer, garbage, electricity, gas, or other utilities provided by the City as well as any penalties, late charges, damages, or other expenses associated with any such utilities.

4.82. **Connection Fee.** The City may charge a fee for connection to the gas utility in an amount as set by the City Council by resolution from time to time, as may be set forth further in Chapter 18 of this Code.

4.83. **Approval Required.** No connection shall be made to the City gas service unless the physical connection has been approved by the authorized and designated municipal employee at the time of connection. This approval shall be in addition to the authorization to connect required from the Office of the City Administrator.

4.84. **Disconnection.** The gas supply to any user may be shut off pursuant to City policies for disconnection upon such notice as the council may from time to time determine. The supply may be shut off at any time without notice in the event of an emergency or in the event there is a danger to the gas system or its integrity.

4.85. **Meter Required.** All gas drawn from the gas mains of the City of Tyler shall be metered. No person shall tamper with, alter, remove, or replace a meter without specific authorization from the City to do so.

4.86. **Meters.** The meters utilized to meter gas in the City shall be classed as:

- a) small, those meters having a class 250 diaphragm or less;
- b) medium, those meters having a class 400 to 675 diaphragm; and
- c) large, constituting those meters having a class 1,000 to 23,000 diaphragm.

4.87. **Access Charge.** That all Owners or Businesses who have previously requested that the City install a natural gas connection to the owner's home or business on the premises but have not yet utilized gas service shall pay a monthly service charge for the availability of such service, the service charge shall be established and may be modified by the Council by a resolution that is set forth in Chapter 18 of this Code.

4.88. **Gas Usage Rates.** The rates to be charged for gas service in the City of Tyler shall consist of two parts, consisting of the following:

4.88.01 The rate for gas service used by the utility shall be the actual cost per CCF of gas purchased by the City (as adjusted by the conversion factors set forth in the following table) and;

4.88.02. A margin for operating expenses of the gas system and debt retirement;

4.88.03. The rate shall be determined on a monthly basis by adding the cost per CCF of gas purchased by the City for the applicable month to the "Margin" for the meter size of the customer. The Margin shall be set by the City Council from time to time by resolution.

Conversion factor table for meter readings:

| <u>METER</u> | <u>FACTOR</u> |
|--------------|---------------|
| 5 SMALL      | 1.1           |
| 6 SMALL      | 1.0           |
| 7 MEDIUM     | 1.1           |
| 8 LARGE      | 1.1           |
| 9 MEDIUM     | 1.7           |
| 12 LARGE     | 1.7           |
| 13 SM MED    | 1.1           |

For any meter sizes not set forth herein, the amount shall be determined from time to time by the City Administrator.

**4.89. Meters to Be Read Monthly.** City personnel shall be responsible for reading the customer's gas meter. No person shall obstruct, damage, impair, or prohibit or prevent access to a meter by City personnel for maintenance or meter reading purposes.

**4.90. Municipal Electric Utility Service.**

**4.91. Connections .** No connection shall be made to the electric distribution system in the City of Tyler without a written authorization received from the office of the City Administrator. The City Administrator shall not issue an authorization for a connection until the administrator has received the appropriate utility deposit as set by the City Council by resolution from time to time.

**4.92. Connection Fee.** The City may charge a fee for connection to the electric utility in an amount as set by the City Council by resolution from time to time, as may be set forth further in Chapter 18 of this Code.

**4.93. Approval Required** No connection shall be made to the City gas service unless the

physical connection has been approved by the authorized and designated municipal employee at the time of connection. This approval shall be in addition to the authorization to connect required from the Office of the City Administrator.

**4.94. Disconnection.** The electric supply to any user may be shut off pursuant to City policies for disconnection upon such notice as the council may from time to time determine. The supply may be shut off at any time without notice in the event of an emergency or in the event there is a danger to the gas system or its integrity.

**4.95. Meter Required** All electricity drawn from the power lines of the City of Tyler shall be metered. No person shall tamper with, alter, remove, or replace a meter without specific authorization from the City to do so.

**4.96. Minimum Charge.** That all Residential or Commercial users who are connected to the City's electric utility service, but do not utilize electric services shall pay a minimum monthly service charge for the availability of such service, the service charge shall be established and may be modified by the Council by a resolution that is set forth in Chapter 18 of this Code.

**4.97. Electric Rates.** The rates to be charged for electric service in the City of Tyler shall be established from time to time by Resolution of the City Council.

**4.98. Code Requirements.** All wiring, connections, and appurtenances shall be installed and performed strictly in accordance with the National Electric Code. Failure to install or maintain the same in accordance therewith or failure to have or permit required inspections, shall, upon discovery by the City, be an additional ground for termination of electrical service to any consumer.

**4.99. Services.** New or changed service installations shall be made at the expense of the consumer, placed underground where designated by the City, and the meter location shall also be designated by the City (1) temporarily during new construction; (2) temporarily during an emergency to prevent danger to person or property; (3) for a period of not more than seven months when soil conditions make excavation for underground service impractical, or (4) where to require underground service, the consumer has shown that such requirement is unduly burdensome. Placement of services and meters shall be determined by the City.

**4.100. Municipal Utility Billings.** All monthly charges associated with the gas, electric, sewer, garbage and water utility service shall be billed on the monthly utility bill applicable for the premises in accordance with the City policy for such utility service billing.

**4.101. Delinquent Utility Bills, Shut-off, Property Lien & Cold Weather Rule..**

**4.101.01.** The City shall endeavor to collect delinquent utility accounts promptly. In any case where satisfactory arrangements for payment have not been made, the City may,

after the procedural requirements of Section 4.101.03 have been complied with, discontinue service to the delinquent customer by shutting off the water at the curb stop.

4.101.02. When water, sewer, electric, garbage and/or natural gas service to any premises has been disconnected, service shall not be restored except upon the payment of all delinquent accounts due plus a fee for disconnection. The fees for disconnection shall be determined by the City Council by resolution, that is provided in Chapter 18.

4.101.03. Water shall not be shut off under Section 4.101 until notice and an opportunity for a hearing have first been given to the occupant of the premises involved. The notice shall be personally served or posted on the premises for a period of 7 days and shall state that if payment is not made before the date stated in the notice, but not less than three (3) days after the date on which the notice is given, the water supply to the premises shall be shut off.

4.101.04 The notice shall also state that the occupant may, before such date, demand a hearing on the matter, in which case the water supply will not be shut off until after the hearing is held. The City Council may, as an alternative, schedule a date, time, and place for hearing and proceed to hearing. If, as a result of a hearing, the City Council finds that the amount claimed to be owing is actually due and unpaid and that there is no legal reason why the water supply to the delinquent customer may not be shut off in accordance with this code, the City may immediately order the shut off of the water supply to the premises.

4.101.05. If disconnection affects the primary heat source for a residential customer during the period between October 15<sup>th</sup> and April 15<sup>th</sup>, the Laws of Minnesota pertaining to Cold Weather Disconnection of Municipal Utilities shall be followed.

4.101.06. Each and every utility service charge levied by and pursuant to the Tyler City Code of 2006 is hereby made a lien upon the lot or premises served.

**4.102. Collection with Taxes.** Whether or not the city has initiated action to shut off services, for water, sewer, electricity, garbage, and/or natural gas supply, all delinquent accounts, which are on September 30 of each year more than thirty (30) days past due and having been properly mailed to the occupant or owner of the premises, shall be certified by the City Administrator, who shall prepare an assessment roll each year providing for assessment of the delinquent amounts against the respective properties served. The assessment roll shall be delivered to the Council for adoption on or before October 1 of each year. Upon such adoption, the City Administrator shall certify the assessment roll to the County Auditor for collection along with taxes.

**4.103. Owner Liable.** The owner of the premises shall be liable to pay for the service to such premises, and the service is furnished to the premises by the City only upon the condition that the owner

of the premises is liable therefore to the City.

**4.104. Assessments.** Nothing in this Code shall be held or construed as in any way stopping or interfering with the right of the City to levy as taxes or assessments against any premises affected any delinquent or past due sewer service charges.

**4.105. Civil Action.** As an alternative to levying a lien, the City may, at its discretion, file suit in a civil action to collect such amounts as are delinquent and due against the occupant, owner, or user of the real estate, and shall collect as well all attorney's fees incurred by the City in filing the civil action. Such attorney's fees shall be fixed by order of the court.

**4.106 to 4.107. Reserved.**

**4.108. Municipal Service Disruptions.** In no event with the City be responsible for direct or indirect damages caused by disruptions in the service of any municipal utility whether the same be a complete or partial interruption, including but not limited to low or high voltages or pressure, line blockages, or other fluctuations in the delivery of services.

**4.109. Ownership of Municipal Utilities.** Ownership of all municipal utilities plants, lines, mains, extensions, and appurtenances thereto shall be and remain in the City, and no person shall own any part or portion thereof. Provided, however, that private facilities and appurtenances constructed on private property are not intended to be included in municipal ownership.

**4.110. Penalties.** Any person found to be violating the provisions of this Chapter 4 of the Tyler City Code shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding \$1,000.00 for each such violation or incarcerated for a period of not more than ninety (90) days or both. Each day on which such violation shall continue shall be deemed as a separate offense.

**4.111. Expenses.** Any person violating any of the provisions of this Chapter 4 fo the Tyler City Code shall become liable to the City for any expense, loss or damage occasioned by the City by reason of such violation.

**4.112. Validity.** The validity of any section, subdivision, clause, sentence or provision of this Code shall not affect the validity of any part of this Code which can be given effect without such invalid part or parts.

# Memo

**To:** Tyler City Council  
**From:** Robert Wolfington - City Administrator  
**Date:** March 7, 2016  
**Re:** Item G - East River Line Agreement

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## **Action Requested**

Vote on a resolution approving the agreement for network transmission service between the City of Tyler and East River Power Cooperative, Inc.

## **Background**

East River Power Cooperative is working on a powerline project that goes from Amiret to Tyler. The power line would include a half mile extension that would fall under the City of Tyler. East River will be constructing the line and would then give it to the City of Tyler.

This agreement would include maintenance of the line from East River.

This line is an essential part of service into Tyler and should result in an improvement to the over-all service to the area.

## **Attachment**

- Resolution
- Agreement

RESOLUTION NO. \_\_\_\_\_

SUBJECT: A RESOLUTION APPROVING THE AGREEMENT FOR NETWORK TRANSMISSION SERVICE BETWEEN THE CITY OF TYLER AND EAST RIVER ELECTRIC POWER COOPERATIVE, INC.

WHEREAS, East River Electric Power Cooperative, Inc. (East River) has proposed an Agreement for Network Transmission Service and associated exhibits (hereinafter called "Agreement") between the City of Tyler, State of South Dakota, and said Cooperative; and

WHEREAS, said Agreement has been presented to the City Council of the City of Tyler for approval; and

WHEREAS, the City Council of the City of Tyler has had opportunity to review the provisions of the Agreement; and

WHEREAS, the City Council for the City of Tyler finds and determines that the execution of the Agreement is to the advantage and best interest of the City;

NOW, THEREFORE, BE IT RESOLVED, that the Agreement between the City of Tyler and East River is hereby approved, and the Mayor is hereby authorized and directed to execute said Agreement on behalf of the City of Tyler and that the City Finance Officer attest the Mayor's signature.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF TYLER

By: \_\_\_\_\_  
Mayor

(CITY SEAL)



ATTEST:

\_\_\_\_\_  
City Finance Officer

AGREEMENT FOR NETWORK TRANSMISSION SERVICE  
BETWEEN  
EAST RIVER ELECTRIC POWER COOPERATIVE, INC.  
MADISON, SOUTH DAKOTA  
AND  
TYLER, SOUTH DAKOTA

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between East River Electric Power Cooperative, Inc. ("East River"), P.O. 227, Madison, South Dakota 57042, a cooperative corporation incorporated under the laws of the State of South Dakota, and the City of Tyler, ("Municipality"), 230 North Tyler Street, Tyler, Minnesota 56178, a municipal corporation of the State of Minnesota.

**WITNESSETH:**

WHEREAS, the Municipality owns and operates an electric power distribution system and has entered into agreements with the United States of America, acting through the Department of Energy's Western Area Power Administration (Western) and Heartland Consumers Power District (Heartland) for the purchase of electric power and energy; and

WHEREAS, Western and Heartland are Transmission Customers in the Southwest Power Pool (SPP) and have entered into Network Operating Agreements with East River and SPP for use of the transmission system transferred to the functional control of SPP (SPP Transmission System); and

WHEREAS, Western and Heartland have executed Network Integrated Transmission Service Agreements with SPP for delivering electric power and energy across the SPP Transmission System for the Municipality; and

WHEREAS, East River has transferred functional control of a portion of its transmission system to SPP; and

WHEREAS, the portion of the East River transmission system and facilities not transferred to the functional control of SPP (East River Transmission System) will be used to provide Network Transmission Service to the Municipality; and

WHEREAS, the Municipality desires to enter into an agreement with East River for Network Transmission Service to receive over and through the East River Transmission System electric power and energy purchased from the Municipality's electric power suppliers in such amounts as are needed to meet the total requirements of the Municipality;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the parties agree as follows:

1. SERVICE TO BE FURNISHED BY EAST RIVER AND RECEIVED BY THE MUNICIPALITY

East River shall deliver to the Municipality and the Municipality shall receive over the East River Transmission System the Municipality's entire electric power and energy requirements.

2. NETWORK TRANSMISSION SERVICE TO BE FURNISHED BY EAST RIVER

East River shall furnish the transmission capacity and other related facilities as currently set forth in Exhibit A, which transmission capacity and facilities are necessary to deliver the electric power and energy requirements of the Municipality.

3. FACILITIES TO BE FURNISHED BY MUNICIPALITY

The Municipality shall own, operate and maintain, the facilities and equipment set forth in Exhibit B which facilities and equipment are necessary to take electric power and energy from the East River Transmission System. The facilities described in Exhibit B shall at all times remain under the sole control of the Municipality and the Municipality shall be responsible for the operation, replacement, repair and maintenance of such facilities.

4. CHARACTER OF SERVICE

The electric power and energy delivered by East River to the Municipality shall be three phase alternating current at a nominal frequency of sixty (60) hertz and at the nominal voltage of sixty nine thousand (69,000) volts. If due to the operating requirements of the East River Transmission System, or if directed by SPP, East River may change the delivery voltage to the Municipality.

The Municipality shall provide such equipment as may be required to maintain a power factor: 1) between ninety-five percent (95%) lagging and ninety-five percent (95%) leading at all times, or 2) as required by SPP, whichever is more restrictive.

5. POINT(S) OF DELIVERY

The point(s) of delivery where the East River Transmission System connects to the Municipality's electric system are set forth in Exhibit A.

6. REQUIREMENTS FOR OPERATION OF MUNICIPALITY'S SYSTEM

The Municipality shall construct, operate and maintain its electric facilities in a manner which will not interfere with the operations of the East River Transmission System or the SPP Transmission System from which electric power and energy is delivered to the Municipality and which will coordinate with the protective relaying and other protective facilities on said system and the SPP Transmission System.

East River may discontinue delivering electric power and energy to the Municipality, if after reasonable notice by East River, the Municipality fails to eliminate any unsatisfactory condition on its system, which condition interferes with or may interfere with any delivery of electric power and energy to the Municipality, to other customers of East River, or with the operation of the SPP Transmission System.

7. SCHEDULE OF RATES

The Municipality shall pay East River for Network Transmission Service provided in accordance with the rates, charges and conditions set forth in Exhibit C.

8. TERM OF AGREEMENT

This Agreement shall become effective on January 1, 2016, and shall remain in effect through December 31, 2032, unless the parties mutually agree to extend the Agreement.

9. BILLING

East River will bill the Municipality as set forth in Exhibit C for Network Transmission Service for the electric power and energy delivered to the Municipality during the billing period.

10. METERING

The metering equipment set forth in Exhibit B shall provide a continuous record of the thirty (30) minute integrated total real and reactive demand and corresponding real and reactive energy delivered during each billing period throughout the term of this Agreement. Such metering equipment shall be accessible at all times and such records of the measured electric power and energy will be available at all reasonable times to authorized agents of East River.

The metering equipment used in measuring the electric power and energy furnished hereunder shall be tested and calibrated by the Municipality or the owner, if other than the Municipality, per the meter testing procedures and intervals of SPP. If any of said metering equipment has a calibration

error of more than two percent (2%), it shall be adjusted to an accurate condition or new metering equipment shall be substituted.

The Municipality or the owner will provide for a special test and calibration of the metering equipment at the request of East River. If the calibration error is not more than two percent (2%) the expense of the test and calibration will be reimbursed to the Municipality or the owner by East River. If the calibration error is more than two percent (2%) the metering equipment shall be adjusted to an accurate condition or new metering equipment shall be substituted by the Municipality or the owner.

Any metering equipment tested and found to have a calibration error of not more than two percent (2%) shall be considered to be commercially correct and accurate insofar as correction of billing is concerned. If, as a result of any test, any metering equipment is found to have an error in registration in excess of two percent (2%) either too high or too low, then the readings of such metering equipment previously taken for billing purposes shall be corrected according to the percentage of inaccuracy so found, but no such correction shall extend beyond the previous meter test or six months prior to the current billing period, whichever time period is shorter.

For any period that any metering equipment is found to have failed to register properly for a reason other than improper calibration of the metering equipment, an equitable estimate and charge shall be made according to the best information obtainable for the electric power and energy delivered during the period in question.

## 11. UNCONTROLLABLE FORCES

Neither party shall be considered to be in default in respect of any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces. The term uncontrollable forces being deemed for the purpose of this Agreement to mean cause beyond the control of the party affected, and which by the exercise of due diligence, the party affected is unable to effect or overcome, including but not limited to acts of God, failure of equipment or facilities or inability to obtain or ship materials or equipment because of similar causes on suppliers or carriers, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, terrorism, labor disputes, labor disturbances or strikes, sabotage, restraint by court or public authority, accident or other causes or acts beyond the control of the party affected which by the exercise of due diligence and foresight such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall be prompt and diligent in removing and overcoming the cause or causes of such interruption. Nothing contained in this Agreement, however, shall be construed to require either party to prevent or settle strikes or labor negotiations against its will.

## 12. CONTINUITY OF SERVICE

East River agrees to operate and maintain the East River Transmission System in a manner that will deliver electric power and energy to the Municipality from its electric power and energy suppliers within reasonable industry standards.

East River does not guarantee that the flow of electric power and energy required to be delivered hereunder will be free from interruption or impairment. The interruption or impairment of the flow of such electric power and energy occasioned by any of the causes mentioned in the foregoing article (Uncontrollable Forces) or for the purpose of making alterations or repairs shall not constitute a breach of contract on the part of either party and neither party shall be liable for damages resulting therefrom. In case of interrupted or impaired service, each party will be diligent in notifying the other party and removing the causes of interrupted or impaired service on their respective system.

Notwithstanding the preceding paragraph, the parties agree that interruptions in service necessitated by causes other than uncontrollable forces shall be scheduled at the mutual convenience of the parties.

## 13. LIABILITIES

The electric power and energy delivered by East River becomes the property of the Municipality after it passes the point(s) of delivery and East River shall not, in any event, be liable for loss or damage to any person or property whatsoever resulting from the use, misuse or presence of said electric power and energy on the Municipality's premises or elsewhere after it passes the point(s) of delivery to the Municipality and the Municipality agrees to indemnify and hold East River harmless by reason of any claims that may be made against East River for any such alleged loss or damage. In no event shall the Municipality have the right to any claim or action for special or consequential damages for the failure, however caused, of East River to deliver power as provided herein.

The Municipality shall not be liable or responsible for any torts, debts, liabilities, or negligence of East River and East River shall not be liable or responsible for any torts, debts, liabilities or negligence of the Municipality.

Nothing contained in this Agreement shall be construed to render East River liable for any claims, demands, costs, losses, causes of action, damages or liability of whatsoever kind or nature, arising out of or resulting from the construction, operation or maintenance of the Municipality's electric distribution system.

14. COORDINATION OF PLANNING

The Municipality agrees to make every reasonable effort to notify East River in writing at least twenty four (24) months prior to any planned changes, additions or modifications to their facilities that may significantly affect the operation of or require the addition or modification to the facilities of East River.

15. RIGHT-OF-WAY

Whenever it is necessary for East River to construct electric transmission lines and facilities for the delivery of electric power and energy to the Municipality's facilities the Municipality shall grant at no cost to East River the right, privilege, and easement of right-of-way mutually acceptable to the parties hereto to construct, operate, and maintain, together with rights of ingress and egress, electric lines and facilities for delivery of electric power and energy hereunder over and across land owned by the Municipality or land over which it may grant such permission.

16. EXHIBITS MADE A PART OF AGREEMENT

The following Exhibits A, B, and C are made a part of this Agreement:

- Exhibit A - Point(s) of Delivery and Facilities to be Furnished by East River
- Exhibit B - Facilities to be Furnished by Municipality
- Exhibit C - Rates and Charges

17. PREVIOUS CONTRACTS OR AGREEMENTS

Upon the effective day of this Agreement, all previous contracts, agreements or amendments and supplements entered into between the Municipality and East River regarding transmission service provided by East River to the Municipality shall be terminated, voided, and of no effect.

18. INSTRUMENT CONTAINS ENTIRE AGREEMENT

This instrument contains the entire agreement between the parties and no statement, promises or inducements made by any party or agent or officer of either party, which is not contained in this written Agreement, shall be valid or binding. This Agreement and its terms may only be terminated, amended, modified, supplemented, or altered by the mutual agreement in writing signed by the parties; provided, however, the Rates and Charges set forth in Exhibit C may be updated in accordance with that Exhibit.

19. ASSIGNEES AND SUCCESSORS

This Agreement shall inure to the benefit of and be binding upon the assignees and successors of the respective parties. Any reference to Western, SPP, Heartland, Municipality, or East River shall apply to any successor organizations.

20. RESOLUTIONS ATTACHED

Certified copies of the Resolution adopted by the respective parties authorizing the execution of this Agreement are attached.

21. SEVERABILITY

Should any part, term or provision of this Agreement be by a court of competent jurisdiction decided to be illegal or in conflict with any applicable law, the validity of the remaining portions or provisions shall not be affected thereby.

22. ASSIGNMENT

All covenants and agreements contained in this Agreement shall inure to the benefit of the parties and their respective successors and assigns; provided, however, that no party may transfer or assign this Agreement, its interest or rights under this Agreement without the consent of the other party except in the case of the transfer or assignment of a party's interest to any entity into which or with which the party making the transfer may be merged or consolidated.

23. NOTICES

Any notice, demand or request required or authorized by this Agreement shall be deemed properly given if electronically transmitted, or mailed, postage prepaid, to the parties at the address designated in this Agreement.

24. WAIVERS

Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter.

25. GOVERNING LAWS

This Agreement, in all respects, shall be governed by and construed in accordance with the laws of the State of South Dakota.

IN WITNESS WHEREOF, the parties hereto have caused this amended Agreement to be executed the day and year first above written.

EAST RIVER ELECTRIC POWER  
COOPERATIVE, INC.

BY: \_\_\_\_\_  
James Ryken  
Title: President

(corporate seal)

ATTEST:

BY: \_\_\_\_\_  
Ervin Fink  
Title: Secretary

CITY OF TYLER

BY: \_\_\_\_\_  
Kurt Thomsen  
Title: Mayor

(city seal)

ATTEST:

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## EXHIBIT A

### Point(s) of Delivery and Facilities to be Furnished by East River

1. Facilities. Except as may be provided in Exhibit B of this Agreement, East River shall construct, own, operate and maintain the necessary sixty-nine thousand (69,000) volt transmission line(s) and associated facilities connecting the East River Transmission System to the point(s) of delivery of the Municipality which transmission system is capable of delivering electric power and energy to the Municipality according to Section Four (4) (Character of Service) of this Agreement. It is understood and agreed by the parties hereto that East River is not dedicating to the Municipality any portion of its transmission system to fulfill the terms and conditions of this Agreement, or to provide any transmission services or facilities for electrical generation interconnected with the Municipality's electric system.
2. Diagrams. A one-line diagram labeled Attachment 1 to Exhibit A identifying the point(s) of delivery and connection to the Municipality with the East River Transmission System is attached hereto and made a part hereof.

(Signatures on Page 2 of Exhibit A to Agreement)

IN WITNESS WHEREOF, the parties hereto have caused this Exhibit to be executed for a term not to exceed the term of the Agreement to which this Exhibit is hereby made a part of.

Date: \_\_\_\_\_

EAST RIVER ELECTRIC POWER  
COOPERATIVE, INC.

BY: \_\_\_\_\_  
James Ryken  
Title: President

(corporate seal)

ATTEST:

BY: \_\_\_\_\_  
Ervin Fink  
Title: Secretary

Date: \_\_\_\_\_

CITY OF TYLER

BY: \_\_\_\_\_  
Kurt Thomsen  
Title: Mayor

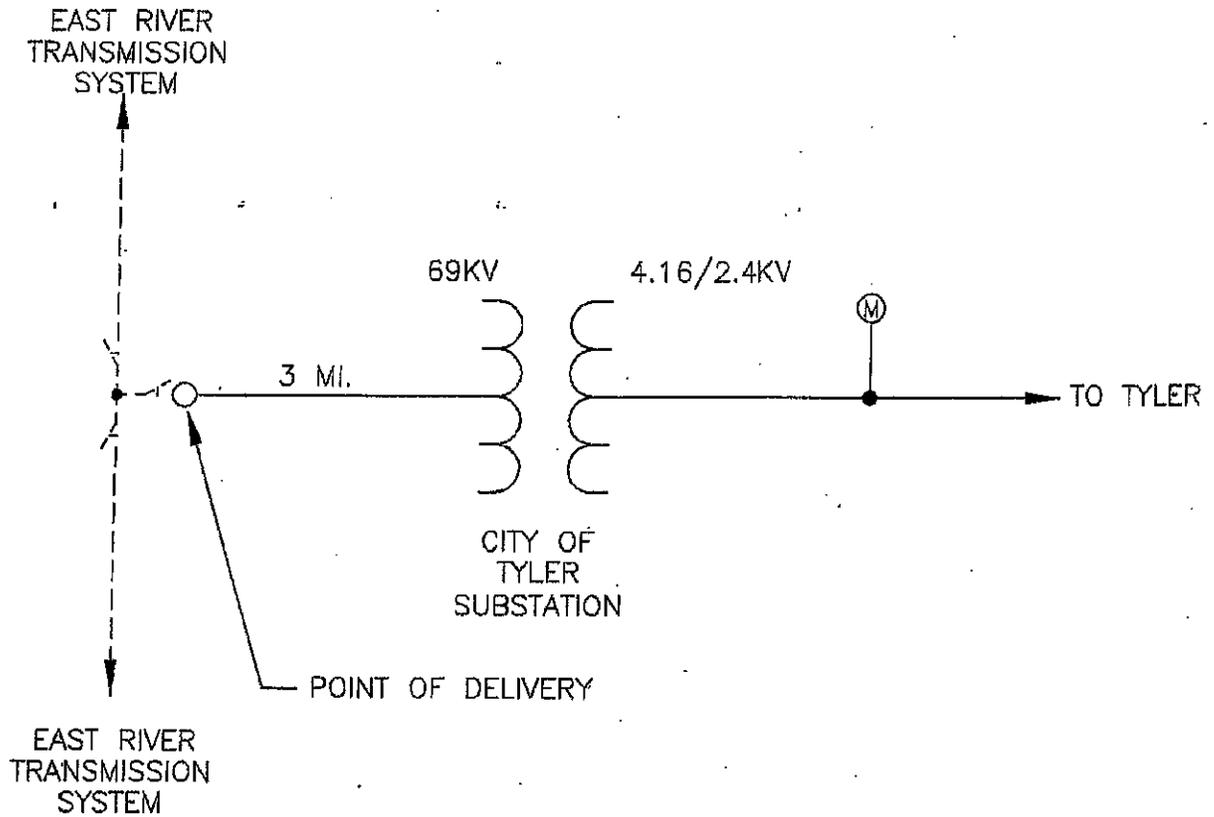
(city seal)

ATTEST:

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



CITY OF TYLER AGREEMENT  
 ATTACHMENT 1 TO  
 EXHIBIT A



LEGEND

EREPC Lines -----  
 City of Tyler Lines =====

NOTE: THIS ONE-LINE DIAGRAM  
 REPRESENTS ELECTRICAL PATHS  
 AND POINT(S) OF DELIVERY.

|             |
|-------------|
| DATE:       |
| 1-12-16     |
| DRAWN BY:   |
| D.A.F       |
| SCALE:      |
| NONE        |
| PLOT SCALE: |
| 1:1         |



**East River**  
 ELECTRIC

A Touchstone Energy Cooperative 

|             |        |               |
|-------------|--------|---------------|
| PCP FILE:   | SHEET  | DRAWING NO:   |
| ERTYPLT.ctb | 1 OF 1 | FGEK1492TYLER |

## CITY OF TYLER INTERCONNECTION

Plot Date: January 12, 2016 Plot Time: 1:14:09 PM File Name: Y:\Drawings\Farms & Graphs\FGEK1492TYLER.dwg Layout: Layout1 By: Michele Whitlock

## EXHIBIT B

### Facilities to be Furnished by Municipality

1. Municipality's Facilities. The Municipality shall own, operate and maintain from its point of delivery approximately three (3) miles of sixty-nine thousand (69,000) volt transmission line and its distribution system and related facilities, all of which are capable of receiving electric power and energy from the East River transmission system in accordance with the terms of this Agreement and in accordance with acceptable industry practices. These facilities are identified and labeled on the one-line diagram, included as Attachment 1 to Exhibit A of this Agreement.
2. Metering. The Municipality shall furnish or cause to be furnished, installed, maintained and read, the meter or meters and associated equipment of standard make necessary to measure and record the electric power and energy, including reactive power and energy, delivered to the Municipality as provided herein. Such metering equipment and associated facilities shall be located on the low-voltage side of the Municipality's substation at a location suitable to East River and as identified in the one-line diagram included as Attachment 1 to Exhibit A of this Agreement.

(Signatures on Page 2 of Exhibit B to Agreement)

IN WITNESS WHEREOF, the parties hereto have caused this Exhibit to be executed for a term not to exceed the term of the Agreement to which this Exhibit is hereby made a part of.

Date: \_\_\_\_\_

EAST RIVER ELECTRIC POWER  
COOPERATIVE, INC.

BY: \_\_\_\_\_

James Ryken

Title: President

(corporate seal)

ATTEST:

BY: \_\_\_\_\_

Ervin Fink

Title: Secretary

Date: \_\_\_\_\_

CITY OF TYLER

BY: \_\_\_\_\_

Kurt Thomsen

Title: Mayor

(city seal)

ATTEST:

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## EXHIBIT C

### Rates and Charges

1. Rate. The Municipality shall pay to East River for Network Transmission Service set forth in this Agreement a rate of \$1.45 per KW per month for the entire adjusted quantity of electric power delivered to the Municipality over the East River Transmission System. For the purposes of this Agreement, the term "adjusted quantity" shall mean the actual meter reading increased by the amount of the transformer loss established in the Power Supply Contract between the Municipality and Western.
2. Losses. The Municipality shall provide or cause to be provided by its power suppliers electric power and energy in amounts equal to one and one half hundredths (1.015) times the adjusted quantities of electric power and energy delivered to compensate for East River system-wide average transmission losses. Such losses shall be reflected in the meter data submittals provided by the Municipality's power suppliers to SPP for settlement purposes. Transmission loss calculations shall be reviewed annually by East River and may be adjusted to reflect any change in transmission losses.

The Municipality shall promptly notify East River of any proposed changes in the calculation of the transformer losses either proposed or agreed to between the Municipality and Western.

3. Rate Adjustments. The rates and charges for Network Transmission Service furnished hereunder shall be reviewed by East River annually and, if necessary, East River shall revise such rates and charges to produce revenues sufficient to meet the cost of service provided by East River. East River shall cause a notice in writing, or by electronic delivery, to be given the Municipality setting forth proposed revisions of rates and/or charges not later than November 1<sup>st</sup> of each year, with the effective date thereof the first day of the first January immediately following such notice. Any adjustment to the rates which entitles the Municipality to the services described by this Agreement shall be consistent with adjustments made to other customers receiving Network Transmission Service from East River under similar terms and conditions. The Municipality agrees that the rates and charges from time to time established by East River shall be deemed to be substituted for the rates and charges herein provided.

Nothing contained herein shall prohibit or limit East River in modifying its rates or adding additional provisions to its rates and charges to compensate for increased or modified taxes or to add charges for noncompliance with the power factor limits set forth in Section Four (4) (Character of Service) of this Agreement.

The Municipality further agrees to pay for the Network Transmission Service provided by East River hereunder after the effective date of any such revisions at such revised rates and charges.

4. Billing Procedure. The Municipality shall furnish or cause to be furnished to East River one (1) copy of bills submitted by its power suppliers within five (5) days after receipt of the same. East River shall submit its bill(s) for the services provided hereunder to the Municipality within ten (10) days from the receipt of such information. Payment shall be due and payable by the Municipality on the tenth (10th) day of the month immediately succeeding the date each bill is submitted. If such due date falls on a Saturday, Sunday or holiday, the bills shall be due on the next day following such Saturday, Sunday or holiday.
  
5. Nonpayment of Bills. If the Municipality fails to pay any bill when due as provided in this Exhibit, a charge of one and one half percent (1.5%) of the amount unpaid shall be added thereto for each succeeding billing period (or portion thereof) so long as the same or any portion thereof remains unpaid. East River shall have the right upon not less than fifteen (15) days advance written notice to discontinue delivery of electric power and energy to the Municipality for nonpayment of bills and to refuse to resume such service so long as any part of the amount due remains unpaid. The rights given herein to East River shall be in addition to all other remedies available to East River, either at law or in equity, for the breach of any of the provisions hereof. No such discontinuance shall relieve the Municipality from any of its obligations under this Agreement, including the obligation to make payments when due.

(Signatures on Page 3 of Exhibit C to Agreement)

IN WITNESS WHEREOF, the parties hereto have caused this Exhibit to be executed for a term not to exceed the term of the Agreement to which this Exhibit is hereby made a part of.

Date: \_\_\_\_\_

EAST RIVER ELECTRIC POWER  
COOPERATIVE, INC.

BY: \_\_\_\_\_  
James Ryken  
Title: President

(corporate seal)

ATTEST:

BY: \_\_\_\_\_  
Ervin Fink  
Title: Secretary

Date: \_\_\_\_\_

CITY OF TYLER

BY: \_\_\_\_\_  
Kurt Thomsen  
Title: Mayor

(city seal)



ATTEST:

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# Memo

**To:** Tyler City Council  
**From:** Robert Wolfington - City Administrator  
**Date:** March 7, 2016  
**Re:** Item H - Airport Grant

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## **Action Requested**

Approve operation grant

## **Background**

City Clerk Barb Powell presented me with an airport maintenance and operation grant contract for the Municipal Airport. This grant would help in the expense of maintaining the municipal airport.

## **Attachment**

- Grant Contract



**STATE OF MINNESOTA  
AIRPORT MAINTENANCE AND OPERATION GRANT CONTRACT**

**State Project Number (S.P.): A4103-MO16**

**State Project Number (S.P.): A4103-MO17**

This contract is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and City of Tyler acting through its Tyler Municipal Airport acting through its City Council ("Recipient").

**RECITALS**

1. Minnesota Statutes §§360.015 and 360.305 authorize State to provide financial assistance to airports for maintenance and operation activities.
2. Recipient owns, operates, or controls an airport ("Airport") in the state system, and Recipient desires financial assistance from the State for maintenance and operation activities for State Fiscal Year 2016 and State Fiscal Year 2017.
3. Recipient assures the State that Recipient will operate and maintain the airport according to the duties and obligations set forth in this Contract.

**CONTRACT TERMS**

**1. Term of Contract and Survival of Terms**

- 1.1 **Effective Date:** This contract will be effective on the date State obtains all required signatures under Minnesota Statutes §16C.05, subdivision 2.
- 1.2 **Expiration Date:** This contract will expire on June 30, 2017 or when all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms:** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this contract, including, without limitation, the following clauses: 9. Indemnification; 10. State Audits; 11. Government Data Practices; 13. Governing Law, Jurisdiction and Venue; and 14. Data Disclosure.

**2. Recipient's Duties**

- 2.1 Recipient will operate and maintain the Airport in a safe, serviceable manner for aeronautical purposes only for the use and benefit of the public.
- 2.2 The Recipient will keep the runway and the area around the lights mowed at the Airport. The grass must be mowed at least 7 feet beyond the lights, and the grass must not exceed 6 inches in height on the landing area.
- 2.3 If the Airport remains operational during the winter months, the Recipient will keep at least one runway, associated taxiway, and apron area cleared of snow and ice to the same priority as arterial roads. Snow banks must be limited in height so that aircraft wings, engines, and propellers will clear them. Landing strip markers and/or lights must remain visible.
- 2.4 If the State contracts for the periodic paint striping of the Airport's runways and taxiways during the term of this Contract, the Recipient will cooperate with the marking operation. The Recipient must coordinate seal coat pavement maintenance projects with the State to maximize the pavement marking life.
- 2.5 The Recipient will allow a representative of the State's Office of Aeronautics access to any area of the Airport necessary for the purpose of periodic inspections.

**3. Recipient's Assurances**

- 3.1 In accordance with Minnesota Statutes § 360.305, subdivision 4, Recipient assures the State that Recipient will operate and maintain the Airport in a safe, serviceable manner for aeronautical purposes only for the use and benefit of the public.
- 3.2 Recipient represents and warrants that Recipient has established a zoning authority for the Airport, and such authority has completed, or is in the process of and will complete, with due diligence, an airport zoning ordinance in accordance with Minnesota Statutes §§ 360.061 to 360.074.

**4. Third-Party Contracting**

- 4.1 Recipient will comply with all applicable local, state, or federal laws, regulations, policies and procedures in the procurement of goods and services funded in whole or in part under this Contract.

**5. Consideration and Payment**

- 5.1 **Consideration.** State will pay for all eligible maintenance and operation costs incurred by Recipient under this Contract as follows:

- 5.1.1 **Basis.** Recipient will be paid for 75% of the eligible maintenance and operation costs not reimbursed by any other source, not to exceed \$5,598.00 ("Base Amount") of state aid for each state fiscal year.
- 5.1.2 **Total Obligation.** The total obligation of State for all compensation and reimbursements to Recipient under this contract will not exceed \$11,196.00 [Total for both fiscal years] (\$5,598.00 for FY2016 and \$5,598.00 for FY2017).

**5.2 Payment**

- 5.2.1 The Recipient must submit a reimbursement request of its eligible costs to the Director of the Office of Aeronautics on a quarterly basis. The State's Office of Aeronautics will supply the reimbursement request forms which Recipient must submit. Reimbursement requests must be submitted according to the following schedule:

- In October, No later than November 15, for the period July 1 through September 30.
- In January, No later than February 15, for the period October 1 through December 31.
- In April, No later than May 15, for the period January 1 through March 31.
- In July, No later than August 15, for the period April 1 through June 30.

The State reserves the right to reject items that may not be eligible for reimbursement.

**6. Conditions of Payment**

- 6.1 All services provided by Recipient under this contract must be performed to State's satisfaction, as determined at the sole discretion of State's Authorized Representative and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations, including business registration requirements of the Office of the Secretary of State. Recipient will not receive payment for work found by State to be unsatisfactory or performed in violation of federal, state or local law. In addition to the foregoing, Recipient will not receive payment for Airport's failure to pass periodic inspections by a representative of the State's Office of Aeronautics.

**7. Authorized Representatives**

- 7.1 **State's Authorized Representative.** State's Authorized Representative will be:

Jenny Bahneman, Grants Specialist  
222 East Plato Boulevard  
Saint Paul, Minnesota 55107-1618  
651-234-7240

State's Authorized Representative or his /her successor, will monitor Recipient's performance and has the authority to accept or reject the services provided under this contract. If the Recipient's duties are performed in a satisfactory manner, the State's Authorized Representative will certify acceptance on each reimbursement request submitted for payment.

**7.2 Recipient's Authorized Representative.** Recipient's Authorized Representative will be:

**Barb Powell, City Clerk**  
**City of Tyler, 230 North Tyler Street, Tyler, MN 56178**  
**(507) 247-5556**  
**depreg148@hotmail.com**

If Recipient's Authorized Representative changes at any time during this contract, Recipient must immediately notify State.

**8. Assignment, Amendments, Waiver and Contract Complete**

- 8.1 Assignment.** Recipient may neither assign nor transfer any rights or obligations under this contract without the prior consent of State and a fully executed Assignment Contract, executed and approved by the same parties who executed and approved this contract, or their successors in office.
- 8.2 Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.
- 8.3 Waiver.** If State fails to enforce any provision of this contract that failure does not waive the provision or State's right to subsequently enforce it.
- 8.4 Contract Complete.** This contract contains all prior negotiations and agreements between State and Recipient. No other understanding regarding this contract, whether written or oral, may be used to bind either party.

**9. Indemnification**

- 9.1** In the performance of this contract by Recipient, or Recipient's agents or employees, Recipient must indemnify, save and hold State, its agents, and employees harmless from any and all claims or causes of action, including reasonable attorney's fees incurred by State, to the extent caused by Recipient's: 1) intentional, willful or negligent acts or omissions; 2) breach of contract or warranty; or 3) breach of the applicable standard of care. The indemnification obligations of this section do not apply if the claim or cause of action is the result of State's sole negligence. This clause will not be construed to bar any legal remedies Recipient may have for State's failure to fulfill its obligation pursuant to this contract.

**10. State Audits**

- 10.1** Under Minnesota Statutes §16C.05, subdivision 5, Recipient's books, records, documents and accounting procedures and practices relevant to this contract are subject to examination by State, State's Auditor or the Legislative Auditor, as appropriate, for a minimum of six years from the expiration date of this contract.

**11. Government Data Practices**

- 11.1 Government Data Practices.** Recipient and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by State under this contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Recipient under this contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either Recipient or State. If Recipient receives a request to release the data referred to in this Clause, Recipient must immediately notify State and consult with State as to how Recipient should respond to the request. Recipient's response to the request must comply with applicable law.

**12. Workers' Compensation**

- 12.1** Recipient certifies that it is in compliance with Minnesota Statutes §176.181, subdivision 2, pertaining to workers' compensation insurance coverage. Recipient's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

**13. Governing Law, Jurisdiction and Venue**

13.1 Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings arising out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**14. Data Disclosure**

14.1 Under Minnesota Statutes §270C.65, and other applicable law, Recipient consents to disclosure of its social security number, federal employer tax identification number and Minnesota tax identification number, already provided to State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring Recipient to file state tax returns and pay delinquent state tax liabilities, if any, or pay other state liabilities.

**15. Termination and Suspension**

15.1 **Termination by State.** State may cancel this contract at any time, with or without cause, upon 30 days' written notice to Recipient. Upon termination, Recipient will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

15.2 **Termination for Insufficient Funding.** State may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to Recipient. Written notice may be transmitted by electronic means. State is not obligated to pay for any services that are provided after notice and effective date of termination. However, Recipient will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. State must provide Recipient notice of the lack of funding within a reasonable time of State's receiving that notice.

**16. Discrimination Prohibited by Minnesota Statutes §181.59**

16.1 Recipient will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

**THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK**

**STATE ENCUMBRANCE VERIFICATION**

Individual certifies that funds have been encumbered as required by Minnesota Statutes §16A.15 and §16C.05.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

SWIFT Contract (SC) ID No. \_\_\_\_\_

Purchase Order (PO) ID No. \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

(with delegated authority)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**RECIPIENT**

Recipient certifies that the appropriate person(s) have executed Contracts on behalf of Recipient as required by applicable articles, bylaws or resolutions.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MnDOT CONTRACT MANAGEMENT**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**RESOLUTION**

**AUTHORIZATION TO EXECUTE  
MINNESOTA DEPARTMENT OF TRANSPORTATION  
AIRPORT MAINTENANCE AND OPERATION GRANT CONTRACT**

It is resolved by the City of Tyler as follows:

1. That the state of Minnesota Contract Number 1001067,  
"Airport Maintenance and Operation Grant Contract," at the  
Tyler Municipal Airport is accepted.

2. That the \_\_\_\_\_ and \_\_\_\_\_ are  
(Mayor, Chairperson, President, etc.) (Clerk, Auditor, Secretary, etc.)  
authorized to execute this Contract and any amendments on behalf of the  
City of Tyler.

**CERTIFICATION**

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

I certify that the above Resolution is a true and correct copy of the Resolution adopted by the

\_\_\_\_\_  
(Name of the Recipient)

at an authorized meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
as shown by the minutes of the meeting in my possession.

Signature: \_\_\_\_\_  
(Clerk)

CORPORATE SEAL

/OR/

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_