

COST SHARING AGREEMENT

This **COST SHARING AGREEMENT** (“Agreement”) is entered into between the **City of North Richland Hills** (“City”) and **Tyson Prepared Foods North Richland Hills** (“Tyson Foods”), owner of a manufacturing / food processing facility (“Facility”) located in North Richland Hills. City and Tyson are each referred to herein individually as a “party” and collectively as the “parties.”

Whereas, the City Council approved the Tyson 12” and 10” Sanitary Sewer By-Pass Line Project (UT2207) as a part of the 2021-22 Capital Projects Budget on August 16, 2021 (“CIP Project”); and

Whereas, Tyson Foods owns and operates a meat production plant located at 6350 Browning Court in the city of North Richland Hills, Texas; and

Whereas, the flowrate of sanitary sewer outflow from Tyson’s production operations overwhelms the existing gravity sewer main and results in excessive sewer gases in the downstream system in close proximity to residential properties; and

Whereas, as a part of the CIP Project, the City desires to construct improvements to bypass the residential neighborhood by conveying the industrial flow through a larger pipe within an alternate alignment; and

Now therefore, the City and Tyson hereby agree as follows:

1. **Commencement.** This Agreement shall be effective upon the last date of execution by both parties.
2. **Project.** This Agreement is for the public purpose of constructing a sanitary sewer bypass line to convey sanitary sewer flow from the Tyson facility south to Browning Drive, and then along Browning Drive to the city’s existing trunk main in order to eliminate industrial sanitary sewer flow through the adjacent residential subdivision in North Richland Hills (“Project”), such Project being depicted in “**Exhibit A,**” which is attached hereto and incorporated into this Agreement.
3. **City Council Approval.** Prior to any work being done on the Project, the Project shall be approved by the City Council of North Richland Hills. The anticipated completion date of the Project is _____ (“Completion Date”).
4. **Cost Share and Payment.** The anticipated cost for construction of the Project and related expenses shall be \$1,215,300 (“Total Cost”). The Total Cost shall be fully set forth in “**Exhibit B,**” which is attached hereto and incorporated herein.
 - a. Tyson agrees to pay the City the amount of \$50,000 in one lump sum payment for costs and expenses of the Project on or before October 31, 2023 (“Tyson Foods Payment”).
 - b. The City anticipates paying an estimated amount of \$1,200,000.00 for the cost of the Project from funds allocated for the CIP Project (“City Payment”). The final amount of

the City Payment will be determined following finalization of the City's procurement process for the Project.

- c. The City shall be obligated to pay for costs and expenses for the Project in accordance with subsection (b) above. Notwithstanding, in the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Tyson of such occurrence and the City shall have the right to extend the Completion Date or terminate this Agreement on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except the City shall pay the portion of expenses herein agreed upon for which funds have been appropriated up through termination.

5. **Termination.** Except as otherwise authorized herein, this Agreement shall terminate upon completion of the Project, such determination of completion to be made at the City's discretion. In the event City Council fails to approve the Project, and Tyson Foods has already remitted the Tyson Foods Payment to the City, the City shall return the Tyson Foods Payment to Tyson Foods within thirty (30) days of such action taken by the City Council.

6. **Public Information.** Tyson acknowledges that the City is a public entity, subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code (the "Act"), and any information maintained or held by the City is subject to public disclosure under the Act.

7. **Disputes.** If there is any dispute between the parties, the disputing party shall notify the other party in writing within ten (10) business days and the parties shall make a good faith effort, either through email, mail, phone conference, in person meetings, or other reasonable means to resolve any such dispute. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation in Tarrant County, Texas, upon written consent of authorized representatives of both. The mediator shall be agreed to by the parties. Each party shall be responsible for its own expenses, including attorney's fees; however, the parties shall share equally in the costs of the mediation. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute. Notwithstanding the fact that the parties may be attempting to resolve a dispute in accordance with this section, the parties agree to continue all of their respective duties and obligations under this Agreement not affected by the dispute. Either party may, at any time before or during this dispute resolution process, apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests.

8. **Notices.** Notices to the parties shall be in writing and effective when (1) hand delivered; (2) sent by facsimile with electronic confirmation of transmission; or (3) three days after deposit with the United States Postal Service, certified mail, return receipt requested and properly addressed to the intended recipient as indicated below:

To Owner/Developer:
Marte Amrine
Tyson Prepared Foods North Richland Hills
6350 Browning Court
North Richland Hills, Texas 76180
Phone: 817-514-3418
Email: Marte.Amrine@tyson.com

To City:

City of North Richland Hills
Attn: Mark Hindman, City Manager
4301 City Point Drive
North Richland Hills, Texas 76180
Phone: 817-427-6007
Fax: 817-427-6016
Email: mhindman@nrhtx.com

With Copy to (such copy shall not constitute notice):

Maleshia B. McGinnis
City Attorney
4301 City Point Drive
North Richland Hills, Texas 76180
Phone: 817/427-6042
Fax: 817/427-6041
Email: mmcginnis@nrhtx.com

9. **Governing Law.** This Agreement shall be governed by the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought pursuant to this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas.

10. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

11. **Force Majeure.** The parties shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, epidemics, pandemics, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

12. **Assignment.** This Agreement may not be assigned, in whole or in part, without the prior mutual written consent of both parties.

13. **Amendments.** Any amendments to this Agreement must be in writing and signed by an authorized representative of each party.

14. **Counterparts.** This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument. This Agreement may be executed in an electronic format and shall be valid as an original signature.

Signed and agreed on this the _____ day of _____, 2023.

[Signature Page Follows]

**TYSON PREPARED FOODS NORTH
RICHLAND HILLS:**

By: _____
Marte Amrine, Plant Manager

CITY OF NORTH RICHLAND HILLS:

By: _____
Mark Hindman, City Manager

ATTEST:

By: _____
Alicia Richardson
City Secretary/Chief Governance Officer

APPROVED TO FORM AND LEGALITY:

By: _____
Maleshia B. McGinnis
City Attorney

EXHIBIT "A"

Description of the Project:

Construction of a sanitary sewer bypass to route wastewater flow from the Tyson facility to a new, larger sanitary sewer main line in order to support industrial wastewater flow to the city's sewer trunk main via Browning Drive rather than flowing through the adjacent residential subdivision , North Richland Hills.

Tyson 12" and 10" Sanitary Sewer By-Pass Line UT2207



EXHIBIT "B"



OPINION OF PROBABLE CONSTRUCTION COST

PROJECT NAME	Tyson Foods Sanitary Sewer Improvements	DATE	10/31/2022
CLIENT	City of North Richland Hills	GROUP	1112
% SUBMITTAL	90% Design Submittal	PM	Aaron Conine

ESTIMATED BY	QC CHECKED BY	FNI PROJECT NUMBER
Jacob Schababerle	Aaron Conine	NRH21828

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	12-Inch PVC Sanitary Sewer (SDR-26) Open Cut (10' Depth or Less)	500	LF	\$ 180.00	\$ 90,000
2	12-Inch PVC Sanitary Sewer (SDR-26) Open Cut (10' to 15' Depth)	50	LF	\$ 190.00	\$ 9,500
3	12-Inch PVC Sanitary Sewer (SDR-26) Open Cut (25' to 30' Depth)	60	LF	\$ 370.00	\$ 22,200
4	10-Inch PVC Sanitary Sewer (SDR-26) Open Cut (10' Depth or Less)	30	LF	\$ 150.00	\$ 4,500
5	10-Inch PVC Sanitary Sewer (SDR-26) Open Cut (10' to 15' Depth)	340	LF	\$ 185.00	\$ 62,900
6	Trench Safety	980	LF	\$ 2.00	\$ 1,960
7	12-Inch PVC Sanitary Sewer (SDR-26) by Other Than Open Cut	1150	LF	\$ 240.00	\$ 276,000
8	10-Inch PVC Sanitary Sewer (SDR-26) by Other Than Open Cut	40	LF	\$ 180.00	\$ 7,200
9	Connect to Existing Sanitary Sewer Manhole	1	EA	\$ 9,000.00	\$ 9,000
10	4-Foot Diameter Sanitary Sewer Manhole (up to 10' Deep)	4	EA	\$ 12,000.00	\$ 48,000
11	Additional Depth for 4-Foot Diameter Sanitary Sewer Manhole	5	VF	\$ 450.00	\$ 2,250
12	5-Foot Diameter Sanitary Sewer Manhole (up to 10' Deep)	1	EA	\$ 16,600.00	\$ 16,600
13	Additional Depth for 5-Foot Diameter Sanitary Sewer Manhole	14	VF	\$ 490.00	\$ 6,860
14	5-Foot Diameter Sanitary Sewer Drop Manhole (up to 10' Deep)	1	EA	\$ 20,600.00	\$ 20,600
15	Additional Depth for 5-Foot Diameter Sanitary Sewer Drop Manhole	2	VF	\$ 550.00	\$ 1,100
16	5-Foot Diameter Sanitary Sewer Manhole with Watertight Ring and Lid (up to 10' Deep)	4	EA	\$ 19,500.00	\$ 78,000
17	Additional Depth for 5-Foot Diameter Watertight Sanitary Sewer Manhole	24	VF	\$ 550.00	\$ 13,200
18	6-Foot Diameter Sanitary Sewer Drop Manhole (up to 10' Deep)	1	EA	\$ 25,800.00	\$ 25,800
19	Additional Depth for 6-Foot Diameter Sanitary Sewer Drop Manhole	27	VF	\$ 565.00	\$ 15,255
20	Concrete Pavement Removal	560	SY	\$ 15.00	\$ 8,400
21	Concrete Pavement Repair	560	SY	\$ 95.00	\$ 53,200
22	Subgrade Repair	560	SY	\$ 17.00	\$ 9,520
23	Remove Existing 8-Inch Sanitary Sewer	40	LF	\$ 45.00	\$ 1,800
24	Abandon and Grout Existing 8-Inch Sanitary Sewer	516	LF	\$ 150.00	\$ 77,400
25	Abandon Existing Sanitary Sewer Manhole	1	EA	\$ 2,560.00	\$ 2,560
26	Remove Existing Sanitary Sewer Manhole	1	EA	\$ 3,765.00	\$ 3,765
27	Pre-Construction Video (Above Ground)	1	LS	\$ 5,000.00	\$ 5,000
28	Post-Construction CCTV of Existing Sewer	640	LF	\$ 4.00	\$ 2,560
29	Clearing and Grubbing	0.5	AC	\$ 5,000.00	\$ 2,500
30	Hydromuch Seeding	2400	SY	\$ 7.00	\$ 16,800
31	Design/Implementation Stormwater Prevention Plan (SWPPP)	1	LS	\$ 10,000.00	\$ 10,000
32	Concrete Encasement	155	LF	\$ 100.00	\$ 15,500
33	Design/Implementation of Traffic Control Plan	1	LS	\$ 37,000.00	\$ 37,000
34	Construction Staking	1	LS	\$ 25,000.00	\$ 25,000
35	Grouted Rock Riprap Repair	85	SY	\$ 650.00	\$ 55,250
36	Iron Horse Wooden Fence Repair	15	LF	\$ 70.00	\$ 1,050
37	Protect Iron Horse Signage	1	LS	\$ 1,000.00	\$ 1,000
38	Trench Check Dam	1	EA	\$ 3,500.00	\$ 3,500
39	Flowable Fill as Directed by Owner	50	CY	\$ 152.00	\$ 7,600
40	4" Rock in Unstable Trench Bottom as Directed by Owner	50	CY	\$ 36.00	\$ 1,800
				SUBTOTAL	\$ 1,052,130
				CONTINGENCY 10%	\$ 105,213

PROJECT NAME	Tyson Foods Sanitary Sewer Improvements	DATE	10/31/2022
CLIENT	City of North Richland Hills	GROUP	1112
% SUBMITTAL	90% Design Submittal	PM	Aaron Conine

ESTIMATED BY	QC CHECKED BY	FNI PROJECT NUMBER
Jacob Schababerle	Aaron Conine	NRH21828

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
		SUBTOTAL		\$	1,157,343
		MOBILIZATION	5%	\$	57,867

PROJECT TOTAL (2022 COSTS)	\$	1,215,300
-----------------------------------	-----------	------------------

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

NOTES:

- 1 FNI OPCC does not include costs associated with engineering fees, permits, surveying, etc.
- 2 FNI 60% OPCC totalled \$1,211,900.