

RESOLUTION NO. R-2012-5

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF TYLER AND THE CITY OF WHITEHOUSE ESTABLISHING AN AGREED UPON EXTRATERRITORIAL JURISDICTION BOUNDARY SOUTHEAST OF TYLER.

WHEREAS, the City of Whitehouse (“Whitehouse”) is a Home Rule city municipal corporation in Smith County, Texas that was incorporated in March 1953; and

WHEREAS, the City of Tyler (“Tyler”) is a Home Rule municipal corporation incorporated on January 29, 1850 in Smith County, Texas and whose citizens voted for a Home Rule Charter on February 9, 1937, and as amended April 1, 1958, April 1, 1975, and May 5, 1990; and

WHEREAS, the City of Tyler declared its number of residents to be 100,000 or greater on January 26, 2005 in Resolution R-2005-3; and;

WHEREAS, a bona fide dispute and controversy exists regarding the overlapping corporate limits or extraterritorial jurisdiction (“ETJ”) of Whitehouse and Tyler (collectively herein the “Parties”); and

WHEREAS, Whitehouse has advised Tyler, and Tyler has advised Whitehouse, of their respective, true and correct jurisdictional boundaries as of the effective date of this Agreement; and

WHEREAS, an agreement with respect to geographic areas adjacent to and neighboring their respective municipal service area, corporate limits and ETJ will assist and enhance the planning and development of capital improvement programs, and services to be provided by their respective communities; and

WHEREAS, this Agreement will accomplish legitimate public purposes of the Cities and will permit more dependable urban planning that will benefit the public health, safety and welfare of their respective present and future citizens; and

WHEREAS, the Parties desire to avoid further cost, delay, and uncertainty associated with the overlapping ETJ, the overlapping city limits and any future controversy with respect to their boundaries, in order to fully and finally compromise and settle all claims that have been or could have been asserted in the future regarding the adjacent territorial boundaries of the Parties, the Parties enter into this Boundary Settlement Agreement; and


WHEREAS, Texas Local Government Code Section 43.021 provides that a home-rule municipality may exchange area with other municipalities; and

WHEREAS, Texas Local Government Code Section 42.023 provides that the extraterritorial jurisdiction of a municipality may be reduced if the governing body of the municipality gives its written consent by ordinance or resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1. That the Interlocal Agreement attached between the City of Tyler, Texas and the City of Whitehouse, Texas establishing an agreed upon extraterritorial jurisdiction boundary southeast of Tyler is hereby approved.

PASSED, APPROVED and ADOPTED this 8th day of February, 2012.


BARBARA BASS, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK



APPROVED:


GARY C. LANDERS, CITY ATTORNEY

STATE OF TEXAS §

COUNTY OF SMITH §

**BOUNDARY SETTLEMENT AND COMPROMISE AGREEMENT BETWEEN THE CITIES
OF WHITEHOUSE AND TYLER**

THIS BOUNDARY SETTLEMENT AGREEMENT regarding the city limits and extraterritorial jurisdictional ("ETJ") boundaries is made and entered into by and between the City of Whitehouse (hereinafter "Whitehouse") and the City of Tyler (hereinafter "Tyler"), which are collectively referred to as the "Parties" or the "Cities."

RECITALS

WHEREAS, the City of Whitehouse ("Whitehouse") is a Home Rule city municipal corporation in Smith County, Texas that was incorporated in March 1953; and

WHEREAS, the City of Tyler ("Tyler") is a Home Rule municipal corporation incorporated on January 29, 1850 in Smith County, Texas and whose citizens voted for a Home Rule Charter on February 9, 1937, and as amended April 1, 1958, April 1, 1975, and May 5, 1990; and

WHEREAS, the City of Tyler declared its number of residents to be 100,000 or greater on January 26, 2005 in Resolution R-2005-3; and;

WHEREAS, a bona fide dispute and controversy exists regarding the overlapping corporate limits or extraterritorial jurisdiction ("ETJ") of Whitehouse and Tyler (collectively herein the "Parties"); and

WHEREAS, Whitehouse has advised Tyler, and Tyler has advised Whitehouse, of their respective, true and correct jurisdictional boundaries as of the effective date of this Agreement; and

WHEREAS, an agreement with respect to geographic areas adjacent to and neighboring their respective municipal service area, corporate limits and ETJ will assist and enhance the planning and development of capital improvement programs, and services to be provided by their respective communities; and

WHEREAS, this Agreement will accomplish legitimate public purposes of the Cities and will permit more dependable urban planning that will benefit the public health, safety and welfare of their respective present and future citizens; and

WHEREAS, the Parties desire to avoid further cost, delay, and uncertainty associated with the overlapping ETJ, the overlapping city limits and any future controversy with respect to their boundaries, in order to fully and finally compromise and settle all claims that have been or could have been asserted in the future regarding the adjacent territorial boundaries of the Parties, the Parties enter into this Boundary Settlement Agreement; and

WHEREAS, Texas Local Government Code Section 43.021 provides that a home-rule municipality may exchange area with other municipalities; and

ATTACHMENT "A" TO RESOLUTION NO. R-2012-5
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WHEREAS, Texas Local Government Code Section 42.023 provides that the extraterritorial jurisdiction of a municipality may be reduced if the governing body of the municipality gives its written consent by ordinance or resolution;

NOW, THEREFORE, pursuant to *Chapter 791, Texas Government Code, Chapter 42, Texas Local Government Code*, and as otherwise authorized and permitted by the laws of the State of Texas for and in full consideration of the mutual promises, conditions, undertakings and agreements contained in this Boundary Settlement Agreement, including the Recitals set forth above, the Parties covenant, contract, and agree as follows:

TERMS OF AGREEMENT

PART 1. Tyler and Whitehouse each acknowledge and agree that the city limits line for Whitehouse will be as depicted in Exhibit "A" (map) which is attached to this Boundary Settlement Agreement and incorporated herein by reference in its entirety, after City of Whitehouse adopts an ordinance to repeal that 1981 ordinance that referred to an annexation to the north and which would be north of the to be agreed upon ETJ boundary line. Tyler and Whitehouse each acknowledge and agree that the portion of the revised ETJ boundary line of each City, as depicted in Exhibit "A", will then be the correct and agreed upon revised ETJ of each City.

PART 2. The Parties acknowledge and agree that through annexation of territory by either city, the current Whitehouse or Tyler city limits and ETJ boundary lines depicted in Exhibit "A" may change. However, Tyler and Whitehouse agree that by this agreement they are both withdrawing from some of their existing ETJ so that the other city may include it in its ETJ as allowed by State law. If the other city's ETJ would not yet reach a withdrawn area, that as soon as that city's future annexations or owner petition requests are received it shall be able to extend its ETJ into that withdrawn area without any additional action by the withdrawing city.

PART 3. Whitehouse and Tyler each agree to adopt all ordinances or resolutions necessary to release, exchange, or disannex all jurisdictional claims to any territory depicted as within the other city's corporate limits, ETJ, or which are located beyond their respective side of the revised Tyler/Whitehouse ETJ Line. After City of Whitehouse repeals that ordinance that referred to extending city limits north of the to be agreed upon ETJ boundary line, Tyler agrees to accept and not challenge other annexations that have resulted in the Whitehouse city limits boundary as shown on the attached Exhibit "A".

PART 4. As of the date of this Boundary Settlement Agreement, the Parties agree that the City of Whitehouse has a 1 mile ETJ and the City of Tyler has a 5 mile ETJ.

PART 5. This Boundary Settlement Agreement, with Exhibit "A" references jurisdictional and territorial dividing lines defining the scope of agreements, exchanges, and releases of jurisdiction between the Parties and this Boundary Settlement Agreement and the territory as divided herein constitutes a valid and enforceable agreement by and between the Parties.

PART 6. In consideration of the exchange of ETJ, and the repeal of that certain 1981 ordinance as described herein, the Parties hereby completely release and forever discharge each other from any and all past, present, or future claims, demands, obligations, actions, causes of action, rights, damages, attorneys'

fees, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, statute, contract, or other theory of recovery, on account of, or which may in any way arise out of the city limits and boundary dispute described herein, including without limitation, any and all known or unknown claims, either state or federal claims, alleged or which should or could have been alleged by any of the Parties related to this boundary dispute.

PART 7. This release and discharge shall also apply to each Party's past, present and future, attorneys, agents, servants, representatives, officials, elected officials, employees, predecessors, insurers, successors in interest, and assigns. This release and discharge shall not apply to breaches of the Boundary Settlement Agreement.

PART 8. Upon the signing of this Boundary Settlement Agreement, each Party shall cooperate in preparing, executing, and filing any documents with federal, state, county agencies or other agencies as necessary to inform and implement this Boundary Settlement Agreement. Each city shall amend its official jurisdictional maps showing the city's corporate and extraterritorial limits consistent with this Boundary Settlement Agreement.

PART 9. In entering into this Boundary Settlement Agreement, the Parties represent that they have relied upon the advice of their attorneys, who are of their own choice, concerning the legal consequences of this Boundary Settlement Agreement.

PART 10. This Boundary Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Texas. Venue is proper in Smith County, Texas.

PART 11. This Boundary Settlement Agreement shall become effective following both Parties governing body passing and approving this Agreement at a duly called and posted meeting on or before February 28, 2012.

PART 12. Each Party shall adopt whatever resolutions or ordinances necessary to comply with the terms of this Agreement within 90 days from the effective date of the Agreement.

PART 13. This Boundary Settlement Agreement is intended to establish the ETJ, and City Limits lines between the Parties hereto and only applies to territory specifically described herein. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either of the Cities nor to create any legal rights or claim on behalf of any third party or entity not a party hereto. Each Party specifically reserves all legislative and police power discretion over the respective city's jurisdiction, including the ability to contract, negotiate, release, litigate, appear before State agencies or otherwise exercise governmental or proprietary functions within the city's territory, in whole or part. Neither Whitehouse nor Tyler waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas of the United States.

PART 14. Should any provision of this Boundary Settlement Agreement be found to be inoperative, void, or invalid by a court of competent jurisdiction, all other provisions of this Boundary Settlement Agreement shall remain in full force and effect for the duration of this Boundary Settlement Agreement, it being the intention of the Parties that no portion of this Boundary Settlement Agreement or provision herein shall become inoperative or fail by reason of the invalidity of any other portion or provision.

PART 15. It is further understood that the provisions of this Boundary Settlement Agreement are contractual and not mere recitals. The terms and conditions set out in this Boundary Settlement Agreement may be enforced by further and appropriate action in a court of competent jurisdiction. In the event of any suit or other adjudication between the Parties to enforce any claim arising out of this Boundary Settlement Agreement or interpret the terms of this Boundary Settlement Agreement, the prevailing Party shall be entitled to recover its reasonable and necessary attorney's fees, expert witness fees, and all other costs and expenses incurred in resolving the suit or adjudication from the non-prevailing Party as provided by Texas Local Government Code § 271.159.

PART 16. The Effective Date of this Boundary Settlement Agreement is the date of the last signatory to this Agreement.

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The City of Tyler, at a duly called and posted meeting, passed and approved this Boundary Settlement Agreement on February 8, 2012.

CITY OF TYLER

BY: 
BARBARA BASS, Mayor

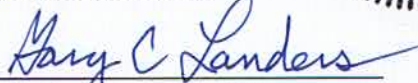
Date: 2/8/2012

ATTEST:


Cassandra Brager, City Clerk

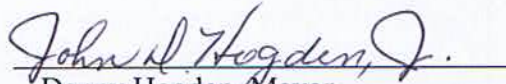


Approved as to Form:


Gary C. Landers, City Attorney

The City of Whitehouse at a duly called and posted meeting, passed and approved this Boundary Settlement Agreement on ~~February~~ 24, 2012.
or January

CITY OF WHITEHOUSE

BY: 
Danny Hogden, Mayor

Date: 17 FEB 2012

ATTEST:


Stefani Wright, City Secretary

Approved as to Form:



Ron Schoenbrun, Attorney for City of Whitehouse

EXHIBIT "A"

