CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
SHERMAN MUNICIPAL BALLROOM
405 NORTH RUSK STREET
SHERMAN, TEXAS
MONDAY, FEBRUARY 1, 2021
5:00 P.M.

A. 1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

A. 2. PLEDGE OF ALLEGIANCE LED BY MAYOR DAVID PLYLER

A. 3. INVOCATION BY MAYOR DAVID PLYLER

A. 4. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JANUARY 4, 2021

Citizen Comments

B. 1. CITIZEN COMMENTS

During this meeting, the City Council welcomes public comment **only** on agenda items listed under the Open Meeting portion of the agenda, in accordance with Texas Government Code Section 551.007. For items not listed on the agenda, those matters may be discussed with City staff during regular business hours, or with the Mayor or any Council member by contacting them at times other than at City Council meetings.

Consent Agenda

C. 1. CONSENT AGENDA

Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Public Hearing

D. 1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6355

An Ordinance of The City Council of The City of Sherman, Texas, Amending Section 8, Subsection (5)(A), Ordinance No. 2280, so as to Grant a Specific Use Permit to allow Outdoor Displays in a C-1 (Retail Business) District/O-1 (75 & 82) Overlay District at 3201 North U.S. Highway 75, Suite 101, being Lot 1R-1, Block 1 of The Replat of Lot 1R of Sherman Crossing Addition (75/82 Sherman Crossing, Ltd, Owner; Tractor Supply, Tenant; Onyx Creative, Architect; And Aaron Blue, Representative); Providing That This Specific Use Permit Shall Be Granted Subject to Certain Conditions; Providing A Penalty Not to Exceed $2,000.00

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

D. 2. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6356**

Amending Section 8, Subsection (5)(A), Ordinance No. 2280, so as to Grant a Specific Use Permit to allow a Two-Family Dwelling (Duplex) in an R-1 (One Family Residential) District on property located at 515 North Colbert Avenue, being 0.276 acres in the C. Carter Survey, Abstract No. 229, also being all of Lots 118 and 119, Belmont Addition (Jose Castillo Torres and Crisalida Serrano Gonzales, Owners; and Helvey-Wagner Surveying, Inc., Surveyor); Providing that this Specific Use Permit shall be Granted Subject to Certain Conditions; Providing a Penalty not to Exceed $2,000.00

D. 3. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6357**

Amending Section 8, Subsection (5)(A), Ordinance No. 2280, so as to Grant a Specific Use Permit to allow Two-Family, Single-Story Patio Homes with no more than Two Structures Attached in a Grouping in an R-1 (One Family Residential) District/College Park Overlay District on Property located at 910, 914, 916 and 918 North Throckmorton Street, being Lots 5, 6, 7 & 8, Block 5, W.P. Carter's Addition (Lazy L Enterprises, Owner; and Underwood Drafting and Surveying, Surveyor); Providing that this Specific Use Permit shall be Granted Subject to Certain Conditions; Providing a Penalty not to Exceed $2,000.00

D. 4. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6358**

Amending Section 8, Subsection (5)(A), Ordinance No. 2280, so as to Grant a Specific Use Permit to allow Patio Homes in an R-1 (One Family Residential) District on Property Located in the 2100 block of West Moore Street, being Lots 2-18, Block A, Lots 1-9, Block B, Lots 1-11, Block H and Lots 10-20, Block G of the Proposed The Grove Addition (SSCGC Homes, LLC, Owner; Grove Addition Development JV, Applicant; Civil Point Engineers, Civil Engineer; and Underwood Drafting and Surveying, Surveyor); Providing that this Specific Use Permit shall be Granted Subject to Certain Conditions; Providing a Penalty not to Exceed $2,000.00

D. 5. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6359**

Amending Section 8, Subsection (5)(A), Ordinance No. 2280, so as to Grant a Specific Use Permit to allow Two-Family Dwellings (Duplexes) in an R-1 (One Family Residential) District on properties located in the 2100 block of West Moore Street,**Tract 1:** Being 1.649 acres in the Elizabeth Jones Survey, Abstract No. 625 and the proposed Lots 12-20, Block B of The Grove Addition; **Tract 2:** Being 3.183 acres in the Elizabeth Jones Survey, Abstract No. 625 and proposed Lots 1-13, Block J of The Grove Addition (SSCGC Holdings, LLC, Owner; Grove Addition Development JV, Applicant; Civil Point Engineers, Civil Engineer; and Underwood Drafting and Surveying, Surveyor); Providing that this Specific Use Permit shall be Granted Subject to Certain Conditions; Providing a Penalty not to Exceed $2,000.00

D. 6. **INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6360**

Amending Section 12, Ordinance No. 2280, so as to Include Certain Property within the C-1 (Retail Business) District, Generally Located in the 2400-2600 blocks of West Travis Street, being 33.996 acres of Land in the Preston Kitchen Survey, Abstract No. 667 and Elizabeth Jones Survey, Abstract No. 625 (SSCGC Holdings, LLC, Owners; Bill Magers, Representative; and Underwood Drafting and Surveying, Surveyor); Providing for a Penalty not to Exceed $2,000.00

Close Public Hearing and Consider Adoption of Ordinances

D. 7. **ADOPTION OF ORDINANCES**

Consider Adoption of Ordinance Numbers: 6355, 6356, 6357, 6358, 6359, & 6360

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

Resolutions

E. 1. **RESOLUTION NO. 6697**
Authorizing Approval Of Receipt Of A Petition From Terra Perpetua, LLC To Create A Public Improvements District Over Approximately 278 Acres Of Land In Sherman, Texas, Acknowledging The Filing Of The Same Petition, And Authorizing The City Manager To Engage A Consultant To Assist The City In Developing A Feasibility Report Regarding The Proposed Public Improvements District

E. 2. **RESOLUTION NO. 6698**
Awarding a Bid to and Authorizing Execution of an Agreement with Thos. S. Byrne, Inc. dba Byrne Construction Services, as Construction Manager-at-Risk (CMAR), for the Construction of a New Police Headquarters Facility

E. 3. **** RESOLUTION NO. 6699***
Authorizing Execution of a Professional Services/Consultant Agreement with Perkins Engineering Consultants, Inc. for Design of the Post Oak Wastewater Treatment Plant Equalization Basin Improvements

E. 4. **** RESOLUTION NO. 6700***
Authorizing Execution of an Agreement with M&G Home Builders LLC for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1227 South Branch Street within City of Sherman Reinvestment Zone, Number Ten (#10)

Requests to Advertise

F. 1. **** REQUEST TO ADVERTISE***
Roof Replacement at Sherman Central Fire Station

Other Business

G. 1. **OTHER BUSINESS**
Repair and Rework the Luella 2 Woodbine Well under an Emergency Designation

G. 2. **OTHER BUSINESS**
Receive Presentation from City Manager Robby Hefton regarding potential debt issuance

G. 3. **OTHER BUSINESS**
Receive an Update on the City of Sherman's Ongoing Projects

G. 4. **** OTHER BUSINESS***
Replat Approval of East Holley Addition, Block 1, Lot 1, a Replat of part of Lot 6, Block 1, Hall and Jones Addition, being 0.115 acres in the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 6, Block 1, Hall and Jones Addition; Holley Jolly Homes LLC, Owners; Josh Holley, Representative; and Preston Trail Land Surveying, Surveyor (821 North East Street)

G. 5. **** OTHER BUSINESS***

Replat Approval of Lot 5, Block 3, Sherman Town Center, being Lot 5, Block 3, Sherman Town Center; JMCR Sherman LLC, Owners; Raising Cane's Restaurants, LLC, Developer; Benchmark Design Group, LLC, Civil Engineer; and Freeman Surveying & Mapping, LLC, Surveyor (3700 North U.S. Highway 75)

G. 6. **** OTHER BUSINESS***

Replat Approval of Lots 118 and 119, Belmont Addition, being 0.276 acres in the C. Carter Survey, Abstract No. 229, also being all of Lots 118 and 119, Belmont Addition; Jose Castillo Torres and Crisalida Serrano Gonzales, Owners; and Helvey-Wagner Surveying, Inc.,, Surveyor (515 North Colbert Avenue)

G. 7. **** OTHER BUSINESS***

Consider Request of Downtown Sherman NOW to Temporarily Close Certain Streets for "Craft the Night Away" on Saturday, June 19, 2021

H. MEDIA QUESTIONS

Consider Board/Commission Appointments

I. 1. APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Animal Control Advisory Committee (1)

J. COUNCIL COMMENTS

Executive Session

EXECUTIVE SESSION

In accordance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, the City Council may hold an Executive Session if the discussion of any of the items identified in this agenda, or any of the items identified below, concern one or more of the following:

Tex. Gov't Code § 551.071	Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. (a)
Tex. Gov't Code § 551.072	Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

Tex. Gov't Code § 551.073	Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.
Tex. Gov't Code § 551.074	Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. (a)
Tex. Gov't Code § 551.076	Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit.
Tex. Gov't Code § 551.087	Discussing or deliberating commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay or expand in or near the City and with which the City is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect.
Tex. Gov't Code § 551.089	Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices.

The Council reconvenes into General Session

L. 1. OPEN MEETING

Reconvene into Open Meeting and Consider Action, if any, on items discussed in Executive Session

M. *COUNCIL CALENDAR*

N. ADJOURNMENT

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on January 29, 2021 at 4:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 29th day of January , 2021.
City of Sherman, Texas

_____
City Clerk

The above agenda schedule represents an estimate of the order for the indicated items and is subject to change at any time.

All agenda items are subject to final action by the City Council.

An unscheduled closed executive session may be held if the discussion of any of the above agenda items concerns the purchase, exchange, lease or value of real property; the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; the deployment or use of security personnel or equipment; or requires consultations with the City Attorney.

At the discretion of the City Council, non-agenda items under the headings of "Citizens Requests", "Media Questions", and "Council Concerns" may be presented to the Council for informational purposes; however, by law, the Council shall not discuss, deliberate, or vote upon such matters except that a statement of specific factual information, a recitation of existing policy, and deliberations concerning the placing of the subject on a subsequent agenda may take place.

The City Attorney has approved the Executive Session items on this agenda.

PERSONS WITH DISABILITIES, WHO PLAN TO ATTEND THIS MEETING AND WHO MAY NEED ASSISTANCE, ARE REQUESTED TO CONTACT LINDA ASHBY AT (903) 892-7204, TWO (2) WORKING DAYS PRIOR TO THE MEETING SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.

Mayor	Deputy Mayor	Council Members	
David Plyler	Daron Holland	Willie Steele, Council-At-Large, PL #1	Josh Stevenson, Council – District #2
		Sandra Melton, Council-At-Large, PL #2	Pamela L. Howeth, Council – District #3
		Shawn C. Teamann, Council – District #1	Daron Holland, Council – District #4

Any item on this posted agenda may be discussed in Executive Session provided it is within one of the permitted categories under Chapter 551 of the Texas Government Code

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **A. 4.**

Meeting Date: 02/01/2021

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JANUARY 4, 2021

Issue:

Attachments

January 4, 2021

STATE OF TEXAS §

January 4, 2021

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Sherman Municipal Ballroom on January 4, 2021.

MEMBERS PRESENT: **MAYOR DAVID PLYLER; DEPUTY MAYOR WILLIE STEELE. COUNCIL MEMBERS HOLLAND, HOWETH, MELTON, STEVENSON, TEAMANN.**

MEMBERS ABSENT: **NONE.**

CALL TO ORDER — **CALL TO ORDER**

Mayor Plyler called the meeting to order at 5:00 p.m. The Pledge of Allegiance and Invocation were given by Council Member Willie Steele.

APPROVE MINUTES — **APPROVE MINUTES**

The Council reviewed the Minutes of the Regular City Council Meeting of December 7, 2020, and the Called City Council Meeting of December 18, 2020. Council Member Melton moved to approve the Minutes, as presented; Second by Council Member Stevenson; All present voted AYE.
MOTION CARRIED.

CITIZEN'S COMMENTS — **CITIZEN'S COMMENTS**

There were no citizen's comments.

CONSENT AGENDA — **CONSENT AGENDA**

The Council reviewed the Consent Agenda. Council Member Steele moved to approve the Consent Agenda, as presented. Second by Council Member Teamann. All present voted AYE.

Mayor Plyler introduced Ordinance No. 6342 and called for a public hearing: — **ORD 6342 SUP FOR PRESCHOOL (1318 N. LUCKETT)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A PRESCHOOL IN AN R-1 (ONE-FAMILY RESIDENTIAL) DISTRICT/COLLEGE PARK OVERLAY DISTRICT ON PROPERTY LOCATED AT 1318 NORTH LUCKETT STREET, BEING LOT 2R, BLOCK 5, REPLAT MILDRED HEIGHTS ADDITION, BLOCK 5, LOTS 1R AND 2R (LENNIE AND LISA LUNDERVOLD, OWNERS; AND PRESTON TRAIL LAND SURVEYING, SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Rob Ray, Director of Development Services, said this is a request for a Specific Use Permit for a preschool in an R-1 (One Family Residential) District and College Park Overlay District, located at 1318 North Luckett Street.

The Planning and Zoning Commission recommended approval of the SUP, subject to the Staff Review Letter, and limiting the number of children to ten.

<u>Lisa and Lennie Lundervold, 413 Carneros Drive</u>
Mr. and Mrs. Lundervold are the owners of the property and are requesting to open a preschool. She said she would limit the number of children to ten at a time.

No other citizens appeared before the City Council to discuss Ordinance No. 6342.

Mayor Plyler introduced Ordinance No. 6343 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW AN AUTOMOBILE RESTORATION CENTER WITH PAINT BOOTH IN A C-2 (GENERAL COMMERCIAL) DISTRICT/O-1 (75 & 82) OVERLAY DISTRICT ON PROPERTY LOCATED AT 2500 TEXOMA PARKWAY, BEING 5.919 ACRES IN THE REUBEN HENDRIX SURVEY, ABSTRACT NO. 504 (RFJ AUTO PROPERTIES, LLC, OWNER; AND ALAN KAINRAD, DIAMOND K CONTRACTORS, REPRESENTATIVE/GENERAL CONTRACTOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6343
SUP FOR AUTO RESTORATION CENTER
(2500 TEXOMA PKWY)

Mr. Rae said this SUP is for an automobile restoration center in a C-2 (General Commercial) District/O-1 (75 and 82) Overlay District.

The Planning and Zoning Commission recommended approval of the SUP, subject to the Staff Review Letter.

No citizens appeared before the City Council to discuss Ordinance No. 6343.

Mayor Plyler introduced Ordinance No. 6344 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A RESIDENTIAL DUPLEX IN AN R-1 (ONE-FAMILY RESIDENTIAL) DISTRICT ON PROPERTY LOCATED AT 405 WEST McLAIN STREET, BEING LOT 1, BLOCK 1, PAUL D. CRAVENS ADDITION (JOSE MENJIVAR, OWNER; AND JAMES GREEN, REPRESENTATIVE/GENERAL CONTRACTOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6344
SUP FOR RESIDENTIAL DUPLEX
(2708 W. LAMBERTH)

Mr. Rae said this SUP is for a Residential Duplex in an R-1 (One-Family Residential) District. There are other duplexes in that area.

The Planning and Zoning Commission recommended approval of the SUP, subject to the Staff Review Letter

James Green, P.O. Box 12, Denison, Texas
Mr. Green is the General Contractor, and appeared representing the request. He said there are duplexes on both sides of the property where the SUP is requested.

No other citizens appeared before the City Council to discuss Ordinance No. 6344.

Mayor Plyler introduced Ordinance No. 6345 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW RESIDENTIAL TOWNHOMES IN A C-O (OFFICE) DISTRICT ON PROPERTY LOCATED AT 2708 WEST LAMBERTH ROAD, BEING LOT 17, THE GARDENS AT O'HANLON RANCH (LAMBERTH CROSSING JOINT VENTURE, OWNER; AND D2L DESIGNS, LLC, DESIGNER); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6345
SUP FOR RESIDENTIAL TOWNHOMES (2708 W. LAMBERTH)

Mr. Rae said this request is for townhomes in an Office District. The Site Plan shows two buildings with four units each. The developer intends to sell the units, similar to a condo development. Two emails were received in support of the project, and one objection was received.

The Planning and Zoning Commission recommended approval of the SUP, subject to the Staff Review Letter

No citizens appeared before the City Council to discuss Ordinance No. 6345.

Mayor Plyler introduced Ordinance No. 6350 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTY WITHIN THE R-2 (MULTI-FAMILY RESIDENTIAL) DISTRICT, GENERALLY LOCATED AT 2151 WEST MOORE STREET, BEING 13.466 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (SSCGC HOLDINGS, LLC, OWNERS; GROVE ADDITION DEVELOPMENT JV, APPLICANT; DFD ARCHITECTS, INC., ARCHITECT; AND UNDERWOOD DRAFTING AND SURVEYING, INC, SURVEYOR); PROVIDING A PENALTY NOT

ORD 6350
ZONE CHANGE (2151 W. MOORE)

TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr. Rae said this item is for a zone change from R-1 to R-2 to allow multi-family construction. The developer plans to have 192 units at this location.

The Planning and Zoning Commission recommended approval of the zone change, subject to the Staff Review Letter.

No citizens appeared before the City Council to discuss Ordinance No. 6350.

Mayor Plyler introduced Ordinance No. 6351 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 12 OF THE CODE OF ORDINANCES, ENTITLED "TRAFFIC AND VEHICLES", ARTICLE 12.05, ENTITLED "TRAFFIC-CONTROL SIGNS, SIGNALS AND DEVICES", AT SECTION 12.05.002; DELETING SECTION 12.05.004 IN ITS ENTIRETY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO PLACE, ERECT AND MAINTAIN TRAFFIC CONTROL DEVICES; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6351
TRAFFIC CONTROL DEVICES

Robby Hefton, City Manager, explained that this ordinance was an attempt to help "clear up" the Council's docket. In the past, the City Council has considered every traffic control device, including stop signs and yield signs, that needs to be placed in the City.

He felt the Council's focus should be on more substantive issues. By approving this ordinance, the City Manager would have the ability to make the decision without specific Council approval on each sign. The City Manager would then have the authority to approve the placement of traffic signs in the City, as warranted by the Traffic Manual and the Engineering Department.

No citizens appeared before the City Council to discuss Ordinance No. 6351.

Mayor Plyler introduced Ordinance No. 6346 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTIES WITHIN THE C-1 (RETAIL BUSINESS) DISTRICT, GENERALLY LOCATED IN THE 2400-2700 BLOCKS OF SOUTH F.M. 1417 (HERITAGE PARKWAY), TRACT 1 BEING 46.339 ACRES OF LAND IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625, AND TRACT 2 BEING 21.799 ACRES OF LAND IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (ARC STX HOLDINGS, LLC, OWNER; TESCH DEVELOPMENT & MANAGEMENT CO.,

ORD 6346
ZONE CHANGE (2400-2700 BLOCKS S. FM 1417)

PROSPECTIVE BUYER; ROBERT TESCH, REPRESENTATIVE; PAPE-DAWSON ENGINEERS, CIVIL ENGINEER; AND PIERCE-MURRAY LAND SOLUTIONS, SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALINGS/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr. Rae said Ordinance Nos. 6346, 6347, 6348, and 6349 were related and asked Council Members if they wanted to discuss all items together.

He explained that the ordinances pertain to a 68-acre development consisting of commercial, multi-family, and mini-storage. Of those 68 acres, 46 of the acres were recently annexed into the City in December 2020 for this development.

Ordinance 6346 is for a zone change from R-A and M-1 to C-1, which would make the entire development in the same zoning district.

Ordinances 6347, 6348, and 6349 are for Specific Use Permits, for two multi-family developments and one mini-storage facility. The multi-family projects are different.

Ordinance 6347 is for a multi-family development on the south side, connected to O.B. Groner Road, and is the traditional multi-family apartment with 276 units.

Ordinance 6348 is for a multi-family development on the northern portion of the property, and is a "single-family for rent" development, where the developer owns all the property and leases the units out, similar to a multi-family development. The units are one-story, single-family units. That development consists of 329 units, with most being single-family, but a few being duplexes.

<u>Dustin Wientz, 5810 Tennyson Parkway, Suite 425, Plano, Texas</u>
Mr. Wientz appeared representing Pape-Dawson Engineers, and said that the owners and his team have met with the City on an executive level. Once the game plan was made and the property was annexed, they came back for a pre-submittal meeting on the zoning package.

Through the zoning process, Mr. Wientz said they have addressed the comments of the staff, and would be able to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance Nos. 6346, 6347, 6348, and 6349.

Mayor Plyler introduced Ordinance No. 6347 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC

ORD 6347
SUP FOR MULTI-FAMILY APARTMENTS (2610 S. FM 1417)

USE PERMIT TO ALLOW MULTI-FAMILY APARTMENTS IN A C-1 (RETAIL BUSINESS) DISTRICT/O-1.1 (FM HIGHWAY 1417) OVERLAY DISTRICT ON PROPERTY LOCATED AT 2610 SOUTH F.M. 1417 (HERITAGE PARKWAY), BEING 13.022 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (ARC STX HOLDINGS, LLC, OWNER; TESCH DEVELOPMENT & MANAGEMENT CO., LLC, PROSPECTIVE BUYER; ROBERT TESCH, REPRESENTATIVE; PAPE-DAWSON ENGINEERS, CIVIL ENGINEER; AND PIERCE-MURRAY LAND SOLUTIONS, SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mayor Plyler introduced Ordinance No. 6348 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A MULTI-FAMILY DEVELOPMENT (329 UNITS) IN A C-1 (RETAIL BUSINESS) DISTRICT/O-1.1 (FM HIGHWAY 1417) OVERLAY DISTRICT ON PROPERTY LOCATED AT 2500 SOUTH F.M. 1417 (HERITAGE PARKWAY), BEING 38.585 ACRES OF LAND IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (ARC STX HOLDINGS, LLC, OWNER; TESCH DEVELOPMENT & MANAGEMENT CO., LLC, PROSPECTIVE BUYER; ROBERT TESCH, REPRESENTATIVE; PAPE-DAWSON ENGINEERS, CIVIL ENGINEER; AND PIERCE-MURRAY LAND SOLUTIONS, SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6348
SUP FOR MULTI-FAMILY DEVELOPMENT (2500 S. FM 1417)

Mayor Plyler introduced Ordinance No. 6349 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A STORAGE FACILITY IN A C-1 (RETAIL BUSINESS) DISTRICT/O-1.1 (FM HIGHWAY 1417) OVERLAY DISTRICT ON PROPERTY LOCATED AT 2602 SOUTH F.M. 1417 (HERITAGE PARKWAY), BEING 3.545 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (ARC STX HOLDINGS, LLC, OWNERS; TESCH DEVELOPMENT & MANAGEMENT CO., LLC, PROSPECTIVE BUYER; ROBERT TESCH, REPRESENTATIVE; PAPE-DAWSON ENGINEERS, CIVIL ENGINEER; AND PIERCE-MURRAY LAND SOLUTIONS, SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6349
SUP FOR STORAGE FACILITY (2602 S. FM 1417)

The Public Hearing was closed.

ADOPTION OF ORDINANCES

Ordinance 6342

ORD 6342 SUP FOR PRESCHOOL (1318 N. LUCKETT)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A PRESCHOOL IN AN R-1 (ONE-FAMILY RESIDENTIAL) DISTRICT/COLLEGE PARK OVERLAY DISTRICT ON PROPERTY LOCATED AT 1318 NORTH LUCKETT STREET, BEING LOT 2R, BLOCK 5, REPLAT MILDRED HEIGHTS ADDITION, BLOCK 5, LOTS 1R AND 2R (LENNIE AND LISA LUNDERVOLD, OWNERS; AND PRESTON TRAIL LAND SURVEYING, SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Council Member Melton confirmed that the owners purchased the home just for the preschool, and did not plan to live in the residence, and that Mrs. Lundervold is an educator. Council Member Melton asked why they decided to purchase the home in that area of Sherman, for the preschool.

Ms. Lundervold said the home is close to the college and has been completely remodeled. Council Member Melton also confirmed that Mr. and Mrs. Lundervold actually live in Sherman.

Council Member Stevenson asked if the 10 child limit was due to the limit for the square footage of the home. Mrs. Lundervold said the square footage would allow more than 10 children, but she did not plan to have more than 10, so she was not sure how many more would be allowed. Council Member Stevenson confirmed with Mr. and Mrs. Lundervold that they would be agreeable to including a limit of 10 children in the SUP.

Council Member Teamann asked if the SUP expired in two years and if the requestor would need to come back for resubmittal. Mr. Rae said that was not correct. The SUP says they have two years to get started on the project, and if they don't, the SUP will expire.

Mayor Plyler said a requirement could be added to bring it back in one year. Council Member Steele said then, if the City received a complaint, they could address renewal. Mr. Rae explained that requirement would need to be included in the motion to limit the SUP to a specific timeframe. Council Member Steele confirmed that Mr. and Mrs. Lundervold were okay with the requirements that were included in the Staff Review Letter.

Council Member Howeth confirmed that the applicant has applied for their State license. Mrs. Lundervold said she was approved, but they are holding the license until they received their permit.

ACTION TAKEN.

Motion by Council Member Stevenson to adopt Ordinance No. 6342, limiting it to a maximum of 10 children and tying the SUP to the person requesting.

Council Member Melton asked to add that the SUP be approved for 1 year, and come back to the Council for renewal at that time.

AMEND MOTION.

Council Member Stevenson amended his motion to adopt Ordinance No. 6342, limiting it to a maximum of 10 children, tying the SUP to the person requesting, and adding that the SUP will expire in one year unless renewed by the City Council. Second by Council Member Melton.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

Ordinance 6343

ORD 6343
SUP FOR AUTO RESTORATION CENTER (2500 TEXOMA PKWY)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW AN AUTOMOBILE RESTORATION CENTER WITH PAINT BOOTH IN A C-2 (GENERAL COMMERCIAL) DISTRICT/O-1 (75 & 82) OVERLAY DISTRICT ON PROPERTY LOCATED AT 2500 TEXOMA PARKWAY, BEING 5.919 ACRES IN THE REUBEN HENDRIX SURVEY, ABSTRACT NO. 504 (RFJ AUTO PROPERTIES, LLC, OWNER; AND ALAN KAINRAD, DIAMOND K CONTRACTORS, REPRESENTATIVE/GENERAL CONTRACTOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Council Member Steele asked about the Planning and Zoning Commission not requiring that the front of the building meet the Overlay District standards.

Mr. Rae said the front of the building is on the back of the lot and they requested an exception to not require masonry on the building. The restoration center is actually behind the Hyundai dealership.

Council Member Steele confirmed that the front building is not addressed at all. Mr. Rae said the back building is not visible from Texoma Parkway.

Council Member Steele asked if there would be outside storage. Mr. Rae said they may have some vehicles parked outside, but they are required to have screening.

ACTION TAKEN.

Motion by Council Member Teamann to adopt Ordinance No. 6343, as presented. Second by Council Member Stevenson.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

Ordinance 6344 — **ORD 6344 SUP FOR RESIDENTIAL DUPLEX (2708 W. LAMBERTH)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A RESIDENTIAL DUPLEX IN AN R-1 (ONE-FAMILY RESIDENTIAL) DISTRICT ON PROPERTY LOCATED AT 405 WEST McLAIN STREET, BEING LOT 1, BLOCK 1, PAUL D. CRAVENS ADDITION (JOSE MENJIVAR, OWNER; AND JAMES GREEN, REPRESENTATIVE/GENERAL CONTRACTOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Ordinance 6345 — **ORD 6345 SUP FOR RESIDENTIAL TOWNHOMES (2708 W. LAMBERTH)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW RESIDENTIAL TOWNHOMES IN A C-O (OFFICE) DISTRICT ON PROPERTY LOCATED AT 2708 WEST LAMBERTH ROAD, BEING LOT 17, THE GARDENS AT O'HANLON RANCH (LAMBERTH CROSSING JOINT VENTURE, OWNER; AND D2L DESIGNS, LLC, DESIGNER); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ACTION TAKEN.

Motion by Council Member Melton to adopt Ordinance Nos. 6344 and 6345, as presented. Second by Council Member Steele.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

Ordinance 6350 — **ORD 6350 ZONE CHANGE (2151 W. MOORE)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTY WITHIN THE R-2 (MULTI-FAMILY RESIDENTIAL) DISTRICT, GENERALLY LOCATED AT 2151 WEST MOORE STREET, BEING 13.466 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (SSCGC HOLDINGS, LLC, OWNERS; GROVE ADDITION

DEVELOPMENT JV, APPLICANT; DFD ARCHITECTS, INC., ARCHITECT; AND UNDERWOOD DRAFTING AND SURVEYING, INC, SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ACTION TAKEN.

Motion by Council Member Steele to adopt Ordinance No. 6350, as presented. Second by Council Member Stevenson.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

Ordinance 6351 — **ORD 6351 TRAFFIC CONTROL DEVICES**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 12 OF THE CODE OF ORDINANCES, ENTITLED "TRAFFIC AND VEHICLES", ARTICLE 12.05, ENTITLED "TRAFFIC-CONTROL SIGNS, SIGNALS AND DEVICES", AT SECTION 12.05.002; DELETING SECTION 12.05.004 IN ITS ENTIRETY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO PLACE, ERECT AND MAINTAIN TRAFFIC CONTROL DEVICES; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ACTION TAKEN.

Motion by Council Member Teamann to adopt Ordinance No. 6351, as presented. Second by Council Member Melton.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

Ordinance 6346 — **ORD 6346 ZONE CHANGE (2400-2700 BLOCKS S. FM 1417) (DENIED)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTIES WITHIN THE C-1 (RETAIL BUSINESS) DISTRICT, GENERALLY LOCATED IN THE 2400-2700 BLOCKS OF SOUTH F.M. 1417 (HERITAGE PARKWAY), TRACT 1 BEING 46.339 ACRES OF LAND IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625, AND TRACT 2 BEING 21.799 ACRES OF LAND IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (ARC STX HOLDINGS, LLC, OWNER; TESCH DEVELOPMENT & MANAGEMENT CO., PROSPECTIVE BUYER; ROBERT TESCH, REPRESENTATIVE; PAPE-DAWSON ENGINEERS, CIVIL ENGINEER; AND PIERCE-MURRAY LAND SOLUTIONS, SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALINGS/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Ordinance 6347

ORD 6347
SUP FOR MULTI-FAMILY APARTMENTS (2610 S. FM 1417) (DENIED)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW MULTI-FAMILY APARTMENTS IN A C-1 (RETAIL BUSINESS) DISTRICT/O-1.1 (FM HIGHWAY 1417) OVERLAY DISTRICT ON PROPERTY LOCATED AT 2610 SOUTH F.M. 1417 (HERITAGE PARKWAY), BEING 13.022 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (ARC STX HOLDINGS, LLC, OWNER; TESCH DEVELOPMENT & MANAGEMENT CO., LLC, PROSPECTIVE BUYER; ROBERT TESCH, REPRESENTATIVE; PAPE-DAWSON ENGINEERS, CIVIL ENGINEER; AND PIERCE-MURRAY LAND SOLUTIONS, SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Ordinance 6348

ORD 6348
SUP FOR MULTI-FAMILY DEVELOPMENT (2500 S. FM 1417) (DENIED)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A MULTI-FAMILY DEVELOPMENT (329 UNITS) IN A C-1 (RETAIL BUSINESS) DISTRICT/O-1.1 (FM HIGHWAY 1417) OVERLAY DISTRICT ON PROPERTY LOCATED AT 2500 SOUTH F.M. 1417 (HERITAGE PARKWAY), BEING 38.585 ACRES OF LAND IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (ARC STX HOLDINGS, LLC, OWNER; TESCH DEVELOPMENT & MANAGEMENT CO., LLC, PROSPECTIVE BUYER; ROBERT TESCH, REPRESENTATIVE; PAPE-DAWSON ENGINEERS, CIVIL ENGINEER; AND PIERCE-MURRAY LAND SOLUTIONS, SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Ordinance 6349

ORD 6349
SUP FOR STORAGE FACILITY (2602 S. FM 1417) (DENIED)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A STORAGE FACILITY IN A C-1 (RETAIL BUSINESS) DISTRICT/O-1.1 (FM HIGHWAY 1417) OVERLAY DISTRICT ON PROPERTY LOCATED AT 2602 SOUTH F.M. 1417 (HERITAGE PARKWAY), BEING 3.545 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (ARC STX HOLDINGS, LLC, OWNERS; TESCH DEVELOPMENT & MANAGEMENT CO., LLC, PROSPECTIVE BUYER; ROBERT TESCH, REPRESENTATIVE; PAPE-DAWSON ENGINEERS, CIVIL ENGINEER; AND PIERCE-MURRAY LAND SOLUTIONS, SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Council Member Stevenson expressed concern about requesting a zone change to C-1 Retail, then requesting several SUPs to "get around" C-1 Retail. He asked what the point of the change was and felt like it set a precedent.

Mr. Rae explained that originally the developer wanted to do a planned development, however the City's ordinance does not allow for a planned development under 200 acres. If the proposed planned development is between 100 and 200 acres, the Council can approve that.

The SUP is a part of the City's ordinance to allow for different uses to be allowed in certain zones. C-1 zoning is a higher and better use than single-family or multi-family. They are coming in for a lower use, R-1 in the C-1 zone. He said the other option was to have each parcel subdivided and rezoned separately. The staff felt it would be better to have it all zoned as one district.

Mr. Hefton said the zoning is currently M-1, Light-Manufacturing, which wouldn't be appropriate for the new high school. He did feel that C-1 would be the appropriate use, versus R-2 for Multi-Family. He asked for clarification from the developer about the Multi-Family, single home portion.

Mr. Hefton said there were multiple uses in the C-1 zone, and some of those uses could be done through a different zoning mechanism, such as R-2. The SUP gives the City the ability to add conditions as to how they are going to use the property. The developer would have to agree to, and abide by, these additional conditions.

He said the issue is multifaceted. Is the C-1 District the highest and best use for this area, and then, is an SUP the best mechanism to handle the changes instead of through zoning?

<u>Robert Tesch, 6950 TDC Drive, Ste. 110, McKinney, Texas</u>
Mr. Tesch is the President of Tesch Development & Mgmt,. Co., LLC, and said they currently have the property under contract, and are trying to conform to the City's process for a mixed use project. The mixed use project includes commercial, single-family, and multi-family uses.

Since the City doesn't have an ordinance that allows a planned development for less than 200 acres, the best way is to zone C-1, and then "down zoning" with an SUP.

Clint Philpott, Assistant City Manager, said one benefit that a planned development has is that the City gets to see a Site Plan and attach stipulations to the Site Plan for approval. The Council is not approving a "blanket zone," but is approving a full plan.

From the staff's perspective, part of this is that, after it's zoned C-1, the Council would approve the SUP, which can be tied

back to the Site Plan and specifications that general zoning wouldn't tie too.

Council Member Stevenson expressed concern that all the changes were to be considered on the same agenda. Mr. Hefton said the Council could consider just the zoning tonight with Ordinance 6346, then send the staff back with questions about the SUPs.

Council Member Melton said there was a provision for the Council to approve a planned development that is less than 200 acres. Mr. Rae said the Council can approve an exception for a planned development from 100 to 200 acres, but not for under 100 acres.

Council Member Teamann said he felt that C-1 zoning was the best and highest use for that land, given the area where it is located.

Mayor Plyler said the Council could consider approving the zone change tonight and then table the other requests until they have more information.

Council Member Stevenson still questioned changing the zoning and then using the SUP process.

Council Member Steele felt they should do different zones for each part of the development. For example, C-1 for the storage and R-2 for the multi-family.

Mr. Rae said they gave choices to the developer to either rezone the property as R-2 and do multi-family, or rezone as C-1, and request an SUP. If they rezoned and requested R-2, they would be entitled to do multi-family without any additional conditions. With the SUP, there are other conditions that the staff can add to it.

Mr. Hefton added that with the SUP, the Council could approve additional conditions that they might want to put on the development to meet their concerns. A planned development would allow the conditions, but this development could not be done as a planned development because it doesn't meet the acreage requirement.

He said, because of the specific concerns that the Council might have about the project, the staff can do more work with the developer and bring back a report or study to address those concerns.

Council Member Stevenson said he understood that the development was too small for a planned development, but this is a substantial project, and he would like to see site specific plans, elevations, and more information.

Mr. Tesch said they are here for zoning, to get the right to build within the City's ordinances for each of these four things. He

said commercial is probably the highest and best use, but it encompasses several things. He also addressed their market research on the project.

He said they are under contract on the property and they need to know that this is what they can do on that property, subject to the City's rules on each of those uses.

Mr. Hefton asked Mr. Tesch if his biggest concern tonight was the zone change in Ordinance 6346? He said the highest and best zoning would be C-1, and asked if he would be okay if the Council only approved the zoning at tonight's meeting. Then considered the other items after additional study.

Mr. Tesch said he would never say it was "all or nothing," but they don't have forever on the contract. He said he could only do 13 acres of the development with the C-1 zoning. He doesn't really want that zoning for the entire property. They were only requesting that to follow the City's rules, since they don't have a planned development for under 100 acres. He said the other uses in the project are very important.

Mr. Tesch said their research indicates that there is a demand for this type of mixed-use development and a variety of different types of rental property, close to commercial development.

Mr. Hefton clarified that Mr. Tesch was saying "no" to the Council only considering the zoning portion of the request at tonight's meeting. He understood Mr. Tesch to say they need all the items.

Council Member Howeth asked why Mr. Tesch didn't just request R-1 or R-2 zoning. Mr. Tesch said he needs the mixed use, because of the way it works together. He said their research has indicated that there is a demand for different types of development, both the standard apartments and the more modern, single story apartments. He said that also works together with the commercial aspect.

Council Member Howeth confirmed that Mr. Tesch has not done a traffic study for this area. She expressed concern about the amount of traffic from the high school, and then adding more traffic from the proposed development.

Council Member Teamann said with the valid concerns about traffic and the elevation of the property, what would the timeline be to work through these issues and bring something back that addresses these issues. Mr. Hefton said the staff could probably have something by the second Council Meeting in February 2021. Mr. Tesch was not sure that would work with his timeline.

Council Member Stevenson asked about the 329 single-family homes for rent that would be offered with the project. He introduced another associate to answer those questions.

<u>William Hancock, 1330 Riverhill Road, Frisco, Texas</u>
Mr. Hancock said his company is under contract with Mr. Tesch to purchase just that section of land for the 320 units for rent. He said the closest example of this type of development is in McKinney and Celina.

The units are built on-site and are not pre-fab. It is on one tax parcel and is like a "horizontal apartment complex." The single-family units are three-to-four bedroom, stand-alone, cottage style homes. By using SUPs, this gives them some requirements instead of giving them "carte blanch."

Mr. Hancock said their goal is to focus on educators, single parents, pet owners, people who don't have money for a down payment, and people that need additional space, but it's still a normal gated community. He said their cost is approximately $200,000 per unit, and the units have granite countertops and high ceilings. He said some of the questions came from their site plan, and if that site plan was changed they would need to come back to the Council.

Council Member Howeth said if they approve C-1 zoning with an SUP, would they not be opening the door for everyone else that has commercial property to come back and request an SUP. She expressed concern about setting a precedent.

Mr. Hancock said they felt the SUP was more restrictive than R-2 zoning, but he said their goal was to be partners in Sherman.

Mayor Plyler told the Council that their options tonight were to enter into Executive Session and discuss the issue, approve the zone change only and let the staff negotiate the other issues first, or table all the requests and let the staff work with the developer.

Mr. Hancock said their contract is set to expire in 36 days. Council Member Stevenson suggested going into Executive Session for the Council to discuss the issue. Ryan Pitman, Attorney, said the Council could enter Executive Session to discuss legal issues surrounding the requests, but not for negotiations.

<u>EXECUTIVE SESSION – IN ACCORDANCE WITH CHAPTER 551, GOVT. CODE, V.T.C.S., (OPEN MEETINGS LAW)</u> **EXECUTIVE SESSION**
THE CITY COUNCIL WILL NOW HOLD AN EXECUTIVE SESSION PURSUANT TO THE PROVISIONS OF THE OPEN MEETINGS LAW, CHAPTER 551, GOVERNMENT CODE, VERNONS TEXAS CODES ANNOTATED, IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN THE FOLLOWING SECTIONS.

TEX. GOV'T CODE § 551.071 --
SEEKING THE ADVICE OF ITS ATTORNEY ABOUT PENDING OR CONTEMPLATED LITIGATION, SETTLEMENT OFFERS OR ANY MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 6:03 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:20 p.m. and reconvened in Open Meeting.

OPEN MEETING — **OPEN MEETING**

Reconvene into Open Meeting and take action, if any, on items discussed in Executive Session.

ACTION TAKEN. — **ORD 6346, 6347, 6348, 6349 (DENIED)**

Motion by Council Member Stevenson to deny the requests in Ordinance Nos. 6346, 6347, 6348, and 6349. Second by Council Member Melton.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED TO DENY.

RESOLUTION NO. 6678 – APPROVING AND AUTHORIZING EXECUTION OF A MASTER DEVELOPMENT AGREEMENT AMONG THE CITY OF SHERMAN, TEXAS, CROSSROADS HOSPITAL DEVELOPMENT LLC, IVY HOTEL GROUP, LLC AND CFP SHERMAN, LLC FOR THE DEVELOPMENT, DESIGN AND CONSTRUCTION OF AN ESTIMATED 80-BED ACUTE CARE HOSPITAL AND APPROPRIATE SITE AMENITIES SUPPORTING THE SAME WITHIN THE CITY OF SHERMAN, TEXAS — **RES 6678 DEVELOPMENT AGREEMENT CROSSROADS HOSPITAL DEVELOPMENT**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AND AUTHORIZING EXECUTION OF A MASTER DEVELOPMENT AGREEMENT AMONG THE CITY OF SHERMAN, TEXAS, CROSSROADS HOSPITAL DEVELOPMENT LLC, IVY HOTEL GROUP, LLC AND CFP SHERMAN, LLC FOR THE DEVELOPMENT, DESIGN AND CONSTRUCTION OF AN ESTIMATED 80-BED ACUTE CARE HOSPITAL AND APPROPRIATE SITE AMENITIES SUPPORTING THE SAME WITHIN THE CITY OF SHERMAN, TEXAS.

RESOLUTION NO. 6679 – APPROVING AND AUTHORIZING EXECUTION OF A PREDEVELOPMENT LOAN AGREEMENT AMONG CFP SHERMAN, LLC, THE CITY OF SHERMAN, TEXAS, CROSSROADS HOSPITAL DEVELOPMENT, LLC, IVY HOTEL GROUP, LLC, AP GULF STATES, INC., PHOENIX INDUSTRIAL DEVELOPMENT AUTHORITY, AND E4 ARCHITECTURE FOR THE COMMITMENT OF FUNDS FOR PREDEVELOPMENT EXPENSES RELATED TO THE — **RES 6679 PREDEVELOPMENT LOAN AGREEMENT CROSSROADS HOSPITAL DEVELOPMENT**

DEVELOPMENT, DESIGN AND CONSTRUCTION OF AN ESTIMATED 80-BED ACUTE CARE HOSPITAL AND APPROPRIATE SITE AMENITIES SUPPORTING THE SAME WITHIN THE CITY OF SHERMAN, TEXAS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AND AUTHORIZING EXECUTION OF A PREDEVELOPMENT LOAN AGREEMENT AMONG CFP SHERMAN, LLC, THE CITY OF SHERMAN, TEXAS, CROSSROADS HOSPITAL DEVELOPMENT, LLC, IVY HOTEL GROUP, LLC, AP GULF STATES, INC., PHOENIX INDUSTRIAL DEVELOPMENT AUTHORITY, AND E4 ARCHITECTURE FOR THE COMMITMENT OF FUNDS FOR PREDEVELOPMENT EXPENSES RELATED TO THE DEVELOPMENT, DESIGN AND CONSTRUCTION OF AN ESTIMATED 80-BED ACUTE CARE HOSPITAL AND APPROPRIATE SITE AMENITIES SUPPORTING THE SAME WITHIN THE CITY OF SHERMAN.

Mr. Hefton said several months ago, members from the Ivy Group approached the City about a proposed new development related to this hospital. The project is in the planning stages, but would be an 80-bed acute care facility located in the Crossroads Development, north of FM 1417 and west of Hwy 75.

Resolution 6678 is related to the Master Development Agreement between the City and these development partners, for a non-profit entity that has recently been created to pursue finalizing the plans for development.

Resolution 6679 is the mechanism by which that predevelopment phase would be funded, which is proposed to be a loan agreement between the interested parties, including the City of Sherman. Upon completion of the predevelopment phase, and the issuance of debt by the non-profit for the construction of the facility, there would be repayment of the loan to all the lenders in the agreement, at a rate of 5% per annum.

He said the staff has been meeting internally and with the developers of the project and believe that it is a great opportunity for the City to contribute, on a short-term basis, to these proposed activities.

He reiterated that this is not a City of Sherman project. The City would be one of several partners in the project. He introduced Robert Columbo and Brian Garcia to discuss the project.

Robert Columbo, 4300 MacArthur Ave, Dallas, Texas

Mr. Columbo said they started this process eight or nine months ago and introduced this alternative financing for the project. The financing uses a non-profit instead of going through the traditional funding sources, which at times can be difficult.

He said the predevelopment phase of the project is an extremely important part of the funding process. The predevelopment phase includes the design, budgeting, cost, and the market feasibility study. This also gives them the opportunity to adjust the growth of the hospital upward if needed.

Mr. Columbo said this will not be a City hospital, but the City is a beneficiary of the hospital, which will be run by a 501c3. At the end of the bond term, the decision to refinance, sell, or continue as it is, will be made by the City, through the 501c3.

He expected that the predevelopment phase would last eight to ten months, but they might be able to make it six to eight months, and they have an "ample budget."

<u>Brian Garcia, 4300 MacArthur Ave, Suite 175, Dallas, Texas</u>
Mr. Hefton verified who actually owns the hospital facility itself. Mr. Garcia said the 501c3 serves in that capacity and acts as a trustee. The 501c3 is the owner at the outset, and at the end of the disposition, the City is presented several options as to what they can do with the facility.

Mr. Hefton asked, in terms of fiscal responsibility, what would the City's obligation be in respect to the bonds. Mr. Garcia said it would be zero. There would be no obligation from the City, the County, or the State.

Mr. Hefton reiterated that the City would not be issuing the debt, would not be guaranteeing the debt, and would not be lending its bond rating toward the debt. It is an obligation of the 501c3, that doesn't affect the City's ability to issue debt in the future, or obligate the City to repay any portion of the debt. Mr. Garcia confirmed that is 100% correct.

Council Member Melton verified that the City will also get back their money that they put into the project, upon the successful funding and closing.

Mr. Columbo said during the time when the hospital is being operated and the bond is being repaid, any surplus cash cannot go to any place other than to the City, because it is a non-profit. There can't be any profit.

Council Member Teamann verified that they are not requesting any tax abatements or rebates. Mr. Garcia said they are not requesting any of those incentives and the market is currently very opportune for this project.

Kristopher Kearney, Abernathy, Roeder, Boyd, Hullett, said there are two agreements for this project, with the first being a Master Development Agreement. The predevelopment phase shows what this hospital will look like. The second agreement is a Predevelopment Loan Agreement to provide funding for the project.

ACTION TAKEN.

Motion by Council Member Howeth to adopt Resolution Nos. 6678 and 6679, as presented. Second by Council Member Melton.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

RES 6650 DEVELOPMENT AGREEMENT

TABLED AT THE SEPTEMBER 21, 2020 CITY COUNCIL MEETING)
RESOLUTION NO. 6650 – AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SHERMAN AND BROWN LEWISVILLE RAILROAD FAMILY FIRST LP FOR THE CONSTRUCTION OF PUBLIC FACILITIES FOR 695 HIGHWAY 11, SHERMAN, TX, IN THE CITY OF SHERMAN'S EXTRA TERRITORIAL JURISDICTION (ETJ)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SHERMAN AND BROWN LEWISVILLE RAILROAD FAMILY FIRST LP FOR THE CONSTRUCTION OF PUBLIC FACILITIES FOR 695 HIGHWAY 11, SHERMAN, TX, IN THE CITY OF SHERMAN'S EXTRA TERRITORIAL JURISDICTION (ETJ).

ACTION TAKEN.

Motion by Council Member Stevenson to remove Resolution No. 6650, from table for discussion. Second by Council Member Steele.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED TO REMOVE FROM TABLE.

Wayne Lee, Director of Engineering, said Brown Lewisville Railroad Family First L.P. is the parent company of Big City Crushed Concrete, which is a company that recycles crushed concrete into gravel that can be used as a road base or on other projects.

They are proposing to locate a facility on Hwy 11, which is about 1,400 feet from an existing water line. Therefore they need to extend the water line to the facility.

The City is requesting them to install a bigger than normal water line. Instead of a 6" or 8" line, the City is asking them to install a 12" water line to facilitate future development.

This contract establishes the City's participation in the upsizing that the City is requesting. The City is capped at paying 30% of the infrastructure improvement by a developer, however the cost of this upsizing is more than 30%. Therefore the City is also waiving the cost of the engineering plan review, inspection, and testing fee, which will get it close to the cost of the upsizing. The contract also sets a discounted rate for crushed concrete that is used by the City maintenance crews.

Council Member Howeth said she has not seen any problems with this facility, and wasn't even aware it was there until recently. Council Member Steele also verified that the City has not received any complaints about the facility.

Council Member Melton verified that the City is asking them to install a 12" water main instead of an 8" water main, and the City is paying 30% of the installation, and waiving other items. Staff added that the City will receive a discount for crushed concrete.

Mr. Philpott said they were obligated to extend a 6" or 8" water line, but the City is asking for a 12" water line. The additional cost to install a 12" water line, exceeds the cost that the City is contributing, so they are also waiving some fees. The City's ordinance on subdivision development says that the City pays to upsize a water line if it's on a thoroughfare. The City actually has a line item in the budget with money for upsizing utility lines on thoroughfares, when needed.

ACTION TAKEN.

Motion by Council Member Steele to adopt Resolution No. 6650, as presented. Second by Council Member Stevenson.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

RES 6680
ANIMAL CONTROL ADVISORY COMMITTEE

RESOLUTION NO. 6680 – APPROVING AN AMENDMENT TO THE COMPOSITION OF THE ANIMAL CONTROL ADVISORY COMMITTEE; PROVIDING FOR ITS MEMBERSHIP AND TERMS OF OFFICE; ALLOWING ITS ORGANIZATION AND STRUCTURE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AN AMENDMENT TO THE COMPOSITION OF THE ANIMAL CONTROL ADVISORY COMMITTEE; PROVIDING FOR ITS MEMBERSHIP AND TERMS OF OFFICE; ALLOWING ITS ORGANIZATION AND STRUCTURE.

CONSENT AGENDA.

RES 6681
EASEMENT FOR ONCOR ELECTRIC RELOCATION OF OVERHEAD ELECTRIC SUPPLY ON HWY 75 SERVICE ROAD AT HWY 56

RESOLUTION NO. 6681 – AUTHORIZING EXECUTION OF AN EASEMENT AND AN EASEMENT FOR TEMPORARY WORKING SPACE TO ONCOR ELECTRIC DELIVERY COMPANY, LLC FOR THE RELOCATION OF OVERHEAD ELECTRIC SUPPLY ALONG THE HIGHWAY 75 SOUTH SERVICE ROAD AT HIGHWAY 56 IN THE CITY OF SHERMAN, TEXAS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN EASEMENT AND AN EASEMENT FOR TEMPORARY WORKING SPACE TO ONCOR ELECTRIC DELIVERY COMPANY, LLC FOR THE RELOCATION OF OVERHEAD ELECTRIC SUPPLY ALONG THE HIGHWAY 75 SOUTH

SERVICE ROAD AT HIGHWAY 56 IN THE CITY OF SHERMAN, TEXAS.
CONSENT AGENDA.

RESOLUTION NO. 6682 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE CUNNINGHAM FAMILY TRUST LTD 1 FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 809 EAST WELLS AVENUE WITHIN CITY OF SHERMAN REINVESTMENT ZONE, NUMBER TEN (#10)

RES 6682 RESIDENTIAL PROPERTY TAX (809 E. WELLS)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE CUNNINGHAM FAMILY TRUST LTD 1 FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 809 EAST WELLS AVENUE WITHIN CITY OF SHERMAN REINVESTMENT ZONE, NUMBER TEN (#10).
CONSENT AGENDA.

RESOLUTION NO. 6683 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE CUNNINGHAM FAMILY TRUST LTD 1 FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 623 SOUTH MAXEY STREET WITHIN CITY OF SHERMAN REINVESTMENT ZONE, NUMBER TEN (#10)

RES 6683 RESIDENTIAL PROPERTY TAX (623 S. MAXEY)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH THE CUNNINGHAM FAMILY TRUST LTD 1 FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 623 SOUTH MAXEY STREET WITHIN CITY OF SHERMAN REINVESTMENT ZONE, NUMBER TEN (#10).
CONSENT AGENDA.

RESOLUTION NO. 6684 – AUTHORIZING THE PURCHASE OF A NEW 2021 KENWORTH T440 6X4 DUMP TRUCK FOR THE UTILITIES DISTRIBUTION SERVICES DEPARTMENT FROM MHC KENWORTH THROUGH THE SOURCEWELL PURCHASING COOPERATIVE

RES 6684 DUMP TRUCK FOR DISTRIBUTION SVCS.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 2021 KENWORTH T440 6X4 DUMP TRUCK FOR THE UTILITIES DISTRIBUTION SERVICES DEPARTMENT FROM MHC KENWORTH THROUGH THE SOURCEWELL PURCHASING COOPERATIVE.
CONSENT AGENDA.

RESOLUTION NO. 6685 – AUTHORIZING THE PURCHASE OF A NEW 2021 KENWORTH T440 6X4 DUMP TRUCK FOR THE STREET MAINTENANCE DEPARTMENT FROM MHC KENWORTH THROUGH THE SOURCEWELL PURCHASING COOPERATIVE

RES 6685 DUMP TRUCK FOR STREET MAINT.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 2021 KENWORTH T440 6X4 DUMP TRUCK FOR THE STREET MAINTENANCE DEPARTMENT FROM MHC

KENWORTH THROUGH THE SOURCEWELL PURCHASING COOPERATIVE.
CONSENT AGENDA.

RESOLUTION NO. 6686 – AUTHORIZING THE PURCHASE OF A NEW CHIPPER TRUCK FOR THE STREET MAINTENANCE DEPARTMENT FROM SOUTHWEST INTERNATIONAL THROUGH THE SOURCEWELL PURCHASING COOPERATIVE

RES 6686 CHIPPER TRUCK FOR STREET MAINT.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW CHIPPER TRUCK FOR THE STREET MAINTENANCE DEPARTMENT FROM SOUTHWEST INTERNATIONAL THROUGH THE SOURCEWELL PURCHASING COOPERATIVE.
CONSENT AGENDA.

RESOLUTION NO. 6687 – AUTHORIZING THE PURCHASE OF A NEW INTERNATIONAL BUCKET TRUCK FOR THE STREET MAINTENANCE DEPARTMENT FROM SOUTHWEST INTERNATIONAL THROUGH THE SOURCEWELL PURCHASING COOPERATIVE

RES 6687 BUCKET TRUCK FOR STREET MAINT.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW INTERNATIONAL BUCKET TRUCK FOR THE STREET MAINTENANCE DEPARTMENT FROM SOUTHWEST INTERNATIONAL THROUGH THE SOURCEWELL PURCHASING COOPERATIVE.
CONSENT AGENDA.

RESOLUTION NO. 6688 – AUTHORIZING THE PURCHASE OF A NEW 2020 JOHN DEERE BOX BLADE FOR THE STREET MAINTENANCE DEPARTMENT FROM RDO EQUIPMENT THROUGH THE SOURCEWELL PURCHASING COOPERATIVE

RES 6688 BOX BLADE FOR STREET MAINT.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 2020 JOHN DEERE BOX BLADE FOR THE STREET MAINTENANCE DEPARTMENT FROM RDO EQUIPMENT THROUGH THE SOURCEWELL PURCHASING COOPERATIVE.
CONSENT AGENDA.

RESOLUTION NO. 6689 – AUTHORIZING THE PURCHASE OF A NEW 2021 FORD SUPER DUTY F-350 TRUCK FOR THE STREET MAINTENANCE DEPARTMENT FROM HOLIDAY FORD WHITESBORO

RES 6689 TRUCK FOR STREET MAINT.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 2021 FORD SUPER DUTY F-350 TRUCK FOR THE STREET MAINTENANCE DEPARTMENT FROM HOLIDAY FORD WHITESBORO.
CONSENT AGENDA.

RESOLUTION NO. 6690 – AUTHORIZING THE PURCHASE OF A NEW 2021 FORD SUPER DUTY F-250 CREW CAB TRUCK FOR THE STREET MAINTENANCE DEPARTMENT FROM HOLIDAY FORD WHITESBORO

RES 6690 TRUCK FOR STREET MAINT.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A

NEW 2021 FORD SUPER DUTY F-250 CREW CAB TRUCK FOR THE STREET MAINTENANCE DEPARTMENT FROM HOLIDAY FORD WHITESBORO.
CONSENT AGENDA.

RES 6691
FRONT LOADER FOR SOLID WASTE SVCS.

RESOLUTION NO. 6691 – AUTHORIZING THE PURCHASE OF A NEW 40 CUBIC YARD FRONTIER FRONT LOADER BODY FOR THE SOLID WASTE DEPARTMENT FROM BRIDGEPORT MANUFACTURING THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 40 CUBIC YARD FRONTIER FRONT LOADER BODY FOR THE SOLID WASTE DEPARTMENT FROM BRIDGEPORT MANUFACTURING THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC).
CONSENT AGENDA.

RES 6692
FRONT END LOADER FOR SOLID WASTE SVCS.

RESOLUTION NO. 6692 – AUTHORIZING THE PURCHASE OF A NEW 2021 AUTOCAR XPEDITOR ACX64 CHASSIS FOR USE AS A COMMERCIAL FRONT END LOADER WITHIN THE SOLID WASTE DEPARTMENT FROM CHASTANG ENTERPRSIES THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 2021 AUTOCAR XPEDITOR ACX64 CHASSIS FOR USE AS A COMMERCIAL FRONT END LOADER WITHIN THE SOLID WASTE DEPARTMENT FROM CHASTANG ENTERPRISES THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD).
CONSENT AGENDA.

REQ TO ADVERTISE HILRE DRIVE EXTENSION

REQUEST TO ADVERTISE CONSTRUCTION OF HILRE DRIVE EXTENSION

Mr. Lee said the Council recently approved a Plat that dedicated the right-of-way for the Hilre Drive Extension Project. This extension is needed for safety purposes so they can eventually close off Knollwood Road where it intersects with Northcreek Drive, near Travis Street. Hilre Drive will be extended from Knollwood Drive to Travis Street

The Texas Department of Transportation is planning to install traffic signalization at Northcreek Drive and Knollwood Road. Before that can be done, Knollwood Road needs to be closed.

He said the plans are complete and they will probably have a bid opening in February 2021. Construction should begin in March or April and should be complete by the end of Summer.

Council Member Melton asked if this project could be done in-house. Mr. Hefton said this encompassed too much concrete for the City crews to lay. He said they have done a large project like this before, but it "ate up" a great deal of the crews' time and it was hard to catch up.

ACTION TAKEN.

Motion by Council Member Steele to approve the request to advertise for the construction of Hilre Drive Extension, as presented. Second by Council Member Melton.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

WWTP OPERATIONS BUILDING ADDITIONS & REMODEL PROJECT

WWTP OPERATIONS BUILDING ADDITIONS AND REMODEL PROJECT

The City Council approved the request to advertise for bids for the construction of the Wastewater Treatment Plant Operations Building Additions and Remodel Project.

The project includes the construction of proposed modifications to the existing building, building additions, pavement, sidewalks, water and sewer service lines, plumbing, HVAC, and electrical improvements at the Post Oak Wastewater Treatment Plant.

The project is estimated to cost approximately $1.2 million, and would be funded through the Greater Texoma Utility Authority $13.59 million Clean Water SRF, made available through the Texas Water Development Board.
CONSENT AGENDA.

WATER & SEWER SUPPLIES & PARTS

ANNUAL WATER AND SEWER MAINTENANCE SUPPLIES AND PARTS

The City Council approved the request to advertise for bids to provide the City with water and sewer supplies and parts for the annual maintenance work, which will be used in the maintenance of the City's water and sewer system.
CONSENT AGENDA.

FINISH & ROUGH MOWING ANNUAL CONTRACTS

ANNUAL SERVICES FOR FINISH AND ROUGH MOWING OF VARIOUS CITY PROPERTIES

The City Council approved the request to advertise for the contract for annual mowing of City boulevards, islands, street rights-of-way, and other City properties.

To optimize efficiency and maintenance, the City contracts for mowing of these public areas on a periodic basis. The bid will include "finish" and "rough mowing" areas, and will be overseen by the Park Maintenance and Street Maintenance departments.
CONSENT AGENDA.

OTHER BUSINESS

CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING

RECOGNITION OF CITY OF SHERMAN AWARD: "CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING"

Mary Lawrence, Director of Finance, thanked the City Council, Mr. Hefton, Tammy Davis, Controller, and everyone who contributed to the Audit process and helped them in achieving

the Certificate of Achievement for Excellence in Financial Reporting, for their fiscal year ended September 30, 2019.

Mr. Hefton said the City runs a clean audit and the Finance Department has the process down. He said the staff does a great job and the process and product is of a very high standard!

SEDCO QUARTERLY PROGRESS REPORT

RECEIVE QUARTERLY PROGRESS REPORT FROM SHERMAN ECONOMIC DEVELOPMENT CORPORATION PRESIDENT KENT SHARP

Kent Sharp, President of the Sherman Economic Development Corporation, presented their Quarterly Progress Report.

He said during the quarter, SEDCO approved Resolution 2020.09, authorizing the purchase of 10.33 acres of vacant land located at the southeast corner of Dorset Drive and Howe Drive. They also approved Resolution 2020.10, authorizing the sale of approximately 10 acres of vacant land located at the southwest corner of West Travis Street and Northgate Drive to the City for use as a law enforcement center.

SEDCO also worked in partnership with Austin College and the Grayson SBDC, to launch the RISE, Raising Innovative Sherman Entrepreneurs Challenge, to help develop young, entrepreneurial companies by awarding a total of $250,000 to qualified applicants. This helps young companies that are in need of capital.

SEDCO presented the third incentive payment of $48,000 to Elevate Recoveries after the company met the conditions of the performance agreement by creating 13 jobs for a total of 50 jobs.

Mr. Sharp said business visits were very tough this year with the COVID-19 restrictions on entering their facilities.

Activity did pick up from October to December 2020. SEDCO responded to over a dozen requests for proposals, and they were "short-listed" on two of the projects. Both were cheese production plants. The first has a capital expenditure of about $40 million and about 150 employees. Sherman did not have enough milk production, so the company went farther west. They actually converted milk to cheese.

The other project was a $180 million capital expenditure. Sherman lost that project to a town that offered a $27.5 million cash investment, plus land, totaling an incentive of almost $30 million. This company repackages bulk cheese that has already been made. Generally, Sherman's incentive plan begins in the range of 5% of capital investment. The company was also looking at cheaper labor.

Mr. Sharp said they are currently working on 15 active projects, with an estimated $2.2 billion in investments, and 5,700 jobs.

He said they are also working with a lack of building issue in Sherman.

CONSIDER APPROVAL OF THE ANNEXATION SCHEDULING PLAN FOR ADOPTION OF APPROXIMATELY 57.88 ACRES OF LAND LOCATED NORTH OF U.S. 82, EAST OF PLAINVIEW ROAD AND WEST OF F.M. 131, ADJACENT TO THE SHERMAN CITY LIMITS AND IN THE CITY OF SHERMAN'S EXTRA TERRITORIAL JURISDICTION; AND DIRECTING THE DEPARTMENT OF ENGINEERING SERVICES TO DEVELOP A SERVICE PLAN FOR THE AREA TO BE ANNEXED UPON APPROVAL OF THE ANNEXATION SCHEDULING PLAN

ANNEXATION SCHEDULE HERITAGE RANCH EAST

Mr. Philpott said this annexation and the next one are related. This annexation includes 57.88 acres and the following one is for 136.94 acres. These annexations are about a Master Plan Development, the third one in Sherman.

These agenda items will set the annexation schedule, with the public hearing at the next Council Meeting. The Service Plans for the annexations are also attached, and the Planning and Zoning Commission has approved the Planned Development.

After the annexations are approved, the next step will be City Council consideration of the Planned Development. The location of the annexations is just north of Hwy 82, between FM 1417 and Travis Street. These two parcels are the two pieces that aren't currently in the City limits. The rest of the property in the Planned Development has previously been annexed.

CONSIDER APPROVAL OF THE ANNEXATION SCHEDULING PLAN FOR ADOPTION OF APPROXIMATELY 136.94 ACRES OF LAND LOCATED NORTH OF U.S. HIGHWAY 82, EAST OF F.M. 1417, AND WEST OF PLAINVIEW ROAD, ADJACENT TO THE SHERMAN CITY LIMITS AND IN THE CITY OF SHERMAN'S EXTRA TERRITORIAL JURISDICTION; AND DIRECTING THE DEPARTMENT OF ENGINEERING SERVICES TO DEVELOP A SERVICE PLAN FOR THE AREA TO BE ANNEXED UPON APPROVAL OF THE ANNEXATION SCHEDULING PLAN

ANNEXATION SCHEDULE HERITAGE RANCH WEST

ACTION TAKEN.

Motion by Council Member Steele to approve the Annexation Scheduling Plans for the annexation of approximately 57.88 acres of land, located North of U.S. 82, East of Plainview Road, and West of F.M. 131, and approximately 136.94 acres of land, located North of U.S. 82, East of F.M. 1417, and West of Plainview Road, as presented. Second by Council Member Stevenson.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

FINAL PLAT APPROVAL OF WASHINGTON MEADOWS, PHASE I, BEING 15.983 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763; WYLDEWOOD HOMES, LLC,

APPROVE FINAL PLAT WASHINGTON MEADOWS, PHASE I

OWNERS; TIM PIKE, REPRESENTATIVE; MDJ ENGINEERING, LLC, CIVIL ENGINEER; AND PRESTON TRAIL LAND SURVEYING, SURVEYOR [900 BLOCK OF NORTH F.M. 1417 (HERITAGE PARKWAY)]

The City Council approved the Final Plat of Washington Meadows, Phase I, being 15.983 acres, located in the 900 block of North FM 1417.

The property is zoned an R-1 (One Family Residential) District, and the owners would like to plat the property into 57 lots for residential development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter. CONSENT AGENDA.

FINAL PLAT APPROVAL OF WASHINGTON MEADOWS, PHASE II, BEING 21.132 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763; WYLDEWOOD HOMES, LLC, OWNERS; TIM PIKE, REPRESENTATIVE; MDJ ENGINEERING, LLC, CIVIL ENGINEER; AND PRESTON TRAIL LAND SURVEYING, SURVEYOR [900 BLOCK OF NORTH F.M. 1417 (HERITAGE PARKWAY)]

APPROVE FINAL PLAT WASHINGTON MEADOWS, PHASE II

The City Council approved the Final Plat of Washington Meadows, Phase II, being 21.132 acres, located in the 900 block of North FM 1417.

The property is zoned an F-1 (One Family Residential) District, and the owners would like to plat the property into 77 lots for residential development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter. CONSENT AGENDA.

FINAL PLAT APPROVAL OF M&G HOME BUILDERS EPSTEIN STREET ADDITION, LOTS 1 AND 2, BEING 0.367 ACRES IN THE G.B. PILANT SURVEY, ABSTRACT NO. 963; M&G HOMEBUILDERS, LLC, OWNERS; MARTIN COVARRUBIAS, REPRESENTATIVE; AND PRESTON TRAIL LAND SURVEYING, LLC, SURVEYOR (1014 EAST EPSTEIN STREET)

APPROVE FINAL PLAT EPSTEIN STREET ADDITION

The City Council approved the Final Plat of M&G Home Builders Epstein Street Addition, being 0.367 acres, located at 1014 East Epstein Street.

The property is zoned an R-1 (One Family Residential) District, and the owners would like to plat the property into two 50' lots for residential development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter. CONSENT AGENDA.

FINAL PLAT APPROVAL OF LOTS 1 AND 2, BLOCK A, FIRST UNITED BANK ADDITION, BEING 5.583 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763; FIRST UNITED BANK

APPROVE FINAL PLAT FIRST UNITED BANK ADDITON

& TRUST, OWNERS; DEAN GILBERT, REPRESENTATIVE; AND ALL AMERICAN SURVEYING, SURVEYOR (2007 AND 2011 TEXOMA PARKWAY)

The City Council approved the Final Plat of First United Bank Addition, being 5.583 acres, located at 2007 and 2011 Texoma Parkway.

The property is zoned C-2 (General Commercial) District, and the owners would like to plat the property into two lots to sell one of the lots.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA.

FINAL PLAT APPROVAL OF GLITZY GIRLZ ADDITION, BEING 4.250 ACRES IN THE ALFRED HUME SURVEY, ABSTRACT NO. 522; 680 INVESTMENT PROPERTIES, LLC, OWNERS; AND UNDERWOOD DRAFTING AND SURVEYING, INC., SURVEYOR [4805 NORTH F.M. 1417 (HERITAGE PARKWAY)]

APPROVE FINAL PLAT GLITZY GIRLZ ADDITION

The City Council approved the Final Plat of Glitzy Girlz Addition, being 4.250 acres, located at 4805 North FM 1417.

The property is zoned a C-2 (General Commercial) District and is located in the O-1.1 (FM 1417) Overlay District. The owners would like to plat the property into one lot for commercial development.

The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA.

APPROVAL OF THE 2020 AD VALOREM TAX ROLL VALUE AND TAX LEVY

AD VALOREM TAX ROLL VALUE & TAX LEVY

The City Council approved the 2020 Ad Valorem Tax Roll Value and Tax Levy. The 2020 tax year represents taxes that will be collected during the City's 2020-2021 fiscal year.

The Grayson County Tax Assessor/Collector's Office provided Sherman's taxable value as $3,835,903,712, which produces a levy of $17,908,107.33, based on the City's total tax rate of $0.489000 per $100.00 valuation.
CONSENT AGENDA.

MEDIA QUESTIONS

MEDIA QUESTIONS

There were no media questions.

COUNCIL COMMENTS

CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING

EXCELLENCE IN FINANCIAL REPORTING

Council Member Teamann congratulated Ms. Lawrence and Ms. Davis on a great job earning the "Certificate of Achievement for Excellence in Financial Reporting" again this year.

CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING

EXCELLENCE IN FINANCIAL REPORTING

Mayor Plyler congratulated Ms. Lawrence, adding that he always enjoyed getting those letters for "Excellence in Financial Reporting." He asked her to convey to her team, how proud the City Council is of them.

ANNOUNCEMENTS

ANNOUNCEMENTS

Mayor Plyler announced the following:

- **Coffee with the Mayor will be held on February 5, 2021, at 8:00 a.m., at Legend Bank.**
- **The annual Martin Luther King, Jr. Day of Service will be held on January 18, 2021, at 10:00 a.m., at 922 North East Street. The project will be to clean up Dr. Martin Luther King, Jr. Memorial Park, followed by an afternoon of food and games.**
- **Habitat for Humanity will hold their annual Habitators fundraiser on January 30, 2021, at 11:00 a.m., in the Municipal Ballroom. The event will raise funds for house construction and home repair in partnership with Grayson County families.**

EXECUTIVE SESSION – IN ACCORDANCE WITH CHAPTER 551, GOVT. CODE, V.T.C.S., (OPEN MEETINGS LAW)

EXECUTIVE SESSION

THE CITY COUNCIL WILL NOW HOLD AN EXECUTIVE SESSION PURSUANT TO THE PROVISIONS OF THE OPEN MEETINGS LAW, CHAPTER 551, GOVERNMENT CODE, VERNONS TEXAS CODES ANNOTATED, IN ACCORDANCE WITH THE AUTHORITY CONTAINED IN THE FOLLOWING SECTIONS.

TEX. GOV'T CODE § 551.071 --
SEEKING THE ADVICE OF ITS ATTORNEY ABOUT PENDING OR CONTEMPLATED LITIGATION, SETTLEMENT OFFERS OR ANY MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT

TEX. GOV'T CODE § 551.072 --
DELIBERATING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.073 --
DELIBERATING A NEGOTIATED CONTRACT FOR A PROSPECTIVE GIFT OR DONATION TO THE CITY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.074 --
DELIBERATING THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF A PUBLIC OFFICER OR EMPLOYEE; OR TO HEAR A COMPLAINT OR CHARGE AGAINST AN OFFICER OR EMPLOYEE UNLESS THE OFFICER OR EMPLOYEE WHO IS THE SUBJECT OF THE DELIBERATION OR HEARING REQUESTS A PUBLIC HEARING

- **(A) SHERMAN ECONOMIC DEVELOPMENT CORPORATION EX-OFFICIO MEMBERS**
- **(B) PLANNING AND ZONING COMMISSION**
- **(C) CIVIL SERVICE COMMISSION**

TEX. GOV'T CODE § 551.076 –
DELIBERATING THE DEPLOYMENT, OR SPECIFIC OCCASIONS FOR IMPLEMENTATION, OF SECURITY PERSONNEL OR DEVICES OR A SECURITY AUDIT

TEX. GOV'T CODE § 551.087 –
DISCUSSING OR DELIBERATING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE CITY SEEKS TO HAVE LOCATE, STAY OR EXPAND IN OR NEAR THE CITY AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS; OR DELIBERATING THE OFFER OF A FINANCIAL OR OTHER INCENTIVE TO A BUSINESS PROSPECT

TEX. GOV'T CODE § 551.089 --
DELIBERATING SECURITY ASSESSMENTS OR DEPLOYMENTS RELATING TO INFORMATION RESOURCES TECHNOLOGY, NETWORK SECURITY INFORMATION, OR THE DEPLOYMENT OR SPECIFIC OCCASIONS FOR IMPLEMENTATION OF SECURITY PERSONNEL, CRITICAL INFRASTRUCTURE OR SECURITY DEVICES

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 7:04 p.m.

On Motion duly made and carried, the Executive Session recessed at 7:25 p.m. and reconvened in Open Meeting.

OPEN MEETING **OPEN MEETING**

Reconvene into Open Meeting and take action, if any, on items discussed in Executive Session.

PLANNING AND ZONING COMMISSION

ACTION TAKEN. **PLANNING & ZONING COMMISSION**

Motion by Council Member Steele to appoint Bryan Blagg to fill an unexpired term on the Planning and Zoning Commission, from January 5, 2021 to May 2, 2022, as presented. Second by Council Member Stevenson.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

CIVIL SERVICE COMMISSION

CIVIL SERVICE COMMISSION

ACTION TAKEN.

Motion by Council Member Stevenson to reappoint Lawrence Davis to the Civil Service Commission, for a term from November 21, 2020 to November 21, 2023, as presented. Second by Council Member Steele.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

SHERMAN ECONOMIC DEVELOPMENT CORPORATION EX-OFFICIO MEMBER

SEDCO EX-OFFICIO MEMBER

ACTION TAKEN.

Motion by Council Member Stevenson to reappoint Council Member Shawn Teamann to serve as an Ex-Officio Member on the Sherman Economic Development Corporation Board, for a term from October 1, 2020 to October 1, 2021, as presented. Second by Council Member Melton.

VOTING AYE: Holland, Howeth, Melton, Steele, Stevenson, Teamann.
VOTING NAY: None.
MOTION CARRIED.

ADJOURNMENT

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 7:28 p.m.

_____
MAYOR

_____
CITY CLERK

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **C. 1.**

Meeting Date: 02/01/2021

Approved By: Robby Hefton, City Manager

Caption:

CONSENT AGENDA

Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Issue:

E. 3. **** RESOLUTION NO. 6699***

Authorizing Execution of a Professional Services/Consultant Agreement with Perkins Engineering Consultants, Inc. for Design of the Post Oak Wastewater Treatment Plant Equalization Basin Improvements

E.4. ****RESOLUTION NO. 6700***

Authorizing Execution of an Agreement with M&G Home Builders LLC for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1227 South Branch Street within City of Sherman Reinvestment Zone, Number Ten (#10)

F.1. **** REQUEST TO ADVERTISE***

Roof Replacement at Sherman Central Fire Station

G.4. **** OTHER BUSINESS***

Replat Approval of East Holley Addition, Block 1, Lot 1, a Replat of part of Lot 6, Block 1, Hall and Jones Addition, being 0.115 acres in the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 6, Block 1, Hall and Jones Addition; Holley Jolly Homes LLC, Owners; Josh Holley, Representative; and Preston Trail Land Surveying, Surveyor (821 North East Street)

G.5. **** OTHER BUSINESS***

Replat Approval of Lot 5, Block 3, Sherman Town Center, being Lot 5, Block 3, Sherman Town Center; JMCR Sherman LLC, Owners; Raising Cane's Restaurants, LLC, Developer; Benchmark Design Group, LLC, Civil Engineer; and Freeman Surveying & Mapping, LLC, Surveyor (3700 North U.S. Highway 75)

G.6. **** OTHER BUSINESS***

Replat Approval of Lots 118 and 119, Belmont Addition, being 0.276 acres in the C. Carter Survey, Abstract No. 229, also being all of Lots 118 and 119, Belmont Addition; Jose Castillo Torres and Crisalida Serrano Gonzales, Owners; and Helvey-Wagner Surveying, Inc.,, Surveyor (515 North Colbert Avenue)

G.7. **** OTHER BUSINESS***

Consider Request of Downtown Sherman NOW to Temporarily Close Certain Streets for "Craft the Night Away" on Saturday, June 19, 2021

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 1.**

Meeting Date: 02/01/2021

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6355

An Ordinance of The City Council of The City of Sherman, Texas, Amending Section 8, Subsection (5)(A), Ordinance No. 2280, so as to Grant a Specific Use Permit to allow Outdoor Displays in a C-1 (Retail Business) District/O-1 (75 & 82) Overlay District at 3201 North U.S. Highway 75, Suite 101, being Lot 1R-1, Block 1 of The Replat of Lot 1R of Sherman Crossing Addition (75/82 Sherman Crossing, Ltd, Owner; Tractor Supply, Tenant; Onyx Creative, Architect; And Aaron Blue, Representative); Providing That This Specific Use Permit Shall Be Granted Subject to Certain Conditions; Providing A Penalty Not to Exceed $2,000.00

Issue:

To consider the request of 75/82 Sherman Crossing LTD (Owners), Tractor Supply (Tenant), Onyx Creative (Architect) and Aaron Blue, (Representative) concerning the property located at 3201 North U.S. Highway 75, Suite 101, being Lot 1R-1, Block 1 of the Replat of Lot 1R of Sherman Crossing Addition for a Specific Use Permit to outdoor display in a C-1 (Retail Business) District/O-1 (75 & 82) Overlay District.

Background:

The property is located at 3201 North U.S. Highway 75, Suite 101, the northeast corner of U.S. Highway 75 and 82; Tractor Supply is the tenant. The property is zoned a C-1 (Retail Business) District and located in the O-1 (75 & 82) Overlay District.

The project consists of an exterior alteration to the existing Tractor Supply Store's side garden center called "The Side Lot Project". Key features will include a greenhouse/canopy feature to provide overhead coverage along with an enclosed bulk feed storage area and drive-through path with gates on both ends. The new drive-thru is to be used as a customer pick-up area in lieu of having a curbside pick-up zone in the parking lot. The garden center will be completely contained with the existing fenced area. They will need to move some of the existing merchandise on the south side of the building to the display area in the parking lot. and are requesting a Specific Use Permit to allow the outdoor displays in the parking lot.

Origination:

75/82 Sherman Crossing LTD (Owners)
Tractor Supply (Tenant)
Onyx Creative (Architect)
Aaron Blue, (Representative)

Financial Consideration:

None

Staff Recommendation:

At the January 12, 2021 regular meeting, the Planning and Zoning Board voted 7/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6355
Exhibit A - Site Plan
Location Map
Zoning Map
Zoning Sign Photo
Plat
Site Plan
Building Elevations
Floor Plan
Staff Review Letter
P&Z Communication

ORDINANCE NO. 6355

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW OUTDOOR DISPLAYS IN A C-1 (RETAIL BUSINESS) DISTRICT/O-1 (75 & 82) OVERLAY DISTRICT AT 3201 NORTH U.S. HIGHWAY 75, SUITE 101, BEING LOT 1R-1, BLOCK 1 OF THE REPLAT OF LOT 1R OF SHERMAN CROSSING ADDITION (75/82 SHERMAN CROSSING, LTD, OWNER; TRACTOR SUPPLY, TENANT; ONYX CREATIVE, ARCHITECT; AND AARON BLUE, REPRESENTATIVE); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Planning and Zoning Commission and the City Council, in accordance with the state law and the ordinances of the City of Sherman, have given the required notices and have held the required public hearings regarding this Specific Use Permit; and

WHEREAS, the City Council finds that this use will complement or be compatible with the surrounding uses and community facilities; contribute to, enhance, or promote the welfare of the area of request and adjacent properties; not be detrimental to the public health, safety, or general welfare; and conform in all other respects to all applicable zoning regulations and standards; and

WHEREAS, the City Council finds that it is in the public interest to grant this specific use permit, subject to certain conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That, from and after the effective date of this Ordinance, 75/82 Sherman Crossing LTD (Owner), Tractor Supply (Tenant), Onyx Creative (Architect) and Aaron Blue, (Representative) and the property located at 3201 North U.S. Highway 75, Suite 101, and more particularly described as Lot 1R-1, Block 1 of the Replat of Lot 1R of Sherman Crossing Addition, according to the Plat thereof filed of record on September 20, 2013, Real Property Records of Grayson County, Texas are granted a Specific Use Permit to allow outdoor displays as depicted in **Exhibit A – Site Plan,** in a C-1 (Retail Business) District/O-1 (75 & 82) Overlay District and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include property described as:

> Lot 1R-1, Block 1 of the Replat of Lot 1R of Sherman Crossing Addition, according to the Plat thereof filed of record on September 20, 2013, Real Property Records of Grayson County, Texas.

SECTION 2. That this Specific Use Permit is granted on the following conditions:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the C-1 (Retail Business) District, the O-1 (75 & 82) Overlay District, the Sign Ordinance, the Fence Ordinance and the Commercial Tree and Landscaping Ordinance.
2. Fire access lanes and codes shall be coordinated with the Fire Marshal 903-892-7267.
3. Any structures built over any of the easements on the property will require approval for an encroachment easement from the City Council.
4. All required off-street parking shall be on private property and shall not encroach into the right-of-way.
5. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
6. Parking requirement is one space per 400 square foot of general floor space; a parking space is considered to be 9'x 20'. Must provide number of parking spaces available before a building permit will be issued. Outdoor display area shall not take up required parking.
7. Outdoor storage of merchandise, equipment or materials, which is essential or incidental to the use and which is not on temporary display for the purpose of being immediately available for sale to the public at large, shall be screened from all public thoroughfares and abutting uses. Stored merchandise shall not exceed the height of the screening device. Screening shall consist of wood or masonry fence material unless an exception is granted.
8. Shall provide mutual access agreement for the development before a permit will be issued.
9. Every site adjacent to the highway right-of-way shall include a buffer strip, landscaped and irrigated, being ten (10) feet in depth adjacent to the highway right-of-way.
10. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
11. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Engineering:

12. Verify fire requirements and code compliance with Fire Marshall.
13. No permanent structures will be permitted within any easements. Coordinate with City Engineering Department regarding water line along Hwy. 82 Service Road.

SECTION 3. That this Ordinance shall be entered upon the official zoning map as provided in Section 2, Ordinance No. 2280.

SECTION 4. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS ($2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 5. That the General Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect..

SECTION 6. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 7. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 8. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the _____ day of _____, 2021.

ADOPTED on this the _____ day of _____, 2021.

EFFECTIVE DATE on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

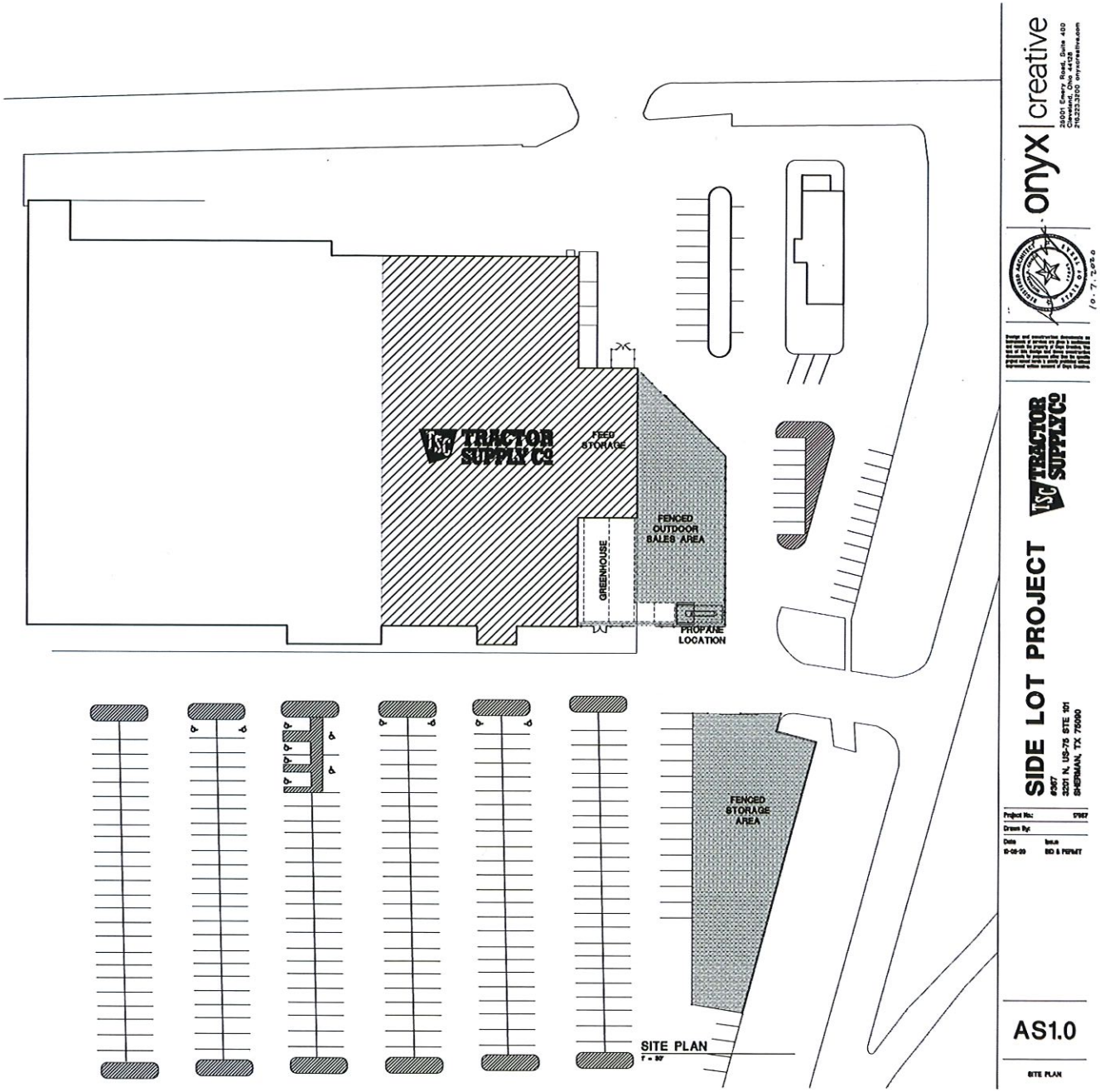
ATTEST:

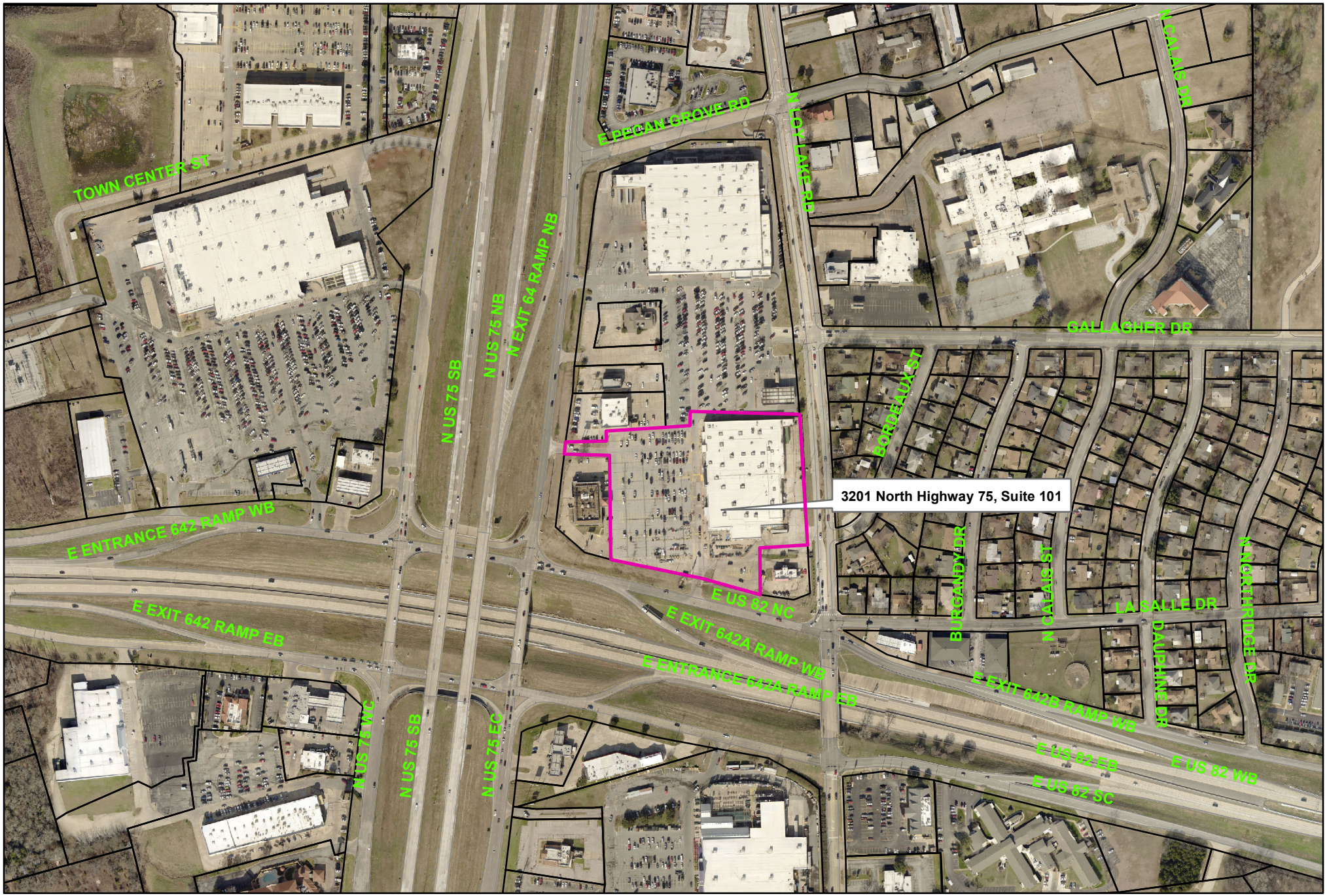
BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:
THE LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Exhibit A - Site Plan





Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

3201 North U.S. Highway 75, Suite 101

NOT TO SCALE

1 in = 400 ft

Zoning - 3201 North U.S. Highway 75, Suite 101

Legend

Special Districts Overlay
DISTRICT_NAME
- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor
Representation: ShermGIS.DBO.TransportationCorridor_Rep_1
- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

Zoning Districts
Representation: ShermGIS.DBO.ZoningDistrict_Rep
- Unknown
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing Distgrict
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District
- PD Planned Development

ImageGIS.DBO.ORTHOS_2020
RGB
- Red: Band_1
- Green: Band_2
- Blue: Band_3

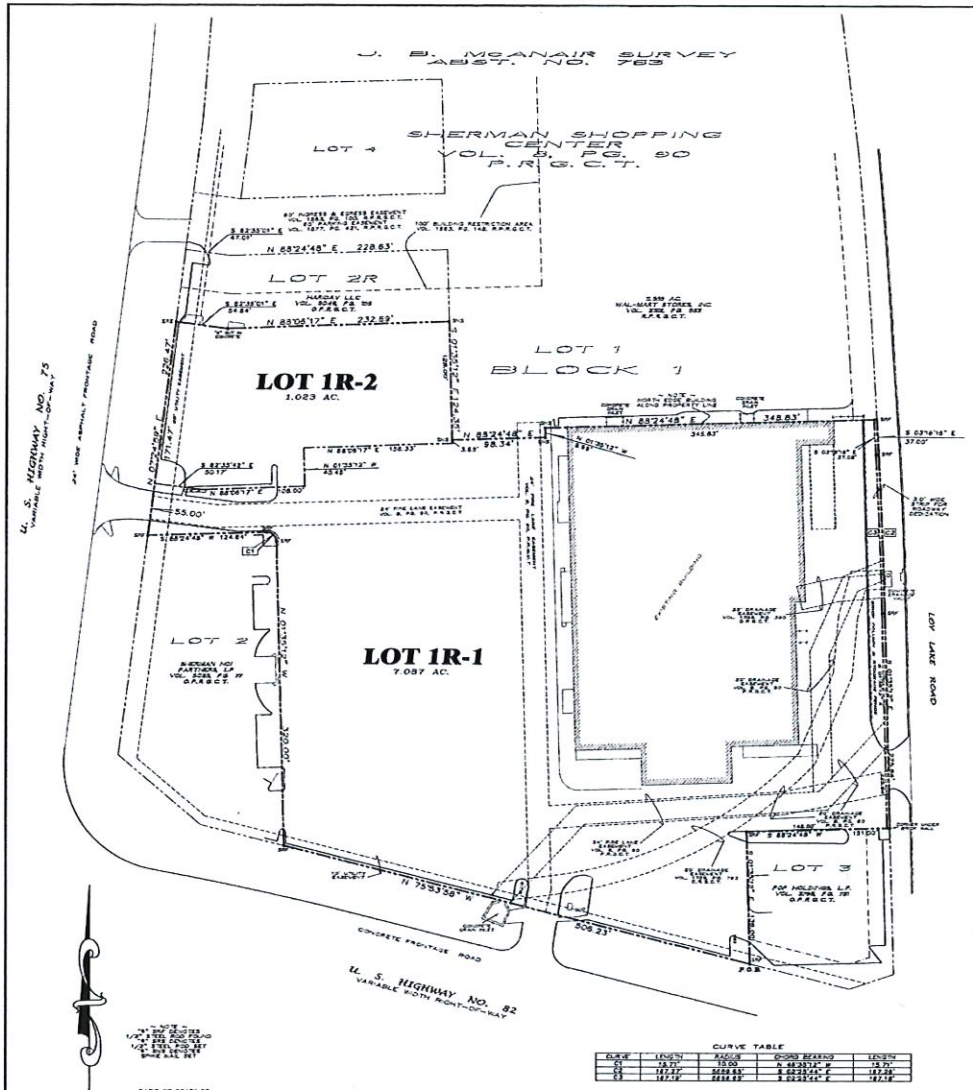
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

NOT TO SCALE

1 in = 200 ft

3201 North U.S. Highway 75, Suite 101


J. B. McANAIR SURVEY
ABST. NO. 783
SHERMAN SHOPPING CENTER
VOL. B, PG. 90
P.R.G.C.T.
LOT 4
LOT 2R
LOT 1
BLOCK 1
LOT 1R-2
1.023 AC.
LOT 1R-1
7.087 AC.
LOT 2
LOT 3
U. S. HIGHWAY NO. 75
VARIABLE WIDTH RIGHT-OF-WAY
LOY LAKE ROAD
U. S. HIGHWAY NO. 82
VARIABLE WIDTH RIGHT-OF-WAY
CONCRETE FRONTAGE ROAD
N 68°24'48" E 228.63'
N 68°24'48" E 232.89'
N 68°24'48" E 348.83'
N 68°24'48" E 98.34'
S 68°24'48" W 134.81'
N 68°24'48" E 345.83'
S 68°24'48" E 30.17'
N 68°24'48" E 28.00'
S 68°24'48" W 28.00'
S 68°24'48" E 37.00'
N 68°24'48" E 55.00'
N 68°24'48" E 348.83'
N 68°24'48" E 345.83'
N 68°24'48" E 98.34'
S 68°24'48" W 134.81'
N 68°24'48" E 55.00'
N 68°24'48" E 28.00'
S 68°24'48" W 28.00'
S 68°24'48" E 37

onyx | creative

23001 Emery Road, Suite 400
Cleveland, Ohio 44128
216.223.2200 onyxcreative.com

10.7.2020

TRACTOR SUPPLY Co.

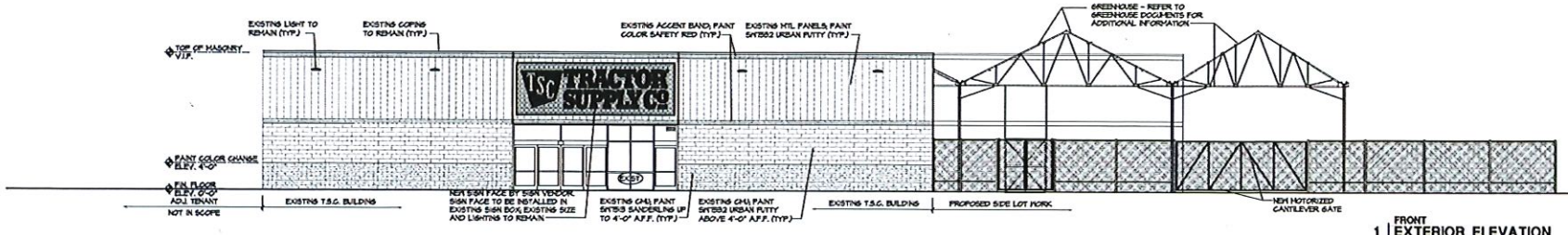
SIDE LOT PROJECT

#967
3201 N. US-75 STE 101
SHERMAN, TX 75090

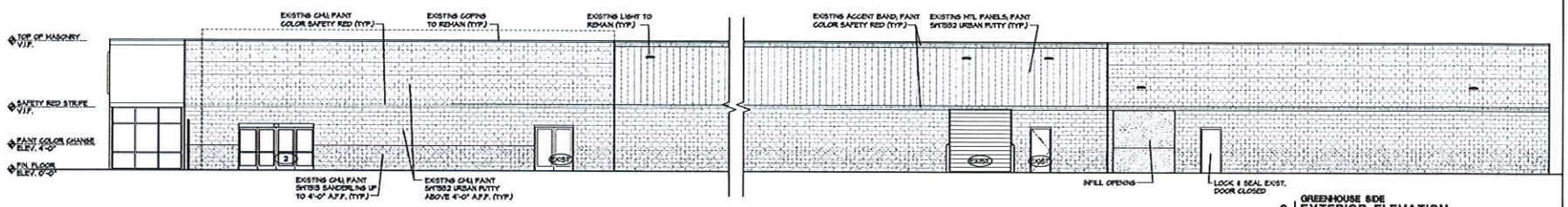
Project No:	0167
Drawn By:	
Date	Issue
10-05-20	BID & PERMIT

AS1.0

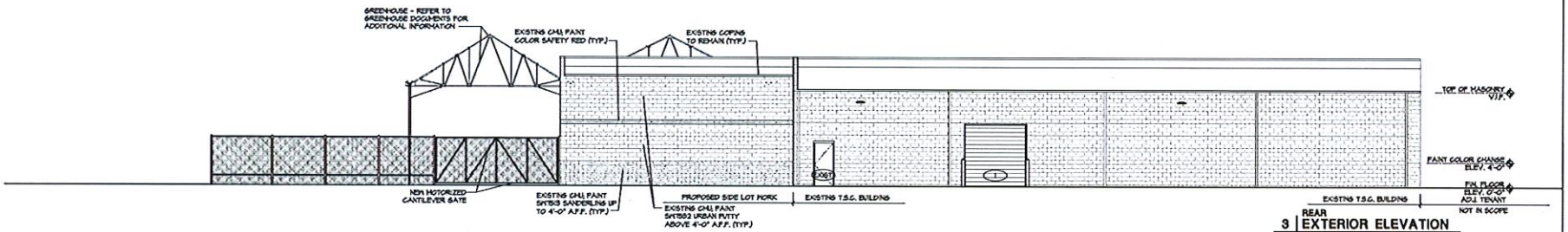
SITE PLAN



1 FRONT EXTERIOR ELEVATION
1/8" = 1'-0"



2 GREENHOUSE SIDE EXTERIOR ELEVATION
1/8" = 1'-0"



3 REAR EXTERIOR ELEVATION
1/8" = 1'-0"

onyx | creative
23001 Emery Road, Suite 400
Cleveland, Ohio 44128
216.223.3260 onyxcreative.com

10.7.20

TSC TRACTOR SUPPLY CO

SIDE LOT PROJECT

#3987
3201 N. US-75 STE 101
SHERMAN, TX 75090

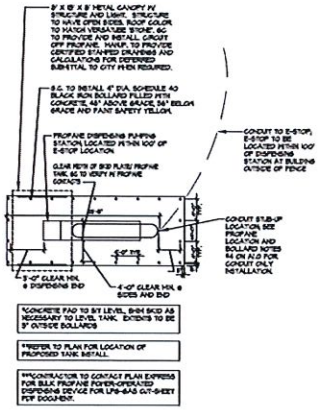
Project No:	3987
Drawn By:	
Date	Issue
9-28-20	BID & PERMIT

A2.0

EXTERIOR ELEVATIONS

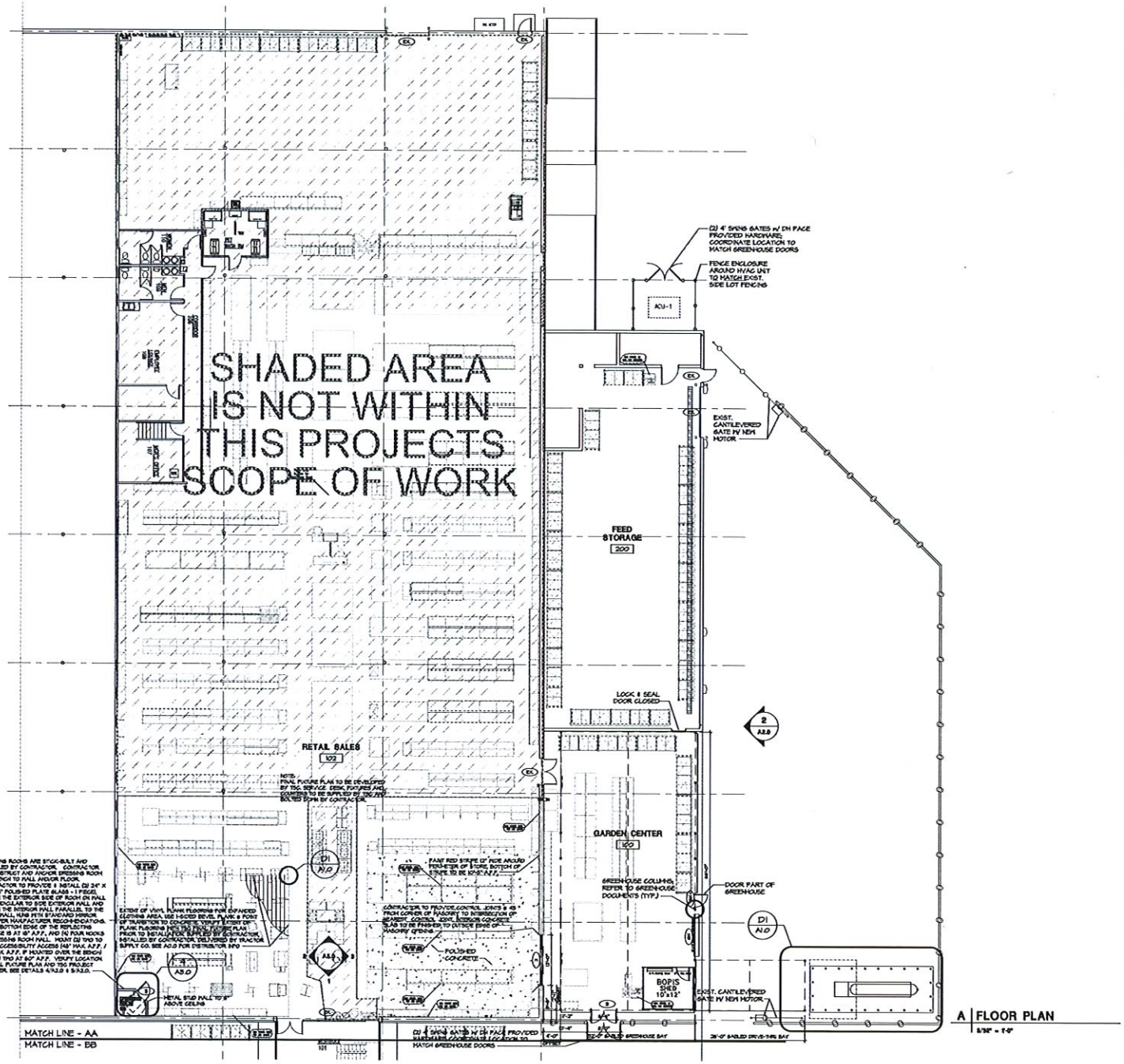
D2 | VINYL PLANK RETURN DETAIL

N.T.S.



D1 | TYPICAL DETAILS PROPANE TANK

N.T.S.



A | FLOOR PLAN

3/32" = 1'-0"

onyx | creative

23501 Cinco Ranch, Suite 400
Katy, Texas 77494
210.323.3200 onyxcreative.com

SIDE LOT PROJECT

#2457
2201 N. US-75 STE 101
SHERMAN, TX 75090

Project No:	2457
Drawn By:	
Date	Issue
9-26-20	BID & PERMIT

A1.0

FLOOR PLAN

Sherman
CLASSIC TOWN. BROAD HORIZON.

Developmental Services

STAFF REVIEW LETTER

January 5, 2021

75/82 Sherman Crossing LTD
2727 LBJ Freeway, Ste. 600
Dallas, TX 75234

Onyx Creative
Aaron Blue
25001 Emery Rd., Ste. 400
Cleveland, OH 44128

Dear Applicants,

The request for site plan approval for Greenhouse/Canopy, Enclosed Feed Storage Area and Customer Pickup Drive-Thru Area for Tractor Supply located at 3201 North U.S. Highway 75, Suite 101 has been scheduled to be heard by the Planning and Zoning Commission on Tuesday, January 12, 2021 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the C-1 (Retail Business) District, the O-1 (75 & 82) Overlay District, the Sign Ordinance, the Fence Ordinance and the Commercial Tree and Landscaping Ordinance.
2. Fire access lanes and codes shall be coordinated with the Fire Marshal 903-892-7267.
3. Any structures built over any of the easements on the property will require approval for an encroachment easement from the City Council.
4. All required off-street parking shall be on private property and shall not encroach into the right-of-way.
5. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
6. Parking requirement is one space per 400 square foot of general floor space; a parking space is considered to be 9'x 20'. Must provide number of parking spaces available before a building permit will be issued. Outdoor display area shall not take up required parking.
7. Outdoor storage of merchandise, equipment or materials, which is essential or incidental to the use and which is not on temporary display for the purpose of being immediately available for sale to the public at large, shall be screened from all public thoroughfares and abutting uses. Stored merchandise shall not exceed the height of the screening device. Screening shall consist of wood or masonry fence material unless an exception is granted.
8. Shall provide mutual access agreement for the development before a permit will be issued.
9. Every site adjacent to the highway right-of-way shall include a buffer strip, landscaped and irrigated, being ten (10) feet in depth adjacent to the highway right-of-way.
10. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
11. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning

Commission.

Engineering:

12. Verify fire requirements and code compliance with Fire Marshall.
13. No permanent structures will be permitted within any easements. Coordinate with City Engineering Department regarding water line along Hwy. 82 Service Road.

It is the policy of this Board not to consider a request unless the applicant or its representative attends the meeting at which the request is considered. You are hereby notified to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Rob Rae at 903-892-7229 prior to the meeting.

Respectfully,

Rob Rae
Secretary, Planning and Zoning Board and Board of Adjustment

cc: Robby Hefton, City Manager
Clint Philpott, Asst. City Manager
Wayne Lee, P.E., Director of Engineering
Tom Pruitt, Utility Engineer
Billy Hartsfield, Fire Marshal
Amber Doan, Engineering Coordinator
Christopher Armstrong, Asst. City Engineer
The Law Firm of Abernathy, Roeder, Boyd, & Hullett, P.C., City Attorney

Planning & Zoning Commission and Board of Adjustments

Agenda Item No. 18.

Meeting Date: 01/12/2021

Prepared by: Patsy Reeves, Developmental Services Coordinator
Rob Rae, Director of Development Services

Clay Mahone, Chairman
David Downtain, Vice Chairman
Shawn Davis, Commissioner
Leigh Ann Sims, Commissioner
Paul Manley, Commissioner
Glenn Whitaker, Commissioner
Bryan Blagg, Commissioner

Requested Action/Proposed Use:

3201 NORTH U.S. HIGHWAY 75, SUITE 101

The request of 75/82 Sherman Crossing LTD (Owners), Tractor Supply (Tenant), Onyx Creative (Architect) and Aaron Blue, (Representative) for the property located at 3201 North U.S. Highway 75, Suite 101, being Lot 1R-1, Block 1 of the Replat of Lot 1R of Sherman Crossing Addition, as follows:

Board of Adjustments

Exception and site plan approval under Ordinance No. 2280, Section 6.8, Subsection (7)(d)(3) to allow an open mesh fence (chain link) to screen an outdoor storage area in lieu of the required solid screening from all public thoroughfares and abutting uses in a C-1 (Retail Business) District/O-1 (75 & 82) Overlay District.

Planning and Zoning Commission

- Specific Use Permit and site plan approval under Ordinance No. 2280, Section 8, Subsection (5)(a) to allow outdoor displays in a C-1 (Retail Business) District/O-1 (75 & 82) Overlay District
- Site plan approval for a Greenhouse/Canopy, Enclosed Feed Storage Area and Customer Pickup Drive-Thru Area for Tractor Supply.

Background:

The property is located at 3201 North U.S. Highway 75, Suite 101, the northeast corner of U.S. Highway 75 and 82; Tractor Supply is the tenant. The property is zoned a C-1 (Retail Business) District and located in the O-1 (75 & 82) Overlay District. An exception to allow an overhead door facing the front of residentially zoned property was approved March 20, 2018.

The project consists of an exterior alteration to the existing Tractor Supply Store's side garden center called "The Side Lot Project". The primary function is to provide a new customer experience within the existing perimeter fencing of the outdoor garden center. Key features will include a greenhouse/canopy feature to provide overhead coverage along with an enclosed bulk feed storage area and drive-thru path with gates on both ends. The new drive-thru is to be used as a customer pick-up area in lieu of having a curbside pick-up zone in the parking lot. The garden center will be completely contained with the existing fenced area. The Specific Use Permit is to allow the outdoor displays in the parking lot and the

exception is to allow a open mesh fence to screen the outdoor displays.

Adjacent Zoning:

R-1 (One Family Residential) District
C-1 (Retail Business) District

Origination:

75/82 Sherman Crossing LTD (Owners)
Tractor Supply (Tenant)
Onyx Creative (Architect)
Aaron Blue, (Representative)

Master Plan Designation:

Auto Urban Commercial – Require more land for parking than building floor area. Automobiles and parking are the most prominent features. Parking lots reduce building density and prevent any possibility of creating an enclosed space.

Number of notices mailed:

14

Objections Received:

0

Attachments

Location Map
Zoning Map
Zoning Sign Photo
Plat
Site Plan
Building Elevations
Floor Plan
Display Area Site Plan
Narrative
Aerial View/Photos
Staff Review Letter

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 2.**

Meeting Date: 02/01/2021

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6356

Amending Section 8, Subsection (5)(A), Ordinance No. 2280, so as to Grant a Specific Use Permit to allow a Two-Family Dwelling (Duplex) in an R-1 (One Family Residential) District on property located at 515 North Colbert Avenue, being 0.276 acres in the C. Carter Survey, Abstract No. 229, also being all of Lots 118 and 119, Belmont Addition (Jose Castillo Torres and Crisalida Serrano Gonzales, Owners; and Helvey-Wagner Surveying, Inc., Surveyor); Providing that this Specific Use Permit shall be Granted Subject to Certain Conditions; Providing a Penalty not to Exceed $2,000.00

Issue:

To consider the request of Jose Castillo Torres and Crisalida Serrano Gonzales (Owners) and Helvey-Wagner Surveying, Inc. (Surveyor) for the property located at 515 North Colbert Avenue, being 0.276 acres in the C. Carter Survey, Abstract No. 229, also being all of Lots 118 and 119, Belmont Addition for a Specific Use Permit to allow a Duplex in an R-1 (One Family Residential) District.

Background:

The property is located at 515 North Colbert Avenue between Pacific Street and Mulberry Street. The property is zoned an R-1 (One Family Residential) District. The owner would like to construct a three-bedroom, two-bath, 1,041 square foot per side duplex at this location. The exterior will include smart siding with cedar post and brick accents. Six parking spaces will be provided in the front of the building.

Origination:

Jose and Crisalida Torres (Owners)
Helvey-Wagner Surveying, Inc. (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 12, 2021 regular meeting, the Planning and Zoning Board voted 7/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6356
Exhibit A - Legal Description
Location Map
Zoning Map
Zoning Sign Photo
Belmont Addition Replat
Survey
Site Plan
Building Elevations
Staff Review Letter
P&Z Communication
Duplexes in Area

ORDINANCE NO. 6356

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A TWO-FAMILY DWELLING (DUPLEX) IN AN R-1 (ONE-FAMILY RESIDENTIAL) DISTRICT ON PROPERTY LOCATED AT 515 NORTH COLBERT AVENUE, BEING 0.276 ACRES IN THE C. CARTER SURVEY, ABSTRACT NO. 229, ALSO BEING ALL OF LOTS 118 AND 119, BELMONT ADDITION (JOSE CASTILLO TORRES AND CRISALID SERRANO GONZALES, OWNERS; AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Planning and Zoning Commission and the City Council, in accordance with the state law and the ordinances of the City of Sherman, have given the required notices and have held the required public hearings regarding this Specific Use Permit; and

WHEREAS, the City Council finds that this use will complement or be compatible with the surrounding uses and community facilities; contribute to, enhance, or promote the welfare of the area of request and adjacent properties; not be detrimental to the public health, safety, or general welfare; and conform in all other respects to all applicable zoning regulations and standards; and

WHEREAS, the City Council finds that it is in the public interest to grant this specific use permit, subject to certain conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That, from and after the effective date of this Ordinance, Jose Castillo Torres and Crisalida Serrano Gonzales (Owners) and Helvey-Wagner Surveying, Inc. (Surveyor) and the property located at 515 North Colbert Avenue and more particularly described in **Exhibit A – Legal Description** attached hereto, are granted a Specific Use Permit to allow a Two-Family Dwelling (Duplex) in an R-1 (One-Family Residential) District and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the property described in **Exhibit A – Legal Description:**

SECTION 2. That this Specific Use Permit is granted on the following conditions:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the R-1 (One-Family Residential) District, the Fence Ordinance and the Residential Tree and Landscaping Ordinance.
2. Fire access, lanes and codes shall be coordinated with the Fire Marshal (903.892.7267).
3. Parking shall be provided for one space per bedroom, minimum two per unit; a parking space is considered to be 9' x 20'.
4. Driveways and parking are permitted on paved surfaces only (concrete or asphalt).
5. A minimum 6' fence is required in areas abutting residentially zoned property.
6. Violation of the ordinance granting a Specific Use Permit, including but not limited to violation of the conditions of any SUP, may result in termination the Specific Use Permit.
7. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
8. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Engineering:

9. Drive approaches and sidewalks must conform to City of Sherman standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.
10. Proposed drive approaches do not meet standard. Max 24' width at property line.
11. Sidewalk is required.

SECTION 3. That this Ordinance shall be entered upon the official zoning map as provided in Section 2, Ordinance No. 2280.

SECTION 4. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS ($2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 5. That the General Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in

conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect..

SECTION 6. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 7. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 8. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the _____ day of _____, 2021.

ADOPTED on this the _____ day of _____, 2021.

EFFECTIVE DATE on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:
THE LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Exhibit A - Legal Description

FIELD NOTES

SITUATED in the City of Sherman, County of Grayson, State of Texas, being a part of the C. Carter Survey, Abstract No. 229, being all of Lots 118 and 119, Belmont Addition to the City of Sherman, Texas as per plat of record in Volume 277, Page 32, Deed Records, Grayson County, Texas and being more particularly described by metes and bounds as follows to–wit:

BEGINNING at a ½ inch capped rebar set, stamped "RPLS 6578" in the East right–of–way line of Colbert Avenue, a public street, at the Northwest corner of Lot 117, said Belmont Addition and the Southwest corner of said Lot 118, SAID rebar bears the following from monumentation found: **1)** North 15 deg. 23 min. 38 sec. West, 40.00 ft. from a ¾ inch pipe found at the Southwest corner of Lot 117, said Belmont Addition; **2)** North 15 deg. 23 min. 38 sec. West, 158.69 ft. from a ¾ inch pipe found at the Southwest corner of Lot 114, said Belmont Addition AND **3)** North 15 deg. 23 min. 38 sec. West, 439.27 ft. from a 3/8 inch rebar found at the Southwest corner of Lot 107, said Belmont Addition;

THENCE North 15 deg. 23 min. 38 sec. West, with the East line of said Colbert Avenue and the West line of said lots 118 and 119, a distance of 80.00 ft. to a ½ inch capped rebar set, stamped "RPLS 6578" at the Southwest corner of Lot 120, said Belmont Addition and the Northwest corner of said Lot 119;

THENCE North 74 deg. 36 min. 22 sec. East, with the South line of said Lot 120 and the North line of said Lot 119, a distance of 150.00 ft. to a ½ inch capped rebar set, stamped "RPLS 6578" in the West line of an alley, at the Southeast corner of said Lot 120 and the Northeast corner of said Lot 119;

THENCE South 15 deg. 23 min. 38 sec. East, with the West line of said alley and the East line of said Lots 119 and 118, a distance of 80.00 ft. to a ½ inch capped rebar set, stamped "RPLS 6578" at the Northeast corner of said Lot 117 and the Southeast corner of said Lot 118;

THENCE South 74 deg. 36 min. 22 sec. West, with the North line of said Lot 117 and the South line of said Lot 118, a distance of 150.00 ft. to the PLACE OF BEGINNING and containing **0.276 ACRES and/or 12,000 SQUARE FEET** of land.

KNOW ALL MEN BY THESE PRESENTS:

THAT I, Kate A. Wagner, Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the subdivision regulations of the City of Sherman, Texas.

_____

Kate A. Wagner, R. P. L. S. No. 6578 Date:

We, Jose Castillo Torres and Crisalida Serrano Gonzales, sole owners of Replat of Lots 118 and 119, Belmont Addition to the City of Sherman, Texas do hereby dedicate the streets, easements, alleys, rights–of–way, parks, school sites and other public places shown hereon to the public use forever.

_____

Jose Castillo Torres

_____

Crisalida Serrano Gonzales

Before me the undersigned, a notary public in and for said County and State, on this day personally appeared Jose Castillo Torres, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated

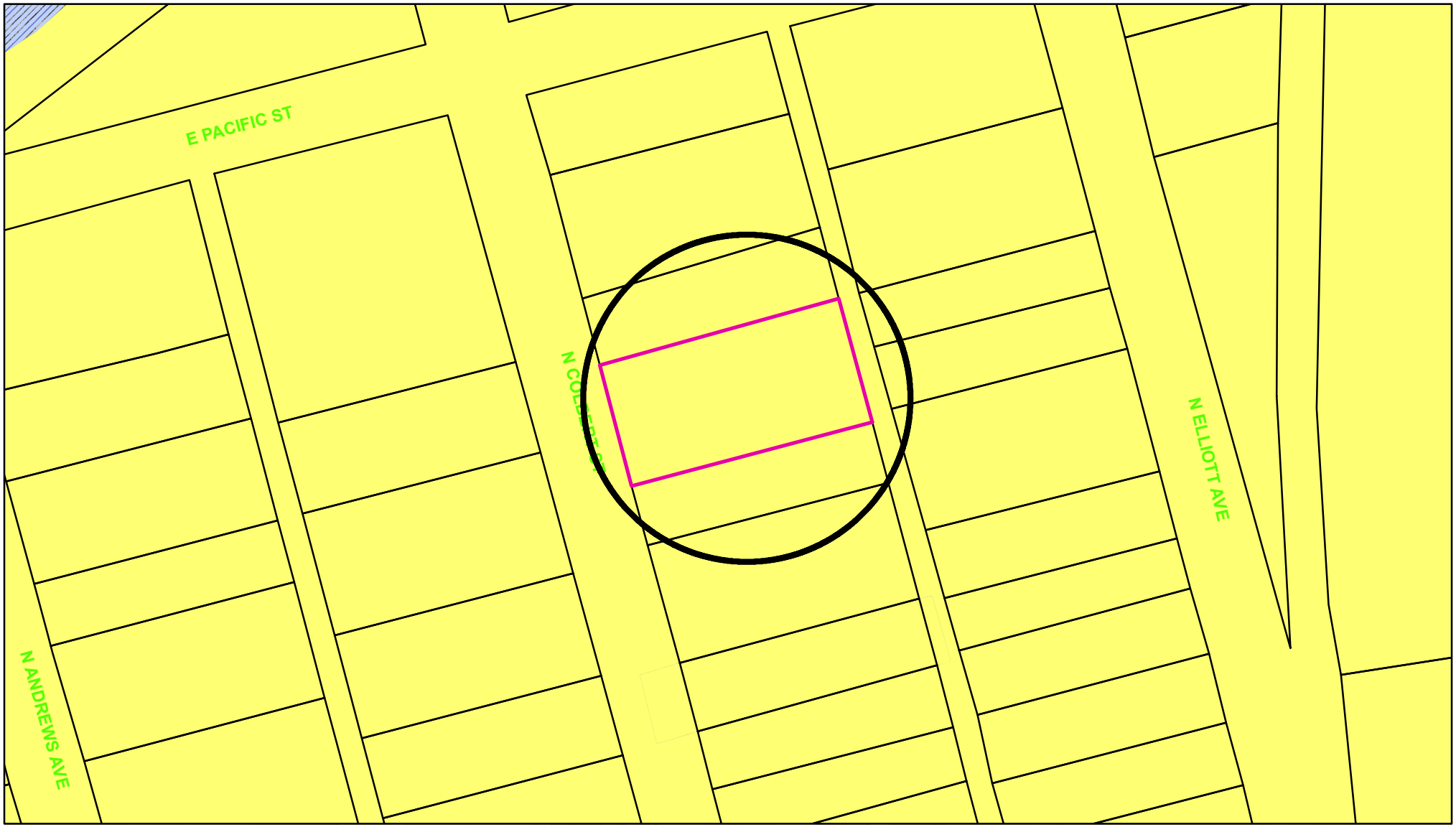
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

515 North Colbert Avenue

NOT TO SCALE

1 in = 150 ft



Zoning - 515 North Colbert Avenue

Legend

Special Districts Overlay
DISTRICT_NAME
- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor
Representation: ShermGIS.DBO.TransportationCorridor_Rep_1
- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

Zoning Districts
Representation: ShermGIS.DBO.ZoningDistrict_Rep
- Unknown
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing Distgrict
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District
- PD Planned Development

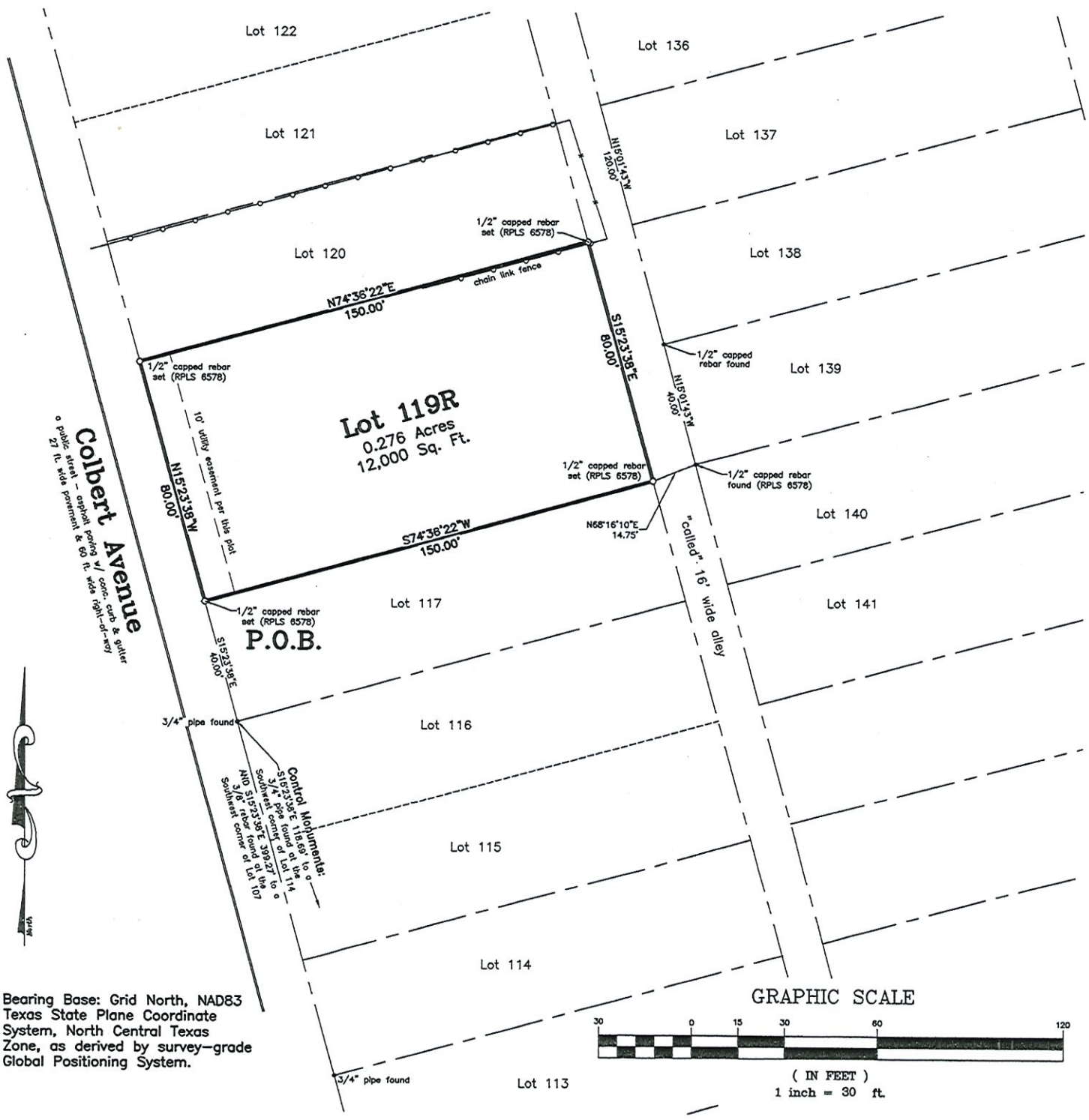
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

NOT TO SCALE

1 in = 87 ft

515 North Colbert Avenue



Bearing Base: Grid North, NAD83 Texas State Plane Coordinate System, North Central Texas Zone, as derived by survey-grade Global Positioning System.

Replat of Lots 119 and 118, Belmont Addition
to
City of Sherman, Texas
0.276 Acres
in the
C. Carter Survey
Abstract No. 229

General Notes:

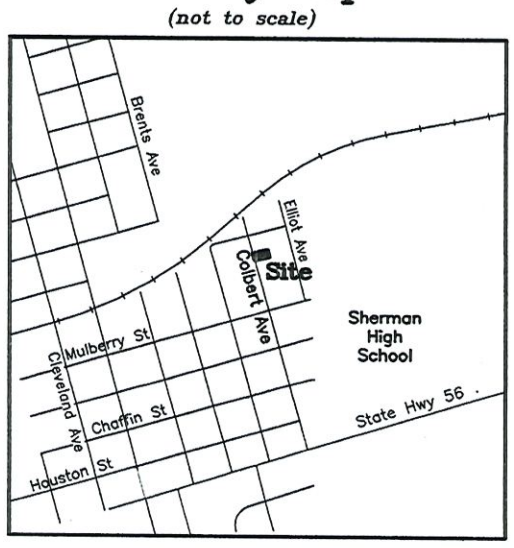
1. Water Supply to be provided by City of Sherman.
2. Sewer service to be provided by City of Sherman.
3. Electrical service is provided by Oncor Electrical Delivery Co..
4. Blocking the flow of water or construction of improvements in drainage easements, and filling or obstruction of the floodway is prohibited.
5. Any existing creeks or drainage channels traversing along or across the addition will remain as open channels and will be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage courses along or across said lots.
6. The City of Sherman will not be responsible for the maintenance and operation of said drainage ways or for the control of erosion.
7. The property shown on the plat hereon lies within a Zone "X" (areas determined to be outside 500-year floodplain) Designation, as shown on the Flood Insurance Rate Map for Grayson County, Texas and Incorporated Areas, Map No. 48181C0290 F, Revised Date: September 29, 2010.
8. Neither the City of Sherman nor the undersigned surveyor will be responsible for any damage, personal injury, or loss of life or property occasioned by flooding or flooding conditions.
9. The owners and builders must comply with all other state and federal regulations regarding developments of this type.

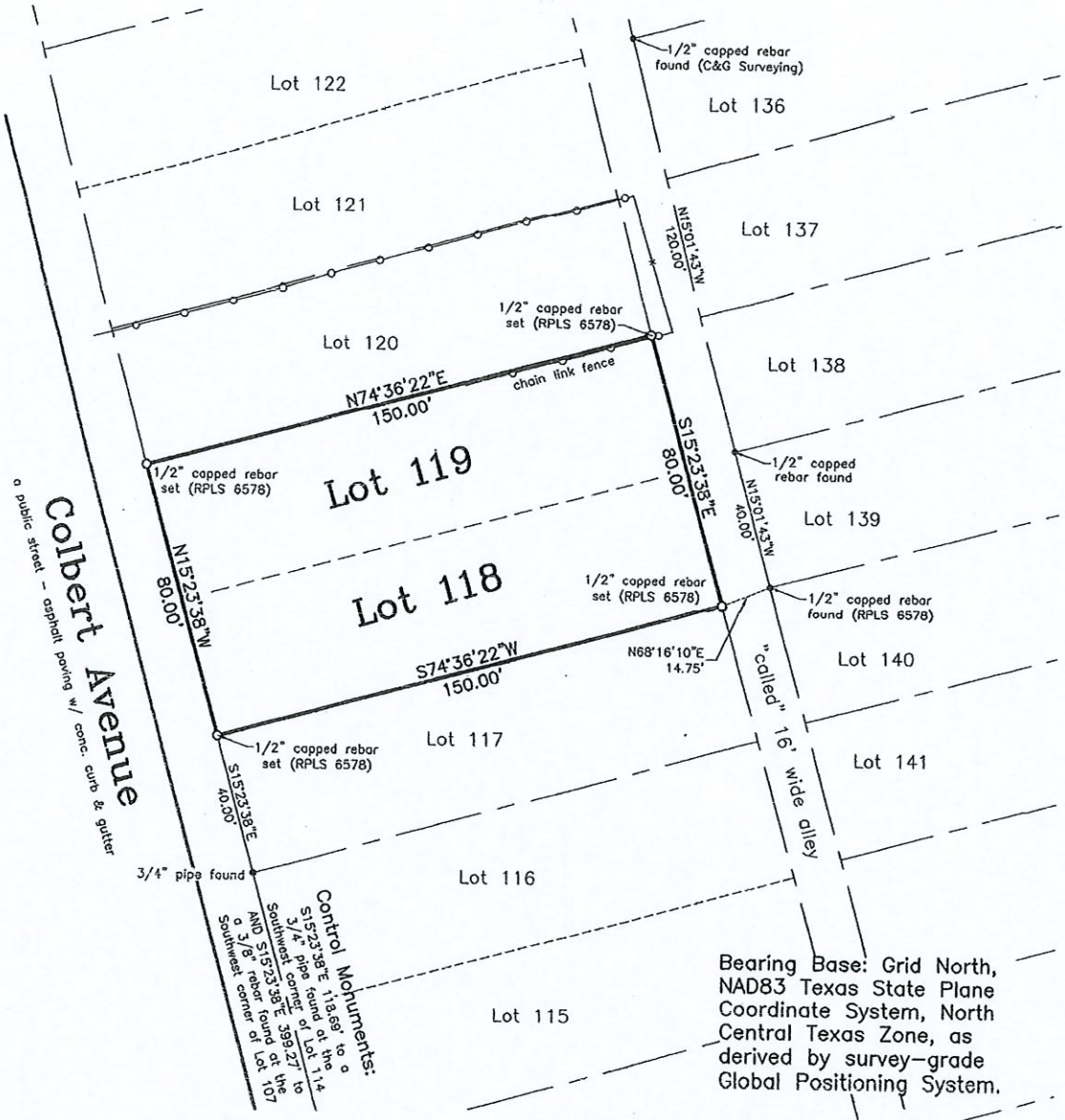
Job No. CGS621220

Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Ph (903) 463-6191 Fax (903) 463-4088
Email: kate@helveywagnersurvey.net
Texas Board of Professional Land Surveying
Firm Registration No. 10088100

Owner:
Jose Castillo Torres and
Crisalida Serrano Gonzales
724 E. Sears Street
Denison, Texas 75020

Vicinity Map
(not to scale)





Owner: Jose Castillo Torres and Crisalida Serrano Gonzales

Buyer:

Address: 515 N. Colbert Avenue
Sherman, Texas

This survey is for the sole benefit of the transaction by and between: the owner stated at left, and is null and void for any other transaction. Any unauthorized use of this survey without the sole consent of the undersigned surveyor will infringe upon state and federal copyright statutes. Any violation of said statutes will be aggressively pursued.

I, Kate A. Wagner, Registered Professional Land Surveyor, do hereby certify that a survey was performed on the ground of the property shown hereinabove and that this survey with the current Texas Society of Professional Surveyors Manual of Practice for a Category 1A, Condition 3, TSPS Land Title Survey and is a true and correct to the best of my knowledge and belief as shown hereon.

Legal Description is as follows: Lots 118 and 119, Belmont Addition to the City of Sherman, Texas, as per plat of record in Volume 277, Page 32, Plat Records, Grayson County, Texas.

The subject property shown hereon does not lie within the limits of any designated 100-year Flood Hazard Areas, as shown on the "FEMA" Flood Insurance Rate Map for Grayson County, Texas, Map No. 48181C0290 F, Revised Date: September 29, 2010.

Note: This survey was done without the benefit of a title commitment.

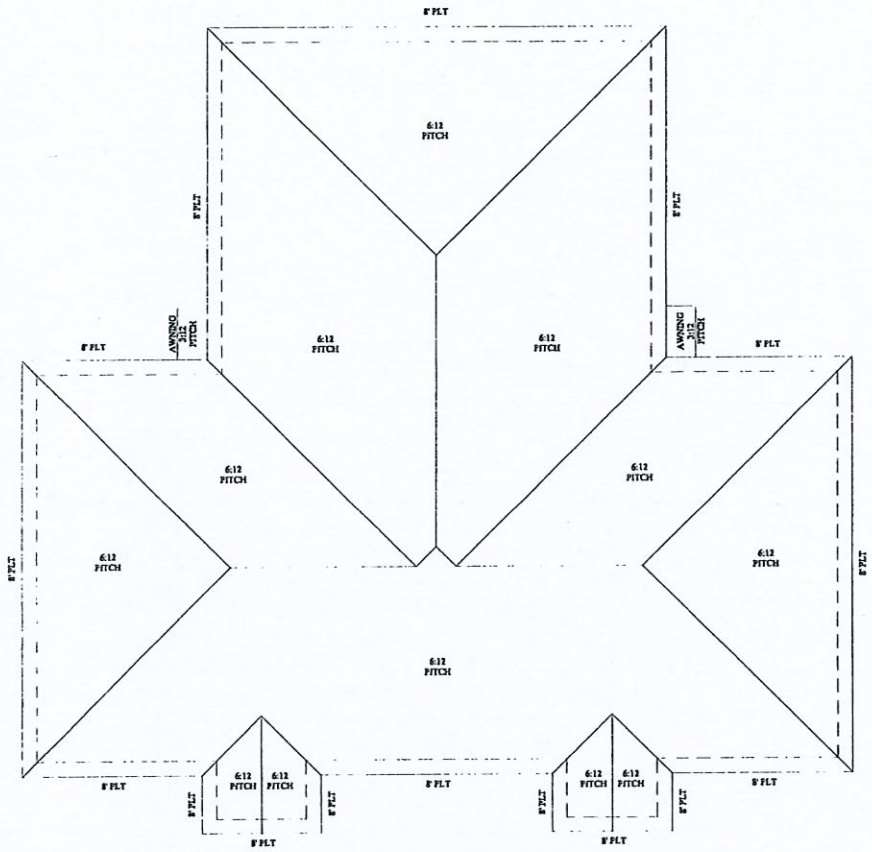
STATE OF TEXAS
REGISTERED
KATE A. WAGNER
6578
PROFESSIONAL
LAND SURVEYOR

Kate A. Wagner, R.P.L.S. No. 6578
Copyright Date: December 3, 2020

Job No. AGS131220

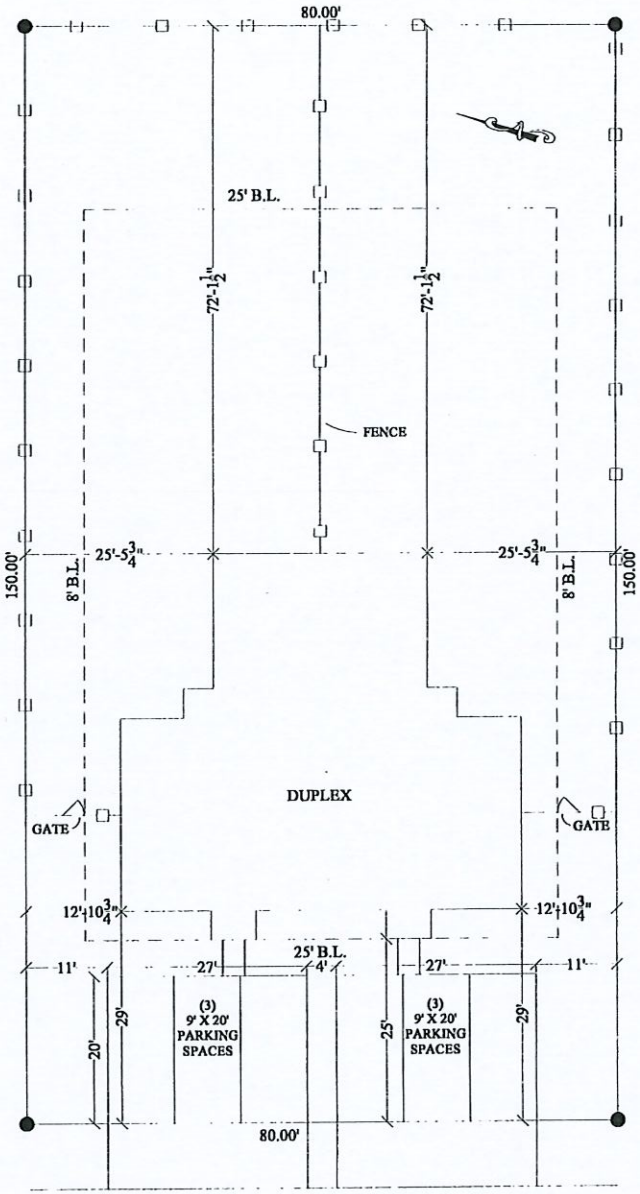
Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Ph (903) 463-6191 Fax (903) 463-4088
Email: helveywagnersurvey@gmail.com
Texas Board of Professional Land Surveying
Firm Registration No. 10088100

S:\Land Projects R2\515-N-Colbert-Sherman\Drawings\Lots-118&119-Belmont-Addition.dwg 12/3/2020 8:49 AM



NOTE: 1'
ROOF
OVERHANG

ROOF PLAN
SCALE: 1/4" = 1'



SITE PLAN
SCALE: 1/8" = 1'

COLBERT

D2L DESIGNS, LLC
903.267.3284
HOUSE PLANS

TORRES DUPLEX PLAN

515 N. COLBERT
SHERMAN, TX 75090

D2LDESIGNS@YAHOO.COM

DATE
12/07/20

SHEET
ROOF & SITE

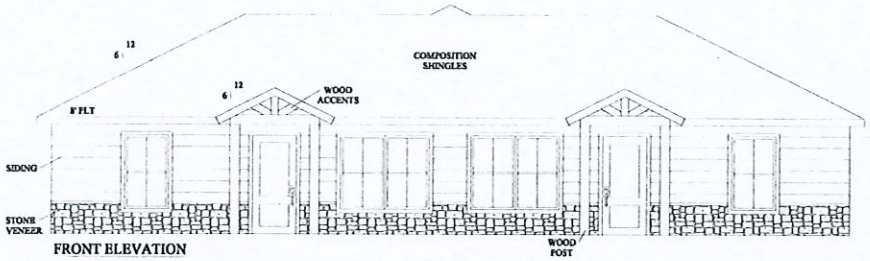
SCALE
AS NOTED

NOTES:

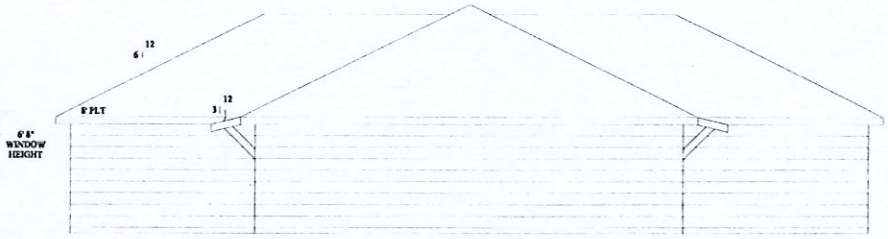
- OWNER & CONTRACTOR TO REVIEW AND APPROVE ALL PLANS PRIOR TO CONSTRUCTION.
- DUPLEX TO BE BUILT BY DIMENSIONS WITH LINES, NOT BY DIMENSIONS ON ROOM LABELS.
- BUILDING TO BE BUILT PER 2017 IRC CODES.
- IF A DOOR OR WINDOW IS NOT DIMENSIONED, IT IS EITHER 6" OFF A WALL OR CENTERED IN A WALL.
- ALL CEILINGS ARE 8' UNLESS NOTED OTHERWISE.
- ALL WALLS ARE 2X4 UNLESS NOTED OTHERWISE.

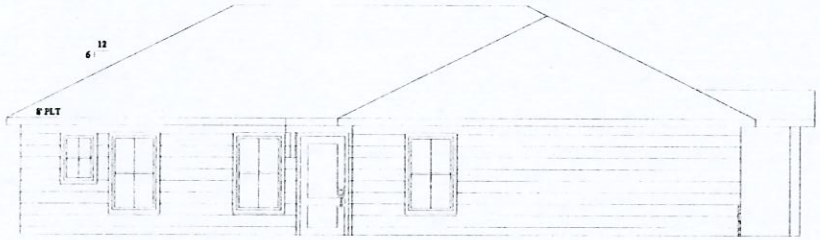
SQUARE FOOTAGE
HEATED: 1041
FRONT PORCH: 24
BACK PATIO: 16

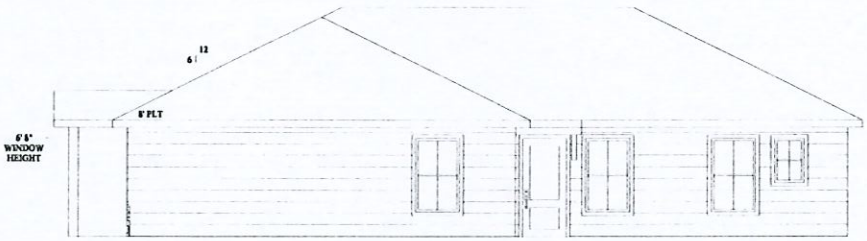
PLAN DESIGNER:
D2L DESIGNS, LLC
D2LDESIGNS@YAHOO.COM
903.267.1284



FRONT ELEVATION







ELEVATION PLAN

TORRES DUPLEX PLAN

515 N. COLBERT
SHERMAN, TX 75090

D2LDESIGNS@YAHOO.COM

DATE
12/07/20

SHEET
ELEVATIONS

SCALE
1/4" = 1'

Sherman
CLASSIC TOWN. BROAD HORIZON.

Developmental Services

STAFF REVIEW LETTER

January 5, 2021

Jose & Crisalida Torres
724 E. Sears St.
Denison, TX 75021

Helvey-Wagner Surveying, Inc.
222 W. Main St.
Denison, TX 75020

Dear Applicants,

The request for a Specific Use Permit to allow a Two-Family Dwelling (Duplex) in an R-1 (One-Family Residential) District located at 515 North Colbert Avenue has been scheduled to be heard by the Planning and Zoning Commission on Tuesday, January 12, 2021 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the R-1 (One-Family Residential) District, the Fence Ordinance and the Residential Tree and Landscaping Ordinance.
2. Fire access, lanes and codes shall be coordinated with the Fire Marshal (903.892.7267).
3. Parking shall be provided for one space per bedroom, minimum two per unit; a parking space is considered to be 9' x 20'.
4. Driveways and parking are permitted on paved surfaces only (concrete or asphalt).
5. A minimum 6' fence is required in areas abutting residentially zoned property.
6. Violation of the ordinance granting a Specific Use Permit, including but not limited to violation of the conditions of any SUP, may result in termination the Specific Use Permit.
7. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
8. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Engineering:

9. Drive approaches and sidewalks must conform to City of Sherman standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.
10. Proposed drive approaches do not meet standard. Max 24' width at property line.
11. Sidewalk is required.

It is the policy of this Board not to consider a request unless the applicant or its representative attends the meeting at which the request is considered. You are hereby notified to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Rob Rae at 903-892-7229 prior to the meeting.

Respectfully,

Rob Rae
Secretary, Planning and Zoning Commission and Board of Adjustment

cc: Robby Hefton, City Manager
Clint Philpott, Asst. City Manager
Wayne Lee, P.E., Director of Engineering
Tom Pruitt, Utility Engineer
Billy Hartsfield, Fire Marshal
Amber Doan, Engineering Coordinator
Christopher Armstrong, Asst. City Engineer
The Law Firm of Abernathy, Roeder, Boyd, & Hullett, P.C., City Attorney

Planning & Zoning Commission and Board of Adjustments

Agenda Item No. 7.

Meeting Date: 01/12/2021

Prepared by: Patsy Reeves, Developmental Services Coordinator
Rob Rae, Director of Development Services

Clay Mahone, Chairman
David Downtain, Vice Chairman
Shawn Davis, Commissioner
Leigh Ann Sims, Commissioner
Paul Manley, Commissioner
Glenn Whitaker, Commissioner
Bryan Blagg, Commissioner

Requested Action/Proposed Use:

515 NORTH COLBERT AVENUE

The request of Jose Castillo Torres and Crisalida Serrano Gonzales (Owners) and Helvey-Wagner Surveying, Inc. (Surveyor) for the property located at 515 North Colbert Avenue, being 0.276 acres in the C. Carter Survey, Abstract No. 229, also being all of Lots 118 and 119, Belmont Addition, as follows;

Planning and Zoning Commission

Specific Use Permit and site plan approval under Ordinance No. 2280, Section 8, Subsection (5)(a) to allow a Two-Family Dwelling (Duplex) in an R-1 (One-Family Residential) District.

Background:

The property is located at 515 North Colbert Avenue between Pacific Street and Mulberry Street. The property is zoned an R-1 (One Family Residential) District. The owner would like to construct a three-bedroom, two-bath per side residential duplex at this location. The exterior will include smart siding with cedar post and brick accents. Six parking spaces will be provided.

Adjacent Zoning:

R-1 (One Family Residential) District

Origination:

Jose Castillo Torres and Crisalida Serrano Gonzales (Owners)
Helvey-Wagner Surveying, Inc. (Surveyor)

Master Plan Designation:

Auto-Urban Single Family Residential – This character type is the single-family residential category with the greatest density and the shortest building setbacks. Most driveways will face the street as well as the garage. Sidewalks are available for pedestrians. Less lot area is devoted to open space and greenery.

Number of notices mailed:

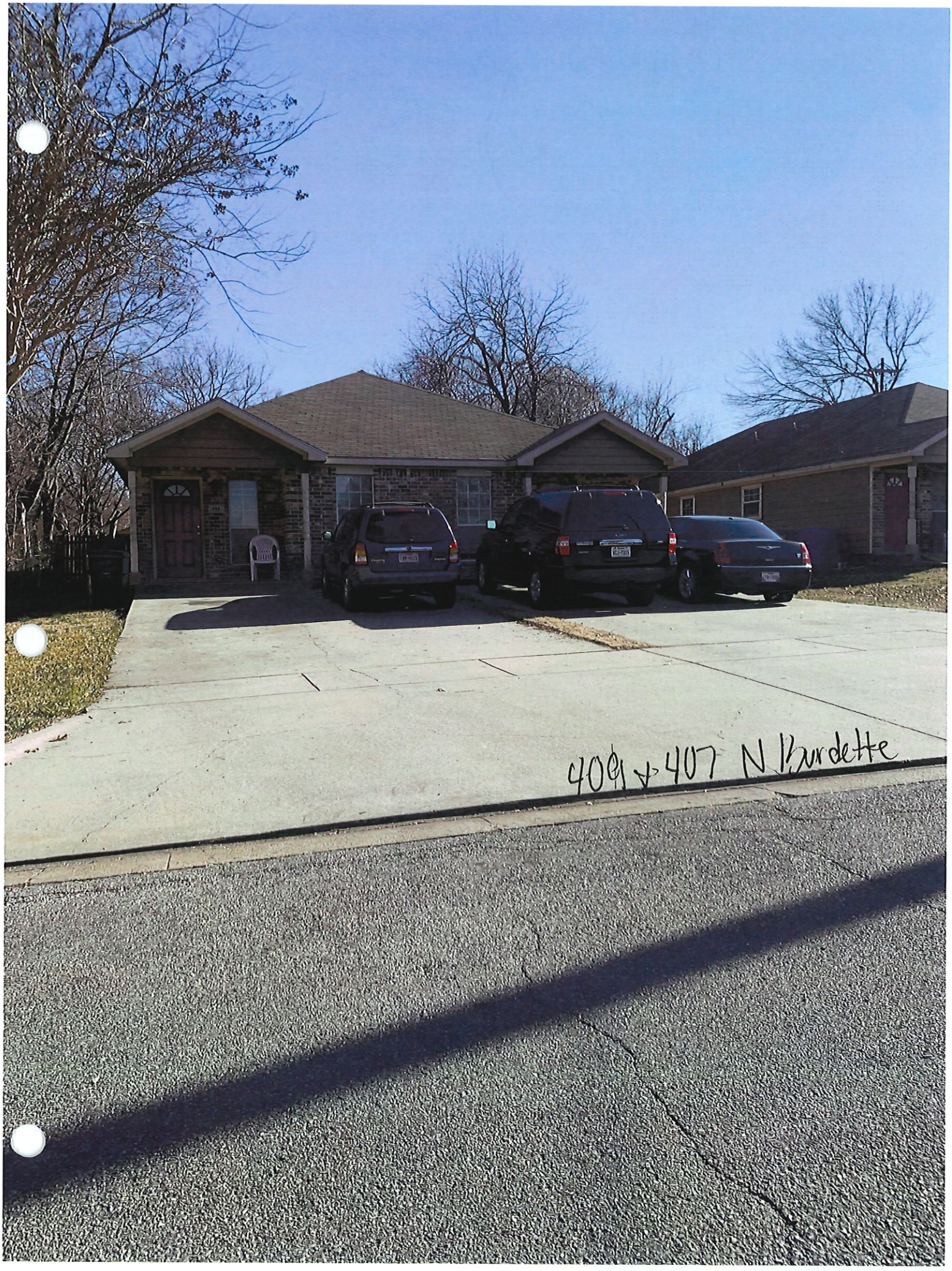
83

Objections Received:

0

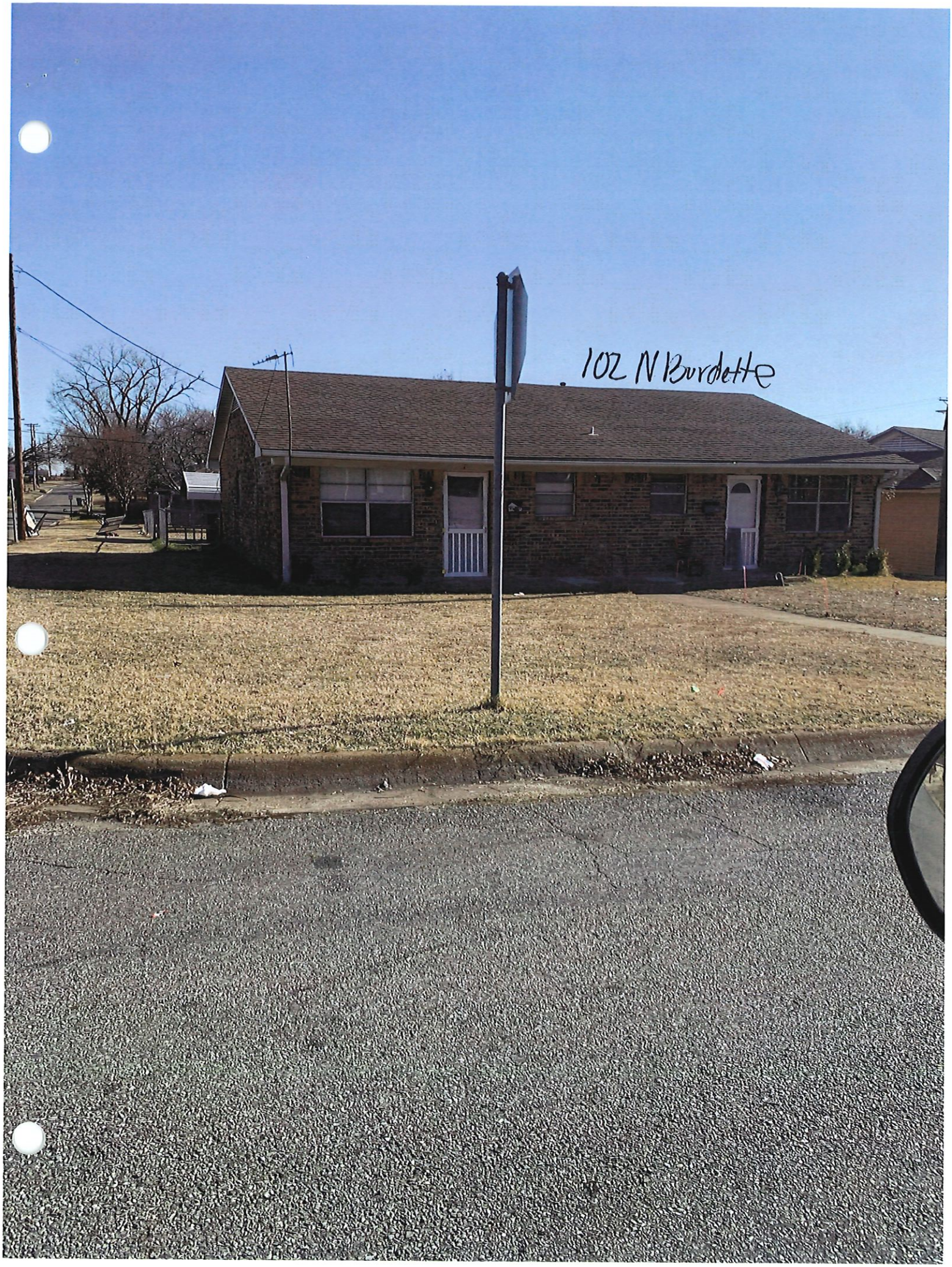
Attachments

Location Map
Zoning Map
Zoning Sign Photo
Survey
Belmont Addition Replat
Site Plan
Building Elevations
Staff Review Letter


409 & 407 N Burdette

405 & 403 Burdette

404 N Burdette


102 N Burdette

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 3.**

Meeting Date: 02/01/2021

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6357

Amending Section 8, Subsection (5)(A), Ordinance No. 2280, so as to Grant a Specific Use Permit to allow Two-Family, Single-Story Patio Homes with no more than Two Structures Attached in a Grouping in an R-1 (One Family Residential) District/College Park Overlay District on Property located at 910, 914, 916 and 918 North Throckmorton Street, being Lots 5, 6, 7 & 8, Block 5, W.P. Carter's Addition (Lazy L Enterprises, Owner; and Underwood Drafting and Surveying, Surveyor); Providing that this Specific Use Permit shall be Granted Subject to Certain Conditions; Providing a Penalty not to Exceed $2,000.00

Issue:

To consider the request of Lazy L Enterprises (Owners) and Underwood Drafting and Surveying (Surveyor) concerning the property located at 910, 914, 916 and 918 North Throckmorton Street, being Lots 5, 6, 7 & 8, Block 5, W.P. Carter's Addition for a Specific Use Permit to allow two-family, single-story patio homes with no more than two structures attached in a grouping in an R-1 (One Family Residential) District/College Park Overlay District.

Background:

The property is located at 910, 914, 916 and 918 North Throckmorton Street between College and Williams Streets. The property is zoned an R-1 (One Family Residential) District and located in the College Park Overlay District.

The owner would like to construct a two-family, single-story patio home (duplex) at this location. Each unit will have three-bedrooms, two-baths, 1,563 square foot with one-car garage and two parking spaces in the driveway. In 2017, a Specific Use Permit was approved for the same patio homes in a grouping in the 800 block of North Throckmorton Street.

Origination:

Lazy L Enterprises (Owners)
Underwood Drafting and Surveying (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 12, 2021 regular meeting, the Planning and Zoning Board voted 7/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6357
Location Map
Zoning Map
Zoning Sign Photo
Plat
Floor Plan
Building Elevations
Staff Review Letter
P&Z Communication
Letter from Bill Magers

ORDINANCE NO. 6357

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW TWO-FAMILY, SINGLE-STORY PATIO HOMES WITH NO MORE THAN TWO STRUCTURES ATTACHED IN A GROUPING IN AN R-1 (ONE-FAMILY RESIDENTIAL) DISTRICT/COLLEGE PARK OVERLAY DISTRICT ON PROPERTY LOCATED AT 910, 914, 916 AND 918 NORTH THROCKMORTON STREET, BEING LOTS 5, 6, 7 AND 8, BLOCK 5, W.P. CARTER'S ADDITION (LAZY L ENTERPRISES, OWNER; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Planning and Zoning Commission and the City Council, in accordance with the state law and the ordinances of the City of Sherman, have given the required notices and have held the required public hearings regarding this Specific Use Permit; and

WHEREAS, the City Council finds that this use will complement or be compatible with the surrounding uses and community facilities; contribute to, enhance, or promote the welfare of the area of request and adjacent properties; not be detrimental to the public health, safety, or general welfare; and conform in all other respects to all applicable zoning regulations and standards; and

WHEREAS, the City Council finds that it is in the public interest to grant this specific use permit, subject to certain conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That, from and after the effective date of this Ordinance, Lazy L Enterprises (Owner) and Underwood Drafting and Surveying (Surveyor) and the property located at 910, 914, 916 and 918 North Throckmorton Street and more particularly described as Lots 5, 6, 7 and 8, block 5, W.P. Carter's Addition, according to the Plat thereof filed of record Volume 25, Page 196, Real Property Records of Grayson County, Texas, are granted a Specific Use Permit to allow two-family, single-story patio homes with no more than two structures attached in a grouping in an R-1 (One Family Residential) District/College Park Overlay District on the property and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the property described as:

Lots 5, 6, 7 & 8, Block 5, W.P. Carter's Addition, according to the Plat thereof filed of record Volume 25, Page 196, Real Property Records of Grayson County, Texas.

SECTION 2. That this Specific Use Permit is granted on the following conditions:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the R-1 (One-Family Residential) District, the College Park Overlay District, the Fence Ordinance and the Residential Tree and Landscaping Ordinance.
2. Fire access lanes and codes shall be coordinated with the Fire Marshal 903-892-7267.
3. Any structures built over any of the easements on the property will require approval for an encroachment easement from the City Council.
4. All required off-street parking shall be on private property and shall not encroach into the right-of-way.
5. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
6. Parking requirement is one space per bedroom, minimum two per unit, a parking space is considered to be 9'x 20'.
7. Side yard setbacks must be uniform for all homes within a given block.
8. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
9. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Engineering:

10. Drive approaches and sidewalks must conform to City of Sherman standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.
11. Sidewalks are required.
12. If structures are to cross lot lines, a replat is required.
13. Verify fire requirements and code compliance with Fire Marshall.
14. The City of Sherman does not maintain alleys.

SECTION 3. That this Ordinance shall be entered upon the official zoning map as provided in Section 2, Ordinance No. 2280.

SECTION 4. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on

conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS ($2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 5. That the General Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 7. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 8. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the _____ day of _____, 2021.

ADOPTED on this the _____ day of _____, 2021.

EFFECTIVE DATE on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:
THE LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

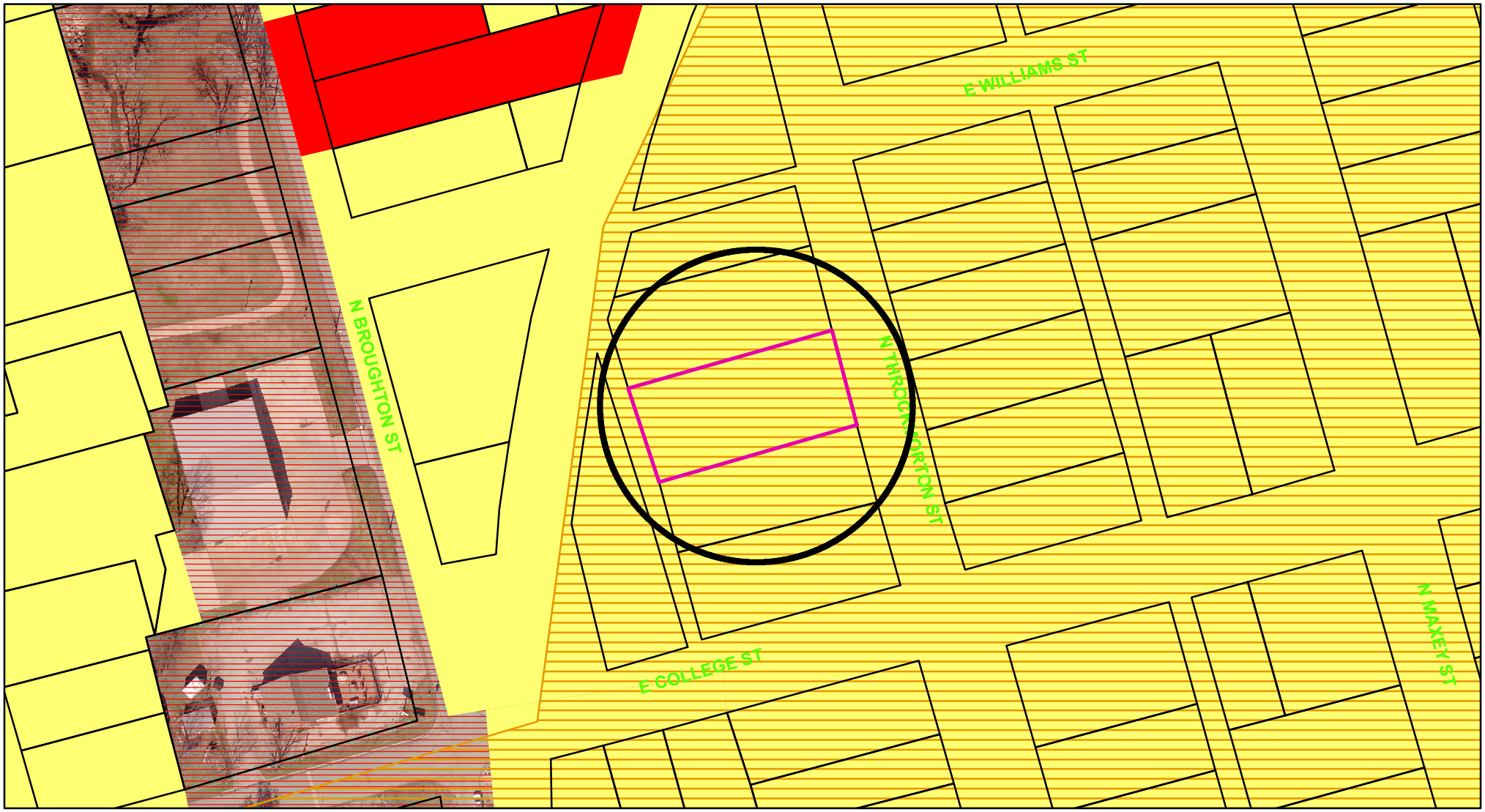
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

910, 914, 916 & 918 North Throckmorton Street

NOT TO SCALE

1 in = 200 ft



Zoning - 910, 914, 916 & 918 North Throckmorton Street

Legend

Special Districts Overlay
DISTRICT_NAME
- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor
Representation: ShermGIS.DBO.TransportationCorridor_Rep_1
- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

Zoning Districts
Representation: ShermGIS.DBO.ZoningDistrict_Rep
- Unknown
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing Distgrict
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District
- PD Planned Development

Sherman
CLASSIC TOWN. BROAD HORIZON.

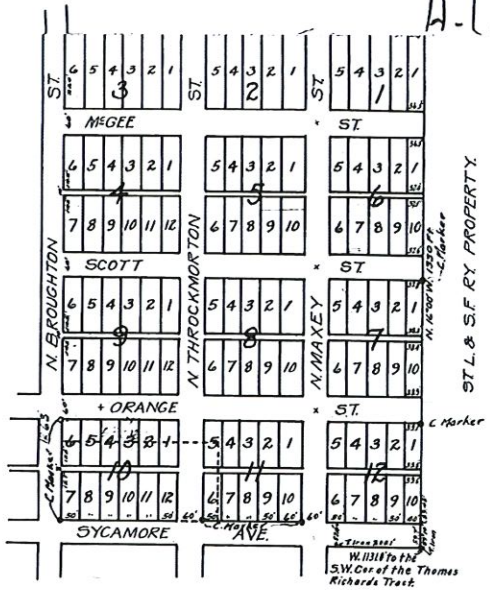
City of Sherman, Texas
Developmental Services Department

NOT TO SCALE

1 in = 100 ft

910, 914, 916 & 918

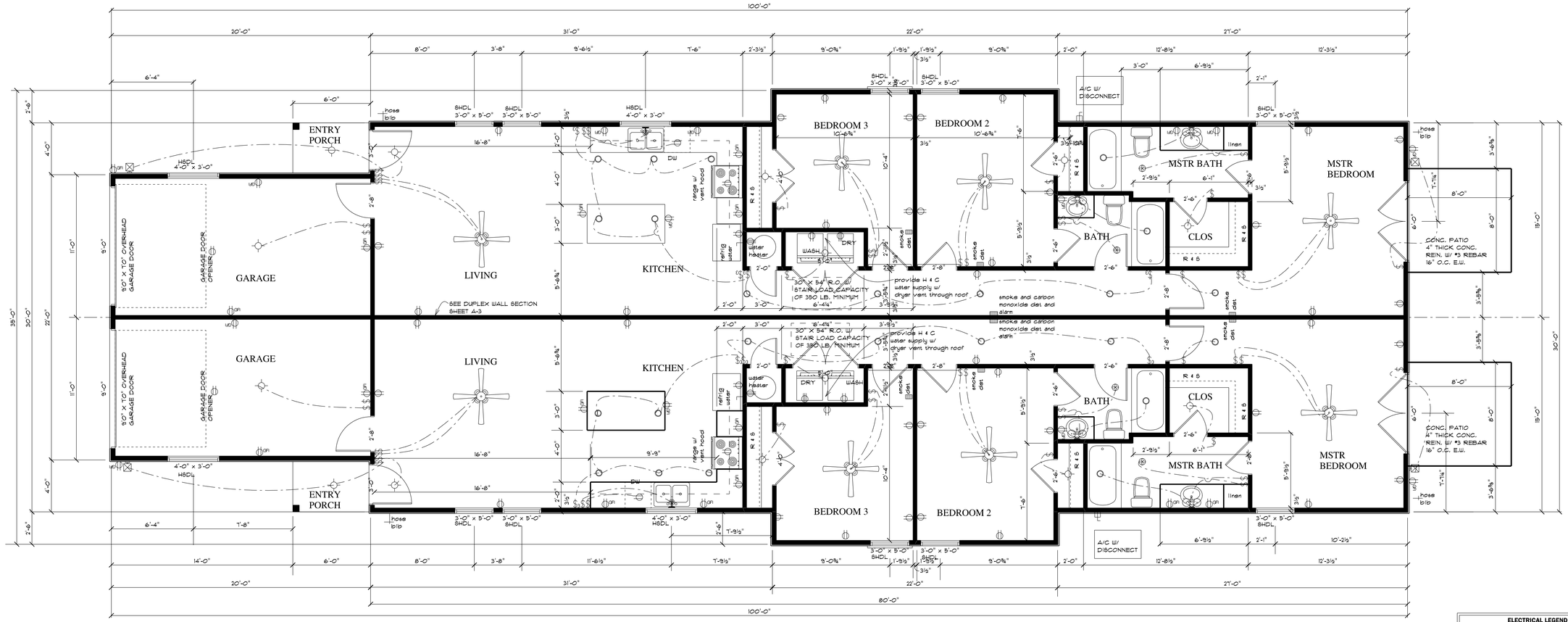
North Throckmorton Street



THE JONES' SUMMIT ADDITION
TO
SHERMAN, TEXAS
VOL. 303-304 PAGE 86-87-34-5

A-1

15

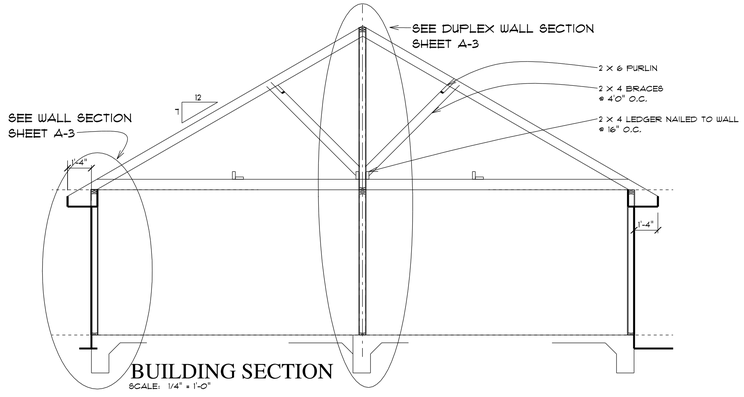


DUPLEX FLOOR PLAN

SCALE: 1/4" = 1'-0"

AREA TABULATION FOR EACH SINGLE UNIT.

1255 S.F. EACH SINGLE UNIT LIVING AREA
220 S.F. GARAGE
24 S.F. ENTRY PORCH
64 S.F. REAR UNCOVERED PATIO



BUILDING SECTION

SCALE: 1/4" = 1'-0"

NOTES

FULL DOWN STAIRS SHALL BE 30 X 54 INCHES.
WITH A LOAD CAPACITY OF 350 POUNDS AND A CLEAR PASSAGEWAY LARGE ENOUGH TO ALLOW REMOVAL OF THE LARGEST APPLIANCE.

SMOKE ALARMS PER IRC SECTION IRC 2012 SEC R 314
ALL SMOKE ALARMS SHALL BE HARD-WIRED, INTER-CONNECTED WITH A BATTERY BACK UP.

GARAGE

THE DOOR ENTERING GARAGE FROM RESIDENCE SHALL BE A SELF CLOSING TIGHT FITTING DOOR .
R 302.5.2 2012 IRC. THE DOOR SHALL BE SOLID WOOD NOT LESS THAN 1 3/8", SOLID OR HONEYCOMB-CORE STEEL DOORS NOT LESS THAN 1 3/8, OR 20 MIN. FIRE RATED DOOR EQUIPED W/ A SELF CLOSING DEVICE.

SHEETROCK

2012 IRC TABLE R302.6 THE GARAGE SHALL BE SEPARATED FROM THE RESIDENCE AND ITS ATTIC AREA BY NOT LESS THAN 1/2" GYP. BD. APPLIED TO THE GARAGE SIDE.
5/8" TYP "X" GYP BD IF HABITABLE ROOM ABOVE.

PROVIDE GREEN BOARD WATER RESISTANT GYP BD IN ALL BATHS

WINDOWS

BEDROOM EMERGENCY ESCAPE AND RESCUE OPENING SHALL BE PROVIDED OR EXTERIOR DOOR OPENING.
MAXIMUM SILL HEIGHT REF R310.1 SHALL NOT BE MORE THAN 44" ABOVE FLOOR.
310.1.1 EMERGENCY OPENING SHALL HAVE A NET CLEAR OPENING OF 5.7 SQUARE FEET. (EXCEPTION: GRADE FLOOR OPENING SHALL HAVE A NET CLEAR OPENING OF 5 SQUARE FEET.
310.1.2. MINIMUM CLEAR HEIGHT OF OPENING SHALL BE 24"
310.1.3. MINIMUM CLEAR WIDTH SHALL BE 20".

PROVIDE TEMPERED GLASS IN HAZARDOUS AREAS AS DEFINED IN IRC 2012 SECTION R308.4.1 THROUGH R 308.4.7

IN ATTIC PROVIDE A CLEAR UNOBSTRUCTED PASSAGEWAY LARGE ENOUGH TO ALLOW REMOVAL OF THE LARGEST APPLIANCE, BUT NOT LESS THAN 30 INCHES HIGH X 22 INCHES WIDE AND NOT MORE THAN 20 FEET LONG MEASURED ALONG THE CENTERLINE OF THE PASSAGEWAY FROM THE OPENING TO THE APPLIANCE. THE PASSAGEWAY SHALL BE OF SOLID FLOORING AND NOT LESS THAN 24" WIDE. PROVIDE A MINIMUM OF 30" WIDE AND 30" DEEP SERVICE SPACE ON SIDES OF APPLIANCE WHERE ACCESS IS REQD.

PROVIDE A SWITCH AT THE ATTIC ACCESS AND LIGHTING FOR THE PASSAGEWAY AND APPLIANCE LOCATIONS.

ELECTRICAL LEGEND		
ELECTRICAL	COUNT	SYMBOL
ceiling fan spotlights 01	8	
pot light	24	
exterior light 02	4	
fan	4	
light	14	
outlet	50	
outlet 220v	4	
outlet gfi	28	GFI
switch	47	
switch 3 way	8	3
wall mounted 01 2 lights	4	
wall mounted 03 1 light	2	

PROJECT DESCRIPTION
1,255 DUPLEX

SWINNEY & ASSOCIATES
GARLAND JOE SWINNEY
2397B NORTHCREST TRAIL NEW CANEY TX 77357
PHONE: 281 689-0723

REVISIONS

DATE:

DRAWN BY:

CHECKED:

SHEET
A-1
OF

924 S.F. LIVING

Sherman
CLASSIC TOWN. BROAD HORIZON.

Developmental Services

STAFF REVIEW LETTER

January 5, 2021

Lazy L. Enterprises
4 Timber Creek
Sherman, TX 75092

Dear Applicants,

The request for a Specific Use Permit and site plan approval to allow two-family, single-story patio homes with no more than two structures attached in a grouping in an R-1 (One Family Residential) District/College Park Overlay District located at 910, 914, 916 and 918 North Throckmorton Street has been scheduled to be heard by the Planning and Zoning Commission on Tuesday, January 12, 2021 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the R-1 (One-Family Residential) District, the College Park Overlay District, the Fence Ordinance and the Residential Tree and Landscaping Ordinance.
2. Fire access lanes and codes shall be coordinated with the Fire Marshal 903-892-7267.
3. Any structures built over any of the easements on the property will require approval for an encroachment easement from the City Council.
4. All required off-street parking shall be on private property and shall not encroach into the right-of-way.
5. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
6. Parking requirement is one space per bedroom, minimum two per unit, a parking space is considered to be 9'x 20'.
7. Side yard setbacks must be uniform for all homes within a given block.
8. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
9. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Engineering:

10. Drive approaches and sidewalks must conform to City of Sherman standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.

11. Sidewalks are required.
12. If structures are to cross lot lines, a replat is required.
13. Verify fire requirements and code compliance with Fire Marshall.
14. The City of Sherman does not maintain alleys.

It is the policy of this Board not to consider a request unless the applicant or its representative attends the meeting at which the request is considered. You are hereby notified to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Rob Rae at 903-892-7229 prior to the meeting.

Respectfully,

Rob Rae
Secretary, Planning and Zoning Board and Board of Adjustment

cc: Robby Hefton, City Manager
Clint Philpott, Asst. City Manager
Wayne Lee, P.E., Director of Engineering
Tom Pruitt, Utility Engineer
Billy Hartsfield, Fire Marshal
Amber Doan, Engineering Coordinator
Christopher Armstrong, Asst. City Engineer
The Law Firm of Abernathy, Roeder, Boyd, & Hullett, P.C., City Attorney

Planning & Zoning Commission and Board of Adjustments

Agenda Item No. 20.

Meeting Date: 01/12/2021

Prepared by: Patsy Reeves, Developmental Services Coordinator
Rob Rae, Director of Development Services

Clay Mahone, Chairman	
David Downtain, Vice Chairman	Paul Manley, Commissioner
Shawn Davis, Commissioner	Glenn Whitaker, Commissioner
Leigh Ann Sims, Commissioner	Bryan Blagg, Commissioner

Requested Action/Proposed Use:

910, 914, 916 & 918 NORTH THROCKMORTON STREET

The request of Lazy L Enterprises (Owners) and Underwood Drafting and Surveying (Surveyor) for the properties located at 910, 914, 916 and 918 North Throckmorton Street, being Lots 5, 6, 7 & 8, Block 5, W.P. Carter's Addition, as follows:

Planning and Zoning Commission

Specific Use Permit and site plan approval under Ordinance No. 2280, Section 8, Subsection (5)(a) to allow two-family, single-story patio homes with no more than two structures attached in a grouping in an R-1 (One Family Residential) District/College Park Overlay District.

Background:

The properties are located at 910, 914, 916 and 918 North Throckmorton Street between College and Williams Streets. The property is zoned an R-1 (One Family Residential) District and located in the College Park Overlay District.

The owner would like to construct a two-family, single-story patio home (duplex) at this location. Each unit will be 1,563 square feet with one-car garage and two parking spaces in the driveway.

Adjacent Zoning:

R-1 (One Family Residential) District

Origination:

Lazy L Enterprises (Owners)
Underwood Drafting and Surveying (Surveyor)

Master Plan Designation:

Auto-Urban Single Family Residential – This character type is the single-family residential category with the greatest density and the shortest building setbacks. Most driveways will face the street as well as the garage. Sidewalks are available for pedestrians. Less lot area is devoted to open space and greenery.

Number of notices mailed:

22

Objections Received:

0

Attachments

Location Map
Zoning Map
Zoning Sign Photo
Plat
Site Plan
Floor Plan
Building Elevations
Staff Review Letter

January 6, 2021

RECEIVED
JAN 07 2021

Chairman Clay Mahone,
Honorable Commissioners
Sherman Planning and Zoning Commission
City of Sherman
220 W Mulberry
Sherman, TX 75090

RE: Groundhog Day on N. Throckmorton St.

Mr. Chairman and Honorable Commissioners,

As the attached highlighted documents clearly demonstrate, in the winter of 2017, both the Sherman Planning and Zoning Commission and the Sherman City Council **unanimously approved** a special use permit to allow two-family, single-story patio homes with no more than two structures attached in a grouping for 800, 802, 804 and 806 N. Throckmorton St. These homes were constructed on four contiguous 25' X 140' lots. It is clear that the lot layout for the current requested SUP, when compared to the one previously approved, are one and the same.

I am requesting that the Planning and Zoning Commission approve, as it did on November 21, 2017, **the exact same application, on the exact same lot layout, using the exact same floorplan, elevation and finish-out,** located just one block north in the 900 block of N. Throckmorton St. The only difference in this request and the one unanimously approved just over three years ago is that there is no longer a variance required for the front entry garage. Otherwise, this request is **identical** to the one that this body, and the Sherman City Council unanimously approved in November and December of 2017.

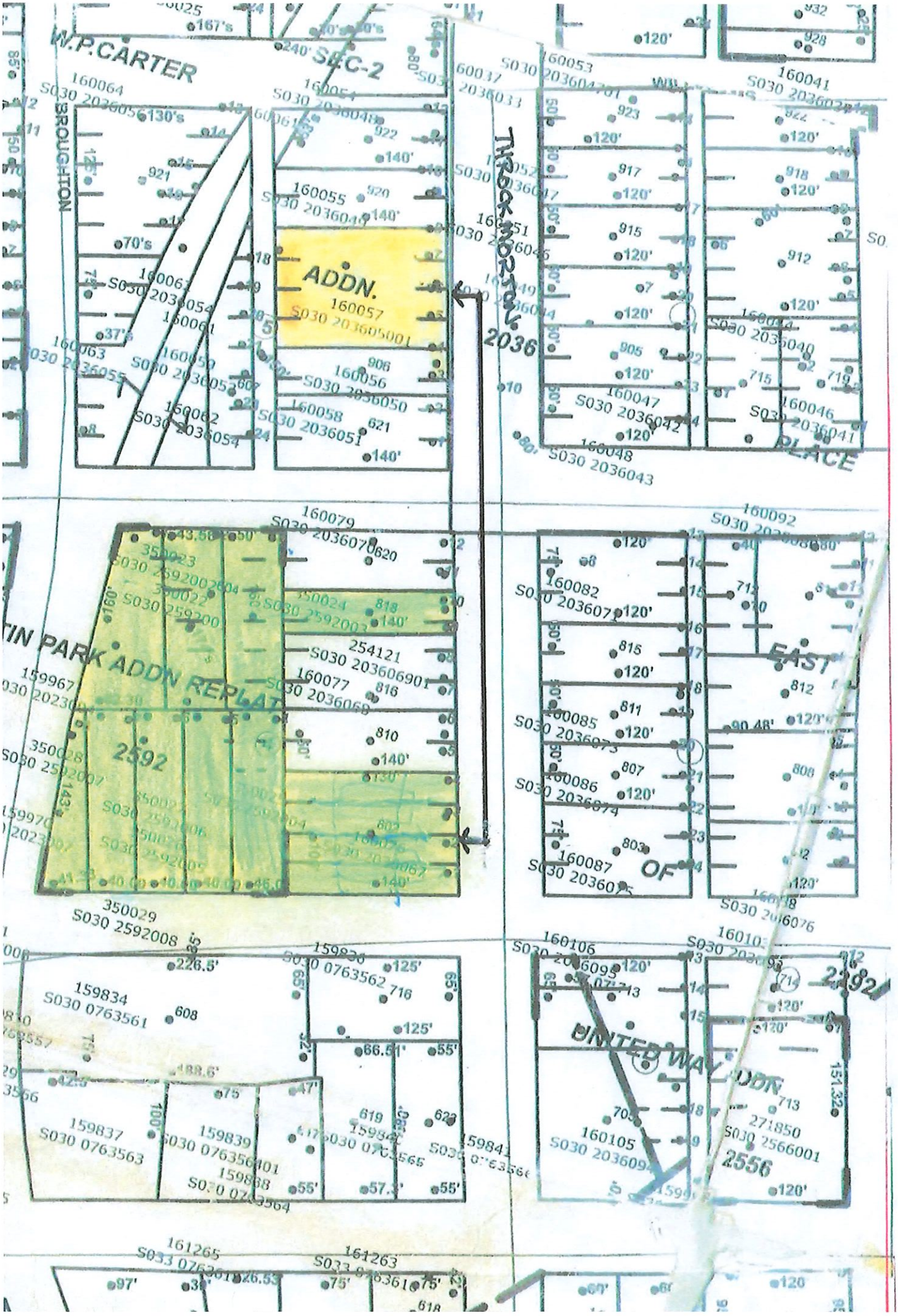
After reviewing, please let me know if you have any questions or need more information. Thank you for your consideration and approval of this request.

Sincerely,

William L. Magers

Bill Magers
Lazy L. Enterprises

Cc: Rob Rae, Director of Development Services
Att/ 6


W.P.CARTER
SEC-2
BROUGHTON
TWR.BLK.NORTON
2036
ADDN.
160057
S030 2036005001
PLACE
EAST
OF
UNITED WAY ADDN
2392
2556
271850
S030 2566001
254121
S030 2036069001
350029
S030 2592008
350023
S030 2592002004
350022
S030 2592004
350024
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159967
159834
S030 0763561
159836
S030 0763562
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S030 0763563
159839
S030 0763564001
159841
S030 0763565
159842
S030 0763566
161265
S033 0763561
161263
S033 0763561

Sherman
CLASSIC TOWN. BROAD HORIZON.

Planning & Zoning Commission and Board of Adjustments **Agenda Item No. 9.**

Meeting Date: 11/21/2017

Prepared by: Patsy Reeves, Developmental Services Admin Secretary
Scott Shadden, Director of Development Services

Clay Mahone, Chairman	
Kyle Patterson, Vice-Chairman	Shawn Davis, Commissioner
Joe Gilbert, Commissioner	Jeff Adams, Commissioner
Eric Elliott, Commissioner	David Downtain, Commissioner
Sean Vanderveer, Commissioner	Trish Bridges, Commissioner

Requested Action/Proposed Use:

601, 605, 609, 613 & 617 E. CARTER STREET & 800, 802, 804 & 806 N. THROCKMORTON STREET

The request of Lazy L Enterprises (Owners) and Underwood Drafting and Surveying (Surveyor) concerning the property located at 601, 605, 609, 613 & 617 East Carter Street and 800, 802, 804 & 806 North Throckmorton Street, being Lots 1, 2, 3 & 4, Block 4, W.P. Carter Addition and Lots 4-7, Block A, Austin Park Addition, being a Replat of Lots 13-21, Block 4 of the W.P. Carter's Addition, as follows:

Board of Adjustments

Variance under Ordinance No. 2280, Section 6.8.3, Subsection (4)(f) to allow front entry garages for six two-family patio homes in an R-1 (One Family Residential) District/College Park Overlay District.

Planning and Zoning Commission

Amending a Specific Use Permit and site plan approval under Ordinance No. 2280, Section 8, Subsection (5)(a) to allow two-family, single-story patio homes with no more than two structures attached in a grouping for Lots 4,5,6,7, Block A, Austin Park Addition, a Replat of Lots 13-21, Block 4 of the W.P. Carter's Addition in an R-1 (One Family Residential) District/College Park Overlay District.

Background:

The property is located at 601, 605, 609, 613 & 617 East Carter Street and 800, 802, 804 & 806 North Throckmorton Street, the northwest corner of Carter Street and Throckmorton Street. The property is zoned an R-1 (One Family Residential) District and also located in the College Park Overlay District. A Specific Use Permit to allow patio homes in an R-1 (One Family Residential) District was approved in 2009 and 2014. Variances have been approved to allow zero setbacks to be adjacent with no more than two patio homes attached in one grouping and to allow zero foot

side yard setback in lieu of the required 10' at the July 21, 2009, Planning and Zoning Commission Meeting.

The owner would like to construct six, single-story, two-family patio homes on the lots at this location. They are also requesting an exception to allow front entry garages in the College Park Overlay District.

Adjacent Zoning:

R-1 (One Family Residential) District
C-2 (General Commercial) District

Origination:

Lazy L Enterprises (Owners)
Underwood Drafting and Surveying (Surveyor)

Master Plan Designation:

Auto-Urban Single Family Residential – This character type is the single-family residential category with the greatest density and the shortest building setbacks. Most driveways will face the street as well as the garage. Sidewalks are available for pedestrians. Less lot area is devoted to open space and greenery.

Number of notices mailed:

19

Objections Received:

0

Attachments

Location Map
Zoning Map
Zoning Sign Photo
Site Plan
Elevations
Staff Review Letter

ORDINANCE NO. 6089

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW TWO-FAMILY, SINGLE-STORY PATIO HOMES WITH NO MORE THAN TWO STRUCTURES ATTACHED IN A GROUPING IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT/COLLEGE PARK OVERLAY DISTRICT AT 605, 609, 613 AND 617 EAST CARTER STREET, BEING LOTS 4, 5, 6 AND 7, BLOCK A, AUSTIN PARK ADDITION, A REPLAT OF LOTS 13-21, BLOCK 4 OF THE W.P. CARTER'S ADDITION (LAZY L ENTERPRISES, OWNERS; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYOR); PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Planning and Zoning Commission and the City Council, in accordance with the state law and the ordinances of the City of Sherman, have given the required notices and have held the required public hearings regarding this Specific Use Permit; and

WHEREAS, the City Council finds that this use will complement or be compatible with the surrounding uses and community facilities; contribute to, enhance, or promote the welfare of the area of request and adjacent properties; not be detrimental to the public health, safety, or general welfare; and conform in all other respects to all applicable zoning regulations and standards; and

WHEREAS, the City Council finds that it is in the public interest to grant this specific use permit, subject to certain conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS;

SECTION 1. That, from and after the passage of this ordinance, Lazy L Enterprises (Owners) and Underwood Drafting and Surveying (Surveyor) are granted a Specific Use Permit to allow two-family, single-story patio homes with no more than two structures attached in a grouping in an R-1 (One Family Residential) District/College Park Overlay District at 605, 609, 613 and 617 East Carter Street, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

BEING Lots 4, 5, 6 and 7, Block A, Austin Park Addition, a Replat of Lots 13-21, Block 4 of the W.P. Carter's Addition

SECTION 2. That this specific use permit is granted on the following conditions:

Zoning:

1. All aspects of the R-1 (One Family Residential) District, the College Park Overlay District and the Residential Tree and Landscaping Ordinance must be followed.
2. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
3. A parking space is considered to be 9'x20'.
4. Parking ratio required: 1 space per bedroom, minimum two per unit.
5. Side yard setbacks must be uniform for all homes within a given block.
6. Fire access, lanes and codes shall be coordinated with the Fire Marshal (903-892-7267).
7. Review the zoning and development ordinance for additional requirements.
8. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering:

9. Drive approaches and sidewalks must conform to City of Sherman standards and a permit is required from City of Sherman Engineering Department.
10. The City of Sherman does not maintain alleys.

SECTION 3. That this ordinance shall not become effective until entered upon the official zoning map as provided in Section 8, Subsection (5)(a), Ordinance No. 2280.

SECTION 4. That a person who violates a provision of this ordinance, upon conviction, is punishable by a fine not to exceed $2,000.00.

SECTION 5. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 6. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

INTRODUCED on this the 18th day of December, 2017.

ADOPTED on this the 18th day of December, 2017.

EFFECTIVE DATE on this the 18th day of December, 2017.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 4.**

Meeting Date: 02/01/2021
Prepared By: Rob Rae, Director of Development Services
Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6358
Amending Section 8, Subsection (5)(A), Ordinance No. 2280, so as to Grant a Specific Use Permit to allow Patio Homes in an R-1 (One Family Residential) District on Property Located in the 2100 block of West Moore Street, being Lots 2-18, Block A, Lots 1-9, Block B, Lots 1-11, Block H and Lots 10-20, Block G of the Proposed The Grove Addition (SSCGC Homes, LLC, Owner; Grove Addition Development JV, Applicant; Civil Point Engineers, Civil Engineer; and Underwood Drafting and Surveying, Surveyor); Providing that this Specific Use Permit shall be Granted Subject to Certain Conditions; Providing a Penalty not to Exceed $2,000.00

Issue:

To consider the request of SSCGC Holdings, LLC (Owner), Grove Addition Development JV (Applicant), Civil Point Engineers (Civil Engineer) and Underwood Drafting and Surveying (Surveyor) concerning the property in the 2100 block of West Moore Street, being Lots 2-18, Block A, Lots 1-9, Block B, Lots 1-11, Block H and Lots 10-20, Block G of the proposed The Grove Addition for a Specific Use Permit to allow patio homes in an R-1 (One Family Residential) District.

Background:

The property is located in the 2100 block of West Moore Street between Park Avenue and West Steadman Street. The property is zoned an R-1 (One Family Residential) District. The owner is requesting a Specific Use Permit to allow patio homes on 48 lots in the proposed The Grove Addition, a 198 lot development. The homes will look similar to the homes in the neighborhood.

Origination:

SSCGC Holdings, LLC (Owner)
Grove Addition Development JV (Applicant)
Civil Point Engineers (Civil Engineeer)
Underwood Drafting and Surveying (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 12, 2021 regular meeting, the Planning and Zoning Board voted 7/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6358
Exhibit A - Preliminary Plat
Location Map
Zoning Map
Zoning Sign Photo
The Grove Addition
Patio Home Lots
Site Plan
Building Elevations
Staff Review Letter
P&Z Communication
Letter from Erin Smith

ORDINANCE NO. 6358

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW PATIO HOMES IN AN R-1 (ONE-FAMILY RESIDENTIAL) DISTRICT ON PROPERTY LOCATED IN THE 2100 BLOCK OF WEST MOORE STREET, BEING LOTS 2-18, BLOCK A, LOTS 1-9, BLOCK B, LOTS 1-11, BLOCK H AND LOTS 10-20, BLOCK G OF THE PROPOSED THE GROVE ADDITION (SSCGC HOLDINGS, LLC, OWNER; GROVE ADDITION DEVELOPMENT JV, APPLICANT; CIVIL POINT ENGINEERS, CIVIL ENGINEER; AND UNDERWOOD DRAFTING SURVEYING, INC., SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Planning and Zoning Commission and the City Council, in accordance with the state law and the ordinances of the City of Sherman, have given the required notices and have held the required public hearings regarding this Specific Use Permit; and

WHEREAS, the City Council finds that this use will complement or be compatible with the surrounding uses and community facilities; contribute to, enhance, or promote the welfare of the area of request and adjacent properties; not be detrimental to the public health, safety, or general welfare; and conform in all other respects to all applicable zoning regulations and standards; and

WHEREAS, the City Council finds that it is in the public interest to grant this specific use permit, subject to certain conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That, from and after the effective date of this Ordinance, SSCGC Holdings, LLC (Owner), Grove Addition Development JV (Applicant), Civil Point Engineers (Civil Engineer) and Underwood Drafting and Surveying (Surveyor) and certain property located in the 2100 block of West Moore Street, and more particularly described as Lots 2-18, Block A, Lots 1-9, Block B, Lots 1-11, Block H and Lots 10-20, Block G of the proposed The Grove Addition, as depicted in **Exhibit A – Preliminary Plat**, are granted a Specific Use Permit to allow Patio Homes in an R-1 (One-Family Residential) District and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the property described as:

Lots 2-18, Block A, Lots 1-9, Block B, Lots 1-11, Block H and Lots 10-20, Block G of the proposed The Grove Addition.

SECTION 2. That this Specific Use Permit is granted on the following conditions:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the R-1 (One-Family Residential) District, the Fence Ordinance and the Residential Tree and Landscaping Ordinance.
2. Fire access lanes and codes shall be coordinated with the Fire Marshal 903-892-7267.
3. Any structures built over any of the easements on the property will require approval for an encroachment easement from the City Council.
4. All required off-street parking shall be on private property and shall not encroach into the right-of-way.
5. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
6. Parking requirement is one space per bedroom, minimum two per unit, a parking space is considered to be 9'x 20'.
7. Side yard setbacks must be uniform for all homes within a given block.
8. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
9. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Engineering:

10. Drive approaches and sidewalks must conform to City of Sherman standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.
11. Sidewalks required along all street frontage. ADA ramps required at all street corners.

SECTION 3. That this Ordinance shall be entered upon the official zoning map as provided in Section 2, Ordinance No. 2280.

SECTION 4. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS ($2,000.00). A violation of any provision of this Ordinance shall constitute a separate

violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 5. That the General Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 7. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 8. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the _____ day of _____, 2021.

ADOPTED on this the _____ day of _____, 2021.

EFFECTIVE DATE on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

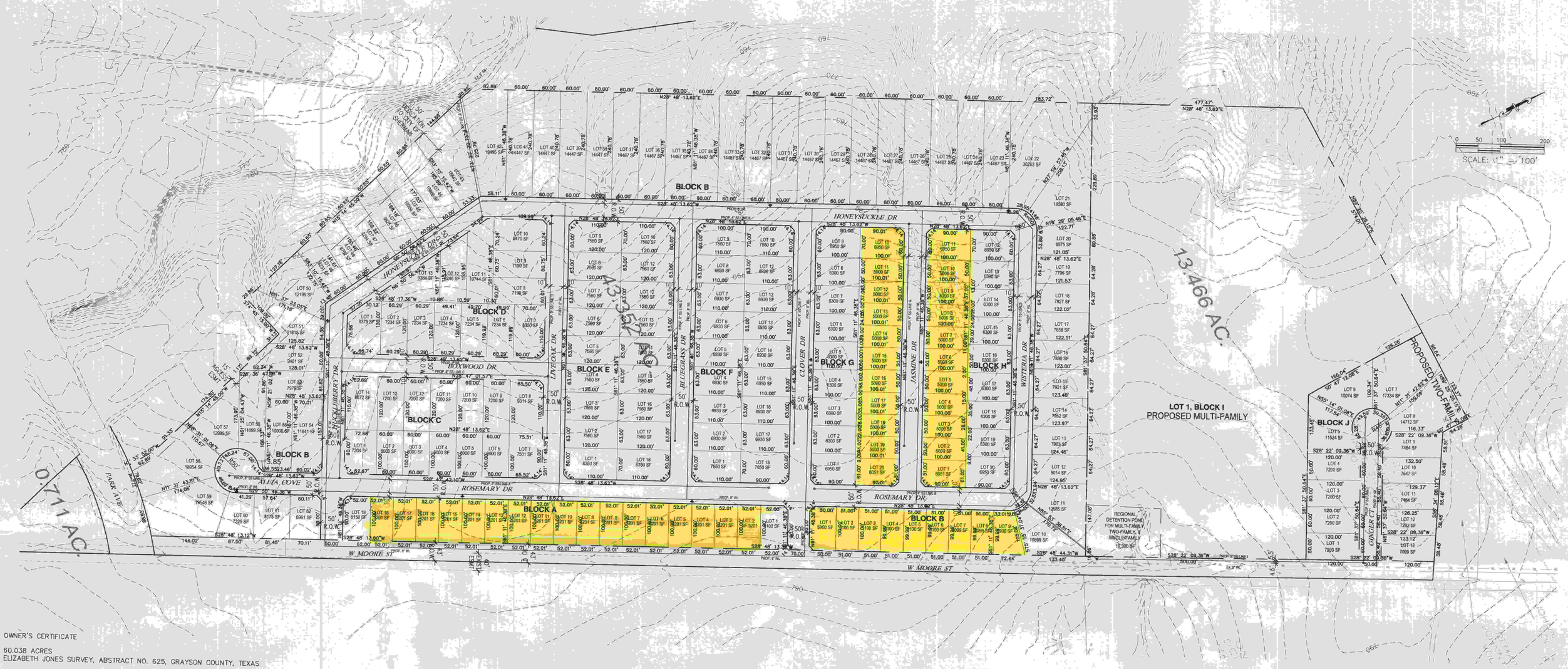
ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:
THE LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Exhibit A - Preliminary Plat



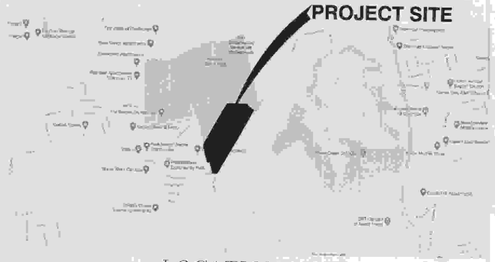
OWNER'S CERTIFICATE

60.038 ACRES
ELIZABETH JONES SURVEY, ABSTRACT NO. 625, GRAYSON COUNTY, TEXAS

LEGAL DESCRIPTION:

Situated in the County of Grayson, State of Texas, being a part of the Elizabeth Jones Survey, Abstract No. 625, and being a part of the 211.4 acre Tract 1–A of lands conveyed to SSCGC Holdings, LLC by deed of record in Instrument No. 2013–475, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a found 1/2" steel rod at the southeast corner of Lot 1 Pebblebrook Phase 3A, as recorded in Volume 22, Page 161, Plat Records, Grayson County, Texas;
Thence North 01°33'52" West with the east line of said addition, a distance of 72.93 feet to a set 1/2" steel rod;
Thence North 15°14'45" West continuing with said east line, a distance of 387.65 feet to a set 1/2" steel rod at the northeast of Lot 7 of said addition;
Thence South 74°45'15" West with the north line of said Lot 7, a distance of 109.00 feet to a set 1/2" steel rod in the east line of the Amending Plat of Pebblebrook, Phase 3 as recorded in Volume 16, Page 6 of said Plat Records, said rod also being in the west line of said Tract 1–A;;
Thence North 15°14'45" West with said west line and the east line of said Tract 1–A, a distance of 694.64 feet to a set 1/2" steel rod;
Thence North 28°48'14" East, a distance of 1,884.08 feet to a set 1/2" steel rod in the south line of that tract of land conveyed to the City of Sherman as recorded in Document Number 2018–12009, Official Public Records, Grayson County, Texas;
Thence North 89°25'26" East with said south line, a distance of 794.01 feet to a found 1/2" steel rod in the west line of that 0.573 acre tract of land conveyed Johnny T. Flores Jr. and Jada D. Flores as recorded in Document Number 2017–5244 of said Official Public Records;
Thence South 00°47'12" East, a distance of 64.26 feet to a found 2" steel pipe at the southwest corner of said 0.573 acre tract;
Thence South 58°34'08" East with the south line of the remainder of that tract of land conveyed to Johnny T. Flores, et ux as recorded in Volume 2164, Page 267, Real Property Records Grayson County, Texas, a distance of 292.45 feet to a set 1/2" steel rod;
Thence over and across said Tract 1–A the following calls and distance;
South 28°22'09" West, a distance of 793.36 feet to a set 1/2" steel rod,
South 28°48'14" West, a distance of 2,124.33 feet to a set 1/2" steel rod,
with a non–tangent curve to the left having a radius of 761.42 feet, (chord bears North 79°44'34" West, 162.51 feet) an arc length of 162.82 feet to the Point–of–Beginning and containing 60.038 acres of land.



LOCATION MAP
(NOT TO SCALE)

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS

That _____ does hereby adopt this plat designating the hereinbefore described property as _____, an Addition to the City of Sherman, Grayson County, Texas, and do hereby dedicate to the public use forever all streets, rights–of–way, alleys and easements shown thereon. The City or any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, or other improvements or growths in which any way endanger or interfere with the construction, maintenance or efficiency of its respective systems on any of these easements, and the City or any public utility shall at all times have the right of ingress and egress to and from and upon the said easement for the purpose of constructing, reconstructing, inspecting, and patrolling, without the necessity at any time of procuring the permission of anyone. This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Gordonville, Texas.

_____
NAME

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein.

WITNESS MY HAND AND SEAL OF OFFICE THIS THE ___DAY _____, 20____.

_____
Notary Public in and for the State of _____

PRELIMINARY
NOT FOR CONSTRUCTION

JOHN H BEZNER
PE # 98469

Engineer:
CIVIL POINT ENGINEERS
9101 JBJ Freeway, Ste 300
Dallas, TX 75243
(972) 554-1100

Surveyor:
Underwood Drafting & Surveying, Inc.
3404 Interurban Rd
Denison, TX 75021
903-465-2151

Developer:
Grove Addition
Development Joint Venture
801 E Taylor St
Sherman, TX 75090
903-893-5188

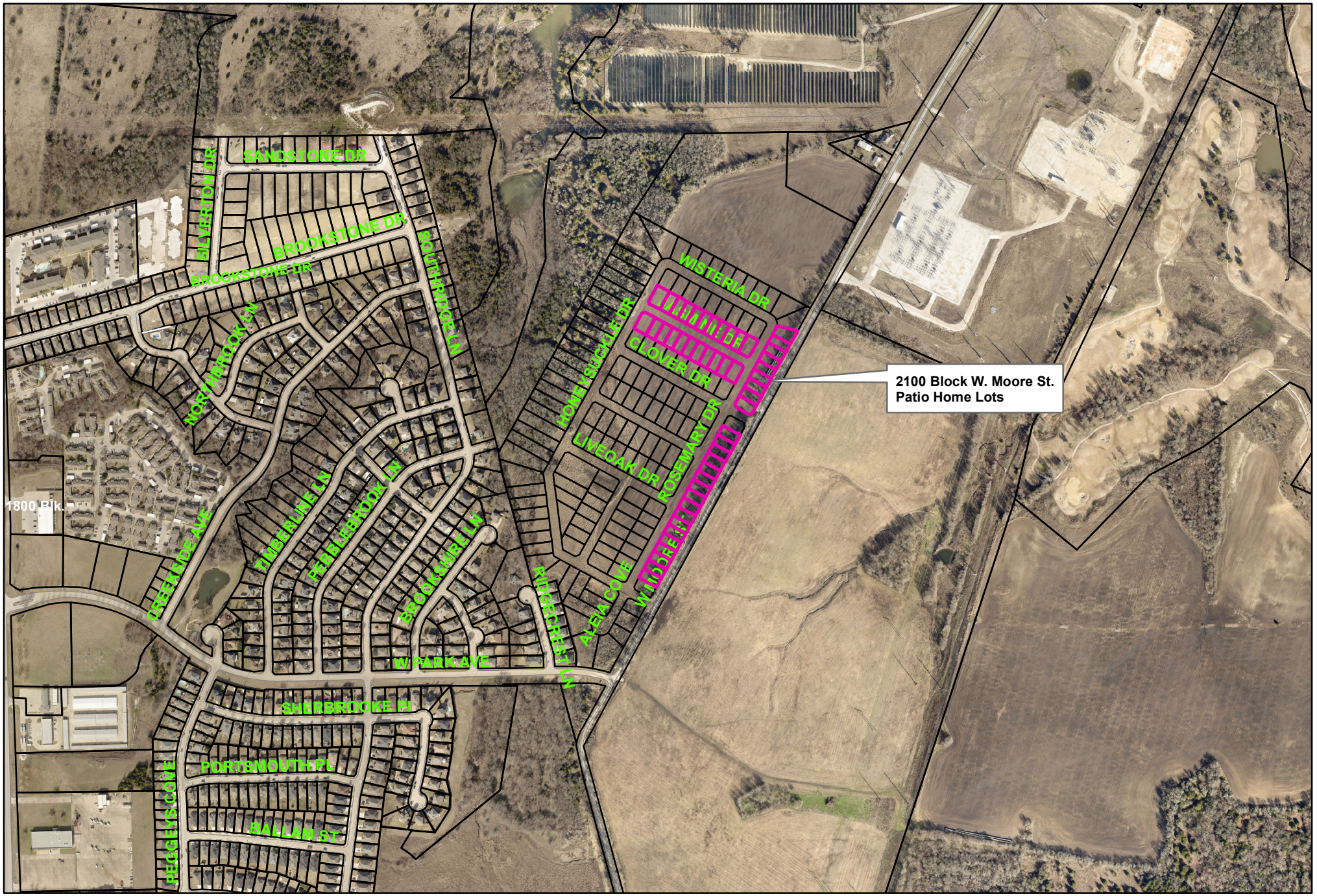
PRELIMINARY PLAT

Tract 1-A

The Grove Addition

Block A, Lots 1-19; Block B, Lots 1-62;
Block C, Lots 1-14; Block D, Lots 1-13;
Block E, Lots 1-18; Block F, Lots 1-18;
Block G, Lots 1-20; Block H, Lots 1-20;
Block J, Lots 1-13
Being 60.00 Acres in the
SSCGC Holdings, LLC, Inst 2013-475,
O.P.R.G.C.T. Survey
in the City of Sherman, Grayson County, Texas

December 18, 2020



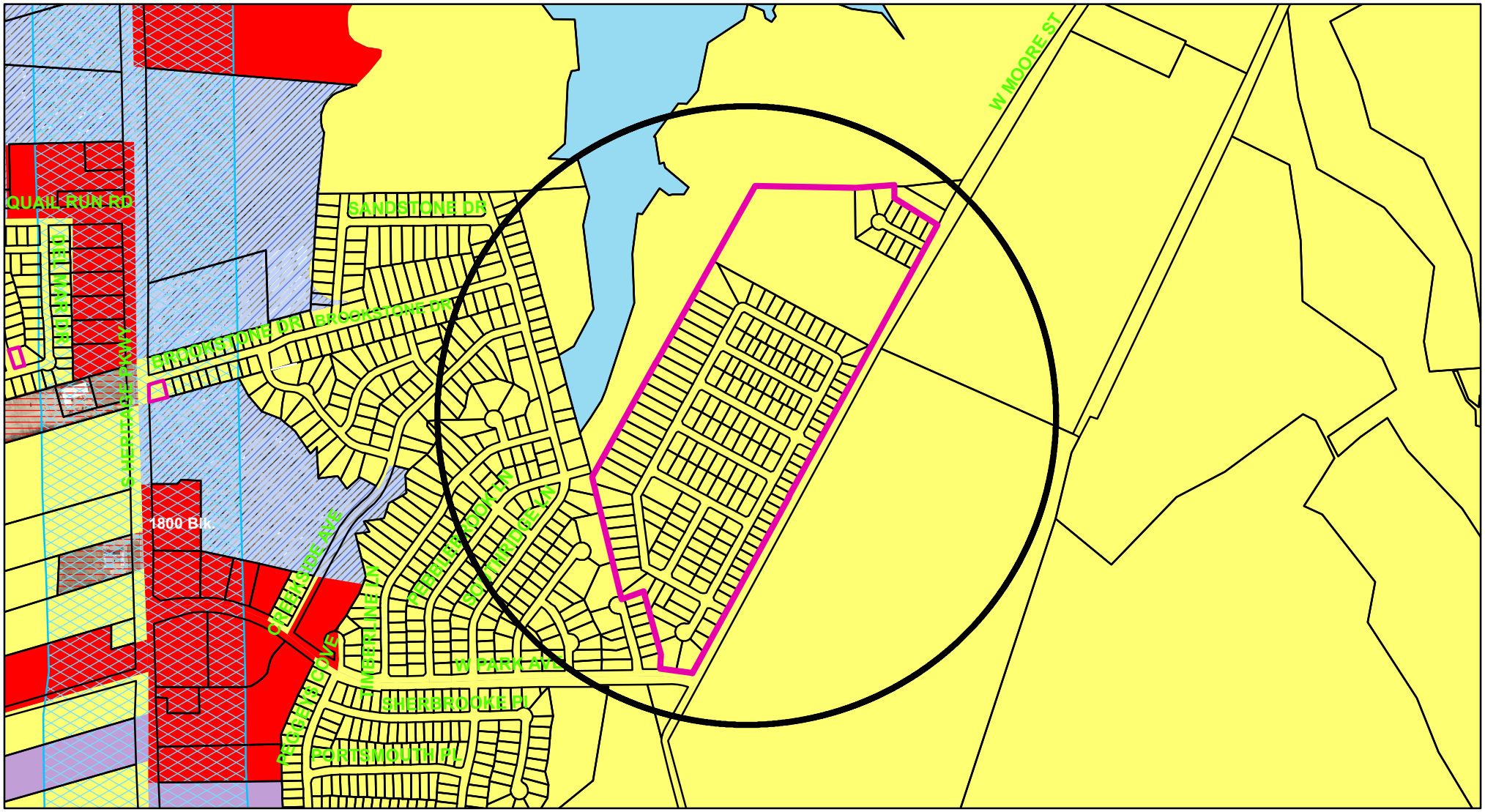
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

2100 Block W. Moore St. - Patio Home Lots

NOT TO SCALE

1 in = 637 ft



Zoning - 2100 Block West Moore Street

Legend

Special Districts Overlay
DISTRICT_NAME
- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor
Representation: ShermGIS.DBO.TransportationCorridor_Rep_1
- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

Zoning Districts
Representation: ShermGIS.DBO.ZoningDistrict_Rep
- Unknown
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing Distgrict
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District
- PD Planned Development

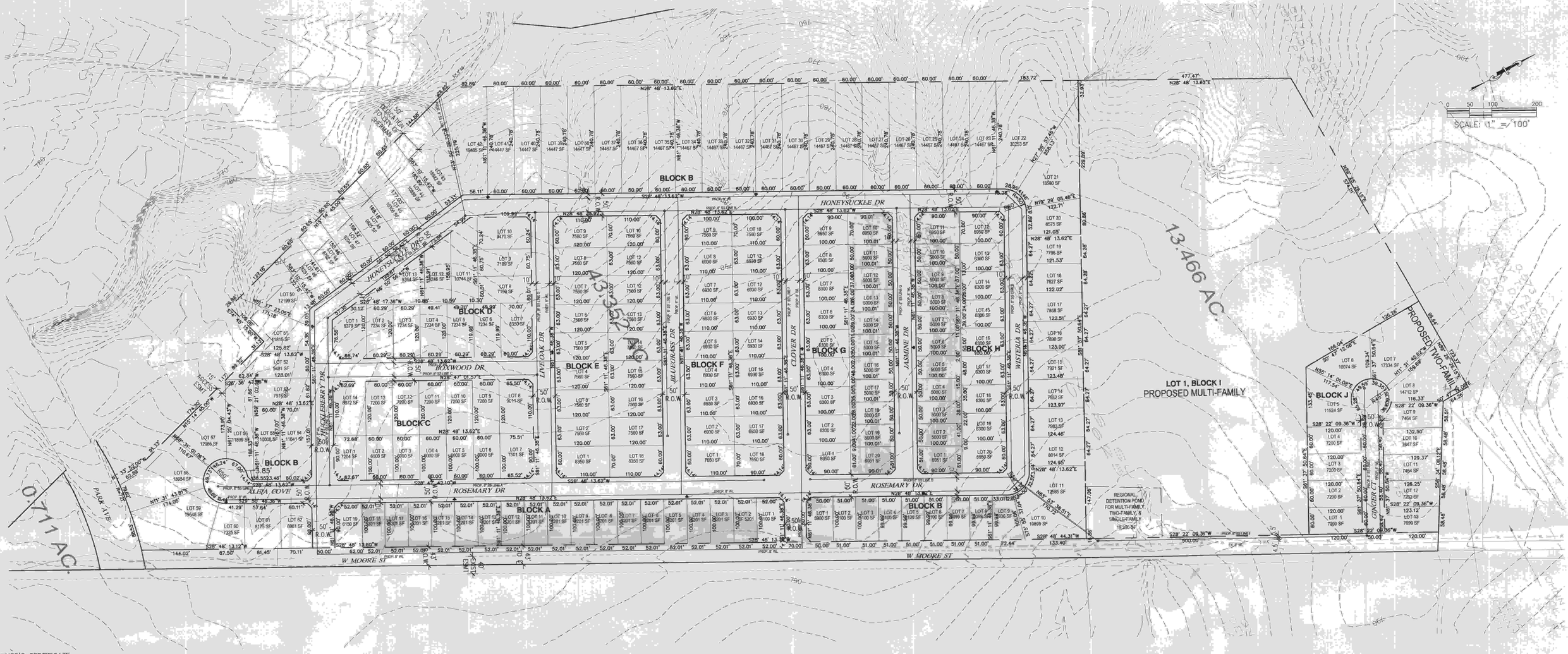
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

NOT TO SCALE

1 in = 800 ft

2100 Block West Moore Street



OWNER'S CERTIFICATE

60.038 ACRES
ELIZABETH JONES SURVEY, ABSTRACT NO. 625, GRAYSON COUNTY, TEXAS

LEGAL DESCRIPTION:

Situated in the County of Grayson, State of Texas, being a part of the Elizabeth Jones Survey, Abstract No. 625, and being a part of the 211.4 acre Tract 1–A of lands conveyed to SSCGC Holdings, LLC by deed of record in Instrument No. 2013–475, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a found 1/2" steel rod at the southeast corner of Lot 1 Pebblebrook Phase 3A, as recorded in Volume 22, Page 161, Plat Records, Grayson County, Texas;
Thence North 01°33'52" West with the east line of said addition, a distance of 72.93 feet to a set 1/2" steel rod;
Thence North 15°14'45" West continuing with said east line, a distance of 387.65 feet to a set 1/2" steel rod at the northeast of Lot 7 of said addition;
Thence South 74°45'15" West with the north line of said Lot 7, a distance of 109.00 feet to a set 1/2" steel rod in the east line of the Amending Plat of Pebblebrook, Phase 3 as recorded in Volume 16, Page 6 of said Plat Records, said rod also being in the west line of said Tract 1–A;;
Thence North 15°14'45" West with said west line and the east line of said Tract 1–A, a distance of 694.64 feet to a set 1/2" steel rod;
Thence North 28°48'14" East, a distance of 1,884.08 feet to a set 1/2" steel rod in the south line of that tract of land conveyed to the City of Sherman as recorded in Document Number 2018–12009, Official Public Records, Grayson County, Texas;
Thence North 89°25'26" East with said south line, a distance of 794.01 feet to a found 1/2" steel rod in the west line of that 0.573 acre tract of land conveyed Johnny T. Flores Jr. and Jada D. Flores as recorded in Document Number 2017–5244 of said Official Public Records;
Thence South 00°47'12" East, a distance of 64.26 feet to a found 2" steel pipe at the southwest corner of said 0.573 acre tract;
Thence South 58°34'08" East with the south line of the remainder of that tract of land conveyed to Johnny T. Flores, et ux as recorded in Volume 2164, Page 267, Real Property Records Grayson County, Texas, a distance of 292.45 feet to a set 1/2" steel rod;
Thence over and across said Tract 1–A the following calls and distance:
South 28°22'09" West, a distance of 793.36 feet to a set 1/2" steel rod,
South 28°48'14" West, a distance of 2,124.33 feet to a set 1/2" steel rod,
with a non–tangent curve to the left having a radius of 761.42 feet, (chord bears North 79°44'34" West, 162.51 feet) an arc length of 162.82 feet to the Point–of–Beginning and containing 60.038 acres of land.

LOCATION MAP
(NOT TO SCALE)

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS

That _____ does hereby adopt this plat designating the hereinbefore described property as _____, an Addition to the City of Sherman, Grayson County, Texas, and do hereby dedicate to the public use forever all streets, rights–of–way, alleys and easements shown thereon. The City or any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, or other improvements or growths in which any way endanger or interfere with the construction, maintenance or efficiency of its respective systems on any of these easements, and the City or any public utility shall at all times have the right of ingress and egress to and from and upon the said easement for the purpose of constructing, reconstructing, inspecting, and patrolling, without the necessity at any time of procuring the permission of anyone. This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Gordonville, Texas.

_____
NAME

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein.

WITNESS MY HAND AND SEAL OF OFFICE THIS THE ___DAY _____, 20_____

_____
Notary Public in and for the State of _____

PRELIMINARY
NOT FOR CONSTRUCTION

JOHN H BEZNER
PE # 98469

Engineer:
CIVIL POINT ENGINEERS
9101 JBJ Freeway, Ste 300
Dallas, TX 75243
(972) 554-1100

Surveyor:
Underwood Drafting & Surveying, Inc.
3404 Interurban Rd
Denison, TX 75021
903-465-2151

Developer:
Grove Addition
Development Joint Venture
801 E Taylor St
Sherman, TX 75090
903-893-5188

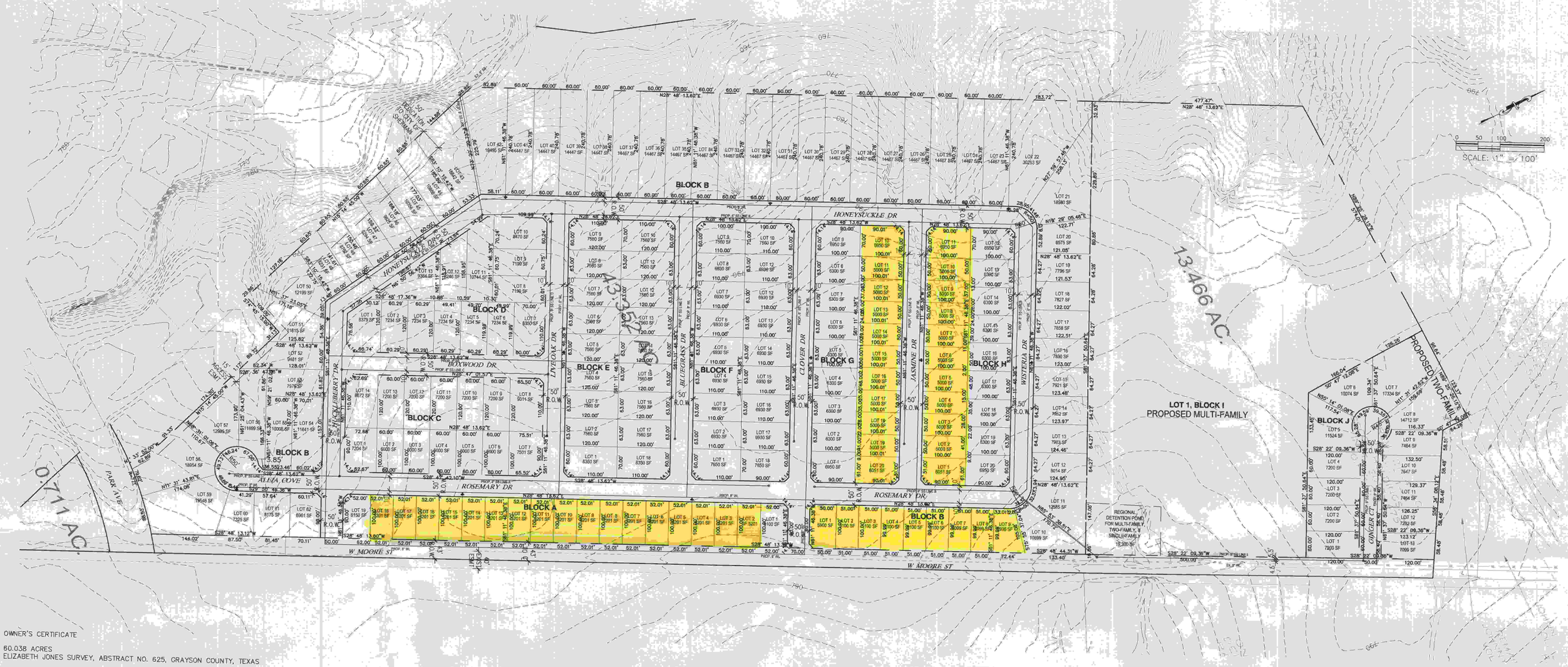
PRELIMINARY PLAT

Tract 1-A

The Grove Addition

Block A, Lots 1-19; Block B, Lots 1-62;
Block C, Lots 1-14; Block D, Lots 1-13;
Block E, Lots 1-18; Block F, Lots 1-18;
Block G, Lots 1-20; Block H, Lots 1-20;
Block J, Lots 1-13
Being 60.00 Acres in the
SSCGC Holdings, LLC, Inst 2013-475,
O.P.R.G.C.T. Survey
in the City of Sherman, Grayson County, Texas

December 18, 2020



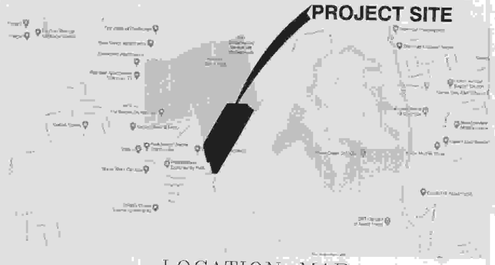
OWNER'S CERTIFICATE

60.038 ACRES
ELIZABETH JONES SURVEY, ABSTRACT NO. 625, GRAYSON COUNTY, TEXAS

LEGAL DESCRIPTION:

Situated in the County of Grayson, State of Texas, being a part of the Elizabeth Jones Survey, Abstract No. 625, and being a part of the 211.4 acre Tract 1–A of lands conveyed to SSCGC Holdings, LLC by deed of record in Instrument No. 2013–475, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a found 1/2" steel rod at the southeast corner of Lot 1 Pebblebrook Phase 3A, as recorded in Volume 22, Page 161, Plat Records, Grayson County, Texas;
Thence North 01°33'52" West with the east line of said addition, a distance of 72.93 feet to a set 1/2" steel rod;
Thence North 15°14'45" West continuing with said east line, a distance of 387.65 feet to a set 1/2" steel rod at the northeast of Lot 7 of said addition;
Thence South 74°45'15" West with the north line of said Lot 7, a distance of 109.00 feet to a set 1/2" steel rod in the east line of the Amending Plat of Pebblebrook, Phase 3 as recorded in Volume 16, Page 6 of said Plat Records, said rod also being in the west line of said Tract 1–A;;
Thence North 15°14'45" West with said west line and the east line of said Tract 1–A, a distance of 694.64 feet to a set 1/2" steel rod;
Thence North 28°48'14" East, a distance of 1,884.08 feet to a set 1/2" steel rod in the south line of that tract of land conveyed to the City of Sherman as recorded in Document Number 2018–12009, Official Public Records, Grayson County, Texas;
Thence North 89°25'26" East with said south line, a distance of 794.01 feet to a found 1/2" steel rod in the west line of that 0.573 acre tract of land conveyed Johnny T. Flores Jr. and Jada D. Flores as recorded in Document Number 2017–5244 of said Official Public Records;
Thence South 00°47'12" East, a distance of 64.26 feet to a found 2" steel pipe at the southwest corner of said 0.573 acre tract;
Thence South 58°34'08" East with the south line of the remainder of that tract of land conveyed to Johnny T. Flores, et ux as recorded in Volume 2164, Page 267, Real Property Records Grayson County, Texas, a distance of 292.45 feet to a set 1/2" steel rod;
Thence over and across said Tract 1–A the following calls and distance;
South 28°22'09" West, a distance of 793.36 feet to a set 1/2" steel rod,
South 28°48'14" West, a distance of 2,124.33 feet to a set 1/2" steel rod,
with a non–tangent curve to the left having a radius of 761.42 feet, (chord bears North 79°44'34" West, 162.51 feet) an arc length of 162.82 feet to the Point–of–Beginning and containing 60.038 acres of land.



LOCATION MAP
(NOT TO SCALE)

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS

That _____ does hereby adopt this plat designating the hereinbefore described property as _____, an Addition to the City of Sherman, Grayson County, Texas, and do hereby dedicate to the public use forever all streets, rights–of–way, alleys and easements shown thereon. The City or any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, or other improvements or growths in which any way endanger or interfere with the construction, maintenance or efficiency of its respective systems on any of these easements, and the City or any public utility shall at all times have the right of ingress and egress to and from and upon the said easement for the purpose of constructing, reconstructing, inspecting, and patrolling, without the necessity at any time of procuring the permission of anyone. This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Gordonville, Texas.

_____
NAME

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein.

WITNESS MY HAND AND SEAL OF OFFICE THIS THE ___DAY _____, 20____.

_____
Notary Public in and for the State of _____

PRELIMINARY
NOT FOR CONSTRUCTION

JOHN H BEZNER
PE # 98469

Engineer:
CIVIL POINT ENGINEERS
9101 JBJ Freeway, Ste 300
Dallas, TX 75243
(972) 554-1100

Surveyor:
Underwood Drafting & Surveying, Inc.
3404 Interurban Rd
Denison, TX 75021
903-465-2151

Developer:
Grove Addition
Development Joint Venture
801 E Taylor St
Sherman, TX 75090
903-893-5188

PRELIMINARY PLAT

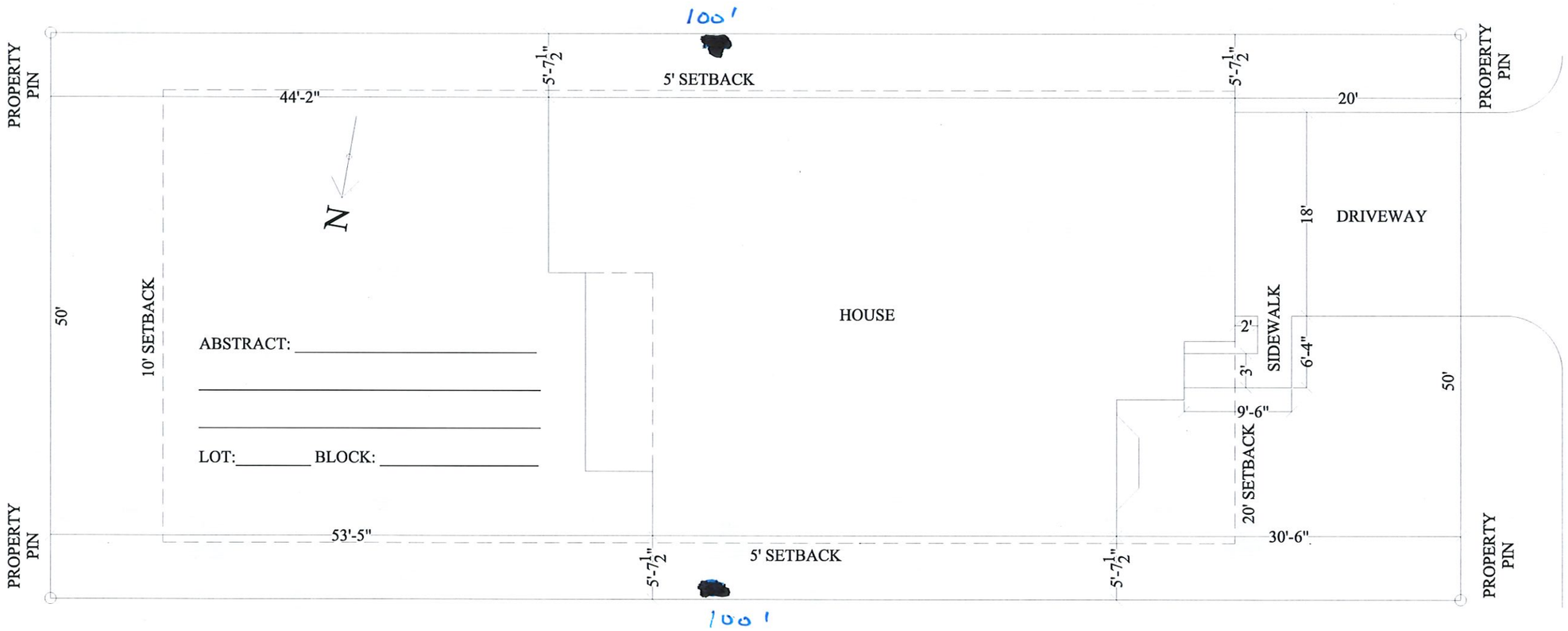
Tract 1-A

The Grove Addition

Block A, Lots 1-19; Block B, Lots 1-62;
Block C, Lots 1-14; Block D, Lots 1-13;
Block E, Lots 1-18; Block F, Lots 1-18;
Block G, Lots 1-20; Block H, Lots 1-20;
Block J, Lots 1-13
Being 60.00 Acres in the
SSCGC Holdings, LLC, Inst 2013-475,
O.P.R.G.C.T. Survey
in the City of Sherman, Grayson County, Texas

December 18, 2020

SITE PLAN
PLAN - 3



GILBERT
Grove Addition
[redacted] LANE
SHERMAN, TEXAS 75092

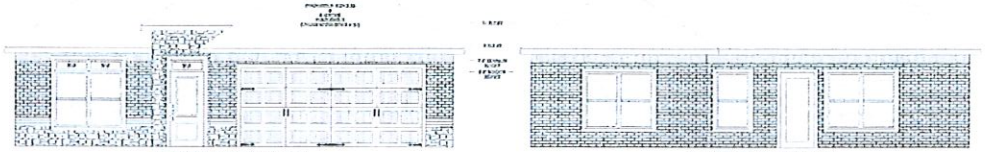
D2LDESIGNS@YAHOO.COM

DATE
09/22/16

SHEET
SITE

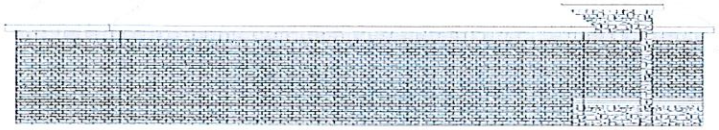
SCALE
3/32" = 1'

ELEVATION PLAN
PLAN - 3
ELEVATION - A

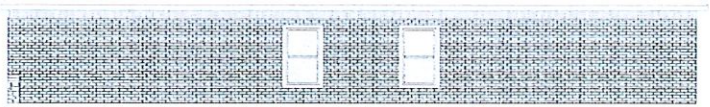


FRONT ELEVATION

BACK ELEVATION

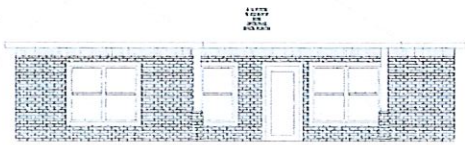


LEFT ELEVATION

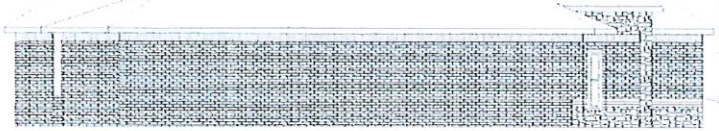


RIGHT ELEVATION

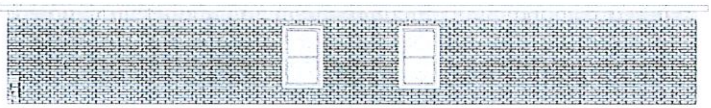
FRONT ELEVATION WITH BAY WINDOW OPTION



BACK ELEVATION WITH BACK PORCH OPTION



LEFT ELEVATION WITH BAY WINDOW AND BACK PORCH OPTION



RIGHT ELEVATION

GILBERT

SHERMAN, TEXAS 75092

D2LDESIGNS@YAHOO.COM

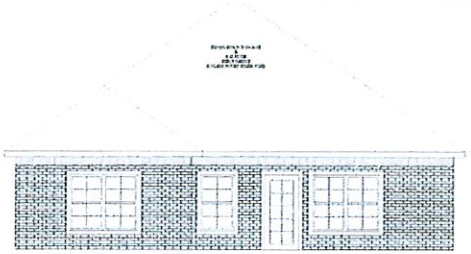
DATE
09/22/16

SHEET
ELEVATION A

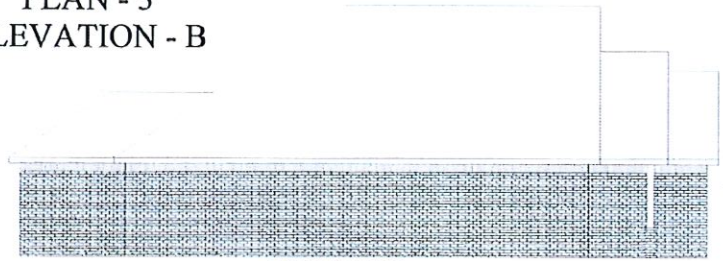
SCALE
3/32" = 1'

ELEVATION PLAN
PLAN - 3
ELEVATION - B

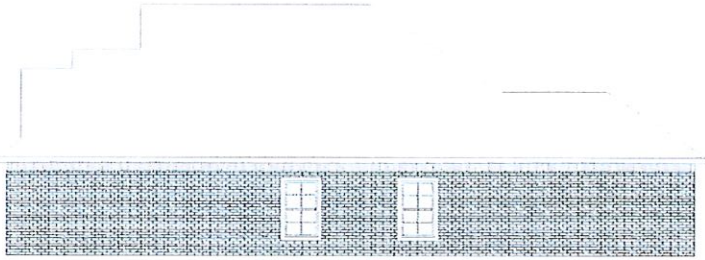
FRONT ELEVATION



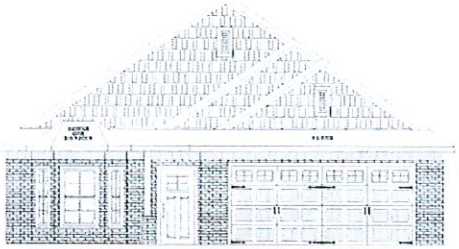
BACK ELEVATION



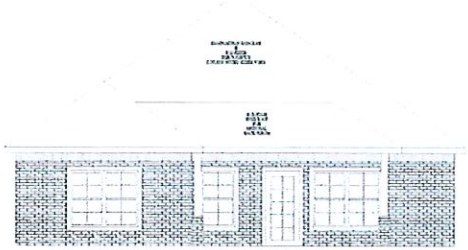
LEFT ELEVATION



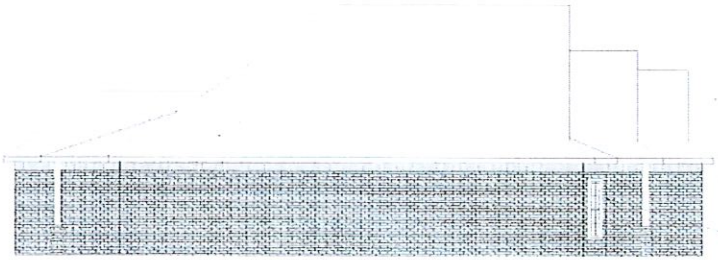
RIGHT ELEVATION



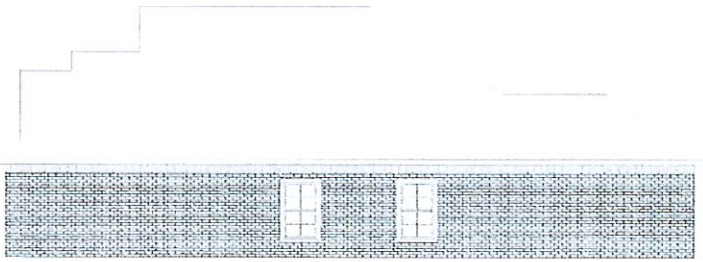
FRONT ELEVATION WITH BAY WINDOW OPTION



BACK ELEVATION WITH BACK PORCH OPTION



LEFT ELEVATION WITH BAY WINDOW AND BACK PORCH OPTION



RIGHT ELEVATION

GILBERT

SHERMAN, TEXAS 75092

D2LDESIGNS@YAHOO.COM

DATE
09/22/16

SHEET
ELEVATION B

SCALE
3/32" = 1'

Sherman
CLASSIC TOWN. BROAD HORIZON.

Developmental Services

STAFF REVIEW LETTER

January 5, 2021

SSCGC Holdings, LLC
4 Timber Creek
Sherman, TX 75092

Underwood Drafting & Surveying
3404 Interurban Rd.
Denison, Texas 75020

Grove Addition Development JV
Joe Gilbert
801 E. Taylor St.
Sherman, TX 75090

Dear Applicants,

The request for a Specific Use Permit and site plan approval to allow patio homes in an R-1 (One-Family Residential) District located in the 2100 block of West Moore Street has been scheduled to be heard by the Planning and Zoning Commission on Tuesday, January 12, 2021 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the R-1 (One-Family Residential) District, the Fence Ordinance and the Residential Tree and Landscaping Ordinance.
2. Fire access lanes and codes shall be coordinated with the Fire Marshal 903-892-7267.
3. Any structures built over any of the easements on the property will require approval for an encroachment easement from the City Council.
4. All required off-street parking shall be on private property and shall not encroach into the right-of-way.
5. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
6. Parking requirement is one space per bedroom, minimum two per unit, a parking space is considered to be 9'x 20'.
7. Side yard setbacks must be uniform for all homes within a given block.
8. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
9. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Engineering:

10. Drive approaches and sidewalks must conform to City of Sherman standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.
11. Sidewalks required along all street frontage. ADA ramps required at all street corners.

It is the policy of this Board not to consider a request unless the applicant or its representative attends the meeting at which the request is considered. You are hereby notified to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Rob Rae at 903-892-7229 prior to the meeting.

Respectfully,

Rob Rae
Secretary, Planning and Zoning Board and Board of Adjustment

cc: Robby Hefton, City Manager
Clint Philpott, Asst. City Manager
Wayne Lee, P.E., Director of Engineering
Tom Pruitt, Utility Engineer
Billy Hartsfield, Fire Marshal
Amber Doan, Engineering Coordinator
Christopher Armstrong, Asst. City Engineer
The Law Firm of Abernathy, Roeder, Boyd, & Hullett, P.C., City Attorney

Planning & Zoning Commission and Board of Adjustments

Agenda Item No. 25.

Meeting Date: 01/12/2021

Prepared by: Patsy Reeves, Developmental Services Coordinator
Rob Rae, Director of Development Services

Clay Mahone, Chairman
David Downtain, Vice Chairman
Shawn Davis, Commissioner
Leigh Ann Sims, Commissioner
Paul Manley, Commissioner
Glenn Whitaker, Commissioner
Bryan Blagg, Commissioner

Requested Action/Proposed Use:

2100 BLOCK WEST MOORE STREET

The request of SSCGC Holdings, LLC (Owner), Grove Addition Development JV (Applicant), Civil Point Engineers (Civil Engineer) and Underwood Drafting and Surveying (Surveyor) for the property in the 2100 block of West Moore Street, being Lots 2-18, Block A, Lots 1-9, Block B, Lots 1-11, Block H and Lots 10-20, Block G of the proposed The Grove Addition, as follows:

Planning and Zoning Commission

Specific Use Permit and site plan approval under Ordinance No. 2280, Section 8, Subsection (5)(a) to allow patio homes in an R-1 (One-Family Residential) District.

Background:

The property is located in the 2100 block of West Moore Street between Park Avenue and West Steadman Street. The property is zoned an R-1 (One Family Residential) District.The owner is requesting a Specific Use Permit to allow patio homes on 48 lots in the proposed The Grove Addition.

Adjacent Zoning:

R-1 (One Family Residential) District

Origination:

SSCGC Holdings, LLC (Owner)
Grove Addition Development JV (Applicant)
Civil Point Engineers (Civil Engineeer)
Underwood Drafting and Surveying (Surveyor)

Master Plan Designation:

Suburban Residential – Increased density and closer building setbacks separate Suburban Residential from Countryside and Estate, but more landscaping and open space distinguish Suburban Residential from Urban and Auto-Urban categories. New suburban subdivisions typically have curvilinear streets and sidewalks, as well as curb and gutter.

Number of notices mailed:

34

Objections Received:

0

Attachments

Location Map
Zoning Map
Zoning Sign Photo
The Grove Addition
Patio Home Lots
Site Plan
Building Elevations
Staff Review Letter

RECEIVED
JAN 0 8 2021

To: Rob Rae

January 8, 2021

Dear Mr. Rae:

I am writing regarding the zoning changes about to be decided upon near my home in Pebblebrook.

When we moved to our home several years ago, we moved there to enjoy the open space behind our house along with its trees and wildlife. Now, there is a plan to develop this area with patio homes, duplexes and apartment buildings. The new development will definitely change the current open space area for the worse.

This same type of development happened last year just to the north of Pebblebrook. An apartment building was built and homes were constructed very close together. It diminished the look and feel of Pebblebrook right away, with more traffic and homes jammed in together to accommodate as many people as possible, with as much profit for the developer as possible.

The development that is being proposed will lower our property values instead of raising them. I believe that the town of Sherman should consider the overall beautification of our community and, if necessary, develop the area to enhance the existing homes instead of devaluing them. If the land must be developed, then new homes with at least one-acre lots would make the area beautiful and raise Sherman's desirability as a location that people will want to move to. There are several areas like this in Sherman, such as Carriage Estates.

The zoning restrictions now call for a certain amount of lot space per house, and I am against changing the rules to accommodate smaller lots.

Sincerely,

Erin Smith

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 5.**

Meeting Date: 02/01/2021

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6359

Amending Section 8, Subsection (5)(A), Ordinance No. 2280, so as to Grant a Specific Use Permit to allow Two-Family Dwellings (Duplexes) in an R-1 (One Family Residential) District on properties located in the 2100 block of West Moore Street, **Tract 1:** Being 1.649 acres in the Elizabeth Jones Survey, Abstract No. 625 and the proposed Lots 12-20, Block B of The Grove Addition; **Tract 2:** Being 3.183 acres in the Elizabeth Jones Survey, Abstract No. 625 and proposed Lots 1-13, Block J of The Grove Addition (SSCGC Holdings, LLC, Owner; Grove Addition Development JV, Applicant; Civil Point Engineers, Civil Engineer; and Underwood Drafting and Surveying, Surveyor); Providing that this Specific Use Permit shall be Granted Subject to Certain Conditions; Providing a Penalty not to Exceed $2,000.00

Issue:

To consider the request of SSCGC Holdings, LLC (Owner), Grove Addition Development JV (Applicant), Civil Point Engineers (Civil Engineer) and Underwood Drafting and Surveying (Surveyor) concerning the property in the 2100 block of West Moore Street, Tract 1: Being 1.649 acres in the Elizabeth Jones Survey, Abstract No. 625 and the proposed Lots 12-20, Block B of The Grove Addition; Tract 2: Being 3.183 acres in the Elizabeth Jones Survey, Abstract No. 625 and proposed Lots 1-13, Block J of The Grove Addition Specific Use Permit to allow duplexes in an R-1 (One Family Residential) District.

Background:

The property is located in the 2100 block of West Moore Street between Park Avenue and West Steadman Street. The property is zoned an R-1 (One Family Residential) District. The owner is requesting a Specific Use Permit to allow duplexes on 22 lots in the proposed The Grove Addition, a 198 lot residential development. A zone change to an R-2 (Multi-Family Residential) District was approved last month for a portion of the property in between the duplexes for an apartment complex. The purpose of the two-family residences is to transition away from the R-2 (Multi-Family Residential) District to the R-1 (One-Family Residential) District development and to transition from the solar farm area to the north and electrical substation across the street.

Origination:

SSCGC Holdings, LLC (Owner)
Grove Addition Development JV (Applicant)
Civil Point Engineers (Civil Engineeer)
Underwood Drafting and Surveying (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 12, 2021 regular meeting, the Planning and Zoning Board voted 7/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6359
Exhibit A - Legal Description
Location Map
Zoning Map
Zoning Sign Photo
The Grove Addition
Duplex Lots
Site Plan
Building Elevations
Staff Review Letter
P&Z Communication
Letter from Michael Brashear
Letter from Erin Smith

ORDINANCE NO. 6359

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW TWO-FAMILY DWELLINGS (DUPLEXES) IN AN R-1 (ONE-FAMILY RESIDENTIAL) DISTRICT ON PROPERTY LOCATED IN THE 2100 BLOCK OF WEST MOORE STREET, TRACT 1: BEING 1.649 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 AND THE PROPOSED LOTS 12-20, BLOCK B OF THE GROVE ADDITION AND TRACT 2: BEING 3.183 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 AND THE PROPOSED LOTS 1-13, BLOCK J OF THE GROVE ADDITION (SSCGC HOLDINGS, LLC, OWNER; GROVE ADDITION DEVELOPMENT JV, APPLICANT; CIVIL POINT ENGINEERS, CIVIL ENGINEER; AND UNDERWOOD DRAFTING SURVEYING, INC., SURVEYOR); PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Planning and Zoning Commission and the City Council, in accordance with the state law and the ordinances of the City of Sherman, have given the required notices and have held the required public hearings regarding this Specific Use Permit; and

WHEREAS, the City Council finds that this use will complement or be compatible with the surrounding uses and community facilities; contribute to, enhance, or promote the welfare of the area of request and adjacent properties; not be detrimental to the public health, safety, or general welfare; and conform in all other respects to all applicable zoning regulations and standards; and

WHEREAS, the City Council finds that it is in the public interest to grant this specific use permit, subject to certain conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That, from and after the effective date of this Ordinance, SSCGC Holdings, LLC (Owner), Grove Addition Development JV (Applicant), Civil Point Engineers (Civil Engineer) and Underwood Drafting and Surveying (Surveyor) and certain property located in the 2100 block of West Moore Street and more particularly described in **Exhibit A – Legal Description**, attached hereto are granted a Specific Use Permit to allow Two-Family Dwellings (Duplexes) in an R-1

(One-Family Residential) District and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the property described in **Exhibit A**: **Legal Description:**

TRACT 1:

BEING 1.649 acres in the Elizabeth Jones Survey, Abstract No. 625.

TRACT 2:

BEING 3.183 acres in the Elizabeth Jones Survey, Abstract No. 625.

SECTION 2. That this Specific Use Permit is granted on the following conditions:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the R-1 (One-Family Residential) District, the Fence Ordinance and the Residential Tree and Landscaping Ordinance.
2. Fire access lanes and codes shall be coordinated with the Fire Marshal 903-892-7267.
3. Any structures built over any of the easements on the property will require approval for an encroachment easement from the City Council.
4. All required off-street parking shall be on private property and shall not encroach into the right-of-way.
5. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
6. Parking requirement is one space per bedroom, minimum two per unit, a parking space is considered to be 9'x 20'.
7. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
8. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Engineering:

9. Drive approaches and sidewalks must conform to City of Sherman standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.
10. Sidewalks required along all street frontage. ADA ramps required at all street corners.

SECTION 3. That this Ordinance shall be entered upon the official zoning map as provided in Section 2, Ordinance No. 2280.

SECTION 4. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS ($2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 5. That the General Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 7. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 8. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the _____ day of _____, 2021.

ADOPTED on this the _____ day of _____, 2021.

EFFECTIVE DATE on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

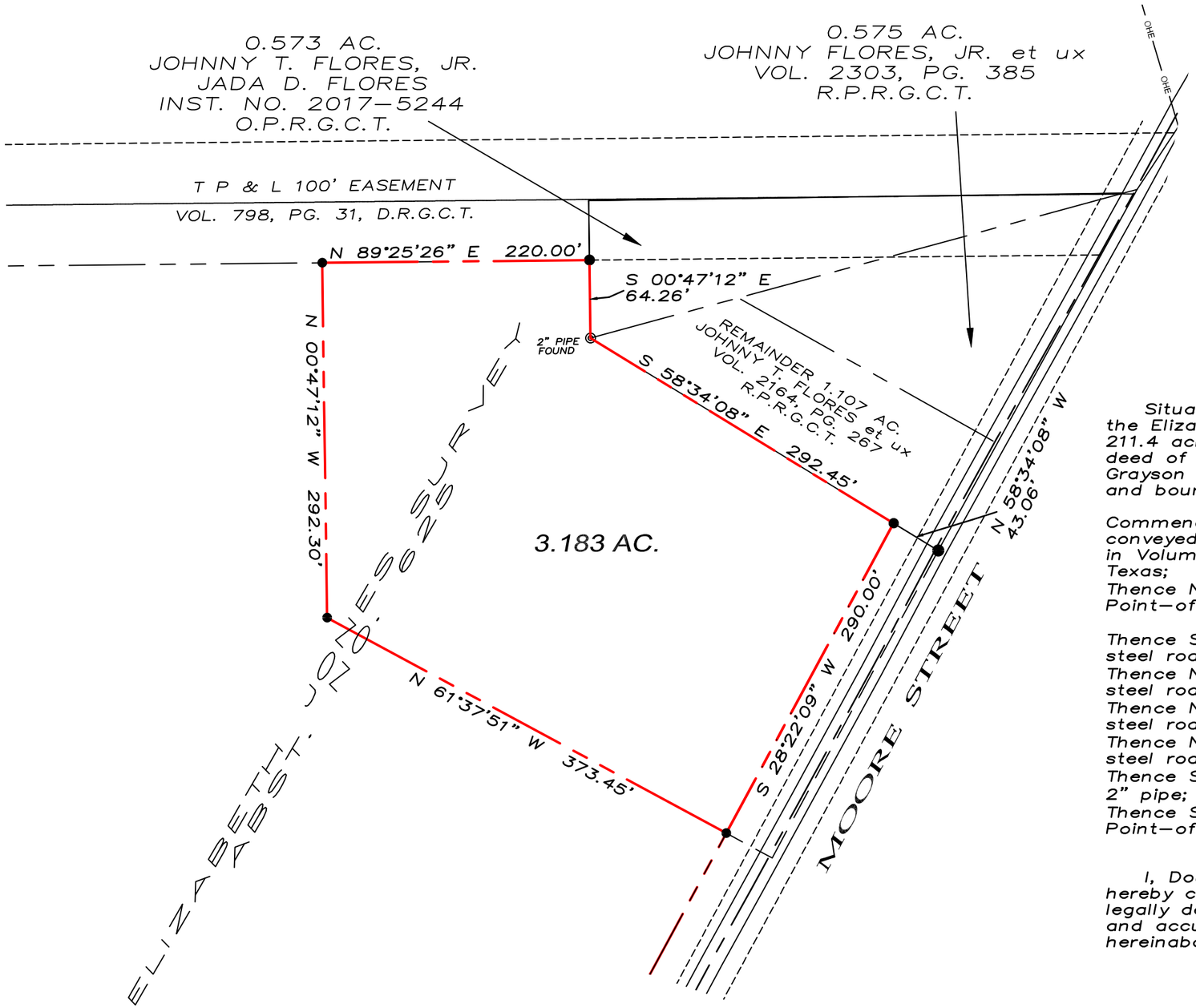
BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:
THE LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Exhibit A - Legal Description

JOB NO. 20110959
DFT: CG



LEGEND

- 1/2" STEEL ROD SET
- 1/2" STEEL ROD FOUND
- BOUNDARY LINE
- PROPERTY LINE
- EASEMENT LINE

SCALE
1" = 100'

LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the Elizabeth Jones Survey, Abstract No. 625, and being a part of the 211.4 acre Tract 1-A of lands conveyed to SSCGC Holdings, LLC by deed of record in Instrument No. 2013-475, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Commencing at the southeast corner of a 1.107 acre tract of land conveyed to Johnny T. Flores, Jr. and Jada D. Flores by deed of record in Volume 2164, Page 267, Real Property Records, Grayson County, Texas;
Thence North 58°34'08" West, a distance of 43.06 feet to the true Point-of-Beginning;

Thence South 28°22'09" West, a distance of 290.00 feet to a set 1/2" steel rod;
Thence North 61°37'51" West, a distance of 373.45 feet to a set 1/2" steel rod;
Thence North 00°47'12" West, a distance of 292.30 feet to a set 1/2" steel rod;
Thence North 89°25'26" East, a distance of 220.00 feet to a set 1/2" steel rod;
Thence South 00°47'12" East, a distance of 64.26 feet to a to a found 2" pipe;
Thence South 58°34'08" East, a distance of 292.45 feet to the Point-of-Beginning and containing 3.183 acres of land.

I, Douglas W. Underwood, Registered Professional Land Surveyor, hereby certify that a survey was made on the ground on the property legally described herein, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

Douglas W. Underwood
Registered Professional
Land Surveyor No. 4709
Firm No. 10006300
DATE OF SURVEY: 12/17/2020

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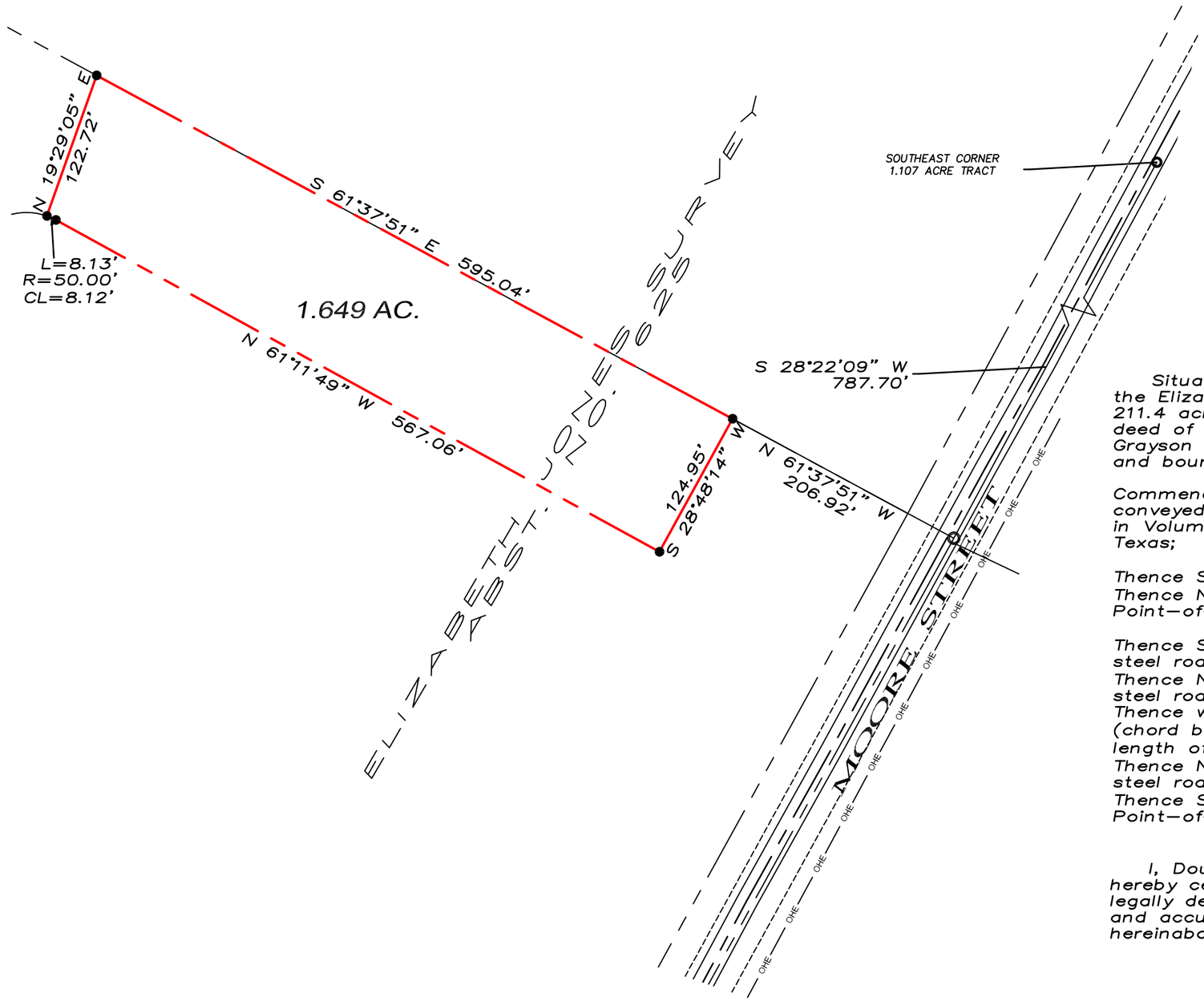
Underwood Drafting & Surveying, Inc.
All rights reserved.

~ BASIS OF BEARINGS ~
GRID NORTH, NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONE

UNDERWOOD
DRAFTING & SURVEYING
3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

Exhibit A - Legal Description

JOB NO. 20110959
DFT: CG



LEGEND

- 1/2" STEEL ROD SET
- 1/2" STEEL ROD FOUND
- BOUNDARY LINE
- PROPERTY LINE
- EASEMENT LINE

SCALE
1" = 100'

LEGAL DESCRIPTION

Situated in the County of Grayson, State of Texas, being a part of the Elizabeth Jones Survey, Abstract No. 625, and being a part of the 211.4 acre Tract 1–A of lands conveyed to SSCGC Holdings, LLC by deed of record in Instrument No. 2013–475, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Commencing at the southeast corner of a 1.107 acre tract of land conveyed to Johnny T. Flores, Jr. and Jada D. Flores by deed of record in Volume 2164, Page 267, Real Property Records, Grayson County, Texas;

Thence South 28°22'09" West, a distance of 787.70 feet to a point;
Thence North 61°37'51" West, a distance of 206.92 feet to the true Point–of–Beginning;

Thence South 28°48'14" West, a distance of 124.95 feet to a set 1/2" steel rod;
Thence North 61°11'49" West, a distance of 567.06 feet to a set 1/2" steel rod;
Thence with a tangent curve to the left having a radius of 50.00 feet, (chord bears North 65°51'14" West, a distance of 8.12 feet) an arc length of 8.13 feet to a set 1/2" steel rod;
Thence North 19°29'05" East, a distance of 122.72 feet to a set 1/2" steel rod;
Thence South 61°37'51" East, a distance of 595.04 feet to the Point–of–Beginning and containing 1.649 acres of land.

I, Douglas W. Underwood, Registered Professional Land Surveyor, hereby certify that a survey was made on the ground on the property legally described herein, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

Douglas W. Underwood
Registered Professional
Land Surveyor No. 4709
Firm No. 10006300
DATE OF SURVEY: 12/17/2020

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Underwood Drafting & Surveying, Inc.
All rights reserved.

~ BASIS OF BEARINGS ~
GRID NORTH, NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONE

UNDERWOOD
DRAFTING & SURVEYING
3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465–2151

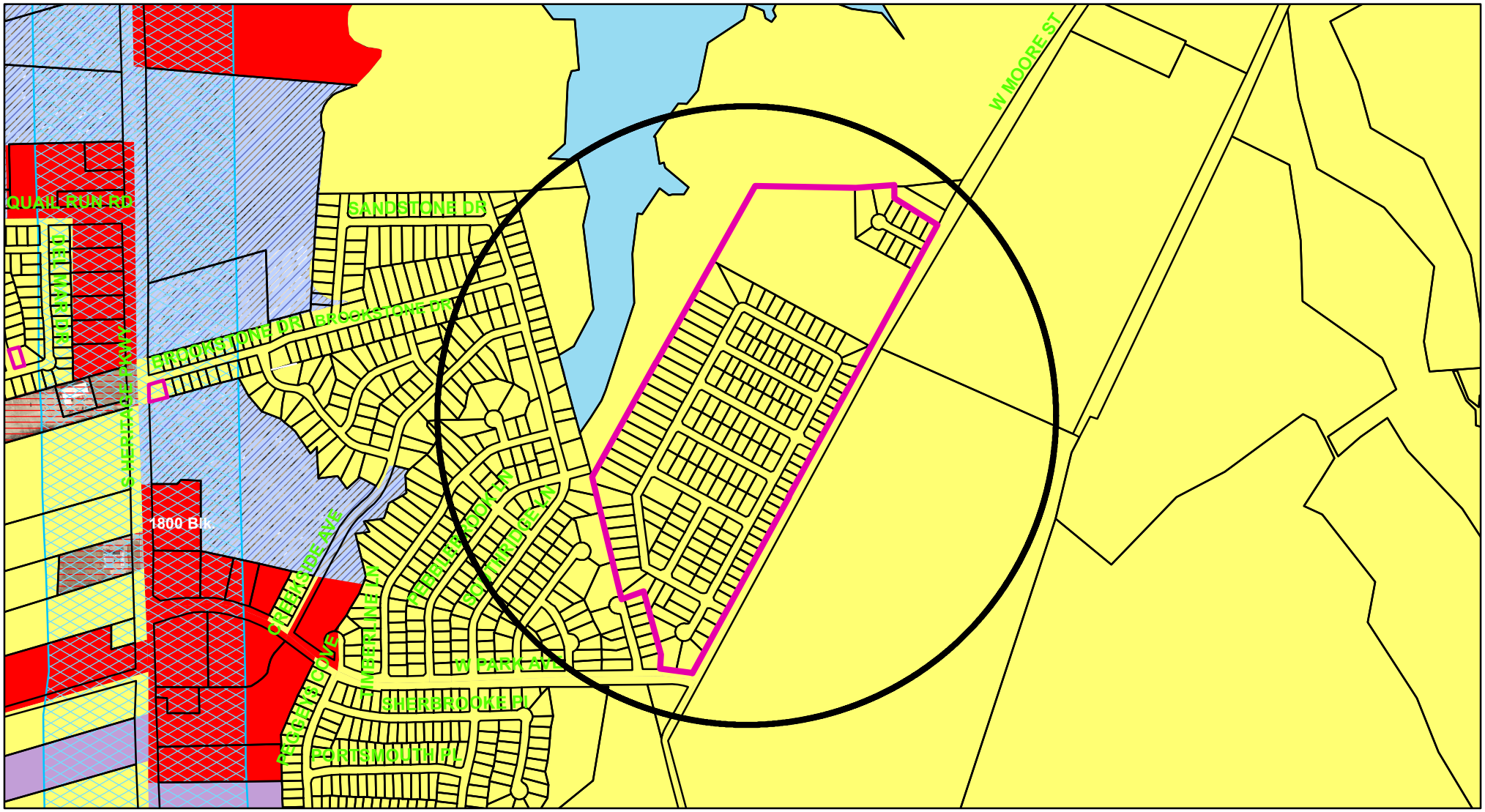
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

2100 W. Moore Street
Lots for Duplexes

NOT TO SCALE

1 in = 500 ft



Zoning - 2100 Block West Moore Street

Legend

Special Districts Overlay
DISTRICT_NAME
- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor
Representation: ShermGIS.DBO.TransportationCorridor_Rep_1
- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

Zoning Districts
Representation: ShermGIS.DBO.ZoningDistrict_Rep
- Unknown
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing Distgrict
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District
- PD Planned Development

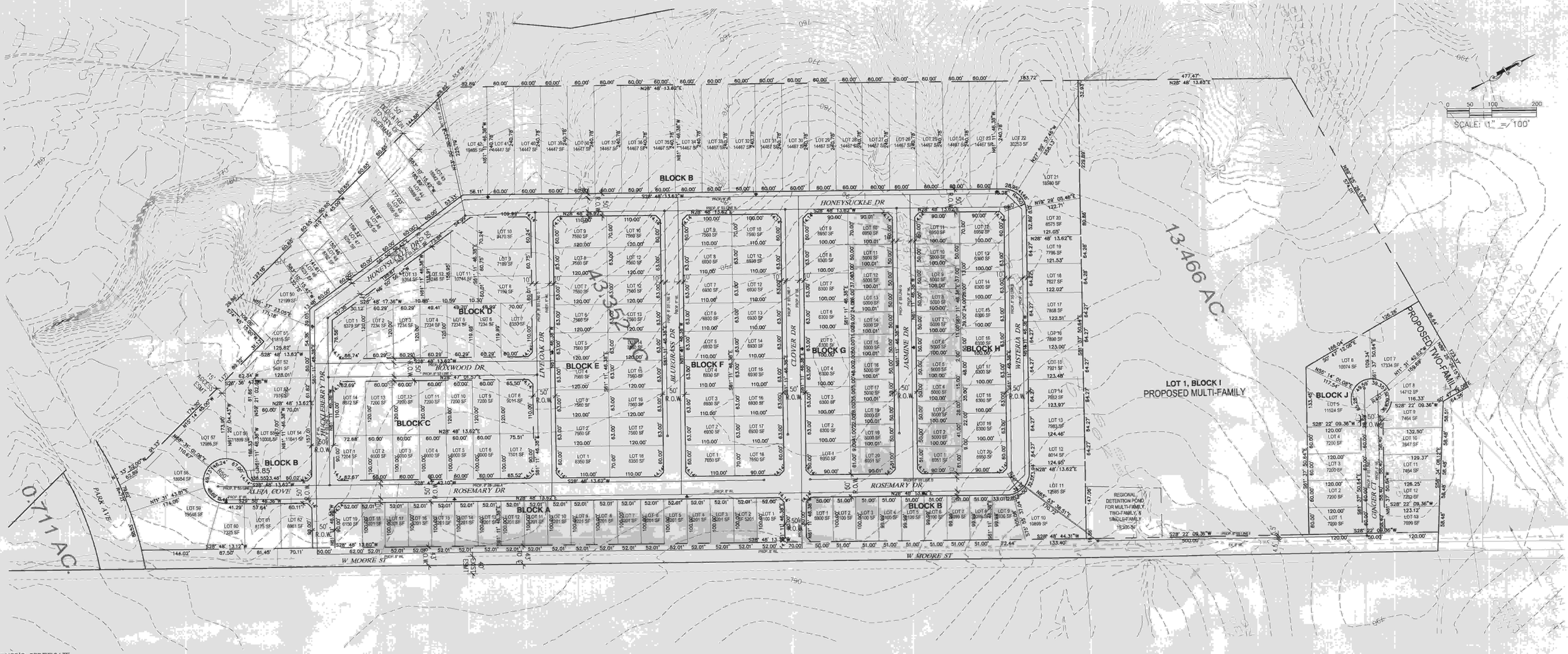
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

NOT TO SCALE

1 in = 800 ft

2100 Block West Moore Street



OWNER'S CERTIFICATE

60.038 ACRES
ELIZABETH JONES SURVEY, ABSTRACT NO. 625, GRAYSON COUNTY, TEXAS

LEGAL DESCRIPTION:

Situated in the County of Grayson, State of Texas, being a part of the Elizabeth Jones Survey, Abstract No. 625, and being a part of the 211.4 acre Tract 1–A of lands conveyed to SSCGC Holdings, LLC by deed of record in Instrument No. 2013–475, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a found 1/2" steel rod at the southeast corner of Lot 1 Pebblebrook Phase 3A, as recorded in Volume 22, Page 161, Plat Records, Grayson County, Texas;
Thence North 01°33'52" West with the east line of said addition, a distance of 72.93 feet to a set 1/2" steel rod;
Thence North 15°14'45" West continuing with said east line, a distance of 387.65 feet to a set 1/2" steel rod at the northeast of Lot 7 of said addition;
Thence South 74°45'15" West with the north line of said Lot 7, a distance of 109.00 feet to a set 1/2" steel rod in the east line of the Amending Plat of Pebblebrook, Phase 3 as recorded in Volume 16, Page 6 of said Plat Records, said rod also being in the west line of said Tract 1–A;;
Thence North 15°14'45" West with said west line and the east line of said Tract 1–A, a distance of 694.64 feet to a set 1/2" steel rod;
Thence North 28°48'14" East, a distance of 1,884.08 feet to a set 1/2" steel rod in the south line of that tract of land conveyed to the City of Sherman as recorded in Document Number 2018–12009, Official Public Records, Grayson County, Texas;
Thence North 89°25'26" East with said south line, a distance of 794.01 feet to a found 1/2" steel rod in the west line of that 0.573 acre tract of land conveyed Johnny T. Flores Jr. and Jada D. Flores as recorded in Document Number 2017–5244 of said Official Public Records;
Thence South 00°47'12" East, a distance of 64.26 feet to a found 2" steel pipe at the southwest corner of said 0.573 acre tract;
Thence South 58°34'08" East with the south line of the remainder of that tract of land conveyed to Johnny T. Flores, et ux as recorded in Volume 2164, Page 267, Real Property Records Grayson County, Texas, a distance of 292.45 feet to a set 1/2" steel rod;
Thence over and across said Tract 1–A the following calls and distance:
South 28°22'09" West, a distance of 793.36 feet to a set 1/2" steel rod,
South 28°48'14" West, a distance of 2,124.33 feet to a set 1/2" steel rod,
with a non–tangent curve to the left having a radius of 761.42 feet, (chord bears North 79°44'34" West, 162.51 feet) an arc length of 162.82 feet to the Point–of–Beginning and containing 60.038 acres of land.

LOCATION MAP
(NOT TO SCALE)

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS

That _____ does hereby adopt this plat designating the hereinbefore described property as _____, an Addition to the City of Sherman, Grayson County, Texas, and do hereby dedicate to the public use forever all streets, rights–of–way, alleys and easements shown thereon. The City or any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, or other improvements or growths in which any way endanger or interfere with the construction, maintenance or efficiency of its respective systems on any of these easements, and the City or any public utility shall at all times have the right of ingress and egress to and from and upon the said easement for the purpose of constructing, reconstructing, inspecting, and patrolling, without the necessity at any time of procuring the permission of anyone. This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Gordonville, Texas.

_____
NAME

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein.

WITNESS MY HAND AND SEAL OF OFFICE THIS THE ___DAY _____, 20_____

_____
Notary Public in and for the State of _____

PRELIMINARY
NOT FOR CONSTRUCTION

JOHN H BEZNER
PE # 98469

Engineer:
CIVIL POINT ENGINEERS
9101 JBJ Freeway, Ste 300
Dallas, TX 75243
(972) 554-1100

Surveyor:
Underwood Drafting & Surveying, Inc.
3404 Interurban Rd
Denison, TX 75021
903-465-2151

Developer:
Grove Addition
Development Joint Venture
801 E Taylor St
Sherman, TX 75090
903-893-5188

PRELIMINARY PLAT

Tract 1-A

The Grove Addition

Block A, Lots 1-19; Block B, Lots 1-62;
Block C, Lots 1-14; Block D, Lots 1-13;
Block E, Lots 1-18; Block F, Lots 1-18;
Block G, Lots 1-20; Block H, Lots 1-20;
Block J, Lots 1-13
Being 60.00 Acres in the
SSCGC Holdings, LLC, Inst 2013-475,
O.P.R.G.C.T. Survey
in the City of Sherman, Grayson County, Texas

December 18, 2020

OWNER'S CERTIFICATE

60.038 ACRES
ELIZABETH JONES SURVEY, ABSTRACT NO. 625, GRAYSON COUNTY, TEXAS

LEGAL DESCRIPTION:

Situated in the County of Grayson, State of Texas, being a part of the Elizabeth Jones Survey, Abstract No. 625, and being a part of the 211.4 acre Tract 1–A of lands conveyed to SSCGC Holdings, LLC by deed of record in Instrument No. 2013–475, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

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Thence North 28°48'14" East, a distance of 1,884.08 feet to a set 1/2" steel rod in the south line of that tract of land conveyed to the City of Sherman as recorded in Document Number 2018–12009, Official Public Records, Grayson County, Texas;
Thence North 89°25'26" East with said south line, a distance of 794.01 feet to a found 1/2" steel rod in the west line of that 0.573 acre tract of land conveyed Johnny T. Flores Jr. and Jada D. Flores as recorded in Document Number 2017–5244 of said Official Public Records;
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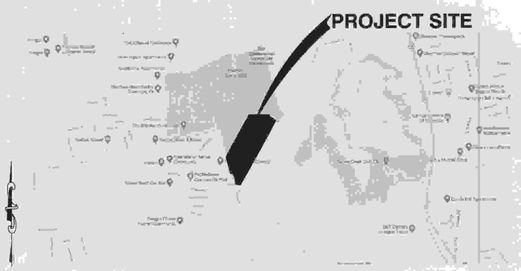

LOCATION MAP
(NOT TO SCALE)

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS

That _____, does hereby adopt this plat designating the hereinbefore described property as _____, an Addition to the City of Sherman, Grayson County, Texas, and do hereby dedicate to the public use forever all streets, rights–of–way, alleys and easements shown thereon. The City or any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs, or other improvements or growths in which any way endanger or interfere with the construction, maintenance or efficiency of its respective systems on any of these easements, and the City or any public utility shall at all times have the right of ingress and egress to and from and upon the said easement for the purpose of constructing, reconstructing, inspecting, and patrolling, without the necessity at any time of procuring the permission of anyone. This plat approved subject to all platting ordinances, rules, regulations, and resolutions of the City of Gordonville, Texas.

NAME _____

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein.

WITNESS MY HAND AND SEAL OF OFFICE THIS THE ___DAY _____, 20_____

_____
Notary Public in and for the State of _____

PRELIMINARY
NOT FOR CONSTRUCTION

JOHN H BEZNER
PE # 98469

Engineer:
CIVIL POINT ENGINEERS
9101 JBJ Freeway, Ste 300
Dallas, TX 75243
(972) 554-1100

Surveyor:
Underwood Drafting & Surveying, Inc.
3404 Interurban Rd
Denison, TX 75021
903-465-2151

Developer:
Grove Addition
Development Joint Venture
801 E Taylor St
Sherman, TX 75090
903-893-5188

PRELIMINARY PLAT

Tract 1-A

The Grove Addition

Block A, Lots 1-19; Block B, Lots 1-62;
Block C, Lots 1-14; Block D, Lots 1-13;
Block E, Lots 1-18; Block F, Lots 1-18;
Block G, Lots 1-20; Block H, Lots 1-20;
Block J, Lots 1-13
Being 60.00 Acres in the
SSCGC Holdings, LLC, Inst 2013-475,
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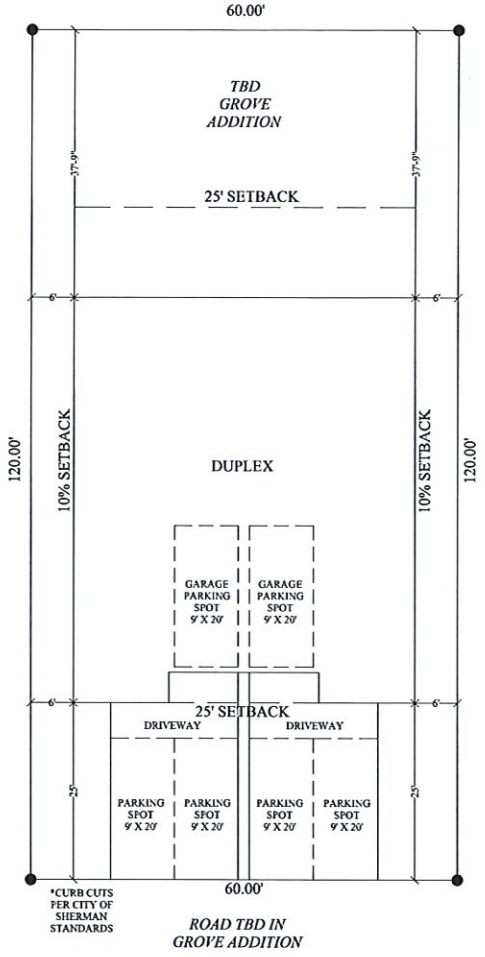
in the City of Sherman, Grayson County, Texas

December 18, 2020



SITE PLAN

D2L DESIGNS, LLC
903 267 1284
HOUSE PLANS

GILBERT DUPLEX PLAN

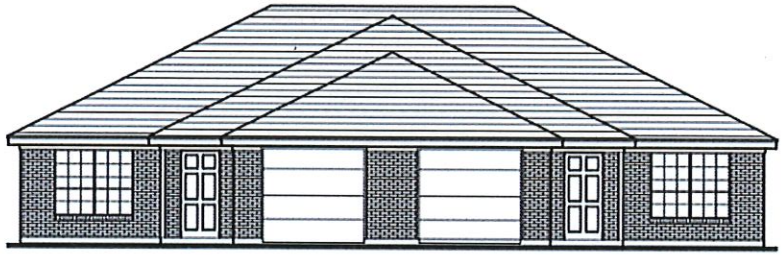
TBD GROVE ADDITION
SHERMAN, TEXAS

D2LDESIGNS@YAHOO.COM

DATE
12/22/20

SHEET
SITE #1

SCALE
1/8" = 1'



FRONT ELEVATION

Sherman
CLASSIC TOWN. BROAD HORIZON.

Developmental Services

STAFF REVIEW LETTER

January 5, 2021

SSCGC Holdings, LLC
4 Timber Creek
Sherman, TX 75092

Underwood Drafting & Surveying
3404 Interurban Rd.
Denison, Texas 75020

Grove Addition Development JV
Joe Gilbert
801 E. Taylor St.
Sherman, TX 75090

Dear Applicants,

The request for a Specific Use Permit and site plan approval to allow Two-Family Dwellings (Duplexes) in an R-1 (One-Family Residential) District located in the 2100 block of West Moore Street has been scheduled to be heard by the Planning and Zoning Commission on Tuesday, January 12, 2021 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the R-1 (One-Family Residential) District, the Fence Ordinance and the Residential Tree and Landscaping Ordinance.
2. Fire access lanes and codes shall be coordinated with the Fire Marshal 903-892-7267.
3. Any structures built over any of the easements on the property will require approval for an encroachment easement from the City Council.
4. All required off-street parking shall be on private property and shall not encroach into the right-of-way.
5. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
6. Parking requirement is one space per bedroom, minimum two per unit, a parking space is considered to be 9'x 20'.
7. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
8. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Engineering:

9. Drive approaches and sidewalks must conform to City of Sherman standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.
10. Sidewalks required along all street frontage. ADA ramps required at all street corners.

It is the policy of this Board not to consider a request unless the applicant or its representative attends the meeting at which the request is considered. You are hereby notified to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Rob Rae at 903-892-7229 prior to the meeting.

Respectfully,

Rob Rae
Secretary, Planning and Zoning Board and Board of Adjustment

cc: Robby Hefton, City Manager
Clint Philpott, Asst. City Manager
Wayne Lee, P.E., Director of Engineering
Tom Pruitt, Utility Engineer
Billy Hartsfield, Fire Marshal
Amber Doan, Engineering Coordinator
Christopher Armstrong, Asst. City Engineer
The Law Firm of Abernathy, Roeder, Boyd, & Hullett, P.C., City Attorney

Planning & Zoning Commission and Board of Adjustments

Agenda Item No. 26.

Meeting Date: 01/12/2021

Prepared by: Patsy Reeves, Developmental Services Coordinator
Rob Rae, Director of Development Services

Clay Mahone, Chairman	
David Downtain, Vice Chairman	Paul Manley, Commissioner
Shawn Davis, Commissioner	Glenn Whitaker, Commissioner
Leigh Ann Sims, Commissioner	Bryan Blagg, Commissioner

Requested Action/Proposed Use:

2100 BLOCK WEST MOORE STREET

The request of SSCGC Holdings, LLC (Owner), Grove Addition Development JV (Applicant), Civil Point Engineers (Civil Engineer) and Underwood Drafting and Surveying (Surveyor) for the property in the 2100 block of West Moore Street, as follows:

Planning and Zoning Commission

- **Tract 1:** Being 1.649 acres in the Elizabeth Jones Survey, Abstract No. 625 and the proposed Lots 12-20, Block B of The Grove Addition - Specific Use Permit and site plan approval under Ordinance No. 2280, Section 8, Subsection (5)(a) to allow Two-Family Dwellings (Duplexes) in an R-1 (One-Family Residential) District.
- **Tract 2:** Being 3.183 acres in the Elizabeth Jones Survey, Abstract No. 625 and proposed Lots 1-13, Block J of The Grove Addition - Specific Use Permit and site plan approval under Ordinance No. 2280, Section 8, Subsection (5)(a) to allow Two-Family Dwellings (Duplexes) in an R-1 (One-Family Residential) District.

Background:

The property is located in the 2100 block of West Moore Street between Park Avenue and West Steadman Street. The property is zoned an R-1 (One Family Residential) District.The owner is requesting a Specific Use Permit to allow Two-Family Dwellings (Duplexes) on 22 lots in the proposed The Grove Addition.

Adjacent Zoning:

R-1 (One Family Residential) District

Origination:

SSCGC Holdings, LLC (Owner)
Grove Addition Development JV (Applicant)
Civil Point Engineers (Civil Engineeer)
Underwood Drafting and Surveying (Surveyor)

Master Plan Designation:

Auto-Urban Single Family Residential – This character type is the single-family residential category with the greatest density and the shortest building setbacks. Most driveways will face the street as well as the garage. Sidewalks are available for pedestrians. Less lot area is devoted to open space and greenery.

Number of notices mailed:

34

Objections Received:

1

Attachments

Location Map
Zoning Map
Zoning Sign Photo
The Grove Addition
Duplex Lots
Site Plan - Duplexes
Building Elevations - Duplexes
Staff Review Letter
Letter from Michael Brashear

RECEIVED
JAN 04 2021

December 29, 2020

Rob Rae
Secretary, Planning and Zoning Board
P.O. Box 1106
Sherman, Texas 75091-1106

RE: 2100 West Moore Street

Mr. Rae,

I am writing you to voice opposition to the planned zoning of duplexes in the 2100 block of West Moore Street.

I purchased a first home for my family in the Pebblebrook neighborhood in 2018 after serious consideration of other options for our first home. Although our neighborhood is seated between apartment complexes, I have held hope that property values continue to increase with the addition of single family homes on FM1417. Placing multiple family residences on a third side of our neighborhood will hurt property values and further promote rental properties in our neighborhood of which residents do not provide adequate upkeep.

I believe placing multiple family residences such as condos on this particular piece of land would be a short sighted solution on behalf of the city and a waste of real estate. This land would be far better suited for larger single family homes due to its proximity to the new high school and easy access to FM 1417. Large single family homes would not only help current resident resale values but increase city revenue as well.

Thank you for your time in this matter.

Sincerely yours,

Michael Brashear

2119 Southridge Lane

RECEIVED
JAN 0 8 2021

To: Rob Rae

January 8, 2021

Dear Mr. Rae:

I am writing regarding the zoning changes about to be decided upon near my home in Pebblebrook.

When we moved to our home several years ago, we moved there to enjoy the open space behind our house along with its trees and wildlife. Now, there is a plan to develop this area with patio homes, duplexes and apartment buildings. The new development will definitely change the current open space area for the worse.

This same type of development happened last year just to the north of Pebblebrook. An apartment building was built and homes were constructed very close together. It diminished the look and feel of Pebblebrook right away, with more traffic and homes jammed in together to accommodate as many people as possible, with as much profit for the developer as possible.

The development that is being proposed will lower our property values instead of raising them. I believe that the town of Sherman should consider the overall beautification of our community and, if necessary, develop the area to enhance the existing homes instead of devaluing them. If the land must be developed, then new homes with at least one-acre lots would make the area beautiful and raise Sherman's desirability as a location that people will want to move to. There are several areas like this in Sherman, such as Carriage Estates.

The zoning restrictions now call for a certain amount of lot space per house, and I am against changing the rules to accommodate smaller lots.

Sincerely,

Erin Smith

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **D. 6.**

Meeting Date: 02/01/2021

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6360

Amending Section 12, Ordinance No. 2280, so as to Include Certain Property within the C-1 (Retail Business) District, Generally Located in the 2400-2600 blocks of West Travis Street, being 33.996 acres of Land in the Preston Kitchen Survey, Abstract No. 667 and Elizabeth Jones Survey, Abstract No. 625 (SSCGC Holdings, LLC, Owners; Bill Magers, Representative; and Underwood Drafting and Surveying, Surveyor); Providing for a Penalty not to Exceed $2,000.00

Issue:

To consider the request of SSCGC Holdings, LLC (Owners), Bill Magers (Representative) and Underwood Drafting and Surveying (Surveyor) concerning the properties in the 2400-2600 blocks of West Travis Street, being 33.996 acres of land in the Preston Kitchen Survey, Abstract No. 667 and Elizabeth Jones Survey, Abstract No. 625 for a zone change approval from an R-1 (One Family Residential) District to a C-1 (Retail Business) District.

Background:

The property is located in the 2400-2600 blocks of West Travis Street between Moore Street and Crossroads Boulevard; Northgate Drive dead ends to the property.

The owner is requesting a zone change and conceptual site plan approval from an R-1 (One Family Residential) District to a C-1 (Retail Business District). The property is on the north side of West Travis Street and west of where the new hospital will be located.

Origination:

SSCGC Holdings, LLC (Owners)
Bill Magers (Representative)
Underwood Drafting and Surveying (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 12, 2021 regular meeting, the Planning and Zoning Board voted 7/0 to recommend to the City Council that the zone change be approved subject to the Staff Review Letter.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance N. 6360
Exhibit A - Legal Description/Field Notes
Location Map
Zoning Map
Zoning Sign Photo
Conceptual Site Plan
Conceptual Building Elevations
Staff Review Letter
P&Z Communication

ORDINANCE NO. 6360

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTY WITHIN THE C-1 (RETAIL BUSINESS) DISTRICT, GENERALLY LOCATED IN THE 2400-2600 BLOCKS OF WEST TRAVIS STREET, BEING 33.996 ACRES OF LAND IN THE PRESTON KITCHEN SURVEY, ABSTRACT NO. 667, AND THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (SSCGC HOLDINGS, LLC, OWNERS; BILL MAGERS, REPRESENTATIVE; AND UNDERWOOD DRAFTING AND SURVEYING, SURVEYOR); PROVIDING A PENALTY NOT TO EXCEED $2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That, from and after the effective date of this Ordinance, the following described property, generally located in the 2400-2600 blocks of West Travis Street and all streets, roads and alleyways contiguous and/or adjacent thereto, shall be rezoned and placed in the C-1 (Retail Business) District, and that Section 12, Ordinance No. 2280 is hereby amended so as to hereafter include the property described in **Exhibit A – Legal Description/Field Notes**, attached hereto.

SECTION 2. That this Ordinance shall be entered upon the official zoning map as provided in Section 2, Ordinance No. 2280.

SECTION 3. That no person shall acquire any vested interest in this ordinance or in any other specific regulations contained herein. Any portion of this ordinance may be repealed or amended by the City Council in the manner provided for by law.

SECTION 4. That it shall be unlawful for any person to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person to construct on the Property any building that is not in conformity with the permissible uses under this Ordinance. Any person violating any provision of this Ordinance or the General Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding TWO THOUSAND AND NO/100 DOLLARS ($2,000.00). A violation of any provision of this Ordinance shall constitute a separate violation for each calendar day in which it occurs. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 5. That the General Zoning Ordinance shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 6. That in the event any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

SECTION 7. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

SECTION 8. That this Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS.

INTRODUCED on this the _____ day of _____, 2021.

ADOPTED on this the _____ day of _____, 2021.

EFFECTIVE DATE on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

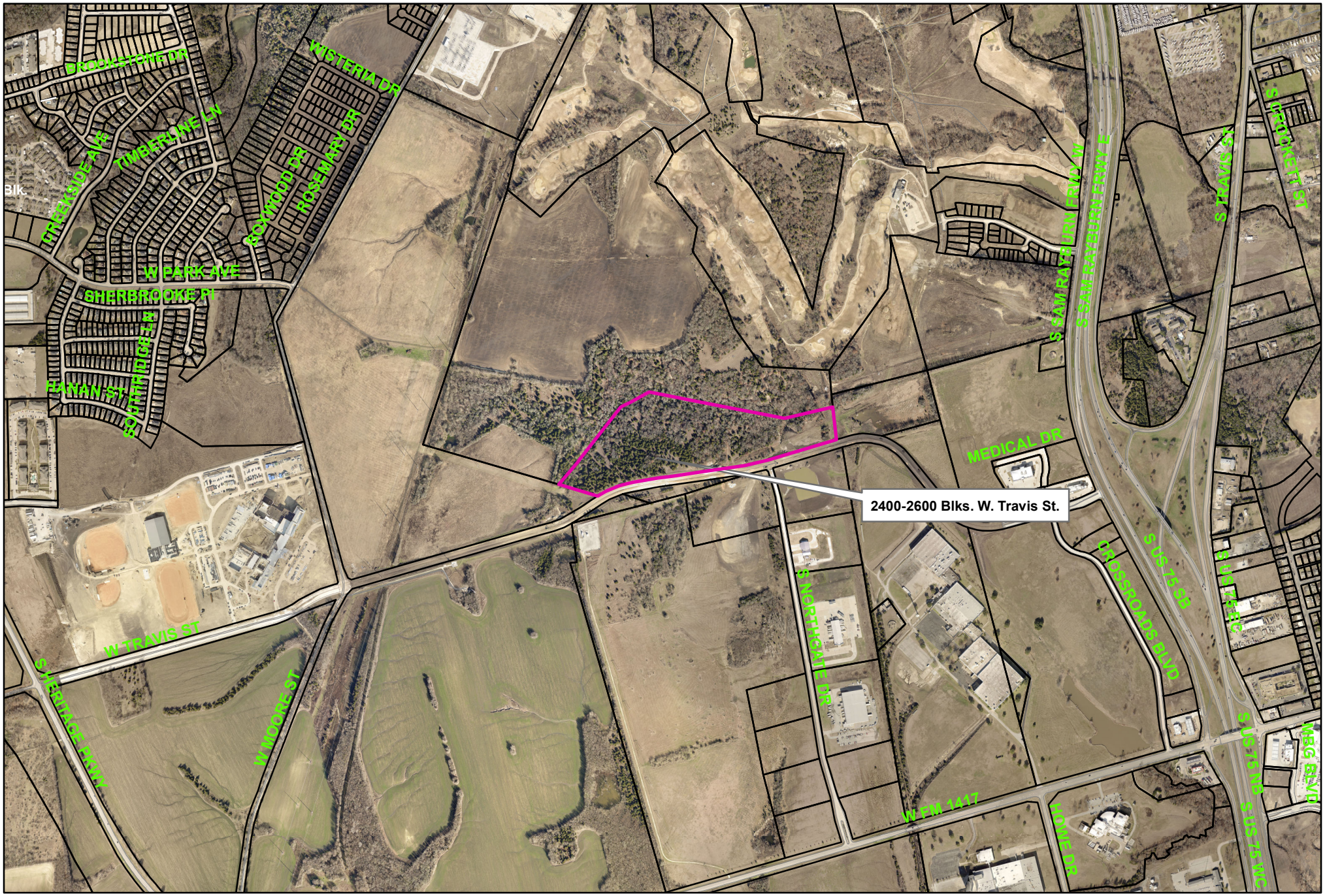
APPROVED AS TO FORM
AND CONTENT:
THE LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Legal Description

Situated in the County of Grayson, State of Texas, being a part of the Preston Kitchen Survey, Abstract No. 667 and a part of the Elizabeth Jones Survey, Abstract No. 625, and being a part Tract 1, as conveyed to SSCGC HOLDINGS, LLC by deed recorded in Volume 5232, Page 220, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Commencing at the most easterly corner of that 147.48 acre tract of land conveyed to Panda Sherman Power as recorded in Volume 5125, Page 388, Official Public Records, Grayson County, Texas;
Thence North 73°04'32" West, a distance of 375.04 feet to the True Point of Beginning;
Thence North 73°04'32" West, a distance of 390.04 feet to a point;
Thence North 37°58'41" East, a distance of 678.96 feet to a point;
Thence North 37°59'03" East, a distance of 279.91 feet to a point;
Thence North 60°54'10" East, a distance of 311.79 feet to a point;
Thence South 79°10'08" East, a distance of 1,354.61 feet to a point;
Thence North 76°19'56" East, a distance of 486.92 feet to a point;
Thence South 06°01'17" East, a distance of 326.00 feet to a point;
Thence South 73°39'59" West, a distance of 822.44 feet to a point;
Thence with a curve to the right having a radius of 997.00 feet, (chord bears South 77°37'43" West, 137.78 feet) an arc length of 137.89 feet to a point;
Thence South 81°35'27" West, a distance of 1,003.87 feet to a point;
Thence with a curve to the left having a radius of 1,083.00 feet, (chord bears South 69°57'32" West, 436.72 feet) an arc length of 439.73 feet to the Point-of-Beginning and containing 33.996 acres of land.:



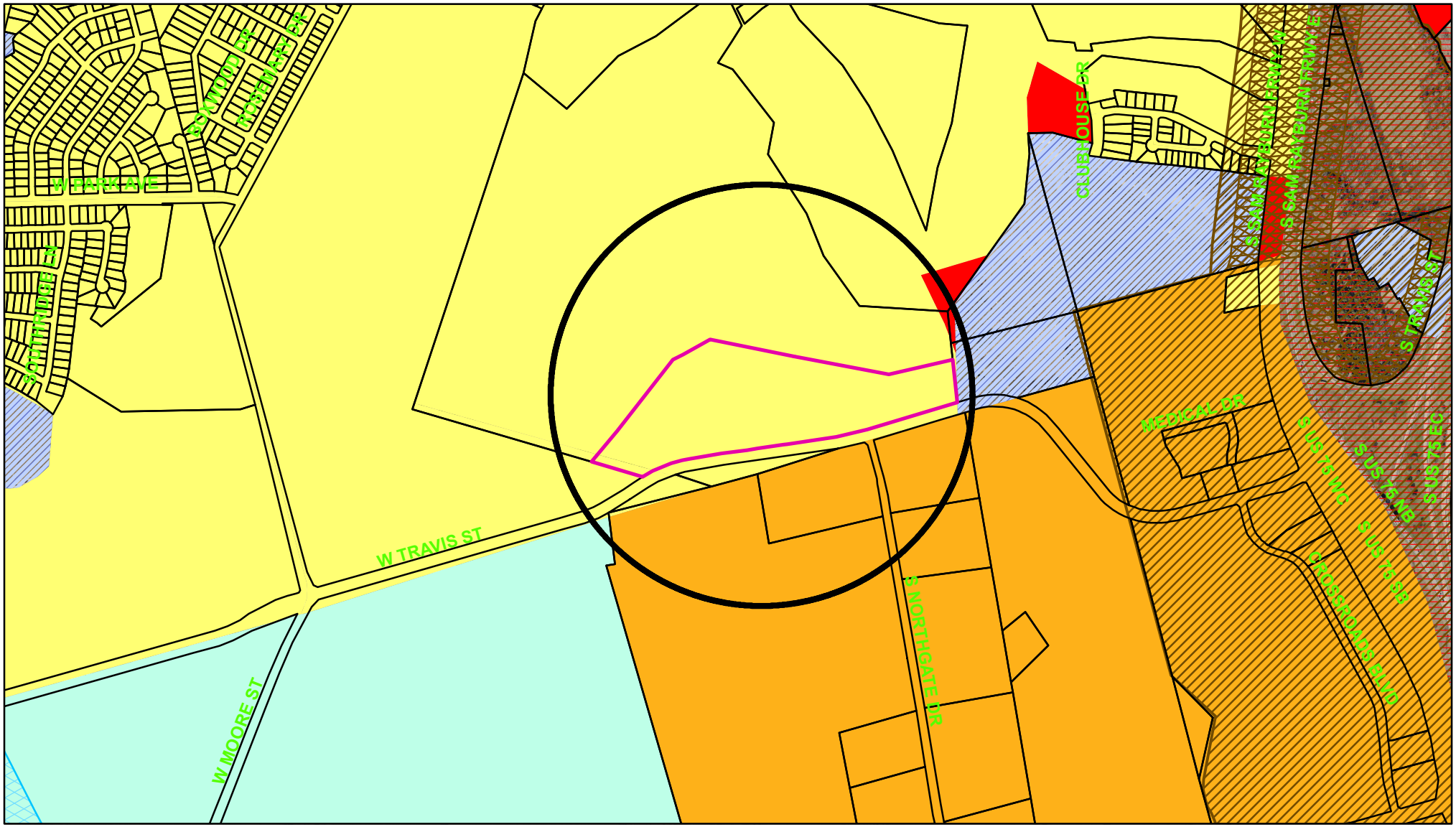
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

2400-2600 Blocks West Travis Street

NOT TO SCALE

1 in = 1,200 ft



Zoning - 2400-2600 Blocks West Travis Street

Legend

Special Districts Overlay
DISTRICT_NAME
- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor
Representation: ShermGIS.DBO.TransportationCorridor_Rep_1
- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

Zoning Districts
Representation: ShermGIS.DBO.ZoningDistrict_Rep
- Unknown
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing Distgrict
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District
- PD Planned Development

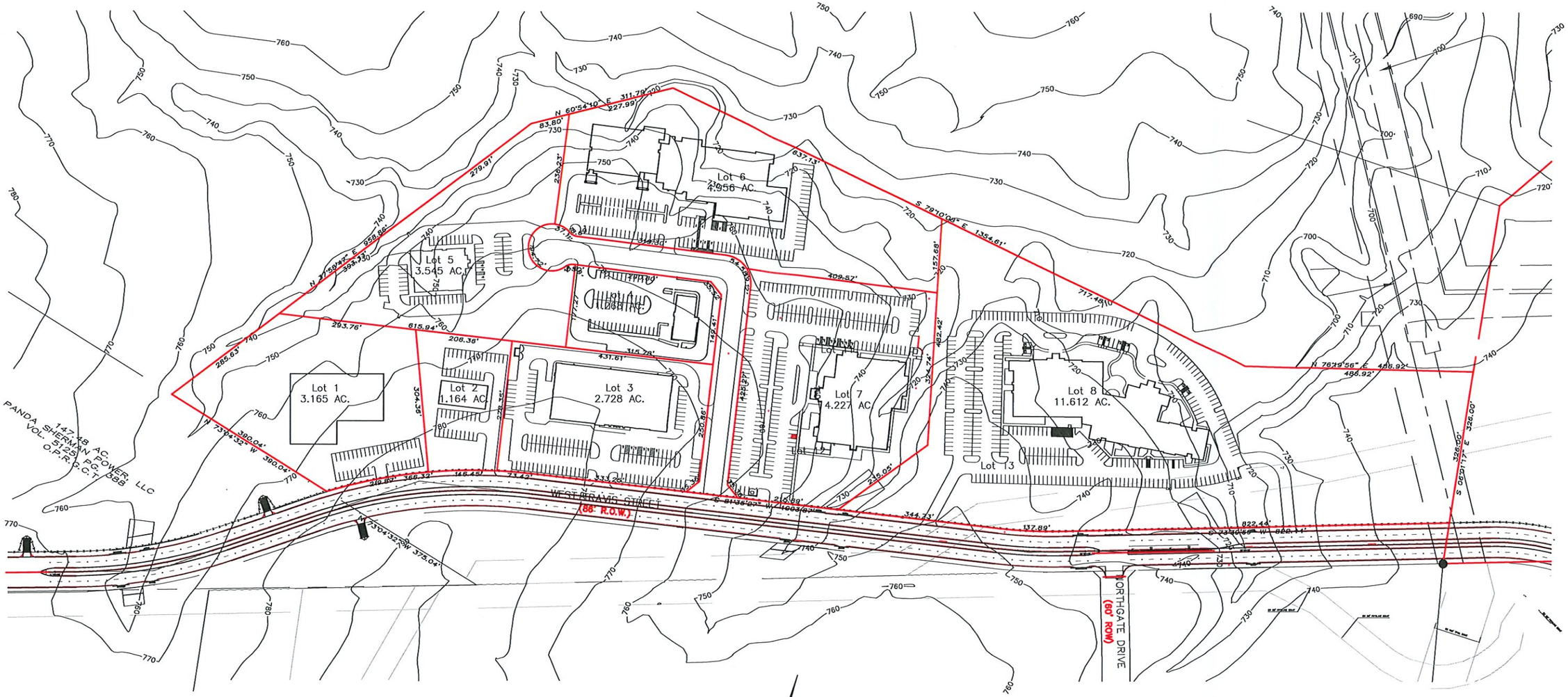
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

NOT TO SCALE

1 in = 1,000 ft

2400-2600 Blocks West Travis Street



Legal Description

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Thence South 81°35'27" West, a distance of 1,003.87 feet to a point;
Thence with a curve to the left having a radius of 1,083.00 feet, (chord bears South 89°57'32" West, 436.72 feet) an arc length of 439.73 feet to the Point-of-Beginning and containing 33.996 acres of land.:

I, Douglas W. Underwood, Registered Professional Land Surveyor, hereby certify that a survey was made on the ground on the property legally described herein, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove.

STATE OF TEXAS
REGISTERED
DOUGLAS W. UNDERWOOD
4709
PROFESSIONAL
LAND SURVEYOR

Douglas W. Underwood
Registered Professional Land Surveyor No. 4709
Firm No. 10006300
DATE OF SURVEY:
12/18/2020

CONCEPT PLAN FOR THE VISTA'S AT STONE CREEK SHERMAN, TEXAS

UNDERWOOD
DRAFTING & SURVEYING
3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

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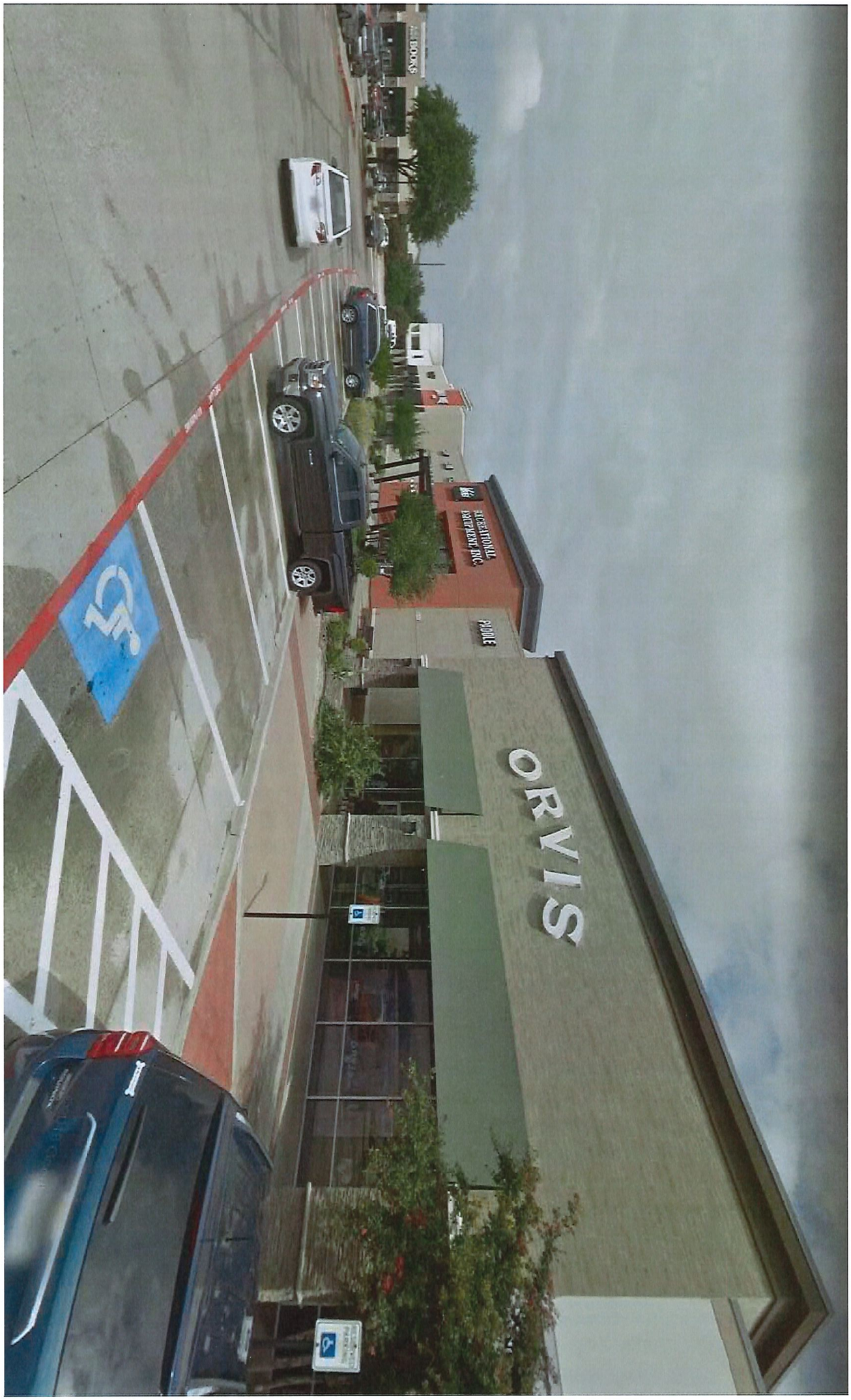
Any modification or use of this drawing without the express
written authorization of TCB Engineering, LLC is prohibited.



SHEET	SCALE	JOB NUMBER	DATE
1 OF 1			12/18/2020

CONCEPTUAL ELEVATION

TCB ENGINEERING, LLC
CONSULTING ENGINEERS
3101 REDBUD TRAIL
SHERMAN, TEXAS 75092-3489
(903) 870-6543 FIRM #20110

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written authorization of TCB Engineering, LLC is prohibited.

SHEET	SCALE	JOB NUMBER	DATE
1 OF 1			12/18/2020

CONCEPTUAL ELEVATION

TCB ENGINEERING, LLC
CONSULTING ENGINEERS
3101 REDBUD TRAIL
SHERMAN, TEXAS 75092-3489
(903) 870-6543 FIRM #20110

Sherman
CLASSIC TOWN. BROAD HORIZON.

Developmental Services

STAFF REVIEW LETTER

January 5, 2021

SSCGC Holdings, LLC
4 Timber Creek
Sherman, TX 75092

Underwood Drafting & Surveying
3404 Interurban Rd.
Denison, Texas 75020

Dear Applicants,

The request for a zone change and conceptual site plan approval from an R-1 (One-Family Residential) District to a C-1 (Retail Business) District located in the 2400-2600 blocks of West Travis Street has been scheduled to be heard by the Planning and Zoning Commission on Tuesday, January 12, 2021 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

Zoning:

1. Compliance with applicable City ordinances, regulations, standards and rules and other laws, as they exist or may be amended, including but not limited to the City's General Zoning Ordinance, Ordinance No. 2280, the regulations applicable to the C-1 (Retail Business) District, the Sign Ordinance, the Fence Ordinance and the Commercial Tree and Landscaping Ordinance.
2. Fire access lanes and codes shall be coordinated with the Fire Marshal 903-892-7267.
3. Any structures built over any of the easements on the property will require approval for an encroachment easement from the City Council.
4. All required off-street parking shall be on private property and shall not encroach into the right-of-way; parking ratios shall be determined by the use.
5. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
6. A minimum 6' fence is required abutting residentially zoned property.
7. The site plan is conceptual in nature and a more detailed site plan must be submitted to and approved by the Planning and Zoning Commission before construction begins.
8. Platting of the property will be required.
9. Compliance with the City's Floodplain Ordinance must be followed.
10. The approval of a Site Plan shall be effective for a period of two (2) years from the date of approval, at the end of which time the Site Plan shall expire unless the applicant demonstrates to the Director of Development Services that progress has been made toward completion of the project for which the Site Plan was approved.
11. Any changes made to the site plan prior to the final fulfillment of the conditions of the staff review letter must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

Engineering:

12. Platting of the subject property is required.

13. Privately owned and maintained detention in accordance with City criteria is required. Engineering plans shall be provided to the City of Sherman Engineering Department for review and approval. Ownership and Maintenance information to be shown on plat.
14. All requirements of the Floodplain Ordinance shall be followed.
15. Mutual Access required for proper traffic control. Mutual Access to be shown on plat.
16. Drive approaches and sidewalks must conform to City of Sherman standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.
17. Verify fire requirements and code compliance with Fire Marshall.
18. Civil Engineering plans required for review and approval by Engineering Department.
19. Water shall be extended to serve the development.
20. City sewer does not serve the property. Extension of sewer main by developer is required.
21. Development Agreement required for public infrastructures.
22. Entrances/Exits off West Travis will be Right-in, Right-out only.

It is the policy of this Board not to consider a request unless the applicant or its representative attends the meeting at which the request is considered. You are hereby notified to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Rob Rae at 903-892-7229 prior to the meeting.

Respectfully,

Rob Rae
Secretary, Planning and Zoning Board and Board of Adjustment

cc: Robby Hefton, City Manager
Clint Philpott, Asst. City Manager
Wayne Lee, P.E., Director of Engineering
Tom Pruitt, Utility Engineer
Billy Hartsfield, Fire Marshal
Amber Doan, Engineering Coordinator
Christopher Armstrong, Asst. City Engineer
The Law Firm of Abernathy, Roeder, Boyd, & Hullett, P.C., City Attorney

Planning & Zoning Commission and Board of Adjustments

Agenda Item No. 21.

Meeting Date: 01/12/2021

Prepared by: Patsy Reeves, Developmental Services Coordinator
Rob Rae, Director of Development Services

Clay Mahone, Chairman
David Downtain, Vice Chairman
Shawn Davis, Commissioner
Leigh Ann Sims, Commissioner
Paul Manley, Commissioner
Glenn Whitaker, Commissioner
Bryan Blagg, Commissioner

Requested Action/Proposed Use:

2400-2600 BLOCKS WEST TRAVIS STREET

The request of SSCGC Holdings, LLC (Owners), Bill Magers (Representative) and Underwood Drafting and Surveying (Surveyor) for the properties in the 2400-2600 blocks of West Travis Street, being 33.996 acres in the Preston Kitchen Survey, Abstract No. 667 and Elizabeth Jones Survey, Abstract No. 625, as follows;

Planning and Zoning Commission

Zone change and conceptual site plan approval under Ordinance No. 2280, Section 12, from an R-1 (One-Family Residential) District to a C-1 (Retail Business) District.

Background:

The property is located in the 2400-2600 blocks of West Travis Street between Moore Street and Crossroads Boulevard; Northgate Drive dead ends to the property.

The owner is requesting a zone change and conceptual site plan approval from an R-1 (One Family Residential) District to a C-1 (Retail Business District.

Adjacent Zoning:

R-1 (One Family Residential) District
R-2 (Multi-Family Residential) District
C-1 (Retail Business) District
Blalock Industrical Park

Origination:

SSCGC Holdings, LLC (Owners)
Bill Magers (Representative)
Underwood Drafting and Surveying (Surveyor)

Master Plan Designation:

Suburban Residential – Increased density and closer building setbacks separate Suburban Residential from Countryside and Estate, but more landscaping and open space distinguish Suburban Residential from Urban and Auto-Urban categories. New suburban subdivisions typically have curvilinear streets and sidewalks, as well as curb and gutter.

Number of notices mailed:

3

Objections Received:

0

Attachments

Location Map
Zoning Map
Zoning Sign Photo
Survey
Conceptual Site Plan
Conceptual Building Elevations
Staff Review Letter

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 1.**

Meeting Date: 02/01/2021

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6697

Authorizing Approval Of Receipt Of A Petition From Terra Perpetua, LLC To Create A Public Improvements District Over Approximately 278 Acres Of Land In Sherman, Texas, Acknowledging The Filing Of The Same Petition, And Authorizing The City Manager To Engage A Consultant To Assist The City In Developing A Feasibility Report Regarding The Proposed Public Improvements District

Issue:

Consider and act upon acceptance of a petition to create a public improvements district over an approximate 288-acre tract of land located in Sherman Texas, and consider and act upon authorization of City Manager engaging a consultant to create a feasibility report in connection therewith

Background:

The Developer and the City of Sherman, Texas (the "City") entered into that certain Master Development Agreement dated December 18, 2020 (the "MDA"), which was executed by the City Manager on the City's behalf pursuant to the City Council's approval set forth in Resolution No. 6676. The MDA provides, among other things, that the Developer and the City will work together to form the PID over the Property. Section 3.1 of the MDA requires the Developer to submit the PID Petition on or before June 1, 2021 to the City Council as a prerequisite to creating the PID. Once the PID Petition is submitted, the City is required to schedule a public hearing to consider the creation of the PID in accordance with relevant Texas laws and regulations.

This Resolution acknowledges receipt of and accepts as valid the PID Petition for the Bel Air Public Improvement District, which was submitted to City staff on January 27, 2021. This Petition meets the requirements of Chapter 372 of the Texas Local Government Code, which governs the establishment and maintenance of PIDs. Next steps in the process will be authorizing MuniCap, whom the City has already engaged, to complete a feasibility report on important aspects of the PID such as advisability, project costs, cost apportionment, property assessments, etc. Upon receipt of the feasibility report, a public hearing at a future Council meeting will then be required to discuss the results of the feasibility study, after which the Council may take action to create the PID, most likely by Ordinance. Creation of the PID must be completed by June 30, 2021, according to the commitments made in the MDA. Staff expects to have the feasibility report in hand by March/April timeframe, with the Public Hearing to follow soon thereafter.

Origination:

Bel Air Communities, LLC

Financial Consideration:

There is no financial impact to scheduling the public hearing.

Staff Recommendation:

City Staff recommends that City Council acknowledge and approve receipt of the valid PID Petition by motion and order.

Alternatives:

The Council may take more time, if needed, to discuss and take action on accepting the Petition.

Attachments

Resolution No. 6697

Petition Requesting Establishment of PID

RESOLUTION NO. 6697

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING APPROVAL OF RECEIPT OF A PETITION FROM TERRA PERPETUA, LLC TO CREATE A PUBLIC IMPROVEMENTS DISTRICT OVER APPROXIMATELY 278 ACRES OF LAND IN SHERMAN, TEXAS, ACKNOWLEDGING THE FILING OF THE SAME PETITION, AND AUTHORIZING THE CITY MANAGER TO ENGAGE A CONSULTANT TO ASSIST THE CITY IN DEVELOPING A FEASIBILITY REPORT REGARDING THE PROPOSED PUBLIC IMPROVEMENTS DISTRICT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Clerk has received a valid petition (the "PID Petition") from Terra Perpetua, LLC to create a Public Improvements District over approximately 278 acres of land in Sherman Texas (the "PID").

SECTION 2. That the City Council acknowledges and approves the receipt of the PID Petition, and acknowledges and approves filing of the same by the City Secretary.

SECTION 3. That the City Manager be and is hereby authorized and directed to engage a consultant and otherwise take all required action to complete a feasibility report demonstrating the feasibility and desirability of the PID, in accordance with the City's policies and procedures established for this purpose.

SECTION 4. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____

NAME: _____
CITY ATTORNEY

STATE OF TEXAS §
§
COUNTY OF GRAYSON §

PETITION REQUESTING ESTABLISHMENT OF
PUBLIC IMPROVEMENT DISTRICT

TO THE HONORABLE MAYOR AND COUNCIL OF THE CITY OF SHERMAN, TEXAS:

The undersigned (hereinafter the "Petitioner"), being the entity which holds fee simple title to more than sixty percent (60%) of the appraised value of taxable property proposed to be included within the public improvement district proposed in this petition (this "Petition"), more than 60 percent of the all record owners of the property to be included within the public improvement district proposed in this Petition, and more than sixty percent (60%) of the area of the public improvement district proposed in this Petition, with the intention to further the development of the land hereinafter described by metes and bounds, and to benefit the City of Sherman, Texas (the "City"), acting pursuant to the provisions of Subchapter A, Chapter 372, Local Government Code, hereby respectfully petitions the City of Sherman, Texas, and its City Council, requesting the creation of a public improvement district pursuant to said Subchapter A, and would show the following:

ARTICLE I
DISTRICT NAME

The name of the proposed public improvement district shall be the Bel Air Village Public Improvement District (the "District").

ARTICLE II
PURPOSE

The District shall be created and organized under the terms and provisions of Chapter 372, Texas Local Government Code, as amended.

ARTICLE III
NATURE OF IMPROVEMENTS

This Petition requests that the City create the public improvement district requested in this Petition. The general nature of the work, services, and improvements proposed to be done within the boundaries of the proposed District include, but are not limited to, the funding of the construction, improvements, and repair and maintenance to public utilities, roads, bridges, and associated drainage and trails; water and sewer facilities; demolition and land clearing for public improvements; maintenance operation and upkeep of a public recreation and civic center(s), gates, walls, and fences; lighting improvements; construction and maintenance of entryway features; signage; and other infrastructure and maintenance thereof, as well as other improvements within the District; and establishment of conservation easements, including costs of acquisition of open space (collectively, the "Authorized Public Improvements"). All Authorized Public Improvements shall be constructed on public or semi-public property or within public easements. The District is also expected to fund special supplemental services, including supplemental security, advertising, and promotion of the District and other supplemental services pursuant to Section 372.003 of the Texas Local Government Code, as amended.

ARTICLE IV
ESTIMATED COSTS

The capital costs and maintenance expenses of the projects proposed to be funded by the District assessments are expected to cost approximately $60,000,000.00.

ARTICLE V
DISTRICT BOUNDARIES

The District shall contain an area of approximately 278.375 acres of land, situated entirely within the City of Sherman, Grayson County, Texas. The boundaries of the land of the proposed District are described, by metes and bounds in Exhibit "A", attached hereto and incorporated herein for all purposes (the "Property").

ARTICLE VI
AUTHORIZED METHOD OF ASSESSMENT; ASSESSABLE PROPERTY

Petitioner requests that the City authorize the levying of assessments on each parcel within the District in a manner that is mutually acceptable to Petitioner and the City. An assessment methodology will be prepared that will address: (1) how the costs of the Authorized Public Improvements financed with the assessments are assessed against the Property in the District; (2) the assessments to be collected each year; and (3) reduction of the assessments for costs savings (pursuant to the annual review of the service plan for the District). Additionally, Petitioner and the City will prepare a mutually agreed upon report that shows the special benefits accruing to Property in the District and how the costs of the Authorized Public Improvements are assessed to Property on the basis of the special benefits. The assessment methodology will result in each parcel within the District paying its fair share of the costs of the Authorized Public Improvements provided with the assessments based on the special benefits received by the Property from the Authorized Public Improvements.

ARTICLE VII
APPORTIONMENT OF COSTS

Petitioner requests that the District be organized to fund the total costs of the Authorized Public Improvements identified in the service and assessment plan of the District; however, with the anticipation that City Tax Increment Reinvestment Zone # 7 (the "TIRZ"), if created, may obtain funds from the incremental ad valorem tax collected from within the TIRZ to fund a portion of the costs of construction of the Authorized Public Improvements, and other expenses as approved in the TIRZ project and financing plan.

ARTICLE VIII
MANAGEMENT

The Petitioner proposes that the District be managed by the City, with the assistance of a consultant that will advise the City regarding the management and operations of the District.

ARTICLE IX
DISTRICT REQUEST

The Petitioner executing this Petition hereby concurs with the establishment of the District..

ARTICLE X
ADVISORY BODY

An advisory body may be established to develop and recommend an improvement plan to the governing body of the municipality. Petitioner requests that a property owners association organized as a private nonprofit corporation (a "POA"), to be created under the laws of the State of Texas and under the provisions of the Internal Revenue Code, be designated to serve as such advisory body.

ARTICLE XI
REQUESTED ACTIONS OF THE CITY COUNCIL

Petitioner hereby requests that the City Council do the following:

(1) Determine that this Petition meets the requirements of the Texas Local Government Code;
(2) Cause this Petition to be filed with the City Secretary;
(3) Make findings by resolution as to the advisability of the nature of the proposed special supplemental services, the estimated cost, the boundaries of the proposed District, the method of assessment, and the apportionment of costs between the proposed District and City as a whole;
(4) Give proper notice and hold a public hearing on the advisability of establishing the District and providing the proposed special supplemental services;
(5) Following the close of the hearing, adopt a resolution authorizing the establishment of the District in accordance with its findings as to the advisability of the special supplemental services;
(6) Cause the resolution authorizing the District to be duly published;
(7) Prepare an assessment roll stating the assessment against each parcel of land within the District as determined by the method of assessment approved by the City Council and cause such assessment roll to be filed with the City Secretary;
(8) Give proper notice and hold a public hearing to consider the proposed assessments;
(9) Levy by ordinance the assessments as special assessments on the property within the District, specify the method of payment, and prepare and send to property owners tax bills for such special assessments; and
(10) Take any and all other steps necessary to establish the District.

[*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.*]

Respectfully submitted this 27th day of January, 2021.

TERRA PERPETUA, LLC,
a Delaware limited liability company

By: _____

Name: Ronny Guerrero

Its: Authorized Signatory

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF Dallas §

This instrument was acknowledged before me on the 26 day of January, 2021, by Ronny Guerrero, Auth. Signatory of Terra Perpetua, LLC, a Delaware limited liability company, on behalf of said limited liability company.

[STAMP]

BAILEY KATE EDLING
Notary Public, State of Texas
Comm. Expires 05-31-2024
Notary ID 130681751

_____
Notary Public, State of Texas

EXHIBIT "A"
The Property

TRACT 1:

SITUATED in the County of Grayson, State of Texas, being a part of the Sherrod Dunman Survey, Abstract No. 329, and being the same tract of land described as 246.134 acres conveyed by Edward C. Greene, Trustee to Rolling Meadows Associates by deed dated September 28, 1984, recorded in Volume 1716, Page 3 84, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point for the most Northerly Northwest corner of the said 246.134 acre tract in the South right-of-way line of F.M. Highway No. 1417 from which a 1/2" steel rod found bears North 15°22'34" West a distance of 0.36 feet, said point also being the Northeast corner of the same tract of land described as 0.84 acres conveyed by Richard J. Self and Brieta Self to Eric Popp and Kelly Popp by deed dated March 20, 2010, recorded in Volume 4809, Page 60, Official Public Records, Grayson County, Texas;

THENCE North 75°03'39" East with said right-of-way line a distance of 799.69 feet to a concrete monument at an angle point;

THENCE North 71°14'48" East continuing with said right-of-way line a distance of 300.67 feet to an angle point at the Southwest base of a concrete monument;

THENCE North 75°03'39" East continuing with said right-of-way line a distance of 814.42 feet to the beginning of a curve to the left having a radius of 11,519.16 feet;

THENCE in an Easterly direction continuing with said right-of-way line along said curve, (chord bears North 74°41'09" East, 150.78 feet) an arc distance of 150.79 feet to the end of said curve;

THENCE North 74°18'39" East continuing with said right-of-way line a distance of 391.99 feet to a point for the most Northerly Northeast corner of the said 246.134 acre tract at the Southwest base of a cross-tie corner post, said point also being the original Northwest corner of the same tract of land described as 32.55 acres conveyed by Frances Maddox to Ruth Ellen Green by deed dated October 8, 2002, recorded in Volume 3331, Page 760, said Official Public Records, also being the Northwest corner of the same tract of land described as 2.00 acres severed from said 32.55 acre tract as conveyed by said Ruth Ellen Green to said Frances Maddox by deed dated October 8, 2002, recorded in Volume 3331, Page 765, said Official Public Records;

THENCE in a Southerly direction with the general course of a fence along the Northerly East line of the said 246.134 acre tract and West line of the said Green and Maddox tracts the following calls and distances:

South 14°55'29" East a distance of 642.51 feet;

South 15°21 '36" East a distance of 667.58 feet;

South 17°39'07" East a distance of 284.78 feet;

South 15°20'03" East a distance of 209.84 feet to a 1/2" steel rod set marking the Southwest corner of the said Maddox tract and an inside “L” corner to the said 246.134 acre tract;

THENCE North 75°18'02" East with a fence a distance of 430.04 feet to a 1/2" steel rod set marking the most Easterly Northeast corner of the said 246.134 acre tract and the Southeast corner of the said Maddox tract in the West right-of-way line of the St. Louis & San Francisco Railroad;

THENCE South 06°41'02" West with said West right-of-way line a distance of 2152.98 feet to an “L” corner;

THENCE North 83°18'58" West a distance of 75.00 feet to an “L” corner;

THENCE South 06°41'02" West continuing with said West right-of-way line a distance of 843.85 feet to a 1/2" steel rod set marking the Southeast corner of the said 246.134 acre tract and the Northeast corner of the same tract of land described as 82.032 acres conveyed by Sherman Development Partnership No. 1 to Sam H. Berry by deed dated October 1, 1993, recorded in Volume 2298, Page 258, Real Property Records, Grayson County, Texas, also being the original Easterly Northeast corner of the same tract of land described as 240. 9284 acres conveyed by International Business Machines Corporation to Fisher Controls Company, Inc. by deed dated June 30, 1976, recoded in Volume 1349, Page 493, said Deed Records;

THENCE North 67°19'54" West with the Southwesterly line of the said 246.134 acre tract, passing the Northwest corner of the said 82.032 acre tract and continuing for a total distance of 1879.15 feet to a 1/2" steel rod found at an angle point;

THENCE North 49°31'48" West continuing with said Southwesterly line, passing the Northeast corner of Block 1, Lot 1, Blalock Industrial Park, an addition to the City of Sherman as shown by plat of record in Volume 8, Page 92, Plat Records, Grayson County, Texas, also being the Southeast corner of the same tract of land described as 25.264 acres conveyed by said Sherman Development Partnership No. I to Liberty Trust Company, Ltd. by deed dated February 7, 2017, recorded in Volume 5948, Page 836, said Official Public Records, and continuing for a total distance of 1553.66 feet to a 1/2" steel rod found at an angle point;

THENCE North 14°46'12" West now with the West line of the said 246.134 acre tract and East line of the said 25.264 acre tract, passing the Northeast corner of the said 25.264 acre tract and the Southeast corner of the same tract of land described as 12.166 acres conveyed by Anthony Aleman to Ramanujam K. Vangipuram and Samrajyam Kolluru by deed dated February 10, 2017, recorded in Volume 5948, Page 638, said Official Public Records, and continuing for a total distance of 1146.71 feet to a 1/2" steel rod found maintaining the most Westerly Northwest corner of the said 246.134 acre tract and the Southwest corner of the same tract of land described as 13.41 acres conveyed by Garcha Corporation to Sherman Economic Development Corporation by deed dated August 25, 2015, recorded in Volume 5680, Page 685, said official Public Records;

THENCE North 74°28'45" East a distance of 642.18 feet to a 1/2" steel rod found maintaining an inside “L” corner to the said 246.134 acre tract and the Southeast corner of the said 13.41 acre tract;

THENCE North 15°22'34" West with the Northerly West line of the said 246.134 acre tract a distance of 959.39 feet to the POINT OF BEGINNING and containing 245.83 acres of land more or less.

TRACT 2:

Situated in the County of Grayson, State of Texas being a port of the Sherrod Dunman Surve y, Abstract No. 329, and being a part of the land conveyed by M.L. Maddox to C.T. Maddox and J.W. Maddox by deed dated April 26th, 1965, recorded in Volume 1029, Page 551, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a cross-tie corner post at the intersection of the South right-of-way line of F.M. Highway No. 1417 and the West line of the said Maddox tract, said post being common to the Northeast corner of a 251.1845 acre tract of land conveyed by Edward C. Greene, Trustee, to Rolling Meadows Associates, by deed recorded in Volume 1716, Page 384, said Deed Records;

THENCE in an easterly direction with said right-of-way the following calls and distances:

North 74’18’25” East a distance of 243.59 feet to a concrete right-of-way marker;

North 80’01’17” East a distance of 803.99 feet to a 1/2" steel rod set at an angle point in said right-of-way;

North 74’18’39” East a distance of 95.31 feet to a 1/2” steel rod set at the intersection of the said right-of-way with the West right-of-way line of the Frisco Railroad;

THENCE South 06’41’02” West with said railroad right-of-way a distance of 1872.88 feet to a said 1/2” steel rod set, said rod maintaining the Southeast corner of said Maddox tract of land;

THENCE South 75’18’02” West with the South line of said Maddox tract a distance of 430.04 feet to a 1/2” steel rod set at the Southwest corner of the said Maddox tract;

THENCE in a Northerly direction with an old fence maintaining the West line of said Maddox tract the following calls and distances:

North 15’20’03” West a distance of 209.84 feet to a point;

North 17’39’07” West a distance of 284.78 feet to a point;

North 15’21’36” West a distance of 667.58 feet to a point;

North 14’55’29” West a distance of 642.51 feet to the Place-of-Beginning and containing 32.545 acres of land more or less.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 2.**

Meeting Date: 02/01/2021
Prepared By: Zachary Flores, Police Chief
Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6698

Awarding a Bid to and Authorizing Execution of an Agreement with Thos. S. Byrne, Inc. dba Byrne Construction Services, as Construction Manager-at-Risk (CMAR), for the Construction of a New Police Headquarters Facility

Issue:

Awarding services for Construction Manager-at-Risk for the construction of a new Police Headquarters Facility

Background:

The current Sherman Police Headquarters Facility was built in 1966 and has reached its maximum occupancy and potential for future growth. In order to better serve the City, the plan is to relocate it to the southwest corner of West Travis Street and Northgate Drive, allowing for immediate and future growth.

At the October 19, 2020 meeting, the City Council approved a request to advertise for a Construction Manager-at-Risk (CMAR), which resulted in thirteen (13) responses. Those responses were evaluated together by the City's project architecture firm, Hidell and Associates, and by City staff. Based upon specific scoring criteria included in the bid solicitation, and one-on-one interviews with those respondents receiving the top five scores, City staff recommends awarding the CMAR contract to Thos. S. Byrne, Inc. dba Byrne Construction Services (Byrne) of Fort Worth, Texas. As CMAR, Byrne will be responsible for estimating the total cost of the project (guaranteed maximum price "GMP"), and will assume the risk of the construction of the new facility at the GMP.

Origination:

Police Department
Hidell and Associates

Financial Consideration:

The Pre-Construction Phase fee for professional CMAR services will be $15,000.00. The Construction Phase fee for professional CMAR services will be 2.45% of the Construction Phase total cost, which is estimated at approximately $294,000.00. Funds are budgeted in the Capital Improvement Program Fund.

Staff Recommendation:

It is recommended that the contract with Byrne for professional CMAR services relating to construction of the new Police Headquarters Facility be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6698
AIA Contract
General Conditions to Contract
Exhibit B
Step 1 - Bid Tabulation
Step 2 - Bid Tabulation

RESOLUTION NO. 6698

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF AN AGREEMENT WITH THOS. S. BRYNE, INC. DBA BYRNE CONSTRUCTION SERVICES, AS CONSTRUCTION MANAGER-AT-RISK (CMAR), FOR THE CONSTRUCTION OF A NEW POLICE HEADQUARTERS FACILITY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Agreement with Thos. S. Bryne, Inc. dba Byrne Construction Services as Construction Manager-at-Risk (CMAR) for the construction of the New Police Headquarters Facility in accordance with all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____

LINDA ASHBY, CITY CLERK **DAVID PLYLER, MAYOR**

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____

RYAN D. PITTMAN, CITY ATTORNEY

AIA® Document A133™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

A133 v1 (07-21-2020)

AGREEMENT made as of the 19th day of January in the year Two Thousand Twenty-One (2021)
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090

and the Construction Manager:
(Name, legal status, address, and other information)

Thos. S. Byrne, Inc.
551 E. Berry Street
Fort Worth, Texas 76110
817.335.3394

for the following Project:
(Name, location, and detailed description)

ARBH File No. 6262.0015: City of Sherman/Police Headquarters
Sherman Police Headquarters Facility
Corner of West Travis and Northgate Drive
Sherman, Texas 75090
The new facility shall consist of a new single story police headquarters, a single story annex building, public parking, and secure parking.

The Architect:
(Name, legal status, address, and other information)

Hidell and Associates Architects, Inc.
3033 Kellway Drive, Suite 120
Carrollton, Texas 75006
972.416.4666

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes: (1165381751)

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The architect shall establish the building program components during the pre-construction phase of the project.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The new facility shall consist of a new single story police headquarters (25,000 to 30,000sf); a single story annex building (approx. 6,000sf); public parking; secure parking. The site is located at the southwest corner of West Travis and Northgate drive.(Topo and Boundary Survey- Elizabeth Jones Survey Abstract No. 625 Sherman, Texas); Geotechnical Report Dated November 12, 2020 by ECS Southwest, LLP (Report No. 19:8099). All remaining site and building components shall be identified/established during the pre-construction phase of the project.

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§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

The Owner's budget is estimated between Thirteen Million and Fourteen Million Dollars ($13,000,000.00 - $14,000,000.00), excluding the Architect's fee.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Construction Documents Complete August 2021.

.2 Construction commencement date:

Commencement of Construction shall be given in a Notice to Proceed in October 2021.

.3 Substantial Completion date or dates:

Substantial Completion shall be on or before December 30, 2021.

.4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Jason Jeffcoat
Assistant Chief of Police
Sherman Police Department
317 S. Travis St.
Sherman, Texas 75090
903.892.7323

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User Notes: (1165381751)

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

ECS Southwest, LLP
3033 Kellway Drive, Suite 110
Carrollton, TX 75006
972.392.3222

.2 Civil Engineer:

Cross Engineering Consultants
1720 W. Virginia Street
McKinney, TX 75069
P: 972.562.4406

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

Boundary and Topographic Survey
Construction Period Materials Testing
HVAC Test and Balance

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Hidell and Associates Architects, Inc.
3033 Kellway Drive, Suite 120
Carrollton, Texas 75006
P: 972.416.4666

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Jason Moore
Thos. S. Byrne, Inc.
551 E. Berry Street
Fort Worth, Texas 76110
817.335.3394

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

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§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both

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phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report in writing to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the

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Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

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§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any taxes from which the Owner is exempt by virtue of its status as a governmental entity. In the event that the Contractor is required to pay or bear the burden of any new federal, state, or local tax, or if any rate increase of an existing tax (except a tax on net profits), as a result of any statute, court decision, written ruling, or regulation takes effect after the contract date, the Guaranteed Maximum Price shall be increased by the amount of the new tax, or tax increase.

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§ 3.3 Construction Phase
§ 3.3.1 General
§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.1.3 Other than services normally associated with Construction Manager's performance of the General Conditions, Construction Manager shall not perform any portions of the Work unless it has been awarded such portion in accordance with the same procedures imposed upon all other trade contractors or subcontractors, and then, only if the Owner has determined that the Construction Manager's bid or proposed bid provides the best value for the Owner.

§ 3.3.2 Administration
§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report
The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs
The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control
The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES
§ 4.1 Information and Services Required of the Owner
§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 The Owner, upon written request from the Construction Manager, shall provide a statement that funds are available and have been authorized for the full contract amount for the construction of the Work in accordance with the requirements of Tex. Bus. and Com. Code, Section 35.521 (n)(3), if applicable. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs.

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§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Except to the extent that the Construction Manager knows of, or with reasonable diligence should have discovered, any inaccuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall provide or contract for, independently of the Construction Manager, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by Owner.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are reasonably required by the Project and are requested by the Construction Manager, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities, including any additional services requested by the Construction Manager and approved by Owner that are necessary for the Preconstruction and Construction Phase services under this Agreement. Upon request of the Construction Manager, the Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement, from which compensation provisions may be deleted.

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ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Compensation shall be a stipulated sum of Fifteen Thousand Dollars ($15,000.00).

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable thirty (30) days from the date the Construction Manager's invoice is received by Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of monthly or annual interest agreed upon.)

The rate of interest computed in accordance with the provisions of the Texas Government Code, Section 2251.025.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

[The fee shall be 2.45% of the Cost of the Work.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

If both Owner and Construction Manager agree that a material change in the scope of services has occurred, the parties will agree on an equitable adjustment in the Construction Manager's Fee.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Those limitations set forth in Section 7.5 of AIA Document A201-2017 as modified by Owner.

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§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

Provisions are described in the A201 – 2017 v:4 (06-11-2020) General Conditions of the Contract for Construction, provided by Owner, attached hereto and incorporated herein for all purposes.

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Contract Time may be adjusted as a result of changes in the Work as agreed upon in writing by Owner.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 Intentionally Deleted.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform minor work at the site or, with the Owner's prior approval, at off-site workshops.

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§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, except taxes from which the Owner is exempt by virtue of its status as a governmental entity, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs
Payments made by the Construction Manager to trade contractors, Subcontractors, or the Construction Manager (for portions of the Work for which Construction Manager was selected under Section 2.3.1.3) in accordance with the requirements of the trade contracts or subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

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§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Intentionally Deleted.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable, except this does not include taxes from which the Owner is exempt by virtue of its status as a governmental entity.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Intentionally Deleted.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 Intentionally Deleted.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Reasonable costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal and mediation costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Intentionally Deleted.

§ 7.6.11 Intentionally Deleted.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

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§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;

.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;

.3 Expenses of the Construction Manager's principal office and offices other than the site office;

.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;

.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

.9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. All portions of the Work, other than minor work, site clean-up, etc. ("General Conditions"), shall be performed by trade contractors or subcontractors, including Construction Manager, who have been selected using competitive bids or competitive sealed proposals in accordance with the policies and procedures approved by Owner. On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all trade contractor and subcontractor

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bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. On any portion of the Work for which the Construction Manager submits a bid or proposal, the Owner shall receive and open the trade contractors, subcontractors and Construction Manager bids or proposals, but shall not disclose the contents of the bids or proposals until the selection process therefor is completed. All bids or proposals shall be made public after the award of the contract or within seven (7) days after the date of final selection of bids or proposals, whichever is later.

The Construction Manager shall furnish to Owner and Architect for the Owner's approval prior to any public advertisement or solicitation for a portion of the Work the evaluation criteria that the Construction Manager proposes to use in recommending qualified trade contractors or subcontractors for each portion of the Work that will provide the best value for the Owner.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, and (4) offers the best value to the Owner, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 3rd day of a month, the Owner shall make payment of the amount certified by the Architect to the Construction Manager not later than the 3rd day of the next month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress

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payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

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§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five percent (5%) of the amount of any progress payment for the Cost of Work and Construction Manager's Fee

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. All subcontracts shall provide for a five percent (5%) retainage unless otherwise agreed in writing by Owner. The Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment as follows:

The Construction Manager shall certify to the Owner that the facility, to the best of his knowledge, has been constructed in accordance with the Architect's construction documents. The certification shall be in a form which is acceptable to the Owner and Construction Manager.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

The rate of interest computed in accordance with the provisions of the Texas Government Code, Section 2251.025.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017.

§ 12.1.2 The Owner will serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Owner.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

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(Check the appropriate box.)

[ ] Arbitration pursuant to Article 15 of AIA Document A201–2017

[X] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs which would have been reimbursable as Cost of Work.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

None.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than one million dollars ($ 1,000,000.00) for each occurrence and two million dollars ($ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million dollars ($ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million dollars ($ 1,000,000.00) each accident, one million dollars ($ $1,000,000.00) each employee, and one million dollars ($ $1,000,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million dollars ($ 1,000,000.00) per claim and two million dollars ($ 2,000,000.00) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

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§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

N/A

§ 14.5 Other provisions:

In accordance with Texas Government Code, Chapter 2270, the undersigned avers that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

.1 This AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017 v: 4 (06-11-2020), General Conditions of the Contract for Construction, as modified and provided by Owner.

.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

N/A

.6 Other Exhibits:
(Check all boxes that apply.)

[N/A] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

[N/A] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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This Agreement is entered into as of the day and year first written above.

CITY OF SHERMAN	THOS. S. BYRNE, INC.
By:	By:
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Robby Hefton, City Manager	Paul Avila, Chief Operating Officer
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for

AIA® Document A133™ – 2019

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PAGE 1

A133 v1 (07-21-2020)

AGREEMENT made as of the 19th day of January in the year Two Thousand Twenty-One (2021)

...

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090

...

Thos. S. Byrne, Inc.
551 E. Berry Street
Fort Worth, Texas 76110
817.335.3394

...

ARBH File No. 6262.0015: City of Sherman/Police Headquarters
Sherman Police Headquarters Facility
Corner of West Travis and Northgate Drive
Sherman, Texas 75090
The new facility shall consist of a new single story police headquarters, a single story annex building, public parking, and secure parking.

...

Hidell and Associates Architects, Inc.
3033 Kellway Drive, Suite 120
Carrollton, Texas 75006
972.416.4666

PAGE 2

The architect shall establish the building program components during the pre-construction phase of the project.

...

The new facility shall consist of a new single story police headquarters (25,000 to 30,000sf); a single story annex building (approx. 6,000sf); public parking; secure parking. The site is located at the southwest corner of West Travis and Northgate drive.(Topo and Boundary Survey- Elizabeth Jones Survey Abstract No. 625 Sherman, Texas);

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Geotechnical Report Dated November 12, 2020 by ECS Southwest, LLP (Report No. 19:8099). All remaining site and building components shall be identified/established during the pre-construction phase of the project.

PAGE 3

The Owner's budget is estimated between Thirteen Million and Fourteen Million Dollars ($13,000,000.00 - $14,000,000.00), excluding the Architect's fee.

...

Construction Documents Complete August 2021.

...

Commencement of Construction shall be given in a Notice to Proceed in October 2021.

...

Substantial Completion shall be on or before December 30, 2021.

...

N/A

...

N/A

...

Jason Jeffcoat
Assistant Chief of Police
Sherman Police Department
317 S. Travis St.
Sherman, Texas 75090
903.892.7323

PAGE 4

ECS Southwest, LLP
3033 Kellway Drive, Suite 110
Carrollton, TX 75006
972.392.3222

...

Cross Engineering Consultants
1720 W. Virginia Street
McKinney, TX 75069
P: 972.562.4406

...

Boundary and Topographic Survey
Construction Period Materials Testing
HVAC Test and Balance

...

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Hidell and Associates Architects, Inc.
3033 Kellway Drive, Suite 120
Carrollton, Texas 75006
P: 972.416.4666

...

Jason Moore
Thos. S. Byrne, Inc.
551 E. Berry Street
Fort Worth, Texas 76110
817.335.3394
PAGE 6

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report in writing to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall ~~obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall~~ coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

...

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager ~~suggests~~ suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.
PAGE 8

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price ~~all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.~~any taxes from which the Owner is exempt by virtue of its status as a governmental entity. In the event that the Contractor is required to pay or bear the burden of any new federal, state, or local tax, or if any rate increase of an existing tax (except a tax on net profits), as a result of any statute, court decision, written ruling, or regulation takes effect after the contract date, the Guaranteed Maximum Price shall be increased by the amount of the new tax, or tax increase.
PAGE 9

§ 3.3.1.3 Other than services normally associated with Construction Manager's performance of the General Conditions, Construction Manager shall not perform any portions of the Work unless it has been awarded such portion

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in accordance with the same procedures imposed upon all other trade contractors or subcontractors, and then, only if the Owner has determined that the Construction Manager's bid or proposed bid provides the best value for the Owner.

...

§ 4.1.2 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.~~ The Owner, upon written request from the Construction Manager, shall provide a statement that funds are available and have been authorized for the full contract amount for the construction of the Work in accordance with the requirements of Tex. Bus. and Com. Code, Section 35.521 (n)(3), if applicable. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs.~~If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.~~

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. ~~The~~ Except to the extent that the Construction Manager knows of, or with reasonable diligence should have discovered, any inaccuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall ~~furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.~~provide or contract for, independently of the Construction Manager, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by Owner.

PAGE 10

§ 4.1.4.3 The Owner, when such services are ~~requested,~~ reasonably required by the Project and are requested by the Construction Manager, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

...

§ 4.2.1 Legal Requirements. The Owner shall furnish all ~~legal, insurance~~ legal and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

...

The Owner shall retain an Architect to provide services, duties and ~~responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition,~~ responsibilities, including any additional services requested by the Construction Manager and approved by Owner that are necessary for the Preconstruction and Construction Phase services under this Agreement. ~~The~~ Upon request of the Construction Manager, the Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the ~~agreement.~~agreement, from which compensation provisions may be deleted.

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Compensation shall be a stipulated sum of Fifteen Thousand Dollars ($15,000.00).

...

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

§ 5.2.2 Payments are due and payable ~~upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date~~ thirty (30) days from the date the Construction Manager's invoice is received by Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the ~~principal place of business of the Construction Manager.~~place where the Project is located.

...

~~%~~ The rate of interest computed in accordance with the provisions of the Texas Government Code, Section 2251.025.

...

[The fee shall be 2.45% of the Cost of the Work.

...

If both Owner and Construction Manager agree that a material change in the scope of services has occurred, the parties will agree on an equitable adjustment in the Construction Manager's Fee.

...

Those limitations set forth in Section 7.5 of AIA Document A201-2017 as modified by Owner.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent (%) of~~ the standard rental rate paid at the place of the Project.

PAGE 12

Provisions are described in the A201 – 2017 v:4 (06-11-2020) General Conditions of the Contract for Construction, provided by Owner, attached hereto and incorporated herein for all purposes.

...

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work ~~within the general scope of the Contract~~ consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The ~~Construction Manager may be entitled to an equitable adjustment in the Contract Time~~ Contract Time may be adjusted as a result of changes in the ~~Work.~~Work as agreed upon in writing by Owner.

...

§ 6.3.5 ~~If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~Intentionally Deleted.

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...

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform ~~the construction of the Work~~ minor work at the site or, with the Owner's prior approval, at off-site workshops.
PAGE 13

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, except taxes from which the Owner is exempt by virtue of its status as a governmental entity, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

...

Payments made by the Construction Manager to ~~Subcontractors~~ trade contractors, Subcontractors, or the Construction Manager (for portions of the Work for which Construction Manager was selected under Section 2.3.1.3) in accordance with the requirements of the trade contracts or subcontracts and this Agreement.

...

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities ~~of equipment owned by the Construction Manager, or a related party as defined in Section 7.8,~~ shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.
PAGE 14

§ 7.6.1.1 ~~Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~Intentionally Deleted.

...

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is ~~liable.~~liable, except this does not include taxes from which the Owner is exempt by virtue of its status as a governmental entity.

...

§ 7.6.4 ~~Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.~~Intentionally Deleted.

...

§ 7.6.5.1 ~~The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~Intentionally Deleted.

...

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§ 7.6.7 ~~Costs~~ Reasonable costs of document reproductions and delivery charges.

...

§ 7.6.9 ~~Legal, mediation and arbitration~~ Legal and mediation costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 ~~Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~Intentionally Deleted.

§ 7.6.11 ~~That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~Intentionally Deleted.

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§ 9.1 ~~Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents.~~ The ~~Construction Manager shall deliver such bids to the Architect and~~ Owner ~~with an indication as to which bids the Construction Manager intends to accept. The Owner~~ then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. ~~The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~All portions of the Work, other than minor work, site clean-up, etc. ("General Conditions"), shall be performed by trade contractors or subcontractors, including Construction Manager, who have been selected using competitive bids or competitive sealed proposals in accordance with the policies and procedures approved by Owner. On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all trade contractor and subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. On any portion of the Work for which the Construction Manager submits a bid or proposal, the Owner shall receive and open the trade contractors, subcontractors and Construction Manager bids or proposals, but shall not disclose the contents of the bids or proposals until the selection process therefor is completed. All bids or proposals shall be made public after the award of the contract or within seven (7) days after the date of final selection of bids or proposals, whichever is later.

The Construction Manager shall furnish to Owner and Architect for the Owner's approval prior to any public advertisement or solicitation for a portion of the Work the evaluation criteria that the Construction Manager proposes to use in recommending qualified trade contractors or subcontractors for each portion of the Work that will provide the best value for the Owner.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; ~~and~~ (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, and (4) offers the best value to the Owner, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 3rd day of a month, the Owner shall make payment of the amount certified by the Architect to the Construction Manager not later than the 3rd day of the next month. If an Application for Payment is received by the Architect after the application date fixed

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above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

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Five percent (5%) of the amount of any progress payment for the Cost of Work and Construction Manager's Fee

...

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to ~~Subcontractors, and the percentage of retainage held on Subcontracts, and the~~ Subcontractors. All subcontracts shall provide for a five percent (5%) retainage unless otherwise agreed in writing by Owner. The Construction Manager shall execute subcontracts in accordance with those agreements.

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§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to ~~request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager.~~ proceed in accordance with Article 12 without a further decision of the Architect. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for ~~Payment, or~~ Payment as follows:

The Construction Manager shall certify to the Owner that the facility, to the best of his knowledge, has been constructed in accordance with the Architect's construction documents. The certification shall be in a form which is acceptable to the Owner and Construction Manager.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. ~~If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

...

~~%~~ The rate of interest computed in accordance with the provisions of the Texas Government Code, Section 2251.025.

...

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. ~~However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.~~

§ 12.1.2 The ~~Architect~~ Owner will serve as the Initial Decision ~~Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision~~ Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the ~~Architect.)~~Owner.)

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[X] Litigation in a court of competent jurisdiction

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§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse ~~or indemnify~~ the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs ~~necessarily incurred by the Construction Manager because of such termination.~~which would have been reimbursable as Cost of Work.

...

None.

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.~~A201–2017.

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§ 14.3.1.1 Commercial General Liability with policy limits of not less than one million dollars ($ 1,000,000.00) for each occurrence and two million dollars ($ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million dollars ($ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million dollars ($ 1,000,000.00) each accident, one million dollars ($ $1,000,000.00) each employee, and one million dollars ($ $1,000,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million dollars ($ 1,000,000.00) per claim and two million dollars ($ 2,000,000.00) in the aggregate.

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N/A

...

In accordance with Texas Government Code, Chapter 2270, the undersigned avers that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

...

.1 This AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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...

.4 AIA Document ~~A201™–2017,~~ A201™–2017 v: 4 (06-11-2020), General Conditions of the Contract for ~~Construction~~Construction, as modified and provided by Owner.

...

N/A

...

[**N/A**] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

...

[**N/A**] Supplementary and other Conditions of the Contract:

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CITY OF SHERMAN	THOS. S. BYRNE, INC.
By:	By:
...	
Robby Hefton, City Manager	Paul Avila, Chief Operating Officer

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Christopher C. Zillmer/mls, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:48:13 CT on 01/22/2021 under Order No. 6923218140 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Christopher C. Zillmer/mls

(Signed)

(Title)

1-22-2021

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

A201-2017 v4 (06-11-2020)

for the following PROJECT:
(Name and location or address)

ARBH File No. 6262.0015: City of Sherman/Police Headquarters
Sherman Police Headquarters Facility
Corner of West Travis and Northgate Drive
Sherman, Texas 75090
The new facility shall consist of a new single story police headquarters, a single story annex building, public parking, and secure parking.

THE OWNER:
(Name, legal status and address)

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090

THE ARCHITECT:
(Name, legal status and address)

Hidell and Associates Architects, Inc.
3033 Kellway Drive, Suite 120
Carrollton, Texas 75006
972.416.4666

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

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7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.
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12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.1.1 The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, plant, supplies, skill, supervision, transportation, services and other facilities and things necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the contract documents. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their

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respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker
The Initial Decision Maker is the Owner.

§ 1.1.9 EQUAL TO (OR APPROVED EQUAL)
Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contract Documents and which may be incorporated in the Work after review and acceptance by the Architect of the information about such products and acceptance by the Owner.

§ 1.1.10 FORCE MAJEURE
An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

§ 1.1.11 KNOWLEDGE
The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work and in accordance with the highest standards in the contracting profession.

§ 1.2 Correlation and Intent of the Contract Documents
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§1.2.4 Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

§1.2.5 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

§1.2.6 Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in

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writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization.

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Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 Intentionally deleted.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Intentionally deleted.

§ 2.2.3 Intentionally deleted.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner may furnish existing surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of the information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.4.1 The furnishing of such information by the Owner shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the site and the Contract Documents. The Owner shall not be required to furnish the Contractor with any information as to subsurface conditions. If the Owner or the Architect has made any investigations of subsurface conditions, such investigations were made solely for the information of the Owner and Architect and not for the Contractor's information. No such information shall be construed to be a part of the Contract Documents. The Contractor acknowledges that, if Owner or Architect furnishes any such information to the Contractor, no waiver of the foregoing shall be implied, and the Contractor shall not be entitled to rely on such information but rather shall conduct its own investigation of such subsurface conditions. Further, no warranty of the accuracy of any such information shall be implied. The Contractor warrants that it is experienced in the type of Work undertaken pursuant to this contract and has the necessary expertise to form its own conclusions as to the necessity for conducting investigations of a type and nature as is calculated by Contractor to provide it with the necessary information so as to properly carry out the Work hereunder. . If the Contractor discovers conditions that vary significantly from those that it anticipated or that it would not have reasonable inferred from the

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examination of the site and available information, the Contractor may seek an equitable adjustment in the Contract Time or Contract Sum, or both.

§ 2.3.5 The information identified in Section 2.3,4, above, is not warranted or represented by the Owner to be accurate. The Contractor will not be entitled to rely on it and shall exercise proper precautions relating to the safe performance of the Work. If the Contractor does rely on such information, then Contractor does so at its own risk. When such information is provided by the Owner, the Contractor acknowledges that the Owner has not verified such information. Site plans prepared by Owner's design professionals or others are based on surveys performed by consultants, and have not been verified by the Owner. Site plans do not constitute any representation by the Owner to the Contractor of Site boundaries or other characteristics.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3, nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.6 ADDITIONAL RIGHTS

§ 2.6.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

§ 2.6.2 The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed, and all matters that may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any items of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 Contractor acknowledges that timely completion of the Work in accordance with the terms of said Documents is of crucial importance to Owner. Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times an adequate supply of labor and materials to secure execution of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of Owner. In the event of delays and/or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on noncritical events. The float available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of

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delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site.

§ 3.3.2 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.5 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

§ 3.3.6 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or by test, inspections, or approvals required or performed by persons other than Contractor.

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including coordinating deliveries, storage, installations, and use of construction utilities. Contractor shall be responsible for the space requirements, location, and routing of its equipment. Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the building(s) and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments, arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

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§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said work and the Drawings and Specifications for the Work.

§ 3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the mis-description of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

§3.3.11 Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved or authorized by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

§3.4.4 Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

§3.4.5 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products equal to those specified.

§3.4.6 By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

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.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§3.4.7 The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that all workmanship shall be of the highest quality and in full conformance with the Contract Documents, and that all labor shall be performed by persons well qualified in their respective trades. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner.

§ 3.6 Taxes

The Contractor shall pay all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certification(s) in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the Contractor in performing this Contract with the Owner. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 10 days

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after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 Prior to starting work, Contractor shall designate the Project Manager, Superintendent, and other key individuals who shall be assigned to the Project through and including Final Completion. The Superintendent shall be in attendance at the Project site throughout the Work, including completion of the punchlist. The Superintendent shall be approved by Owner in its sole discretion. Said representative shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of Owner. Should a representative leave Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in Contractor's representative if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contractor may, at Owner's option, be terminated for cause. The Superintendent shall represent Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. Owner shall have no obligation to direct or monitor Contractor's employees.

§ 3.9.2 Intentionally deleted.

§ 3.9.3 Intentionally deleted.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 Contractor, promptly after being awarded the Contract for Construction and before commencing Work, shall prepare and submit for Owner's and Architect's review and approval a preliminary schedule for the Work. Within

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ten (10) days following Owner's Notice to Proceed, Contractor shall provide to Owner and Architect a schedule of performance of the Work, showing timely completion of the Work and timely achievement of each Milestone Date as required by the Contract for Construction and meeting all other requirements of this Section 3.10 (the "Progress Schedule"). Upon receipt of Contractor's proposed Progress Schedule, Owner may accept the proposed Progress Schedule as submitted or reject it, noting deficiencies. If such schedule is requested, the deficiencies noted shall be corrected and a new proposed Progress Schedule shall be submitted within ten (10) days. In any case, a complete Progress Schedule must be approved by Owner prior to any payments' being made.

§ 3.10.2 The Progress Schedule shall be in the form of a network using critical path methodology (CPM), clearly showing construction activities, dependencies, and durations. The critical path activities shall be highlighted, float time for noncritical activities shall be shown, and the start and stop stated for each activity shall be listed. Longer-duration activities shall be broken into subactivities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic, and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the Scope of Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (drying); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) lath and plaster phase; (q) painting phase; (r) ordering and delivery of long-lead materials; (s) completion of any parking structures; and (t) Milestone Dates. For all long-lead materials and for the purchase of any materials or equipment with a cost of $5,000 or more, the Progress Schedule shall include a Material Purchase Log, indicating the item of material or equipment, the quantity required, the estimated lead time, and, to the extent known, Contractor's purchase order number, the date ordered, the scheduled delivery date, and the actual or committed delivery date.

§ 3.10.3 The Contractor shall perform the Work in accordance with the Progress schedule as well as within the Milestone Dates and completion dates specified in the Contract for Construction. The times set forth in the Contract for Construction for all Milestone Dates and the time of completion must govern, and the Progress Schedule must be adjusted to meet these dates. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this Section 3.10 and shall keep proper records to substantiate actual activity durations and completion dates.

§ 3.10.4 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, three copies of a Monthly Status Report in such form as Owner reasonably requests. Each Monthly Status Report shall concisely but completely describe, in narrative form, the then current status of the Work including, without limitation:

§ 3.10.4.1 A review of actual progress during the month in comparison to the Progress Schedule and, if actual progress is behind schedule, discussion of any "workaround" or "catch-up plan" that Contractor has employed or will employ to recover the original Progress Schedule;

§ 3.10.4.2 A concise statement of the outlook for meeting future Progress Schedule dates, and the reasons for any change in outlook from the previous report;

§ 3.10.4.3 A concise statement of significant progress on major items of Work during the report period, and progress photographs as necessary to document the current status of the Work;

§ 3.10.4.4 A review of any significant technical problems encountered during the months and the resolution or plan for resolution of such problems;

§ 3.10.4.5 An explanation of any corrective action taken or proposed;

§ 3.10.4.6 A complete review of the status of Change Orders, including a review of any changes in the critical path of the construction Progress Schedule which result from Change Orders approved by Owner during the month, as well as a review of the schedule impact of Change Order requests then pending;

§ 3.10.4.7 A summary of any Claims anticipated by Contractor with respect to the Work, including the anticipated cost and schedule impacts of any such Claims;

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§ 3.10.4.8 A cumulative summary of the number of days of, and the extent to which the progress of the Work was delayed by, any of the causes for which Contractor could be entitled to an extension of the Contract Time;

§ 3.10.4.9 A marked copy of the current Progress Schedule showing the status of each element of the Work; and

§ 3.10.4.10 An updated Material Purchase Log.

§ 3.10.5 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, for Owner's review and approval, three copies of an updated Progress Schedule meeting all the requirements of this Section 3.10, including:

§ 3.10.5.1 Actual versus estimated percent completion for each activity and Project total;

§ 3.10.5.2 Actual versus estimated work in place for each activity and Project total;

§ 3.10.5.3 Actual versus estimated manpower for each activity and Project total;

§ 3.10.5.4 Actual versus estimated cash flow; and

§ 3.10.5.5 Any change in the critical path.

§ 3.10.6 If the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, Owner may direct Contractor to accelerate its work, at Contractor's own cost, without any adjustment to the Contract Sum. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity with the Progress Schedule and to assure timely substantial completion of the Work and achievement of all Milestone Dates.

§ 3.10.7 In addition, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, or Contractor fails to take prompt and adequate corrective action to Owner's satisfaction to bring the progress of the Work in compliance with the Progress Schedule, Owner may, in addition to any other right or remedy provided herein, proceed as provided in Sections 2.3, 2.4., or 2.5.

§ 3.10.8 Whenever significant changes to the Project occur, such as added or deleted activities, they must be reflected on a revised Progress Schedule to be submitted Owner for its review and approval.

§ 3.10.9 Contractor shall be responsible on a daily basis to maintain all information which affects the length of specific activities on the Progress Schedule, times when Contractor will perform specific jobs, and other data relevant to the Progress Schedule as required by the Architect or Owner. Contractor shall make available at any time such information for review by the Architect or Owner.

§ 3.10.10 Contractor shall prepare and keep current, for Architect's review, a schedule of submittals which is coordinated with Contractor's Progress Schedule, and allow the Architect reasonable time to review submittals.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the Project site, the Contract Documents, including the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form and paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely

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upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.13.2 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Document, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

§3.13.3 Operating systems, utilities and services, serving the existing building and project site shall be maintained in operation to serve the needs of the building and site not involved in the Work under this Contract at all times during the progress of the Work under the Contract, except for such short periods as are absolutely necessary to perform the Work. Such operating systems, utilities and services include, but are not limited to, water, electric power, natural gas, heating, ventilating, air conditioning, sanitary sewer, fire alarm, telephone, security, cable television and communications cabling. Prior to interrupting or otherwise affecting any such operating system, utility or service, Contractor shall consult with Owner and Architect to establish a mutually satisfactory schedule for cut over, cut off, disruption or other change in operation of the affected system, utility or service. Owner may require that such cut over, cut off, disruption or change in operation be made to occur after normal working hours or on holidays or weekends. Such agreed upon times and dates shall be clearly indicated in a written memorandum among the parties; and once established and agreed to, schedules of disruption of systems, services and utilities shall be strictly adhered to, unless later changed in writing by mutual agreement of the parties.

§3.13.4 The Contractor shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations.

§3.13.5 The Contractor shall provide and maintain temporary "all-weather" emergency vehicle access roads as Fire Lanes, as required by the appropriate governmental entity having jurisdiction, until complete construction of all fire lanes. Fire lanes shall be maintained and remain accessible at all times.

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§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect, and their representatives, access to the Work in preparation and progress at all times and wherever located and shall provide proper and safe facilities for such access.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's officers and trustees, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused in whole or in part by andy act or omission, whether negligent or otherwise, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages (subject to the mutual waiver of consequential damages in Section 15.1.6), compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.19 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark-up said set with "record information" in a legible manner to show: (1) bidding addendums, (2)

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executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

§ 3.20 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect at the time of Substantial Completion, or as soon thereafter as practicable. Submission of all of the following shall be a condition precedent to Final Payment to the Contractor. The operating instructions and service manuals shall contain:

.1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.

.2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.

.3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.

.4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.

(a) Recommended spare parts including catalog number and name of local suppliers or factory representative.

(b) Belt sizes, types, and lengths.

(c) Wiring diagrams.

.5 Manufacturer's Certificate of Warranty:

Manufacturer's Certificate of Warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.

.6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when

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fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract Documents, and any such determination shall be communicated through the Architect.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

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§5.2.5 Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

§5.2.6 The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall be relieved of any legal responsibility under the subcontract if the successor contractor assumes Owner's obligations under the subcontract.

§5.5 OWNER PAYMENTS TO SUBCONTRACTORS

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the Contractor.

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the

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Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for such proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount as determined by Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, and workers' compensation insurance;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
.5 Additional costs of supervision and field office personnel directly attributable to the change.

(Paragraphs Deleted)

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 AGREED OVERHEAD AND PROFIT RATES

§ 7.5.1 For any adjustments to the Contract Sum based on other than the unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

.1 For the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost;
.2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractor;
.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;
.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
.5 Costs to which overhead and profit is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.7.1 through 7.3.7.5;
.6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;
.7 To facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, material, and subcontracts. When major cost items are

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Subcontracts, they shall be itemized also.

8. For the Construction Manager when there are adjustments to the Contract sum that increase the GMP total, the Construction Manager's fee shall be at the percentage established in the contract and the combined total of the Construction Manager's fee plus the subcontractors overhead and profit should not exceed 15%.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Claims for extension of time shall be stated in whole or half calendar days.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only in accordance with Section 8.3.5 below.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by a wrongful act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by other causes that the Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Extensions of time shall be granted only because of delay preventing the execution of the major items of work critical to the schedule for completion of the Work.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay caused by either party under other provisions of the Contract Documents.

§ 8.3.4 In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

§ 8.3.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm or other data as mutually agreed by the Architect and Contractor for the Project area or as set forth in an exhibit to the Guaranteed Maximum Price Amendment, if applicable. In allowing delays for weather, the Architect will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis of one (1) calendar day credit for every working day lost, with each separate extension figured to the

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nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions. Extensions of Contract Time shall be the sole remedy for delays due to weather conditions; compensation shall not be available.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Before any work is done on the site and before the first Application for Payment, the Contractor shall submit to the Architect a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the Work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may require. Such schedule, when approved by the Architect, unless it be found to be in error, shall be used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, submitted in quadruplicate.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

§9.3.1.4 Contractor is to submit to Architect within 15 days of execution of Owner/Contractor Agreement proposed sample of Lien Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

§9.3.1.5 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

§9.3.1.6 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify

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that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§9.4.3 Contractor shall include as a separate and distinct line item on his pay request a value for trenching and shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

§9.4.4 Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot

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be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
.7 repeated failure to carry out the Work in accordance with the Contract Documents; or
.8 **failure to submit a written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract Time.**

§ 9.5.2 Intentionally deleted.

§ 9.5.3 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of any Work.

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§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when construction is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy and utilize the Work as a whole for the use for which it is intended.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 In the event of partial use and occupancy by Owner, the Work, or any portion thereof, shall not be deemed substantially complete until the entire Work is substantially complete; and such partial use and occupancy shall not commence any warranty period under the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner **(1)** an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, **(2)** a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect, **(3)** a written statement satisfactory to the Owner that the insurance will cover the period required by the Contract Documents, **(4)** consent of surety, if any, to final payment, **(5)** documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and **(6)** if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; **(7)** certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are complete and accurate in all respects; and **(8)** evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including but not limited to (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material

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supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor must furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner and Owner's lender (if any) against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and attorneys' fees. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor must furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local inspection authorities.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner.
(Paragraphs Deleted)

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 **In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor's being responsible for excess Architect's fees. Excess Architect's fees include the cost incurred after sixty (60) days beyond the date of Substantial Completion. Excess Architect's fees will be deducted from the amount due the Contractor.**

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twelve (12) months from the date of substantial completion as certified by the Architect under this Contract. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (A) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve

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the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§10.2.2.1 **If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.**

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3 except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not

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insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§10.2.9 The Contractor shall protect and be responsible for any damage to his work or material, from the date of the agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

§10.2.10 The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

§10.2.11 The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

§ 10.2.12 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or Subcontractors, shall be removed from the Project site at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its Subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Owner and Architect harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from, or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state, or local law.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or

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polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 Intentionally deleted.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Intentionally deleted.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

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.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.2.1 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be
maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

(Paragraph Deleted)

"Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises Operations (including X, C and U coverage as applicable).
2. Independent Contractor's Protective
3. Products and Completed Operations.
4. Personal Injury Liability.
5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
6. Owned, non-owned and hired motor vehicles."

§11.1.2.2 The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

1. Worker's Compensation:

(a) State: Statutory

(b) Applicable Federal: Statutory

(c) Employer's Liability: $1,000,000,000 per Accident
$1,000,000,000 Disease, Policy Limit
$1,000,000 Disease, Each Employee

2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations):

(a) Each Occurrence: $1,000,000
Aggregate: $2,000,000

(b) Products and Completed Operations to be maintained for two years after final payment:
$2,000,000 Aggregate

(c) Coverage to be extended to include the interests of the Architect and his consultants.

(d) No total pollution exclusion should be included.

3. Business Auto $1,000,000 Combined Single Limit for Bodily Injury and Property Damage.

4. Umbrella Excess Liability:

(a) Over Primary Insurance: $1,000,000 Each Occurrence

5. Occurrence Policy: $1,000,000 Each Occurrence
(applicable for asbestos related projects only)

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If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

§11.1.2.3 Each policy of insurance listed above shall be purchased and maintained by the Contractor and each certificate of insurance for said insurance shall contain a complete waiver of subrogation against Owner, Architect and Architect's Engineers. Each certificate shall also list Owner, the Contractor of the Owner, Architect and Architect's Engineers as a party insured.

§11.1.2.4 Contractor shall not commence work at the site under this Contract until he has obtained all required insurance and submitted appropriate certifications.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance
The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss
§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

§ 11.6 PERFORMANCE BOND AND PAYMENT BOND
§ 11.6.1 The Contractor shall furnish a Performance Bond and a Payment Bond. The amount of each bond shall be equal to 100 percent of the Contract Sum. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Work made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond.

§11.6.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§11.6.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.

§11.6.1.3 The Contractor shall provide each bond on the form required by Owner.

§11.6.1.4 No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor, and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

§ 11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction, shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall be extended from the date corrective Work is performed by the Contractor.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§12.2.6 Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall

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have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

§13.1.2 The Owner has adopted a prevailing wage rate schedule as more fully described in the Project Manual or other Contract Documents. The Contractor and each Subcontractor shall pay to all laborers, workmen and mechanics employed by them in the execution of this Work not less than such rates for each craft or type of workman or mechanic needed to execute the Work. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the prevailing wage rates adopted by Owner. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates shown. In compliance with Texas Government Code, Chapter 2258, the Contractor and each subcontractor shall forfeit, as a penalty to the Owner, sixty dollars ($60.00) for each laborer, workman or mechanic employed by them, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the rates adopted by Owner.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 Rights and Remedies

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.5 Tests and Inspections

§ 13.5.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections, or approvals that do not become requirements until

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after bids are received or negotiations concluded and (2) tests, inspections, or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection, or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at twelve percent (12%) per annum.

§ 13.7 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§13.8 Equal Opportunity

§13.8.1 The Contractor shall maintain policies of employment as follows:

§13.8.1.1 The Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

§13.8.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

§13.9 Intentionally Deleted.

§13.10 Working Time and Working Restrictions

§13.10.1 THE ENTIRE BUILDING SHALL REMAIN TOBACCO-FREE AT ALL TIMES.

§13.10.2 Normal working hours and normal working days for Contractor's work on this Project shall be between

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7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

§13.10.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

§13.10.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

§13.10.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

§13.10.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

§13.10.7 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because the Owner has not made payment on a Certificate for Payment approved by the Architect within thirty (30) days after receipt of written notification from Contractor that the time for payment stated in the Contract

Documents as expired.

§ 14.1.2 Intentionally deleted.

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, as well as reasonable overhead and profit on Work not executed.

§ 14.1.4 Intentionally deleted.

§14.1.5 Any payment due to, or recovered by, Contractor under paragraph 14.1.3 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

(a) the fair value (not Contractor's cost or profit) of the properly executed Work; or

(b) an amount determined by multiplying the contract price, as adjusted by change orders, times the

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percentage of Work completed.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or

.5 Contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

§ 14.2.2 When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.4.1 The costs of finishing the Work include, without limitation, all direct costs incurred by the Owner by reason of the termination of the Contractor as stated herein, including without limitation, attorney and other professional fees, insurance premiums and interest costs.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum may include profit. No adjustment shall be made to the extent

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum or for extra costs or damages, he shall give the Architect and the Owner written notice thereof within ten days after the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the portion of the Work that is the subject of the Claim except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with paragraph 10.4. Such claim, with the recommendation of the Architect, will be submitted to the Owner and its action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made. Compliance by the Contractor with this paragraph does not validate any claim which is otherwise invalid.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, the Contractor shall provide written notice as required by Sections 8.3.1 and 8.3.5.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented in accordance with Section 8.3.5.

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§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision - Intentionally Deleted

(Paragraphs Deleted)

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code. A request for mediation shall be filed in writing with the other party to this Contract.

§ 15.3.3 Intentionally deleted.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration – Intentionally Deleted

(Paragraph Deleted)

§ARTICLE 16: ADDITIONAL PROVISIONS FOR LIQUIDATED DAMAGES

§16.1 Contractual Provisions

§16.1.1 **It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are essential conditions of this Contract.**

§16.1.2 **Contractor agrees that said work shall be prosecuted in accordance with the provisions of this Contract at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.**

§16.1.3 If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated above or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration

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for the awarding of this Contract, to pay to
the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth for **$500.00, for each and every calendar day** that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.

§16.1.4 **The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.**

§16.1.5 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:

.1 To any
performance, priority or allocated order duly issued by the Government;

.2 To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

.3 To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.

§16.1.6 Provided, further, that the Contractor shall, within 10 days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner in writing of the cause of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

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A201-2017 v4 (06-11-2020)

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ARBH File No. 6262.0015: City of Sherman/Police Headquarters
Sherman Police Headquarters Facility
Corner of West Travis and Northgate Drive

...

Sherman, Texas 75090

...

The new facility shall consist of a new single story police headquarters, a single story annex building, public parking, and secure parking.

...

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090

...

Hidell and Associates Architects, Inc.
3033 Kellway Drive, Suite 120
Carrollton, Texas 75006
972.416.4666

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ARTICLE 1 GENERAL PROVISIONS

...

§ 1.1.1.1 The Contractor acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable the Contractor to complete the Work in a timely manner for the Contract Sum, and that they include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner

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and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This Agreement was the result of negotiations between the Owner and Contractor, and has been reviewed by the Owner, Contractor and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of both parties and no ambiguity shall be construed in favor of or against either party.

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, ~~and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.~~ plant, supplies, skill, supervision, transportation, services and other facilities and things necessary or proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the contract documents. The Work may constitute the whole or a part of the Project.

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The Initial Decision Maker is the ~~person identified~~ Owner.

...

§ 1.1.9 EQUAL TO (OR APPROVED EQUAL)

...

~~in the Agreement to render initial decisions~~ Products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution as equal to those specified in the Contract Documents and which may be incorporated in the Work after review and acceptance by the Architect of the information about such products and acceptance by the Owner.

...

§ 1.1.10 FORCE MAJEURE

...

~~on Claims~~ An act of God, fire, tornado, hurricane, flood, earthquake, explosion, war on American soil, civil disturbance, labor strikes, and similar unavoidable circumstances beyond Contractor's control, not caused by the negligent act or omission of Contractor or breach of this Agreement, its Subcontractors, or anyone else for whom Contractor is responsible, and not caused by Contractor's breach of a project labor or a "no strike" agreement.

...

§ 1.1.11 KNOWLEDGE

...

~~in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence of a diligent and prudent contractor familiar with the work. Analogously, the expression "reasonably inferable" and

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similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a diligent and prudent contractor familiar with the work and in accordance with the highest standards in the contracting profession.

...

§1.2.4 Specifications determine nature and setting, workmanship and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

...

§1.2.5 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect to satisfy exact and specific conditions. If discrepancies appear, Contractor shall request interpretation from the Architect prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

PAGE 12

§1.2.6 Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

...

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved ~~rights in their Instruments of Service,~~ rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

...

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, ~~subject to any protocols established pursuant to Sections 1.7 and 1.8,~~ solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to ~~the~~ this Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

PAGE 13

§ 2.1.2 ~~The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~ Intentionally deleted.

...

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to~~

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~~provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~Intentionally deleted.

...

§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~Intentionally deleted.

...

§ 2.3.4 The Owner ~~shall furnish~~ may furnish existing surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of the information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

PAGE 14

§ ~~2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under~~ 2.3.4.1 The furnishing of such information by the Owner shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the site and the Contract Documents. The Owner shall not be required to furnish the Contractor with any information as to subsurface conditions. If the Owner or the Architect has made any investigations of subsurface conditions, such investigations were made solely for the information of the Owner and Architect and not for the Contractor's information. No such information shall be construed to be a part of the Contract Documents. The Contractor acknowledges that, if Owner or Architect furnishes any such information to the Contractor, no waiver of the foregoing shall be implied, and the Contractor shall not be entitled to rely on such information but rather shall conduct its own investigation of such subsurface conditions. Further, no warranty of the accuracy of any such information shall be implied. The Contractor warrants that it is experienced in the type of Work undertaken pursuant to this contract and has the necessary expertise to form its own conclusions as to the necessity for conducting investigations of a type and nature as is calculated by Contractor to provide it with the necessary information so as to properly carry out the Work hereunder. . If the Contractor discovers conditions that vary significantly from those that it anticipated or that it would not have reasonable inferred from the examination of the site and available information, the Contractor may seek an equitable adjustment in the Contract Time or Contract Sum, or both.

...

~~the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.~~§ 2.3.5 The information identified in Section 2.3,4, above, is not warranted or represented by the Owner to be accurate. The Contractor will not be entitled to rely on it and shall exercise proper precautions relating to the safe performance of the Work. If the Contractor does rely on such information, then Contractor does so at its own risk. When such information is provided by the Owner, the Contractor acknowledges that the Owner has not verified such information. Site plans prepared by Owner's design professionals or others are based on surveys performed by consultants, and have not been verified by the Owner. Site plans do not constitute any representation by the Owner to the Contractor of Site boundaries or other characteristics.

...

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the

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Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section ~~6.1.3.~~6.1.3, nor shall the exercise of the Owner's right hereunder give rise to any claim by Contractor for additions to the Contract Sum or Contract Time.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such ~~default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for~~ deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~If~~

...

§ 2.6 ADDITIONAL RIGHTS

...

§ 2.6.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

...

~~the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~§ 2.6.2 The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the Project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has ~~visited the site, become generally familiar with local~~ carefully examined the Contract Documents and the site, and represents that the Contractor is thoroughly familiar with the nature and location of the Work, the site, the specific conditions under which the Work is to be performed, and ~~correlated personal observations with requirements of the Contract Documents.~~all matters that may in any way affect the Work or its performance. The Contractor further represents that as a result of such examinations and investigations, the Contractor thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as they apply to the Work, and that the Contractor will abide by same. Claims for additional time or additional compensation as a result of the Contractor's failure to follow the foregoing procedure and to familiarize itself with all local conditions and the Contract Documents will not be permitted.

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...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, the Contractor shall take field measurements required for the proper fabrication and installation of the work. Upon commencement of any items of work, the Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to the Owner.

...

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public ~~authorities.~~authorities unless such error, inconsistency or omission could be ascertained from a careful study of the Contract Documents.

PAGE 16

§ 3.3.1 Contractor acknowledges that timely completion of the Work in accordance with the terms of said Documents is of crucial importance to Owner. Contractor shall provide the best skill and judgment of its officers and employees and shall cooperate with Owner and Architect to further the interests of Owner and to bring about timely completion of the Work. Contractor shall furnish sufficient business administration and superintendence and provide at all times an adequate supply of labor and materials to secure execution of the Work in the best and soundest way and in the most expeditious and economical manner consistent with the interests of Owner. In the event of delays and/or unforeseen events, whether or not the same should entitle Contractor to an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 hereof, Contractor shall use diligent efforts to maintain scheduled completion dates. Such efforts shall include rephasing events, decreasing overly conservative durations on subsequent events, increasing activity overlap, and using float on noncritical events. The float available in the Progress Schedule shall be used by Owner and Contractor whenever possible to offset the impact of delays. Contractor shall be responsible for coordinating its Work with the Work of any other contractors and/or activities at the job site.

...

§ 3.3.2 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction.

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Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

...

§ ~~3.3.2~~ 3.3.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

...

§ ~~3.3.3~~ 3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

...

§ 3.3.5 Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

...

§ 3.3.6 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect or by test, inspections, or approvals required or performed by persons other than Contractor.

...

§ 3.3.7 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including coordinating deliveries, storage, installations, and use of construction utilities. Contractor shall be responsible for the space requirements, location, and routing of its equipment. Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

...

§ 3.3.8 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the building(s) and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, the Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments, arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or

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agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

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§ 3.3.9 Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said work and the Drawings and Specifications for the Work.

...

§ 3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the mis-description of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

...

§3.3.11 Contractor shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with State of Texas HB 662 and HB 665. On trench excavations in excess of five feet in depth, Contractor shall pay a qualified engineer to prepare detailed plans and specifications directing Contractor in the safe execution of trenching and shoring, unless other procedures are reviewed and accepted in writing by the applicable authorities prior to commencing trenching work.

...

§ 3.4.2 Except in the case of minor changes in the Work approved or authorized by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

...

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Smoking and chewing of tobacco products is prohibited in enclosed new construction. No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

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§3.4.4 Not later than 30 days from the contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each major product identified in the specifications and the name of the installing subcontractor.

...

§3.4.5 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products equal to those specified.

...

§3.4.6 By making requests for substitutions based on Subparagraph 3.4.5 above, the Contractor:

...

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

...

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

...

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

...

§3.4.7 The Contractor shall not use any materials in the work that contain lead or asbestos materials in excess of

...

amounts allowed by local/state standards, laws, codes, rules and regulations, Federal Environmental Protection

...

Agency (EPA) standards and the Federal Occupational Safety and Health Administration (OSHA) standards,

...

whichever are most restrictive.

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§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that all workmanship shall be of the highest quality and in full conformance with the Contract Documents, and that all labor shall be performed by persons well qualified in their respective trades. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

...

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the ~~Owner, and shall commence in accordance with Section 9.8.4.~~Owner.

...

The Contractor shall pay ~~sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~all sales, consumer, use and other similar taxes required by law. The Owner is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certification(s) in lieu of sales tax on the purchase, rental, or lease of all materials, supplies, equipment and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the Contractor in performing this Contract with the Owner. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s) shall comply with the applicable rulings of the State Comptroller.

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If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~14~~ 10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and ~~Contractor,~~ Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may ~~submit a Claim~~ proceed as provided in Article 15.

...

§ 3.9.1 ~~The Contractor shall employ a competent superintendent and necessary assistants who~~ Prior to starting work, Contractor shall designate the Project Manager, Superintendent, and other key individuals who shall be assigned to the Project through and including Final Completion. The Superintendent shall be in attendance at the Project site ~~during performance of the Work. The superintendent shall represent the~~ throughout the Work, including completion of the punchlist. The Superintendent shall be approved by Owner in its sole discretion. Said representative shall be qualified in the type of Work to be undertaken and shall not be changed during the course of construction without the prior consent of Owner. Should a representative leave Contractor's employ, Contractor shall promptly designate a new representative. Owner shall have the right, at any time, to direct a change in

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Contractor's representative if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contractor may, at Owner's option, be terminated for cause. The Superintendent shall represent Contractor, and communications given to the ~~superintendent~~ Superintendent shall be as binding as if given to the Contractor. Owner shall have no obligation to direct or monitor Contractor's employees.

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§ 3.9.2 ~~The~~ Intentionally deleted.

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§ 3.9.3 Intentionally deleted.

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§ 3.10 Contractor's Construction and Submittal Schedules

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~~Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days~~ § 3.10.1 Contractor, promptly after being awarded the Contract for Construction and before commencing Work, shall prepare and submit for Owner's and Architect's review and approval a preliminary schedule for the Work. Within ten (10) days following Owner's Notice to Proceed, Contractor shall provide to Owner and Architect a schedule of performance of the Work, showing timely completion of the Work and timely achievement of each Milestone Date as required by the Contract for Construction and meeting all other requirements of this Section 3.10 (the "Progress Schedule"). Upon receipt of Contractor's proposed Progress Schedule, Owner may accept the proposed Progress Schedule as submitted or reject it, noting deficiencies. If such schedule is requested, the deficiencies noted shall be corrected and a new proposed Progress Schedule shall be submitted within ten (10) days. In any case, a complete Progress Schedule must be approved by Owner prior to any payments' being made.

...

~~of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional~~ § 3.10.2 The Progress Schedule shall be in the form of a network using critical path methodology (CPM), clearly showing construction activities, dependencies, and durations. The critical path activities shall be highlighted, float time for noncritical activities shall be shown, and the start and stop stated for each activity shall be listed. Longer-duration activities shall be broken into subactivities when the Work can be completed in phases (i.e., south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic, and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the Scope of Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (drying); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) lath and plaster phase; (q) painting phase; (r) ordering and delivery of long-lead materials; (s) completion of any parking structures; and (t) Milestone Dates. For all long-lead materials and for the purchase of any materials or equipment with a cost of $5,000 or more, the Progress Schedule shall include a Material Purchase Log, indicating the item of material or equipment, the quantity required, the estimated lead time, and, to the extent known, Contractor's purchase order number, the date ordered, the scheduled delivery date, and the actual or committed delivery date.

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...

~~time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~§ 3.10.3 The Contractor shall perform the Work in accordance with the Progress schedule as well as within the Milestone Dates and completion dates specified in the Contract for Construction. The times set forth in the Contract for Construction for all Milestone Dates and the time of completion must govern, and the Progress Schedule must be adjusted to meet these dates. Contractor shall maintain such Progress Schedule on a current basis in accordance with the provisions of this Section 3.10 and shall keep proper records to substantiate actual activity durations and completion dates.

...

§ ~~3.9.3 The Contractor shall not employ a proposed superintendent~~ 3.10.4 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, three copies of a Monthly Status Report in such form as Owner reasonably requests. Each Monthly Status Report shall concisely but completely describe, in narrative form, the then current status of the Work including, without limitation:

...

~~to whom the Owner or Architect has made reasonable~~ § 3.10.4.1 A review of actual progress during the month in comparison to the Progress Schedule and, if actual progress is behind schedule, discussion of any "workaround" or "catch-up plan" that Contractor has employed or will employ to recover the original Progress Schedule;

...

~~and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~§ 3.10.4.2 A concise statement of the outlook for meeting future Progress Schedule dates, and the reasons for any change in outlook from the previous report;

...

§ ~~3.10 Contractor's Construction and Submittal Schedules~~3.10.4.3 A concise statement of significant progress on major items of Work during the report period, and progress photographs as necessary to document the current status of the Work;

...

§ ~~3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for~~ 3.10.4.4 A review of any significant technical problems encountered during the months and the resolution or plan for resolution of such problems;

...

§ 3.10.4.5 An explanation of any corrective action taken or proposed;

...

~~the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for~~ § 3.10.4.6 A complete review of the status of Change Orders, including a review of any changes in the critical path of the construction Progress Schedule which result from Change Orders approved by Owner during the month, as well as a review of the schedule impact of Change Order requests then pending;

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~~the Project, including (1) the date of commencement~~ § 3.10.4.7 A summary of any Claims anticipated by Contractor with respect to the Work, including the anticipated cost and schedule impacts of any such Claims;

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~~of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion~~ § 3.10.4.8 A cumulative summary of the number of days of, and the extent to which the progress of the Work was delayed by, any of the causes for which Contractor could be entitled to an extension of the Contract Time;

...

~~of the Work. The schedule shall provide for the orderly progression of the Work~~ § 3.10.4.9 A marked copy of the current Progress Schedule showing the status of each element of the Work; and

...

§ 3.10.4.10 An updated Material Purchase Log.

...

~~to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work~~ § 3.10.5 Contractor shall submit to Owner monthly with each application for payment, and at such additional times as may be required by Owner, for Owner's review and approval, three copies of an updated Progress Schedule meeting all the requirements of this Section 3.10, including:

...

~~and Project.~~ § 3.10.5.1 Actual versus estimated percent completion for each activity and Project total;

...

~~§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule~~ 3.10.5.2 Actual versus estimated work in place for each activity and Project total;

...

§ 3.10.5.3 Actual versus estimated manpower for each activity and Project total;

...

§ 3.10.5.4 Actual versus estimated cash flow; and

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~~the Architect's approval. The Architect's approval shall not~~ § 3.10.5.5 Any change in the critical path.

...

~~be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow~~ § 3.10.6 If the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, Owner may direct Contractor to accelerate its work, at Contractor's own cost, without any adjustment to the Contract Sum. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity with the Progress Schedule and to assure timely substantial completion of the Work and achievement of all Milestone Dates.

...

~~the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule,~~ § 3.10.7 In addition, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the critical path dates set forth in the Progress Schedule, including without limitation any Milestone Date, or Contractor fails to take prompt and adequate corrective action to Owner's satisfaction to bring the progress of the Work in compliance with the Progress Schedule, Owner may, in addition to any other right or remedy provided herein, proceed as provided in Sections 2.3, 2.4., or 2.5.

...

§ 3.10.8 Whenever significant changes to the Project occur, such as added or deleted activities, they must be reflected on a revised Progress Schedule to be submitted Owner for its review and approval.

...

~~Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.~~ § 3.10.9 Contractor shall be responsible on a daily basis to maintain all information which affects the length of specific activities on the Progress Schedule, times when Contractor will perform specific jobs, and other data relevant to the Progress Schedule as required by the Architect or Owner. Contractor shall make available at any time such information for review by the Architect or Owner.

...

~~§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.~~ 3.10.10 Contractor shall prepare and keep current, for Architect's review, a schedule of submittals which is coordinated with Contractor's Progress Schedule, and allow the Architect reasonable time to review submittals.

...

The Contractor shall ~~make available,~~ maintain at the Project site, the Contract Documents, including the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form ~~or~~ and paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect. Should the Contractor Subcontractors or Sub-subcontractors install, construct, erect or perform any portion of the Work without approval of any requisite submittal, the Contractor shall bear the costs, responsibility, and delay for removal, replacement, and/or correction of any and all items, material, and /or labor.

...

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the ~~adequacy and accuracy~~ adequacy, accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor ~~the~~ all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

...

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

...

§3.13.2 The Contractor shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Document, Contractor shall not interfere with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Work in the event of partial occupancy. Contractor shall assume full responsibility for any damage to the property comprising the Work or to the owner or occupant of any adjacent land or areas resulting from the performance of the Work.

...

§3.13.3 Operating systems, utilities and services, serving the existing building and project site shall be maintained in operation to serve the needs of the building and site not involved in the Work under this Contract at all times during the progress of the Work under the Contract, except for such short periods as are absolutely necessary to perform the Work. Such operating systems, utilities and services include, but are not limited to, water, electric power, natural gas, heating, ventilating, air conditioning, sanitary sewer, fire alarm, telephone, security, cable television and

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communications cabling. Prior to interrupting or otherwise affecting any such operating system, utility or service, Contractor shall consult with Owner and Architect to establish a mutually satisfactory schedule for cut over, cut off, disruption or other change in operation of the affected system, utility or service. Owner may require that such cut over, cut off, disruption or change in operation be made to occur after normal working hours or on holidays or weekends. Such agreed upon times and dates shall be clearly indicated in a written memorandum among the parties; and once established and agreed to, schedules of disruption of systems, services and utilities shall be strictly adhered to, unless later changed in writing by mutual agreement of the parties.

...

§3.13.4 The Contractor shall not permit any workers to use any existing facilities at the site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by Owner. The Contractor, Subcontractors of any tier, suppliers and employees shall comply with instructions or regulations of the Owner governing access to, operation of, and conduct while in or on the premises and shall perform all Work required under the Contract Documents in such a manner as not to unreasonably interrupt or interfere with the conduct of Owner's operations.

...

§3.13.5 The Contractor shall provide and maintain temporary "all-weather" emergency vehicle access roads as Fire Lanes, as required by the appropriate governmental entity having jurisdiction, until complete construction of all fire lanes. Fire lanes shall be maintained and remain accessible at all times.

PAGE 24

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the ~~Contract.~~ Contract and shall be responsible for daily clean-up of construction materials and dust control. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the ~~Project.~~Project and shall clean all glass surfaces and leave the Work "broom clean", or its equivalent, except as otherwise specified.

...

The Contractor shall provide the Owner and ~~Architect with~~ Architect, and their representatives, access to the Work in preparation and progress ~~wherever located.~~at all times and wherever located and shall provide proper and safe facilities for such access.

...

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or ~~patent is discovered by, or made known to, the Contractor,~~ a patent, the Contractor shall be responsible for ~~the loss unless the~~ such loss unless such information is promptly furnished to the Architect.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants,~~ Owner's officers and trustees, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury,

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sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused ~~by the negligent acts or omissions~~ in whole or in part by andy act or omission, whether negligent or otherwise, of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of ~~damages,~~ damages (subject to the mutual waiver of consequential damages in Section 15.1.6), compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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§ 3.19 The Contractor shall maintain a set of Record Drawings on site in good condition and shall use colored pencils to mark-up said set with "record information" in a legible manner to show: (1) bidding addendums, (2) executed change orders, (3) deviations from the Drawings made during construction; (4) details in the Work not previously shown; (5) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (6) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (7) such other information as either Owner or Architect may reasonably request. The prints for Record Drawing use will be a set of "blue line" prints provided by Architect to Contractor at the start of construction. Upon Substantial Completion of the Work, Contractor shall deliver all Record Drawings to Owner and Architect for approval. If not approved, Contractor shall make the revisions requested by Architect or Owner. Final payment and any retainage shall not be due and owing to Contractor until the final Record Drawings marked by Contractor as required above are delivered to Owner.

...

§ 3.20 The Contractor shall submit four (4) volumes of operating instructions and service manuals to the Architect at the time of Substantial Completion, or as soon thereafter as practicable. Submission of all of the following shall be a condition precedent to Final Payment to the Contractor. The operating instructions and service manuals shall contain:

...

.1 Start-up and Shutdown Procedures: Provide a step-by-step write up of all major equipment. When manufacturer's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference.

...

.2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment.

...

.3 Equipment List: List of all major equipment as installed shall include model number, capacities, flow rate, and name-plate data.

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...

.4 Service Instructions: The Contractor shall be required to provide the following information for all pieces of equipment.

...

(a) Recommended spare parts including catalog number and name of local suppliers or factory representative.

...

(b) Belt sizes, types, and lengths.

...

(c) Wiring diagrams.

...

.5 Manufacturer's Certificate of Warranty:

...

Manufacturer's Certificate of Warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Substantial Completion. Where longer period is required by the Contract Documents, the longer period shall govern.

...

.6 Parts catalogs: For each piece of equipment furnished, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

...

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and ~~promptly~~ report to the Owner (1) known deviations from the Contract ~~Documents, (2) known deviations~~ Documents and from the most recent construction schedule submitted by the Contractor, and ~~(3)~~ (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections ~~13.4.2 and 13.4.3,~~ 13.5.2 and 13.5.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to

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exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

...

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions ~~or~~ or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

...

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may ~~order~~ authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The ~~Owner shall notify the Contractor of any change in the~~ duties, responsibilities and limitations of authority of ~~the Project representatives.~~such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

...

§ 4.2.11 The Architect will interpret ~~and decide~~ matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

...

§ 4.2.12 Interpretations ~~and decisions~~ of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~

...

§ 4.2.13 The ~~Architect's decisions on matters relating to aesthetic effect will be final if~~ Owner shall have final authority on questions relating to aesthetic effect, provided such authority is exercised in a way which is consistent with the intent expressed in the Contract ~~Documents.~~Documents, and any such determination shall be communicated through the Architect.

...

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall ~~notify the Owner and Architect~~ furnish in writing to the Owner through the Architect the names of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials

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or equipment fabricated to a special design. ~~Within 14 days of receipt of the information, the Architect may notify the Contractor~~ The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect ~~(1)~~ has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the ~~Architect to provide notice~~ Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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§5.2.5 Upon request, the Contractor shall provide to the Owner an executed copy of all subcontracts, purchase orders, and other agreements relating to the Work.

...

§5.2.6 The Contractor shall not sublet the Work as a whole. The approval of subcontractors in no way relieves the Contractor from full responsibility.

...

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and ~~Contractor;~~ Contractor in writing; and

...

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall ~~nevertheless remain legally responsible for all of the successor contractor's~~ be relieved of any legal responsibility under the subcontract if the successor contractor assumes Owner's obligations under the subcontract.

...

§5.5 OWNER PAYMENTS TO SUBCONTRACTORS

...

§5.5.1 In the event of any default hereunder by the Contractor, or in the event the Owner or Architect fails to approve any Application for Payment that is not the fault of a Subcontractor, the Owner may make direct payment to the Subcontractor, less appropriate retainage. In that event, the amount paid the Subcontractor shall be deducted from the payment to the Contractor.

...

§5.5.2 Nothing contained herein shall create any obligation on the part of the Owner to make any payments to any Subcontractor, and no payment by the Owner to any Subcontractor shall create any obligation to make any further payments to any Subcontractor.

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly ~~notify~~ report to the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for such proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to

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proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

PAGE 30

.4 As provided in Section ~~7.3.4.~~7.3.7.

...

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

...

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

...

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

...

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable ~~amount.~~ amount as determined by Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section ~~7.3.4~~ 7.3.7 shall be limited to the following:

PAGE 31

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, ~~workers' compensation insurance, and other employee costs approved by the Architect;~~and workers' compensation insurance;

...

.5 ~~Costs~~ Additional costs of supervision and field office personnel directly attributable to the change.

...

~~§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.~~

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...

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...

~~§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.~~

...

§ 7.5 AGREED OVERHEAD AND PROFIT RATES

...

§ 7.5.1 For any adjustments to the Contract Sum based on other than the unit price method, overhead and profit combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

...

.1 For the Contractor for Work performed by the Contractor's own forces, ten percent (10%) of the cost;

...

.2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractor;

...

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost;

...

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;

...

.5 Costs to which overhead and profit is to be applied shall be determined in accordance with Sub-subparagraphs 7.3.7.1 through 7.3.7.5;

...

.6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;

.7 To facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, material, and subcontracts. When major cost items are Subcontracts, they shall be itemized also.

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...

8. For the Construction Manager when there are adjustments to the Contract sum that increase the GMP total, the Construction Manager's fee shall be at the percentage established in the contract and the combined total of the Construction Manager's fee plus the subcontractors overhead and profit should not exceed 15%.

...

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Claims for extension of time shall be stated in whole or half calendar days.

...

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall be substantially complete with all work shown on or before the date specified for substantial completion in the Contract Documents. Extensions to the Completion Date will be granted only in accordance with Section 8.3.5 below.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by ~~(1) an~~ a wrongful act or neglect of the Owner or Architect, or of an employee of either, or of a ~~Separate Contractor; (2)~~ separate contractor employed by the Owner; or by changes ordered in the Work; ~~(3)~~ or by labor disputes, fire, unusual delay in deliveries, unavoidable ~~casualties, adverse weather conditions documented in accordance with Section 15.1.6.2,~~ casualties or other causes beyond the Contractor's control; ~~(4) by delay authorized by the Owner pending mediation and binding dispute resolution;~~ or ~~(5)~~ by other causes that the ~~Contractor asserts, and the Architect determines,~~ Architect and Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Extensions of time shall be granted only because of delay preventing the execution of the major items of work critical to the schedule for completion of the Work.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay caused by either party under other provisions of the Contract Documents.

...

§ 8.3.4 In the event that the Owner has specified a stipulated completion date, the provisions of 8.3.1 through 8.3.3 do not apply. However, in the event of delay(s) fully beyond the Contractor's control, the Owner may authorize by change order reimbursement for additional costs to accelerate the construction in order to maintain the stipulated completion date.

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§ 8.3.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center's (NCDC's) Surface Data US at http://gis.ncdc.noaa.gov/website/ims-cdo/sod/viewer.htm or other data as mutually agreed by the Architect and Contractor for the Project area or as set forth in an exhibit to the Guaranteed Maximum Price Amendment, if applicable. In allowing delays for weather, the Architect will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis of one (1) calendar day credit for every working day lost, with each separate extension figured to the nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in

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the event that the weather in question affected critical activities on the most current Contractor's Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions. Extensions of Contract Time shall be the sole remedy for delays due to weather conditions; compensation shall not be available.

...

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the ~~total~~ maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be increased pursuant to a Change Order signed by the Owner. Completion of the Work is a condition precedent to Owner's obligation to pay the full Contract Sum.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum~~ Before any work is done on the site and before the first Application for Payment, the Contractor shall submit to the Architect a schedule or breakdown showing the respective amounts (called "values" for convenience) properly allocable to the various portions of the ~~Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect~~ Work and aggregating the total contract sum. Each respective amount or value shall include its part of overhead and profit so that the sum of the items will total the contract sum. Such schedule of values will be prepared so as to facilitate payments by the Contractor to his Subcontractors and shall follow the trade divisions of the specifications so far as practicable. Such schedule and the amount therein shall be in such detail and supported by such data to substantiate its accuracy as the Architect may ~~require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~require. Such schedule, when approved by the Architect, unless it be found to be in error, shall be used only as a basis for the Contractor's Applications for Payment and shall not be taken as evidence of market or other value.

...

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. ~~The~~ Such application shall be notarized, if required, and supported by ~~all~~ such data substantiating the Contractor's right to payment ~~that~~ as the Owner or Architect may require, such as copies of ~~requisitions, and releases and waivers of liens from Subcontractors and~~ requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, submitted in quadruplicate.

...

§9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

...

§9.3.1.4 Contractor is to submit to Architect within 15 days of execution of Owner/Contractor Agreement proposed sample of Lien Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

...

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§9.3.1.5 Monthly Applications for Payment shall include waivers of liens for all work included in the previous months' application for payment. Waiver of Liens for the subcontractors and materialmen shall be the total amount paid prior to the previous months' application for payment.

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§9.3.1.6 With each Application for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to the Contractor under the terms of the Contract Documents and shall also certify that there are not any Mechanics' or Materialmen's Liens outstanding at the date of this Application for Payment, that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of that Application for Payment, and that there is no known basis for the filing of any Mechanics' or Materialmen's Liens against the Surety in connection with the Work, and that waivers and bills paid affidavit forms from all subcontractors and materialmen have been or will be obtained in such form as the Owner may require.

...

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner ~~shall, to the best of the Contractor's knowledge, information, and belief,~~ shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities ~~that~~ making a claim by reason of having provided labor, materials, and equipment relating to the Work.

...

§9.4.3 Contractor shall include as a separate and distinct line item on his pay request a value for trenching and shoring operations. Contractor shall attach to pay request a notarized letter from shoring engineer that designed Contractor's trenching and shoring systems, addressed to Owner, attesting that engineer has (1) reviewed trenching and shoring systems installed in field and found them in conformance with shoring engineer's detailed plans and specifications, (2) line item on Contractor's pay request accurately represents work installed and/or materials on site, and (3) engineer recommends payment to Contractor of line item for trenching and shoring based on engineer's observations.

...

§9.4.4 Contractor's monthly Application for Payment that is submitted without required letter from Contractor's shoring engineer described by Subparagraph 9.4.3 is subject to return without review until letter is submitted.

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.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;~~or~~

...

.7 repeated failure to carry out the Work in accordance with the Contract ~~Documents.~~Documents; or

...

.8 **failure to submit a written plan indicating action by Contractor to regain time schedule for completion of Work within the Contract**

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...

Time.

...

§ 9.5.2 ~~When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.~~Intentionally deleted.

...

§ 9.5.3 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

...

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors ~~and suppliers~~ to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a ~~Subcontractor or supplier,~~ Subcontractor, except as may otherwise be required by law.

...

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of ~~Work not in accordance with the Contract Documents.~~any Work.

PAGE 36

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the ~~Architect or awarded by binding dispute resolution,~~ Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when ~~the Work or designated portion thereof~~ construction is sufficiently complete in accordance with the Contract Documents so that the Owner ~~can occupy or utilize the Work for its intended use.~~may occupy and utilize the Work as a whole for the use for which it is intended.

PAGE 37

§ 9.9.3 ~~Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of~~ In the event of partial use and occupancy by Owner, the Work, or any portion thereof, shall not be deemed substantially complete until the entire Work is substantially complete; and such partial use and occupancy shall not commence any warranty period under the Contract Documents.

...

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the

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Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

PAGE 38

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner **(1)** an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, **(2)** a certificate evidencing that insurance required by the Contract Documents to remain in full force after final payment is currently in effect, **(3)** a written statement ~~that the Contractor knows of no reason that the insurance will not be renewable to~~ satisfactory to the Owner that the insurance will cover the period required by the Contract Documents, **(4)** consent of surety, if any, to final payment, **(5)** documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and **(6)** if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner.~~ Owner; **(7)** certification by the Contractor that (i) all Work has been completed in accordance with the Contract Documents, (ii) the final Application for Payment includes all claims of the Contractor against the Owner arising in connection with the Project and constitutes a waiver and release of any and all claims not presented in that application except for claims arising out of third party actions, cross-claims and counterclaims, and (iii) the Record Drawings maintained by the Contractor pursuant to the Contract Documents and delivered to the Owner or Architect are complete and accurate in all respects; and **(8)** evidence of compliance with all requirements of the Contract Documents, such as notices, certificates, affidavits, or other requirements to complete obligations under the Contract Documents, including but not limited to (i) instruction of the Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems; (ii) delivery of keys to the Owner with keying schedule (master, submaster, and special keys); (iii) delivery to the Owner of the Contractor's warranties as set forth in the Contract Documents and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for the Architect's review and delivery to the Owner; (iv) delivery to the Owner of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work (parts lists and special tools for mechanical and electrical work) in approved form; (v) delivery to the Owner of the Record Drawings; (vi) delivery to the Owner of a Final Waiver and Release of Liens covering all Work for itself and for each Subcontractor, vendor, and material supplier who furnished labor, materials, and services to the Work, executed by an authorized officer and duly notarized; (vii) delivery to the Owner of final waivers of lien from each subcontractor and material supplier who furnished labor, materials, and services to the Work, executed by their respective officers and duly notarized; and (viii) delivery of sales and use tax certificate number of the Contractor. In addition to the foregoing, all other submissions required by other Articles and Paragraphs of the Specifications and other Contract Documents shall be submitted to the Owner before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner and Owner's lender (if any), the Contractor must furnish a bond satisfactory to the Owner and Owner's lender (if any) to indemnify the Owner and Owner's lender (if any) against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and attorneys' fees. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor ~~may~~ must furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

...

§9.10.2.1 In addition to items listed in 9.10.2 to be submitted before Final Payment will be made or remaining retainage released, Contractor shall deliver a permanent certificate of occupancy from local inspection authorities.

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...

§ 9.10.4 The making of final payment shall not constitute a waiver of ~~Claims by the Owner except those arising from~~any Claims by the Owner.

...

~~.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~

...

~~.2 failure of the Work to comply with the requirements of the Contract Documents;~~

...

~~.3 terms of special warranties required by the Contract Documents; or~~

...

~~.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~

...

§ 9.10.6 **In addition to any other damages, failure of the Contractor to achieve final completion within sixty (60) days after the specified date of Substantial Completion, subject to authorized extensions, will result in the Contractor's being responsible for excess Architect's fees. Excess Architect's fees include the cost incurred after sixty (60) days beyond the date of Substantial Completion. Excess Architect's fees will be deducted from the amount due the Contractor.**

...

A. The Contractor shall deliver to the Owner his written guarantee, made out to the Owner and in form satisfactory to the Owner, guaranteeing all of the work under the contract to be free from faulty materials in every particular, and free from improper workmanship, and against injury from proper and usual wear; and agreeing to replace or re-execute without cost to the Owner such work as may be found to be improper or imperfect, and to make good all damage caused to other work or materials, due to such required replacement or re-execution. This guarantee shall be made to cover a period of twelve (12) months from the date of substantial completion as certified by the Architect under this Contract. This guarantee must be furnished to the Owner and approved by him before acceptance and final payment is made.

...

B. Contractor shall provide Owner with copies of all guarantees or warranties which have been made to the Contractor by suppliers or subcontractors as required hereunder, together with an assignment of such warranties and guarantees to the Owner; however, such assignment shall not relieve the Contractor of the responsibility stated in subparagraph (A) above in case of failure of subcontractors or supplies to fulfill the provision of such warranties or guarantees.

C. Neither the Final Certificate, nor payment, nor any provision in the Contract Documents shall relieve the Contractor of responsibility for neglect or faulty materials or workmanship during the period covered by the guarantee.

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§10.2.2.1 **If the Contractor fails to give such notices or fails to comply with such laws, ordinances, rules, regulations, and lawful orders, it shall be liable for and shall indemnify and hold harmless the Owner and the Architect and their respective employees, officers, and agents, against any resulting fines, penalties, judgments, or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder.**

...

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and ~~10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is~~ 10.2.1.3 except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, ~~notice of the~~ written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

...

§10.2.9 The Contractor shall protect and be responsible for any damage to his work or material, from the date of the agreement until the acceptance of the work and shall make good without cost to the Owner, any damage or loss that may occur during this period, except that in the event of partial or total occupancy by the Owner prior to final acceptance, the Owner shall be responsible for any damage caused by such partial or total occupancy. The Contractor shall handle all materials directed, so that it may be inspected by the Architect. All material affected by the weather shall be covered and protected to keep it free from damage while being transported to the site, as well as when it is stored on the site.

...

§10.2.10 The Contractor shall have full responsibility for preventing overstress of any structure or any part of member of it during construction. The Contractor shall fully check the effect of his operations in this regard, and shall provide all temporary support and connections required.

...

§10.2.11 The Contractor at his own expense and option shall employ watchmen or erect adequate fencing at such time as necessary to protect or attend his work, including times when building exterior is breached to protect it and its contents.

...

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§ 10.2.12 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the Project site except to the extent such Hazardous Materials: (i) are necessary for the prosecution of the Work; (ii) are required pursuant to the Contract Documents; and (iii) have been approved in writing by Owner. Any Hazardous Materials allowed to be used on the Project site shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus Hazardous Materials, as well as any other Hazardous Materials that have been placed, released, or discharged on the Project site by the Contractor or any of its employees, agents, suppliers, or Subcontractors, shall be removed from the Project site at the earlier of: (i) the completion of the Work requiring the use of such Hazardous Materials; (ii) the completion of the Work as a whole; or use of such Hazardous Materials; (ii) the completion of the Work as a whole; or (iii) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. Any damage to the Work, the Project site, or any adjacent property resulting from the improper use of or any discharge or release of Hazardous Materials shall be remedied by the Contractor at its sole cost and expense and in compliance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site. The Contractor shall provide the Owner with copies of all warning labels on products which the Contractor or any of its Subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, which relate to any Hazardous Materials on the Project site. Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by Owner), and hold the Owner and Architect harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing or remedying the effect of any Hazardous Materials on, under, from, or about the Project site, arising out of or relating to, directly or indirectly, the Contractor's failure to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and any substances, materials, or wastes that are or become regulated under federal, state, or local law.

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§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the ~~condition.~~condition in writing.

...

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be

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extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

...

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~Intentionally deleted.

...

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Intentionally deleted.

...

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is ~~located.~~ located as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project:

...

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

...

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Clause 11.1.1 but required by the Contract Documents to be covered by the insurance required by that Clause;

...

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

...

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.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

...

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

...

.7 Claims for bodily injury or property damage arising out of completed operations; and

...

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section ~~The~~ 3.18.

...

The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

...

§ ~~11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~11.1.2.1 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be

...

~~§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

...

~~§ 11.2 Owner's Insurance~~

...

~~§ 11.2.1 The Owner shall purchase and maintain insurance of the types~~ "Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

...

~~and limits of liability, containing the endorsements,~~ 1. Premises Operations (including X, C and U

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coverage as applicable).

...

2. Independent Contractor's Protective

...

~~and subject to the terms~~ 3. Products and Completed Operations.

...

4. Personal Injury Liability.

...

5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.

...

~~and conditions, as described in the Agreement or elsewhere in the Contract Documents.~~ 6. Owned, non-owned and hired motor vehicles."

...

~~The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~ §11.1.2.2 The insurance required by Subparagraph 11.1.1 shall be written by an insurance company having an A rating or better by A.M. Best and shall be written in limits for not less than the minimum required by law or the following:

...

1. Worker's Compensation:

...

(a) State: Statutory

...

(b) Applicable Federal: Statutory

...

(c) Employer's Liability: $1,000,000,000 per Accident

...

$1,000,000,000 Disease, Policy Limit

...

$1,000,000 Disease, Each Employee

...

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2. Comprehensive or Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations):

...

(a) Each Occurrence: $1,000,000

...

Aggregate: $2,000,000

...

(b) Products and Completed Operations to be maintained for two years after final payment: $2,000,000 Aggregate

...

~~§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages~~ (c) Coverage to be extended to include the interests of the Architect and his consultants.

...

(d) No total pollution exclusion should be included.

...

~~and in~~ 3. Business Auto $1,000,000 Combined Single Limit for Bodily Injury and Property Damage.

...

4. Umbrella Excess Liability:

...

(a) Over Primary Insurance: $1,000,000 Each Occurrence

...

5. Occurrence Policy: $1,000,000 Each Occurrence

...

(applicable for asbestos related projects only)

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~~the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement~~ If the General Liability coverage is provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverage required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.

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...

~~of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain~~ §11.1.2.3 Each policy of insurance listed above shall be purchased and maintained by the Contractor and each certificate of insurance for said insurance shall contain a complete waiver of subrogation against Owner, Architect and Architect's Engineers. Each certificate shall also list Owner, the Contractor of the Owner, Architect and Architect's Engineers as a party insured.

...

~~insurance that will protect the interests~~ §11.1.2.4 Contractor shall not commence work at the site under this Contract until he has obtained all required insurance and submitted appropriate certifications.

...

~~of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~ § 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

...

§ ~~11.2.3~~ 11.1.4 Notice of Cancellation or Expiration of ~~Owner's Required Property~~ Contractor's Required Insurance. Within three (3) business days of the date the ~~Owner~~ Contractor becomes aware of an impending or actual cancellation or expiration of any ~~property~~ insurance required by the Contract Documents, the ~~Owner~~ Contractor shall provide notice to the ~~Contractor~~ Owner of such impending or actual cancellation or expiration. ~~Unless~~ Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of ~~the Contractor: (1) the Contractor, upon receipt of notice from~~ the Owner, ~~shall~~ have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by ~~either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order.~~ the Contractor. The furnishing of notice by the ~~Owner~~ Contractor shall not relieve the ~~Owner~~ Contractor of any contractual obligation to provide any required coverage.

...

§ 11.2 Owner's Insurance

...

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The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

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§ 11.6 PERFORMANCE BOND AND PAYMENT BOND

...

§ 11.6.1 The Contractor shall furnish a Performance Bond and a Payment Bond. The amount of each bond shall be equal to 100 percent of the Contract Sum. Any person or firm executing a bond upon the Contractor's Work under this Contract shall be deemed to have consented in advance to any changes in the Work made by order of Owner as set forth in Article 7; and any such changes made under these provisions shall in no way alter or impair the obligations of the person or firm executing such bond.

...

§11.6.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

...

§11.6.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney, indicating the monetary limit of such power.

...

§11.6.1.3 The Contractor shall provide each bond on the form required by Owner.

...

§11.6.1.4 No sureties will be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation pending against the Owner during the term of this Contract. All bonds shall be executed by a corporate surety authorized to do business in the State of Texas. The surety company or companies furnishing the surety bonds for this Contract must show a Texas Department of Insurance underwriting limitation not less than the total amount of the Contract. Each bond shall be executed by the Contractor and the Owner. Should any surety be determined unsatisfactory at any time by the Owner, notice will be given to the Contractor, and the Contractor shall immediately provide a new surety (complying with Article 11) acceptable to the Owner and at no additional cost to the Owner. This Contract shall not be valid nor will any payments be due or paid until approval of each bond by the Owner.

...

§ 11.6.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, ~~the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate.~~ costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, ~~the costs of uncovering the Work,~~ such costs and the cost of correction, shall be at the Contractor's ~~expense.~~expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

...

§ 12.2.2.3 The one-year period for correction of Work shall ~~not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~be extended from the date corrective Work is performed by the Contractor.

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§12.2.6 Owner shall have the right to operate equipment until defects are corrected and warranties met, and shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear.

...

The Contract shall be governed by the law of the place where the Project is ~~located, excluding that jurisdiction's choice~~ located.

...

~~of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~§13.1.2 The Owner has adopted a prevailing wage rate schedule as more fully described in the Project Manual or other Contract Documents. The Contractor and each Subcontractor shall pay to all laborers, workmen and mechanics employed by them in the execution of this Work not less than such rates for each craft or type of workman or mechanic needed to execute the Work. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the prevailing wage rates adopted by Owner. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates shown. In compliance with Texas Government Code, Chapter 2258, the Contractor and each subcontractor shall forfeit, as a penalty to the Owner, sixty dollars ($60.00) for each laborer, workman or mechanic employed by them, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the rates adopted by Owner.

...

§ 13.3 Written Notice

...

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

...

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§ 13.4 Rights and Remedies

...

§ ~~13.3.1~~ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

...

§ ~~13.3.2~~ 13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

...

§ ~~13.4~~ 13.5 Tests and Inspections

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§ ~~13.4.1~~ 13.5.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations ~~concluded. The Owner shall directly arrange and pay for~~ concluded and (2) tests, inspections, or approvals where building codes or applicable laws or regulations ~~so require.~~prohibit the Owner from delegating their cost to the Contractor.

...

§ ~~13.4.2~~ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section ~~13.4.1,~~ 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section ~~13.4.3,~~ 13.5.3, shall be at the Owner's expense.

...

§ ~~13.4.3 If~~ 13.5.3 If such procedures for testing, inspection, or approval under Sections ~~13.4.1 and 13.4.2~~ 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

...

§ ~~13.4.4~~ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

...

§ ~~13.4.5~~ 13.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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...

§ ~~13.4.6~~ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

...

§ ~~13.5~~ 13.6 Interest

...

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at twelve percent (12%) per annum.

...

§ 13.7 Time Limits on Claims

...

~~the rate the parties agree upon in writing or,~~ The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

...

§13.8 Equal Opportunity

...

§13.8.1 The Contractor shall maintain policies of employment as follows:

...

§13.8.1.1 The Contractor and Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in ~~the absence thereof,~~ conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

...

§13.8.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

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...

§13.9 Intentionally Deleted.

...

§13.10 Working Time and Working Restrictions

...

§13.10.1 THE ENTIRE BUILDING SHALL REMAIN TOBACCO-FREE AT ALL TIMES.

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§13.10.2 Normal working hours and normal working days for Contractor's work on this Project shall be between 7:00 a.m. and 8:00 p.m., Monday through Friday, except as otherwise noted below. The Owner may require that certain limited portions of the Work be accomplished after normal working hours or other than on normal working days.

...

§13.10.3 Should Contractor desire to carry out portions of the Work at times other than between the hours and days stipulated above, he shall submit written request to do so to the Owner together with specific calendar days and hours he wishes to work and a description of the activities he proposes to carry out during those times. Construction activities will not be permitted at ~~the legal rate prevailing from~~ times other than those specified or subsequently approved in writing by the Owner. Only those activities specifically approved by Owner will be permitted during hours or on days other than those stipulated above.

...

§13.10.4 No extension of time will be granted and no "extra" or additional amount will be paid due to failure of Owner to approve performing of construction activities during hours other than those stipulated above.

...

§13.10.5 Work performed other than between 7:00 a.m. and 8:00 p.m., Monday through Friday, shall be done at no additional cost, whether work at other times is required by Owner or requested by Contractor and approved by Owner.

...

§13.10.6 If necessary in order to complete Work within time fixed in Contract or any extension thereof, Contractor shall request approval from Owner to perform work before 7:00 a.m. or after 8:00 p.m. or on weekends or holidays, and if Owner approves, shall perform work during such additional times and on such additional days as have been approved, at ~~the place where~~ no additional cost to Owner. Work during such additional times and on such additional days shall continue only so long as is necessary to return work to on schedule or to complete the Work within the Contract Date.

...

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~~the Project is located.~~§13.10.7 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the ~~Contractor, a Subcontractor, a Sub-subcontractor,~~ Contractor or a Subcontractor, Sub-subcontractor or their agents or employees, or any other persons or entities performing portions of the ~~Work,~~ Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

...

.3 Because ~~the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because~~ the Owner has not made payment on a Certificate for Payment approved by the Architect within thirty (30) days after receipt of written notification from Contractor that the time for payment stated in the Contract ~~Documents; or~~

...

~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~Documents as expired.

...

§ 14.1.2 ~~The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.~~Intentionally deleted.

...

§ 14.1.3 If one of the reasons described in Section 14.1.1 ~~or 14.1.2~~ exists, the Contractor may, upon ~~seven days'~~ fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, as well as reasonable overhead and profit on Work not ~~executed, and costs incurred by reason of such termination.~~executed.

...

§ 14.1.4 ~~If~~ Intentionally deleted.

...

~~the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under~~ §14.1.5 Any payment due to, or recovered by, Contractor under paragraph 14.1.3 above shall not exceed the remainder, if any, after subtracting the total of the previous payments made by Owner to Contractor from the lesser of:

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...

~~the Contract Documents with respect to matters important to the progress of the Work,~~ (a) the fair value (not Contractor's cost or profit) of the properly executed Work; or

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~~the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~(b) an amount determined by multiplying the contract price, as adjusted by change orders, times the percentage of Work completed.

...

.4 otherwise is guilty of substantial breach of a provision of the Contract ~~Documents.~~Documents; or

...

.5 Contractor becomes insolvent or makes a general assignment for the benefit of its creditors.

...

§ 14.2.2 When any of the ~~reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action,~~ above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

...

§ 14.2.4.1 The costs of finishing the Work include, without limitation, all direct costs incurred by the Owner by reason of the termination of the Contractor as stated herein, including without limitation, attorney and other professional fees, insurance premiums and interest costs.

...

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum ~~shall~~ may include profit. No adjustment shall be made to the extent

...

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

PAGE 50

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within ~~21~~ 10 days

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after occurrence of the event giving rise to such Claim or within ~~21~~ 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

...

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. ~~In such event, no decision by the Initial Decision Maker is required.~~

...

§ 15.1.4.2 ~~The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will~~ The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

...

If the Contractor wishes to make a Claim for an increase in the Contract ~~Sum, notice as provided in Section 15.1.3 shall be given~~ Sum or for extra costs or damages, he shall give the Architect and the Owner written notice thereof within ten days after the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the portion of the Work that is the subject of the ~~Claim. Prior notice is not required for Claims relating to~~ Claim except in an emergency endangering life or property ~~arising under Section 10.4.~~ in which case the Contractor shall proceed in accordance with paragraph 10.4. Such claim, with the recommendation of the Architect, will be submitted to the Owner and its action shall be final and binding. Failure to give such notice shall be a waiver of the claim and such claim or possible claim shall be invalid and unenforceable unless so made. Compliance by the Contractor with this paragraph does not validate any claim which is otherwise invalid.

...

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, ~~notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.~~ the Contractor shall provide written notice as required by Sections 8.3.1 and 8.3.5.

...

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented ~~by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.~~ in accordance with Section 8.3.5.

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§ 15.2 Initial Decision - Intentionally Deleted

...

~~**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

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...

~~§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~

...

~~§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~

...

~~§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

...

~~§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

...

~~§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

...

~~§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

...

~~§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

...

~~§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

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...

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to ~~binding dispute resolution.~~the institution of legal or equitable proceedings by either party.

...

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation ~~which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.~~ which shall be in accordance with the provisions of Section 154.023, Texas Civil Practice and Remedies Code. A request for mediation shall be ~~made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~filed in writing with the other party to this Contract.

...

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~Intentionally deleted.

...

§ 15.4 Arbitration – Intentionally Deleted

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~~§ 15.4.1 If~~

...

§ARTICLE 16: ADDITIONAL PROVISIONS FOR LIQUIDATED DAMAGES

...

§16.1 Contractual Provisions

...

~~the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise,~~ §16.1.1 **It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be**

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done hereunder are essential conditions of this Contract.

...

~~**shall be** administered by the American Arbitration Association **in accordance with** its Construction Industry Arbitration Rules in effect on **the** date **of the** Agreement. The Arbitration shall be conducted in **the** place where **the** Project is located, unless another location is mutually agreed upon. A demand for arbitration~~ §16.1.2 **Contractor agrees that said work shall be prosecuted in accordance with the provisions of this Contract at such a rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and Owner, that the time for the completion of the Work described herein is a reasonable time for completion of the same.**

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~~shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~§16.1.3 If the said Contractor shall neglect, fail or refuse to complete the Work within the time indicated above or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to

...

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract, as hereinafter set forth for **$500.00, for each and every calendar day** that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. Such damages shall be cumulative and not in lieu of any other rights or remedies of Owner against Contractor as a result of any breach by Contractor hereunder.

...

~~§15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~16.1.4 **The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain.**

...

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in~~ §16.1.5 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever, and where under the Contract an additional time is allowed for the completion of any work, the new time fixed by such an extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess costs when the delay in completion of the Work is due:

...

~~any court having jurisdiction thereof.~~**.1** To any

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...

~~§ 15.4.4 Consolidation or Joinder~~ performance, priority or allocated order duly issued by the Government;

...

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~.2 To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not limited to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

...

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~.3 To any delays of subcontractors or suppliers occasioned by any of the causes specified in subparagraphs of this Article.

...

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~§16.1.6 Provided, further, that the Contractor shall, within 10 days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner in writing of the cause of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Christopher C. Zillmer/mls, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:51:59 CT on 01/22/2021 under Order No. 6923218140 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Christopher C. Zillmer/mls

(Signed)

(Title)

1-21-2021

(Dated)

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AIA® Document A133™ – 2019 Exhibit B

Insurance and Bonds

A133-2019 Exhibit B v1 (09-10-2020)

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 19th day of January in the year Two Thousand Twenty-One (2021)
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

ARBH File No. 6262.0015: City of Sherman/Police Headquarters
Sherman Police Headquarters Facility
Corner of West Travis and Northgate Drive
Sherman, Texas 75090
The new facility shall consist of a new single story police headquarters, a single story annex building, public parking, and secure parking.

THE OWNER:
(Name, legal status, and address)

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Thos. S. Byrne, Inc.
551 E. Berry Street
Fort Worth, Texas 76110
817.335.3394

TABLE OF ARTICLES

B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

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ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance required under section B.2.3, and, upon the Construction Manager's request, provide evidence thereof by a certificate of insurance reasonably acceptable to the Construction Manager.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance, at Owner's discretion.

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall provide and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in Texas, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. Loss, if any, shall be adjusted with, and made payable to, the Owner on behalf of all insureds as their interests may appear. The Owner may satisfy this obligation by enrolling the Project in a consortium or agency of the State of Texas that provides coverages of the types and in the amounts set forth herein.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of

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coverage. Notwithstanding the foregoing, any partial occupancy or use by Owner that would cause cancellation, lapse, or reduction of insurance does not constitute an event of default by Owner hereunder.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall provide and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.

The Owner may, but shall not be required to, provide and maintain the insurance selected and described below. *(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[ ] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,** to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[ ] **§ B.2.4.2 Ordinance or Law Insurance,** for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[ ] **§ B.2.4.3 Expediting Cost Insurance,** for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[ ] **§ B.2.4.4 Extra Expense Insurance,** to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[ ] **§ B.2.4.5 Civil Authority Insurance,** for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[ ] **§ B.2.4.6 Ingress/Egress Insurance,** for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[ ] **§ B.2.4.7 Soft Costs Insurance,** to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects,

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engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.
The Owner shall purchase and maintain the insurance selected below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

[ ] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

[ ] **§ B.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner on an ACORD form evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies. At Owner's request, the Construction Manager shall provide Owner a copy of the policies of insurance required hereunder. Owner's failure to require the submission of the certificates of insurance, or any of them, shall not excuse the Construction Manager of its obligation to procure and maintain the insurance required herein.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. The Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in Texas having a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent. The Construction Manager shall maintain

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the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

With respect to the Construction Manager's completed operations coverage, the duration shall continue through the end of any required maintenance of completed operations.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars ($ 1,000,000.00) each occurrence, Two Million Dollars ($ 2,000,000.00) general aggregate, and Two Million Dollars ($ 2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
.2 personal injury and advertising injury;
.3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
.4 bodily injury or property damage arising out of completed operations; and
.5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

.1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
.2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
.3 Claims for bodily injury other than to employees of the insured.
.4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
.5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
.6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
.7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
.8 Claims related to roofing, if the Work involves roofing.
.9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
.10 Claims related to earth subsidence or movement, where the Work involves such hazards.
.11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, hired and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars ($ $1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

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§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars ($ $1,000,000.00) each accident, One Million Dollars ($ $1,000,000.00) each employee, and One Million Dollars ($ $1,000,000.00) policy limit.

§ B.3.2.7 Intentionally Deleted.

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

§ B.3.2.11 Intentionally Deleted.

§ B.3.2.12 Intentionally Deleted.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in Texas having a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

Umbrella or Excess Liability insurance with a minimum limit of $2,000,000.00.

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[X] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

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[ ] § B.3.3.2.2. Intentionally Deleted.

[ ] § B.3.3.2.3 **Asbestos Abatement Liability Insurance**, with policy limits of not less than ($) per claim and ($) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ ] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[ ] § B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[ ] § B.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

§ B.3.4 Performance Bond and Payment Bond
The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in Texas, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum ($0.00)
Payment Bond	In the total amount of the Cost of the Work, as modified during the term of construction
Performance Bond	In the total amount of the Cost of the Work, as modified during the term of construction

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™ or as required by the Texas Government Code, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Without limiting any of the other obligations or liabilities of the Construction Manager, the Construction Manager shall require each subcontractor of every tier performing work under the Contract, at the subcontractor's own expense, to maintain during the term of the engagement of such subcontractor the types and limits of insurance set forth above that are appropriate with the work being performed. All subcontractors' liability insurance shall name the Construction Manager as an additional insured.

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Additions and Deletions Report for

AIA® Document A133™ – 2019 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

A133-2019 Exhibit B v1 (09-10-2020)

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 19th day of January in the year Two Thousand Twenty-One (2021)

...

ARBH File No. 6262.0015: City of Sherman/Police Headquarters
Sherman Police Headquarters Facility
Corner of West Travis and Northgate Drive
Sherman, Texas 75090
The new facility shall consist of a new single story police headquarters, a single story annex building, public parking, and secure parking.

...

City of Sherman
220 W. Mulberry Street
Sherman, TX 75090

...

Thos. S. Byrne, Inc.
551 E. Berry Street
Fort Worth, Texas 76110
817.335.3394

PAGE 2

Prior to commencement of the Work, the Owner shall secure the ~~insurance, and provide evidence of the coverage, required under this Article B.2~~ insurance required under section B.2.3, and, upon the Construction Manager's request, provide ~~a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~evidence thereof by a certificate of insurance reasonably acceptable to the Construction Manager.

...

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability ~~insurance.~~insurance, at Owner's discretion.

...

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§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall ~~purchase~~ provide and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in ~~the jurisdiction where the Project is located,~~ Texas, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. ~~This insurance shall include the interests of mortgagees as loss payees.~~ Loss, if any, shall be adjusted with, and made payable to, the Owner on behalf of all insureds as their interests may appear. The Owner may satisfy this obligation by enrolling the Project in a consortium or agency of the State of Texas that provides coverages of the types and in the amounts set forth herein.

...

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 ~~or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect~~ until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

...

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. ~~The Owner and the Construction Manager shall take no action with respect to partial occupancy or use~~ Notwithstanding the foregoing, any partial occupancy or use by Owner that would cause cancellation, lapse, or reduction of ~~insurance, unless they agree otherwise in writing.~~ insurance does not constitute an event of default by Owner hereunder.

PAGE 3

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall ~~purchase~~ provide and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

...

The Owner ~~shall purchase~~ may, but shall not be required to, provide and maintain the insurance selected and described below.

PAGE 4

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner on an ACORD form evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies. At Owner's request, the Construction Manager shall provide Owner a copy of the policies of insurance required hereunder. Owner's failure to require the submission of the certificates of insurance, or any of them, shall not excuse the Construction Manager of its obligation to procure and maintain the insurance required herein.

...

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§ B.3.1.3 **Additional Insured Obligations.** ~~To the fullest extent permitted by law, the~~ The Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

...

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in ~~the jurisdiction where the Project is located.~~ Texas having a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
PAGE 5

With respect to the Construction Manager's completed operations coverage, the duration shall continue through the end of any required maintenance of completed operations.

...

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars ($ 1,000,000.00) each occurrence, Two Million Dollars ($ 2,000,000.00) general aggregate, and Two Million Dollars ($ 2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

...

§ B.3.2.3 Automobile Liability covering vehicles owned, hired and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars ($ $1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.
PAGE 6

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars ($ $1,000,000.00) each accident, One Million Dollars ($ $1,000,000.00) each employee, and One Million Dollars ($ $1,000,000.00) policy limit.

§ B.3.2.7 ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~ Intentionally Deleted.

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than One Million Dollars ($ 1,000,000.00) per claim and One Million Dollars ($ 1,000,000.00) in the aggregate.

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§ B.3.2.11 ~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ($) per claim and ($) in the aggregate.~~Intentionally Deleted.

§ B.3.2.12 ~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ($) per claim and ($) in the aggregate.~~Intentionally Deleted.

...

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in ~~the jurisdiction where the Project is located.~~ Texas having a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

Umbrella or Excess Liability insurance with a minimum limit of $2,000,000.00.

...

[X] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

[ ] § B.3.3.2.2. Intentionally Deleted.

[ ] ~~§ B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than ($) per claim and ($) in the aggregate, for Work within fifty (50) feet of railroad property.~~

[ ] ~~§ B.3.3.2.3 Asbestos Abatement Liability Insurance~~, with policy limits of not less than ($) per claim and ($) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

...

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in ~~the jurisdiction where the Project is located,~~ Texas, as follows:

...

Payment Bond	In the total amount of the Cost of the Work, as modified during the term of construction
Performance Bond	In the total amount of the Cost of the Work, as modified during the term of construction

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document ~~A312™,~~ A312™ or as required by the Texas Government Code, current as of the date of this Agreement.

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...

Without limiting any of the other obligations or liabilities of the Construction Manager, the Construction Manager shall require each subcontractor of every tier performing work under the Contract, at the subcontractor's own expense, to maintain during the term of the engagement of such subcontractor the types and limits of insurance set forth above that are appropriate with the work being performed. All subcontractors' liability insurance shall name the Construction Manager as an additional insured.

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Construction Manager-at-Risk for New Police Headquarters Facility RFP - Step 1 Scoring Evaluation

Evaluation Criteria	Schmoldt Construction	Key Construction, Texas, LLC	AUI Partners, LLC	Pogue Construction Company	W.B. Kibler Construction Company	Byrne Construction Services	Lee Lewis Construction, Inc.	Crossland Construction Company, Inc.	Harris, Walker & Harper	O'Haver Construction	Turner Construction Company	Core Construction	Pete Durant & Associates
CMAR Experience, including References (15%)	8.8	12.0	13.3	14.6	11.8	13.9	14.4	12.9	13.0	10.8	13.4	14.1	10.3
Necessary Resources Capabilities (10%)	6.3	8.0	7.8	9.6	8.0	9.6	9.4	9.0	8.8	7.4	9.5	9.4	6.1
Staff Qualifications & Experience (10%)	5.3	8.1	8.0	9.4	8.1	9.6	9.8	6.8	7.0	6.1	8.9	9.8	5.5
Past Performance w/ Texas Cities, Counties, Etc. (15%)	8.6	11.3	12.1	13.8	11.6	14.0	14.0	12.3	12.4	10.5	13.5	13.9	10.9
Construction Methodology & Technology Knowledge (10%)	7.3	8.4	8.0	9.6	7.9	9.5	9.6	8.1	8.0	7.9	9.4	9.6	7.8
Past Ability to Meet Project Schedules (10%)	6.4	7.9	8.0	9.5	8.5	9.1	9.4	9.0	8.3	8.6	9.1	9.5	7.8
Safety Record (Accurate/Verifiable) (10%)	5.9	8.8	8.4	9.5	8.0	9.6	8.9	9.5	9.3	9.4	9.6	9.9	7.1
Ability to Complete Projects within Budget (20%)	13.3	16.6	16.8	19.0	15.8	18.3	18.4	17.3	16.3	16.1	18.0	18.1	15.5
Total Points Distributed	61.6	81.0	82.3	**95.0**	79.6	**93.6**	**93.8**	84.8	82.9	76.8	**91.4**	**94.3**	70.9

Construction Manager-at-Risk for New Police Headquarters Facility RFP - STEP 2 Proposal (Fees & General Conditions)

Step 2 - Proposal	Pogue Construction Company	Lee Lewis Construction, Inc.	Core Construction Company, Inc.	Byrne Construction Services	Turner Construction Company
Pre-Construction Phase					
Pre-Construction Phase Fee ($)	$ 20,000	$ 5,000	$ 20,000	**$ 15,000**	$ 10,000
Construction Phase					
Construction Phase Fee Percentage (%)	1.00%	1.95%	3.00%	**2.45%**	2.35%
Construction Phase Fee ($)	$ 120,000	$ 234,000	$ 360,000	**$ 294,000**	$ 282,000
Not-To-Exceed General Conditions Costs					
General Conditions Percentage (%)	4.97%	3.77%	6.39%	**6.42%**	4.48%
General Conditions Dollars ($)	$ 596,459	$ 452,344	$ 767,338	**$ 769,927**	$ 537,983
Monthly General Conditions Dollars ($)	$ 39,685	$ 30,156	$ 51,155.87	**$ 51,328**	$ 38,427

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 3.**

Meeting Date: 02/01/2021

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 6699***

Authorizing Execution of a Professional Services/Consultant Agreement with Perkins Engineering Consultants, Inc. for Design of the Post Oak Wastewater Treatment Plant Equalization Basin Improvements

Issue:

To consider a contract for professional services/consultant agreement with Perkins Engineering Consultants, Inc. for engineering services to design the Post Oak Wastewater Treatment Plant Equalization Basin Improvements

Background:

This project is for the design of the repair of impacted sloped basin walls and localized levee issues, and replacement of slide gate actuators at fine screens, clarifier control station, and aeration basin bypass.

Origination:

Engineering Department

Financial Consideration:

The total Detailed Engineering Services fee will be $96,390.00 and the total Authorized Special Services fee will be $53,469.00, for a total funding amount of $149,859.00. Funding in the 2020 GTUA bond issue will be used as well as funding from the city's 2021 Capital Improvement Program.

Staff Recommendation:

It is recommended that the contract for professional services/consultant agreement with Perkins Engineering Consultants, Inc. for engineering services to design the Post Oak Wastewater Treatment Plant Equalization Basin Improvements be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6699
Agreement
Location Map

RESOLUTION NO. 6699

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES/CONSULTANT AGREEMENT WITH PERKINS ENGINEERING CONSULTANTS, INC. FOR DESIGN OF THE POST OAK WASTEWATER TREATMENT PLANT EQUALIZATION BASIN IMPROVEMENTS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services/Consultant Agreement with Perkins Engineering Consultants, Inc. for design of the Post Oak Wastewater Treatment Plant Equalization Basin Improvements, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the_____ day of_____, 2021.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____ **BY:** _____
LINDA ASHBY, CITY CLERK **DAVID PLYLER, MAYOR**

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____
NAME: _____
CITY ATTORNEY

Professional Services/Consultant Agreement

ENGINEERING SERVICES AGREEMENT

This AGREEMENT or CONTRACT is made and entered into this ___ day of _____ 20__, by and between the City of Sherman, Texas hereinafter also called the OWNER or City, and Perkins Engineering Consultants, Inc. hereinafter called the ENGINEER or Consultant. On consideration of the mutual agreements herein and subject to the following terms and conditions, the parties mutually agree as follows:

ARTICLE I.
SERVICES TO BE PROVIDED

ENGINEER agrees to furnish professional engineering services in accordance with the terms and conditions of this AGREEMENT (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

ENGINEER shall conduct professional engineering services generally described as follows:

Post Oak Wastewater Treatment Plant
Equalization Basin Improvements

ARTICLE II.
SCOPE OF WORK

During the term of this AGREEMENT, ENGINEER shall perform at the request and requirements of the Engineering Department of the City of Sherman, the stated services and the indicated fee schedule attached as **EXHIBIT A.**

ARTICLE III.
TERM

The contract term shall commence on the date of this AGREEMENT and extend to 30th day of November 2022. The contract term may be extended by mutual AGREEMENT of the parties.

ARTICLE IV.
PROJECT INITIATION

Prior to the OWNER issuing a work order to proceed with any assessments, surveys, or other related work, ENGINEER shall provide OWNER with a written proposal detailing the scope of services and providing a fee estimate for proposed work. Said costs are to be based on the attached fee schedule. Final cost, excluding an approved change order, may not exceed the cost estimate by more that 10 percent without written approval of the OWNER.

ARTICLE V.
FEES

Fees for services performed under this AGREEMENT shall be based on an hourly rate for personnel, equipment, and related services as detailed on the fee schedule attached as **EXHIBIT A** to this AGREEMENT. Subcontract services such as consulting with other engineers, as well as other services not specifically listed on the fee schedule, will be performed by subconsultants who operate under a subcontract agreement with ENGINEER. Fees shall be payable from the currently available funds. In the event funds are not available, ENGINEER shall not be obligated to perform the work.

ARTICLE VI.
PAYMENT TERMS

ENGINEER will invoice OWNER for work performed on a monthly basis. In the case of short duration projects, invoicing will be upon project completion, with the invoice issued upon delivery of appropriate proposals or documents. Alternative invoicing methods may be acceptable provided they are agreed to prior to the work being undertaken.

ARTICLE VII.
INSURANCE

Prior to the commencement of services under this AGREEMENT, ENGINEER shall obtain standard comprehensive professional liability insurance coverage in an amount of at least $1,000,000.00 per claim with a $2,000,000.00 aggregate policy limit per year, covering the services provided under this AGREEMENT. A “claims made” policy is acceptable subject to coverage being maintained during the course of the PROJECT and up to two (2) years after completion and acceptance of PROJECT by the City. ENGINEER shall maintain such coverage during all phases of engineering services and for two (2) years after substantial completion of the PROJECT. The OWNER shall be supplied with a certificate of such coverage which shall provide for a thirty (30) day notice of cancellation, non-renewal, or change in limits by endorsement, to the OWNER by certified mail.

ENGINEER will maintain general insurance coverage as follows:

A. Worker’s Compensation Insurance – Statutory as required by the Texas Labor Code.
B. Employer’s Liability Insurance - $100,000 per accident; $300,000 per disease; $100,000 occupational disease per employee.
C. Commercial General Liability Insurance - $2,000,000 per occurrence; $2,000,000 aggregate policy limit applies per project.
D. Automobile Liability Insurance - $1,000,000 CSL
E. Professional Liability - $1,000,000 per occurrence; $2,000,000 aggregate policy limit. A “claims made” policy is acceptable subject to coverage being maintained during the course of the project and up to two (2) years after completion and acceptance of the project by the City.

ENGINEER shall maintain such coverage during all phases of engineering services and for two (2) years after substantial completion of the PROJECT. The OWNER shall be supplied with a certificate of such coverage which shall provide for a thirty (30) day notice of cancellation, non-renewal, or change in limits by endorsement, to the OWNER by certified mail.

The OWNER, City of Sherman, including its officers, officials, employees, Boards and Commissions, and volunteers shall be named as an additional insured by endorsement to the general insurance coverage listed in this AGREEMENT, excluding Workers’ Compensation, Employers’ Liability, and Professional Liability (for which a waiver of subrogation is required to be issued in favor of the OWNER), with regard to the ENGINEER’S activities as required by this CONTRACT. The coverage shall contain no special limitations on the scope of protection afforded to the OWNER, and all premiums arising from the coverage herein shall be the responsibility of the ENGINEER.

ARTICLE VIII.
INDEMNIFICATION

The ENGINEER shall hold harmless and indemnify the OWNER from all claims and liability for damage arising out of or in connection with this CONTRACT to the extent that the damage is caused by or results from failure by the ENGINEER or the ENGINEER'S agent, consultant under contract, or another entity over which the ENGINEER exercises control to perform services with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer, or that results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the ENGINEER or the ENGINEER'S agent, consultant under contract, or another entity over which the ENGINEER exercises control. The ENGINEER shall also save harmless the OWNER from any and all expenses, including attorney fees which might be incurred by the OWNER in litigation or otherwise resisting said claim or liabilities, which might be imposed on the OWNER as the result of such negligent acts or omissions by the ENGINEER in proportion to the ENGINEER'S liability.

ENGINEER further agrees that during the course and scope of this AGREEMENT, except with OWNER'S knowledge and consent, ENGINEER shall not represent any third party against the OWNER in any claim, litigation, or other matter, or be retained to act as an expert witness for any third party in any claim, litigation, or any other matter that is, or may be, adversarial to the OWNER, as determined by the OWNER.

Acceptance by the OWNER of the ENGINEER'S work shall not constitute nor be deemed a release of the responsibility and liability of ENGINEER, its employees, subcontractors, agents, or consultants for the accuracy and competency of ENGINEER'S work; nor shall such acceptance be deemed to be an assumption of such responsibility by the OWNER for any defect, error, or omission in the ENGINEER'S work, its employees, subcontractors, agents, and consultants. ENGINEER, shall without additional costs or fee, correct or revise any errors or deficiencies in his performance.

The parties hereby acknowledge and agree that OWNER is entering into this AGREEMENT pursuant to its governmental functions and that nothing contained in the AGREEMENT shall be construed as constituting a waiver of the OWNER'S governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law. Notwithstanding anything to the contrary herein, the parties hereby acknowledge and agree that to the extent this AGREEMENT is subject to the provisions of Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the OWNER'S immunity from suit is waived only as set forth in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE. Further, the parties agree that this AGREEMENT is made subject to all applicable provisions of the Texas Civil Practices and Remedies Code ("CPRC"), including but not limited to all defenses, limitations, and exceptions to the limited waiver of immunity from liability provided in Chapter 101 and Chapter 75.

ARTICLE IX.
COMPLIANCE WITH LAWS

The ENGINEER, its consultants, agents, employees and subcontractors shall comply with all applicable Federal and State laws, charter and ordinances of the City of Sherman, as amended, and all other applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. ENGINEER shall complete only the professional engineering services as required in the performance of the services contracted for herein.

ARTICLE X.
OWNER'S RIGHTS AND OWNERSHIP OR DOCUMENTS

All ENGINEER'S designs and work products under this AGREEMENT including, but not limited to, tracings, drawings, plans, specifications, studies and other documents completed or partially completed, shall be the property of the City, to be used as the City desires, without restriction. ENGINEER specifically waives and releases any proprietary rights or ownership claims herein. The City recognizes the documents have been prepared specifically for the subject project, and the ENGINEER is released from any liability associated with the City's use of the documents for any other project or purpose**.**

ARTICLE XI.
SUCCESSORS AND ASSIGNS

The City and the ENGINEER each bind himself, his partners, successors, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this AGREEMENT. The ENGINEER shall not assign, sublet or transfer its interest in this AGREEMENT without the written consent of the City.

ARTICLE XII.
PROVISION FOR TERMINATION/INTERRUPTION

The City may terminate or suspend the ENGINEER'S services under this AGREEMENT at any time upon paying all sums due the ENGINEER for work to time of termination and after giving the ENGINEER seven (7) calendar days prior written notice by certified mail, stating the reason for such termination or suspension.

In the event of termination or abandonment of the ENGINEER'S services under this AGREEMENT, payment shall be made to the ENGINEER for all services performed to the date of same.

Upon payment in the event of termination or abandonment, all documents prepared by the ENGINEER shall become the property of the City.

If this AGREEMENT is terminated because of material breach of this AGREEMENT by the ENGINEER, the City may have the remaining work and services to be performed by the ENGINEER performed by another engineer, and the ENGINEER shall be liable to the City for any excess costs accrued by the City thereof.

ARTICLE XIII.
CONFIDENTIALITY

ENGINEER will maintain as confidential any documents or information provided by OWNER and will not release or publish same to any third party without prior permission from OWNER, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to OWNER.

ARTICLE XIV.
GOVERNING LAW

This AGREEMENT shall be governed in all respects by the laws of the State of Texas. Venue for this AGREEMENT shall be exclusively in Grayson County, Texas.

ARTICLE XV.
SURVIVAL

All provisions of this AGREEMENT for indemnity or allocation of responsibility or liability between OWNER and ENGINEER shall survive the completion of the services and the termination of the AGREEMENT.

ARTICLE XVI.
SEVERABILTY

In the event that any provision of the AGREEMENT is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.

ARTICLE XVII.
ENGINEERS SEAL

The ENGINEER shall place a Texas Professional Engineer's seal of endorsement on construction plans, specifications and details, reports, and engineering opinions, as would be required by the Texas Board of Professional Engineering Rules, furnished by ENGINEER to the Owner.

ARTICLE XVIII.
PUBLIC FUNDING

This Contract is subject to the appropriation of public funds by the City in its budget adopted for any fiscal year for the specific purpose of making payments pursuant to this Contract for that fiscal year. The obligation of the City pursuant to this Contract in any fiscal year for which this Contract is in effect shall constitute a current expense of the City for that fiscal year only, and shall not constitute an indebtedness of the City of any monies other than those lawfully appropriated in any fiscal year. In the event of non-appropriation of funds in any fiscal year to make payments pursuant to this Contract, this Contract may be terminated without any liability to either party.

ARTICLE XIX.
EXTENT OF AGREEMENT

This AGREEMENT represents the entire and integrated AGREEMENT between the City and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral.

EXECUTED in three (3) counterparts (each of which is an original) on behalf of ENGINEER shown below, and on behalf of the OWNER this ___ day of _____, 20 __.

OWNER:
CITY OF SHERMAN, TEXAS

_____
Robby Hefton, City Manager

ATTEST:

_____

ENGINEER:
Perkins Engineering Consultants, Inc.

_____
Mark A. Perkins, Principal

ATTEST:

Charlotte D. Smith

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____

NAME: _____
CITY ATTORNEY

EXHIBIT A
SCOPE OF SERVICES, FEE, AND RATE SCHEDULE

Exhibit A

PERKINS ENGINEERING CONSULTANTS, INC.

CITY OF SHERMAN

POST OAK WASTEWATER TREATMENT PLANT

EQUALIZATION BASIN IMPROVEMENTS

PROPOSED FEE SUMMARY

PHASE AND TASK NO.	TASK DESCRIPTION	PROPOSED FEE
TASK 1	DETAILED DESIGN	$ 96,390
TASK 2	ADVERTISEMENT AND BID PHASE SERVICES	$ 7,915
TASK 3	CONSTRUCTION ADMINISTRATION ASSISTANCE	$ 33,554
Special Services (Requires Separate Authorization) for Geotech, If Needed		$ 12,000
TOTAL (not including Special Services)		$ 137,859

PERKINS ENGINEERING CONSULTANTS, INC.

CITY OF SHERMAN

POST OAK WASTEWATER TREATMENT PLANT
EQUALIZATION BASIN IMPROVEMENTS

TASK 1 DETAILED DESIGN

Labor Summary		Labor Category & Projected Hours					Labor
Subtask	Description	Principal	Proj. Manager	Grad. Engineer	Technician	Admin / Intern	Subtotal
1	Detailed design of identified improvements. - Debris removal for offsite disposal by City - Repair impacted sloped basin walls and localized levee issues - Gate replacement and actuation of three gates at fines screens - Actuation of three gates and three valves at Clarifier Control Station and one gate at Aeration Basin bypass	4	60	80	72	8	$ 27,140
2	Review and refine general and supplemental conditions or front-end documents.	1	8	8		4	$ 2,690
3	Coordinate detailed design with consultant team.	2	8	8	4	1	$ 3,070
4	Coordinate and attend review meetings at the Post Oak WWTP at project initiation and the 50-percent and 90-percent milestones. An updated OPCC will be provided at each review milestone. It is anticipated specifications only will be provided at the 90-percent review milestone.	6	24	24		3	$ 8,070
5	Seal and submit final construction documents.	1	8	4	4	2	$ 2,450
6	Develop and submit Engineering Report and other submittal information to GTUA and TWDB. Follow-up with GTUA and TWDB during review process.	1	12	8		2	$ 3,170
7	Allowance for project administration, recordkeeping, quality control review.	1	8			4	$ 1,730
	Total Hours	***16***	***128***	***132***	***80***	***24***	***380***
	Hourly Rate	$ 210	$ 155	$ 120	$ 95	$ 70	
	Labor Subtotal	$ 3,360	$ 19,840	$ 15,840	$ 7,600	$ 1,680	$ 48,320

Expense Summary		
Estimated Direct Expenses:		
Mileage	$ 500	
Printing & Reproduction	$ -	
Postage, Delivery, & Courier Charges	$ -	
Subconsultant Fees:		
GPRS (Ground Penetrating Radar and Pipe Inspection)	$ 2,000	
Jordan Consulting Engineers (Structural)	$ 4,200	
Freeman-Millican (E&I)	$ 37,000	
		Labor Fee $ 48,320
Subtotal Direct Expenses	$ 43,700	Direct Expense Fee $ 48,070
Direct Expense Service Charge	$ 4,370	**Total Professional Services Fee** **$ 96,390**

Notes & Assumptions

Anticipated number of progress milestones meetings 3

Anticipated number of site visits 2

Review plans and specifications to be distributed digitally only in PDF format

Sealed documents to be digitally distributed. City anticipated only to receive conformed and record drawings in hard copy format

Geotechnical to be authorized under special services.

PERKINS ENGINEERING CONSULTANTS, INC.

CITY OF SHERMAN

POST OAK WASTEWATER TREATMENT PLANT
EQUALIZATION BASIN IMPROVEMENTS

TASK 2 ADVERTISEMENT AND BID PHASE SERVICES

Labor Summary		Labor Category & Projected Hours					Labor
Subtask	Description	Principal	Proj. Manager	Grad. Engineer	Technician	Admin / Intern	Subtotal
1	Coordinate bidding and advertisement with CivCast and City. City will pay for newspaper advertisement costs directly.		1	1		2	$ 375
2	Coordinate and attend pre-bid conference.		6				$ 930
3	Respond to questions and information requests during advertisement phase.	1	4	4		2	$ 1,410
4	Prepare addenda, to be uploaded to and distributed by City selected planholder document distribution service.		4	8	2	2	$ 1,870
5	Attend bid opening.		6				$ 930
6	Review and evaluate received bids. Recommend general contractor for award.	1	2	2		1	$ 810
7	Conform construction documents.		1	2	4	2	$ 875
	Total Hours	***2***	***24***	***17***	***6***	***9***	***58***
	Hourly Rate	$ 210	$ 155	$ 120	$ 95	$ 50	
	Labor Subtotal	$ 420	$ 3,720	$ 2,040	$ 570	$ 450	$ 7,200

Expense Summary		
	Estimated Direct Expenses:	
	Mileage	$ 200
	Printing & Reproduction (including CivCast)	$ 425
	Postage, Delivery, & Courier Charges	$ 25
	Subconsultant Fees:	
	Subtotal Direct Expenses	$ 650
	Direct Expense Service Charge	$ 65

Notes & Assumptions

No prebidding of equipment
Client to pay newspaper advertisement costs directly; engineer will pay CivCast
Document distribution to be handled through CivCast
Conformed documents to be digitally distributed, other than copies for City
Project will be constructed as one construction contract
No attendance at Council meetings or GTUA Board meetings included
City and GTUA will receive four half-sized sets of plans with specifications.

Labor Fee	$ 7,200
Direct Expense Fee	$ 715
Total Professional Services Fee	**$ 7,915**

PERKINS ENGINEERING CONSULTANTS, INC.

CITY OF SHERMAN

POST OAK WASTEWATER TREATMENT PLANT
EQUALIZATION BASIN IMPROVEMENTS

TASK 3 CONSTRUCTION ADMINISTRATION ASSISTANCE

Labor Summary		Labor Category & Projected Hours					Labor
Subtask	Description	Principal	Proj. Manager	Grad. Engineer	Technician	Admin / Intern	Subtotal
1	Prepare for and attend pre-construction meeting and prepare meeting minutes.		6	8			$ 1,890
2	Prepare for and attend monthly construction meetings and prepare meeting minutes, assuming an 6-month construction project. It is assumed two persons knowledgeable of the process and mechanical design will attend 4 construction meetings.	8	24	24			$ 8,280
3	Submittal review.	1	8	12			$ 2,890
4	Respond to inquiries during construction and maintain construction log.	1	6	8			$ 2,100
5	Visit Post Oak WWTP for up to two other meetings, one person per additional visit.		6	6			$ 1,650
6	Prepare for and attend substantial completion walkthrough and prepare substantial completion punch list.	1	8	8			$ 2,410
7	Prepare and distribute record drawings.		2	4	6	1	$ 1,430
8	Allowance for project administration, recordkeeping, quality control review.	1	4			1	$ 900
	Total Hours	***12***	***64***	***70***	***6***	***2***	***154***
	Hourly Rate	$ 210	$ 155	$ 120	$ 95	$ 70	
	Labor Subtotal	$ 2,520	$ 9,920	$ 8,400	$ 570	$ 140	$ 21,550

Expense Summary		
	Estimated Direct Expenses:	
	Mileage	$ 700
	Printing & Reproduction	$ 300
	Postage, Delivery, & Courier Charges	$ 25
	Subconsultant Fees:	
	Jordan Consulting Engineers (Structural)	$ 2,000
	Freeman-Millican (E&I)	$ 7,300
	Subtotal Direct Expenses	$ 10,325
	Direct Expense Service Charge	$ 1,033

Notes & Assumptions

This task is assumed to occur in 2021

Assumed number of monthly construction meetings 4

Additional compensation if construction extends beyond 9 months

Record documents to be digitally distributed, other than copies for City

City will provide daily construction inspection. Resident representation is not included in this fee amount.

Labor Fee (Escalated 3% to 2021 rates)	$ 22,197
Direct Expense Fee	$ 11,358
Total Professional Services Fee	**$ 33,554**

FM 1417
SH 11
City of Sherman
Wastewater Treatment Plant
Flow Equalization Basin
Rehabilitation / Repair
N
0
250
500
1,000
Feet
Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **E. 4.**

Meeting Date: 02/01/2021

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

**** RESOLUTION NO. 6700***

Authorizing Execution of an Agreement with M&G Home Builders LLC for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1227 South Branch Street within City of Sherman Reinvestment Zone, Number Ten (#10)

Issue:

This item is to consider property tax abatement for the construction of a new single-family residence at 1227 South Branch Street situated within City of Sherman Reinvestment Zone, Number Ten (#10).

Background:

Several years ago, the City Council began a residential tax abatement program to encourage the redevelopment of older sections of town. This application is for the construction of a new single-family residence at this location. This lot is in the current designated zone for residential tax abatement.

Origination:

M&G Home Builders LLC, Owner

Financial Consideration:

A $75.00 application fee has been received for this residential lot. If granted, the initial abatement for this property will be approximately $440.58 annually.

Staff Recommendation:

The staff recommends approval of this abatement since it meets the requirements of the process.

Alternatives:

The City Council could decide against granting this abatement.

Attachments

Resolution No. 6700
Residential Tax Abatement Ageement
Exhibit A
Application
Warranty Deed
Building Permit
Survey
Site Plan
Location Map
Photo
Reinvestment Zone Map

RESOLUTION NO. 6700

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH M&G HOME BUILDERS LLC FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1227 SOUTH BRANCH STREET WITHIN CITY OF SHERMAN REINVESTMENT ZONE, NUMBER TEN (#10); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to receipt of a fully-executed agreement from M&G Home Builders LLC and subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an agreement with M&G Home Builders LLC for the abatement of ad valorem property taxes for a period of ten (10) years, for the construction of one (1) new single-family residence at 1227 South Branch Street, lying within City of Sherman Reinvestment Zone, Number Ten (#10), in accordance with the City's policies and procedures established for this purpose.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the _____ day of _____, 2021.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:
THE LAW FIRM OF ABERNATHY, ROEDER, BOYD & HULLETT, P.C.

BY: _____

NAME: _____
CITY ATTORNEY

THE STATE OF TEXAS §
§
COUNTY OF GRAYSON §

AGREEMENT

THIS AGREEMENT, entered into by and between the **CITY OF SHERMAN, TEXAS**, a home rule city and municipal corporation of the State of Texas, duly acting herein by and through its City Manager, hereinafter referred to as CITY, and **M&G HOME BUILDERS LLC** hereinafter referred to as OWNER,

WITNESSETH:

WHEREAS, on the 18th day of April, 2016, the City Council of Sherman, Texas, passed Ordinance No. 5948 establishing a reinvestment zone for residential tax abatement, as authorized by Chapter 312 of the Texas Tax Code, as amended, hereinafter referred to as CODE; and

WHEREAS, on the 19th day of August, 2019, the City Council of Sherman, Texas adopted Ordinance No. 6241 and redesignated the Reinvestment Zone to be City of Sherman Reinvestment Zone, Number Ten (#10); and

WHEREAS, the CITY has adopted a resolution (Resolution No. 6210) stating that it elects to be eligible to participate in a residential tax abatement program; and

WHEREAS, the CITY desires to create the proper economic and social environment to induce the investment of private resources in real estate construction located in incorporated areas of the CITY; and

WHEREAS, the CITY hereby finds that it may effectively encourage and assist the creation of such an environment by participating in tax abatement pursuant to the CITY; and

WHEREAS, the CITY has created a reinvestment zone within its jurisdiction to induce the investment of private resources in real estate construction located in incorporated areas of the CITY, and OWNER has agreed to construct certain real property improvements; and

WHEREAS, OWNER is prepared to comply with the provisions of the CITY'S guidelines and criteria enacted the 18th day of April, 2016;

NOW, THEREFORE, WITNESS THIS TAX ABATEMENT AGREEMENT which provides as follows:

I.

1.01 To the extent authorized by the Texas Constitution and by the Tax Code, CITY hereby agrees to exempt from City of Sherman taxation a portion of the increase in value of taxable

real property of OWNER in the CITY over the same real property and its value as calculated by the Grayson Appraisal District for ad valorem property tax purposes in accordance with the following schedule. Such tax exemption shall be in effect for tax years beginning January 1, 2021, and continuing for tax years 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029 and 2030, with same constituting ten (10) tax years. However, nothing contained herein shall be construed to grant an abatement of taxes to be assessed based on the change of use of the property from an agricultural use to another use, sometimes referred to as rollback taxes, penalties or interest. In the event rollback taxes are applicable for the real property utilized by OWNER, then such increase in value of taxable property resulting from such rollback shall be used as the tax value for such property for the tax year 2021, sometimes referred to herein as the Base Tax Year.

SCHEDULE OF TAXES ASSESSED

TAX YEAR	ABATEMENT
2021	100%
2022	100%
2023	100%
2024	100%
2025	100%
2026	100%
2027	80%
2028	60%
2029	40%
2030	20%

II.

2.01 OWNER warrants and represents that the real property upon which OWNER has constructed or will construct improvements is qualified property within the meaning of that Act, and that such has been and will remain eligible for tax abatement under the provisions of the Property Redevelopment and Tax Abatement Act, Sections 312.001, et seq., Texas Tax Code.

2.02 To continue to qualify for tax abatement under the terms of this Agreement, OWNER hereby warrants and represents that the improvements made by OWNER on the real property described herein are for residential use.

2.03 The tax abatement granted under the terms of the Agreement shall only be implemented if appraised value of all real property and improvements located thereon owned by OWNER and lying within designated zone exceeds the base year value. The OWNER agrees that Grayson Appraisal District shall, at reasonable times upon reasonable notice, have access to the property made the subject of this Agreement, and that the above set forth inspectors shall be able to inspect the property to insure that the improvements are being made in accordance with the terms and conditions hereof and utilized in accordance with this Agreement.

III.

3.01 The term of this Agreement shall be for tax years 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029 and 2030, as indicated above in paragraph 1.01.

IV.

4.01 The kind, number and location of all proposed property improvements are set forth as follows:

> Construction of one (1) new Single-Family Residence at 1227 South Branch Street, Sherman, Texas, and as more particularly described by the following:

BEING out of the Samuel Blagg Survey, Abstract No. 56, being a part of Lot 8 and the east half of Lot 7, Block 10, Jones and Wainwrights Addition to the City of Sherman, Texas, recorded in Volume 35, Page 96, Deed Records, Grayson County, Texas, the same tract of land conveyed by Special Warranty Deed from Ronald Polk and others to Raymond Stone on May 17, 2018 and recorded in Document No. 2018-17109, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as to hereafter include the property described in **Exhibit A.**

V.

5.01 OWNER agrees that, should he fail to make improvements substantially as described or fail to perform any other term or covenant hereof, CITY shall have the right, after giving notice and opportunity to cure as hereinafter set out, to recapture all tax revenue on said property in the zone lost as a result of this Agreement for the entire term of the Agreement. Such recapture shall mean that all of such property shall be taxed at the full improved value as assessed by the Grayson Appraisal District for all years this Agreement has been in effect. The payment of such recaptured taxes minus any taxes paid by OWNER during the years this Agreement has been in force shall be due January 1 of the next following year and shall be delinquent if not paid on or prior to January 31st. Penalties and interest shall be calculated thereafter as if all taxes had become due in the same year. The CITY agrees prior to enforcement of the terms of this paragraph to give 120 days written notice to the address shown below of OWNER'S default in completing the improvements called for in this Agreement, and OWNER shall have the right to cure such default within the 120-day period.

VI.

6.01 This Agreement shall inure to the benefit of CITY and OWNER, and shall be binding upon them, their heirs, successors and assigns. It is specifically provided and agreed that the right to tax abatement shall inure to the benefit of subsequent owners so long as the term and conditions of this Agreement are in effect.

VII.

7.01 CITY agrees that this Agreement may be assigned and the improvements leased or sub-leased, without any further necessity for consent, by the OWNER to any person, firm or corporation.

VIII.

8.01 At any time before the expiration of the term hereof, this Agreement may be modified by the mutual action of the parties hereto to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. Such modification must be in writing and signed by all the parties hereto and made by the same procedure by which the original Agreement was approved and executed. In no event may the original Agreement be modified so as to extend the term beyond the original term of this Agreement.

IX.

9.01 This Agreement shall be construed subject to the laws of the State of Texas, and particularly to the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code.

9.02 All appraisal values for real property shall be made by the Grayson Appraisal District or such other entity as may succeed or replace such District.

9.03 OWNER is hereby notified that the Grayson Appraisal District may impose additional requirements which must be met in order for OWNER to realize the benefit of tax abatement and this Agreement. Contact should be made by OWNER with the District in person at 512 North Travis Street, Sherman, Texas, or by telephone at (903) 893-9673.

X.

10.01 This Agreement is subject to all provisions of all outstanding bond issues of CITY. To the extent that this Tax Abatement Agreement conflicts with any of the provisions of such bond issues, such bond issues and attendant documents thereto shall control.

XI.

11.01 This Tax Abatement Agreement is specifically subject to present laws of the State of Texas and any future laws enacted subsequent to the execution of this Agreement which may provide retroactively for a modification of Agreements of this type as a matter of law. Upon the effective date of any such law, then this Agreement shall automatically be so modified.

XII.

12.01 Notices required by this Agreement shall be mailed to the following addresses as same may be in the future changed by either party upon written notice to the other:

City of Sherman P.O. Box 1106

Sherman, Texas 75091-1106
(903) 892-7200

1218 N. Brents
Sherman, TX 75090
(903) 870-8212

M&G Home Builders LLC

Copy to: Grayson Appraisal District
512 North Travis Street
Sherman, Texas 75090
(903) 893-9673

This Agreement is performable in Grayson County, Texas. Witness our hands on this the _____ day of _____, 2021.

CITY:
CITY OF SHERMAN, TEXAS

BY: _____
ROBBY HEFTON

OWNER:
M&G HOME BUILDERS LLC

BY: _____
MARTIN COVARRUBIAS

ATTEST:

BY: _____
LINDA ASHBY
CITY CLERK

APPROVED AS TO FORM
AND CONTENT:
THE LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.

BY: _____
NAME: _____
CITY ATTORNEY

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared **MARTIN COVARRUBIAS** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein express.

GIVEN UNDER MY HAND and seal of office this _____day of _____, 2021 A.D.

_____

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

EXHIBIT A

SITUATED in the City of Sherman, County of Grayson, State of Texas, being out of the Samuel Blagg Survey, Abstract No. 56, being a part of Lot 8 and the East Half of Lot 7, Block 10, Jones and Wainwrights Addition to the City of Sherman, Texas, recorded in Volume 35, Page 96, Deed Records, Grayson County, Texas, being the same tract of land conveyed by Special Warranty Deed from Ronald Polk and others to Raymond Stone on May 17, 2018 and recorded in Document No. 2018-17109, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 1/2 inch capped rebar set, stamped "RPLS 6578" at the intersection of the North line of Centennial Street, a public street, with the East line of said Branch Street, a public street, at the Southwest corner of said Lot 8 and said Stone tract;

THENCE North 16 deg. 42 min. 03 sec. West, with the East line of said Branch Street and the West line of said Lot 8, a distance of 50.00 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" at the Southwest corner of both said Lot 7 and the Charlie W. Nelson and Thelma V. Nelson tract of land known as the West 100 ft. of said Lot 7 as recorded in Volume 1255, Page 502, said Deed Records and the Northwest corner of said Lot 8, at the most Western Northwest corner of said Stone tract, **SAID** rebar bears South 16 deg. 42 min. 03 sec. East, 100.00 ft. from a 1/2 inch capped rebar found, stamped "RPLS 3694" at the Northwest corner of Lot 6, said Block 10;

THENCE North 73 deg. 59 min. 44 sec. East, with the South line of both said Lot 7 and Nelson tract and the North line of said Lot 8, a distance of 146.07 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" at an Ell corner of said Stone tract;

THENCE North 16 deg. 42 min. 03 sec. West, over and across said Lot 7 and with a West line of said Stone tract, a distance of 50.00 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" in the South line of said Lot 6 and the North line of said Lot 7, at the most Northern Northwest corner of said Stone tract;

THENCE North 73 deg. 59 min. 44 sec. East, with the North line of said Lot 7 and the South line of said Lot 6, passing a 1/2 inch capped rebar found "RPLS 3694" at a distance of 121.06 ft., and continuing on said course for a **TOTAL** distance of 146.07 ft. to a point in the center of Branch Creek, at the Southeast corner of said Lot 6 and the Northeast corner of both said Lot 7 and Stone tract;

THENCE South 11 deg. 07 min. 06 sec. East, with the center of said Branch Creek maintaining the East line of both Lots 7 and 8, a distance of 80.28 ft. to a point in center of said creek, at the Northeast corner of the 100 ft. by 20 ft. tract of land conveyed out of said Lot 8 to the City of Sherman, recorded in Volume 1076, Page 693, said Deed Records and the most Eastern Southeast corner of said Stone tract;

THENCE South 73 deg. 59 min. 44 sec. West, with the North line of said City of Sherman tract, a distance of 101.71 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" at the Northwest corner of said City of Sherman tract and an Ell corner of said Stone tract;

THENCE South 16 deg. 00 min. 16 sec. East, with the West line of said City of Sherman tract, a distance of 20.00 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" in the North line of said Centennial Street and the South line of said Lot 8, at the Southwest corner of said City of Sherman tract and the most Southern Southeast corner of said Stone tract;

THENCE South 73 deg. 59 min. 44 sec. West, with the North line of said Centennial Street and the South line of said Lot 8, a distance of 182.38 ft. to the **PLACE OF BEGINNING** and containing **0.445 ACRES** of land.

CITY OF SHERMAN
APPLICATION FOR RESIDENTIAL TAX ABATEMENT

Property Owner:

Name: M&G Home Builders, LLC

Mailing Address: 1218 N Brents, Sherman, TX

Telephone Number: 903-870-8212

Contact (if different than owner):

Name: _____

Mailing Address: _____

Telephone Number: _____

Property:

Physical Address: 1227 S Branch

Summary Legal Description: Lot: 8 & E 193'7 Block: 10 Addition JONES & WAINRIGHTS ADDN

Full Legal Description: Include as an attachment a full legal description with metes and bounds.

Improvements:

Type of Improvements (please check one). New Construction: x Remodeling: _____

Estimated Value of Improvements: $90,100

Estimated Date of Start of Construction: 12/28/2020

Estimated Date of Completion of Project: 04/01/2021

Description of Project: new residential construction

Applicant(s): _____ Date: 12/23/2020

_____ Date: _____

VG-286-2020-29286

Grayson County
Wilma Bush
County Clerk
Sherman, TX 75090

0133855

Instrument Number: 2020 - 29286

Real Property Recordings

Recorded On: October 23, 2020 11:36 AM

Number of Pages: 5

Parties: STONE RAYMOND

" Examined and Charged as Follows: "

Total Recording: $28.00

********** THIS PAGE IS PART OF THE INSTRUMENT **********
Any provision herein which restricts the Sale, Rental or use of the described Document because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	29286
Receipt Number:	20201023000052
Recorded Date/Time:	October 23, 2020 11:36 AM
User:	Cort M
Station:	CLERK07

Record and Return To:

RED RIVER TITLE CO
421 N CROCKETT ST

SHERMAN TX 75090

STATE OF TEXAS
COUNTY OF GRAYSON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Grayson County, Texas.

Wilma Bush
County Clerk
Grayson County, TX

1035

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEED WITHOUT WARRANTY

THE STATE OF TEXAS §
§ KNOW ALL BY THESE PRESENTS: THAT
COUNTY OF GRAYSON §

RAYMOND STONE, A MARRIED MAN, OWNING, OCCUPYING AND CLAIMING OTHER PROPERTY AS HIS HOMESTEAD ("**Grantor**"), whose mailing address is **2514 N. Hickory, Sherman, Texas 75092**, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) cash and other good and valuable consideration to Grantor in hand paid by **M&G HOME BUILDERS LLC, a Texas limited liability company** ("**Grantee**"), whose mailing address is **1218 N. Brents, Sherman, Texas 75090**, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto Grantee, the following real property, together with all improvements thereon (the "**Property**"):

SITUATED IN THE CITY OF SHERMAN, COUNTY OF GRAYSON, STATE OF TEXAS, BEING OUT OF THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56, BEING A PART OF LOT 8 AND THE EAST HALF OF LOT 7, BLOCK 10, JONES AND WAINWRIGHTS ADDITION TO THE CITY OF SHERMAN, TEXAS, BEING MORE FULLY DESCRIBED BY METES AND BOUNDS ON THE ATTACHED EXHIBIT "A".

Exceptions to Conveyance:

Easements, rights-of-way, visible and apparent easements on or across the property herein described, all presently recorded restrictions, reservations, covenants, conditions, and other instruments, other than liens and conveyances, that affect the property, any discrepancies, conflicts, or shortages in area or boundary lines; and taxes for the current and all subsequent years.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever, without express or implied warranty. All warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded.

This conveyance is intended to include any property interests obtained by after-acquired title.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED AS OF the date set forth in the acknowledgement herein, EFFECTIVE for all purposes as of the 22 day of **October, 2020**.

TITLE EXAMINATION WAS NOT REQUESTED IN CONNECTION WITH THE PREPARATION OF THE DOCUMENTATION CONCERNING THE ABOVE DESCRIBED PROPERTY, NOR WAS ANY MADE. THE PREPARER EXPRESSES NO OPINION AS TO TITLE TO THIS PROPERTY, NOR AS TO ANY TAXES AND/OR ASSOCIATION FEES DUE ON THIS PROPERTY, ANY DEFECTS WHICH MAY AFFECT MARKETABILITY, OR ADVERSE LEGAL EFFECTS, INCLUDING BUT NOT LIMITED TO VIOLATION OF ANY DUE ON SALE CLAUSE IN ANY SECURITY INSTRUMENT AGAINST THE PROPERTY NOR AS TO COMMUNITY OR SEPARATE PROPERTY LAW MATTERS OR OTHER MARITAL RIGHTS OR TRANSFERS THAT MIGHT ARISE AS A RESULT OF YOUR CONVEYANCE IN THIS TRANSACTION. THIS INSTRUMENT WAS PREPARED BASED ON INFORMATION FURNISHED BY THE PARTIES, AND AN INDEPENDENT TITLE SEARCH HAS NOT BEEN MADE.

GRANTOR AND GRANTEE AGREE TO HOLD HAY LEGAL GROUP PLLC HARMLESS AS TO ANY COSTS AND/OR ADVERSE LEGAL EFFECTS WHICH COULD ARISE AS A RESULT OF THIS CONVEYANCE.

GRANTOR:

RAYMOND STONE

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF Grayson §

Before me, a Notary Public, on the 22 day of **October, 2020**, personally appeared **RAYMOND STONE,** who acknowledged that he did sign the foregoing instrument, and acknowledged to me that he executed the same for the uses and purposes and consideration therein expressed.

DORIS C. CASTON
Notary Public, State of Texas
Comm. Expires 02-06-2021
Notary ID 1076036-7

Notary Public, State of Texas

[GRANTEE SIGNATURE AND ACKNOWLEDGEMENT PAGE FOLLOWS]

AGREED TO AND ACCEPTED BY GRANTEES:

M&G HOME BUILDERS, LLC,
a Texas limited liability company

BY: _____
MARTIN G. COVARRUBIAS,
Member

BY: _____
MARTIN COVARRUBIAS,
Member

ACKNOWLEDGEMENTS

STATE OF TEXAS §
§
COUNTY OF Gray §

Before me, a Notary Public, on the 22 day of **October, 2020**, personally appeared **MARTIN G. COVARRUBIAS, Member of M&G HOME BUILDERS, LLC, a Texas limited liability company,** who acknowledged that he did sign the foregoing instrument, and acknowledged to me that he executed the same for the uses and purposes and consideration therein expressed, and in the capacity therein stated.

DORIS C. CASTON
Notary Public, State of Texas
Comm. Expires 02-06-2021
Notary ID 1076036-7

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF Gray §

Before me, a Notary Public, on the 22 day of **October, 2020**, personally appeared **MARTIN COVARRUBIAS, Member of M&G HOME BUILDERS, LLC, a Texas limited liability company,** who acknowledged that he did sign the foregoing instrument, and acknowledged to me that he executed the same for the uses and purposes and consideration therein expressed, and in the capacity therein stated.

DORIS C. CASTON
Notary Public, State of Texas
Comm. Expires 02-06-2021
Notary ID 1076036-7

_____
Notary Public, State of Texas

PREPARED IN THE OFFICE OF:

THE HAY LEGAL GROUP PLLC
611 W. 5th Street, Suite 300
Austin, Texas 78701

VG-285-2020-29287

Grayson County
Wilma Bush
County Clerk
Sherman, TX 75090

0132855

Instrument Number: 2020 - 29287

Real Property Recordings

Recorded On: October 23, 2020 11:36 AM

Number of Pages: 4

Parties: STONE RAYMOND

" Examined and Charged as Follows: "

Total Recording: $24.00

********** **THIS PAGE IS PART OF THE INSTRUMENT** **********
Any provision herein which restricts the Sale, Rental or use of the described Document because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number:	29287
Receipt Number:	20201023000052
Recorded Date/Time:	October 23, 2020 11:36 AM
User:	Cort M
Station:	CLERK07

Record and Return To:

RED RIVER TITLE CO
421 N CROCKETT ST

SHERMAN TX 75090

STATE OF TEXAS
COUNTY OF GRAYSON

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Grayson County, Texas.

Wilma Bush
County Clerk
Grayson County, TX

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GENERAL WARRANTY DEED

THE STATE OF TEXAS §
§ KNOW ALL BY THESE PRESENTS: THAT
COUNTY OF GRAYSON §

RAYMOND STONE, A MARRIED MAN, OWNING, OCCUPYING AND CLAIMING OTHER PROPERTY AS HIS HOMESTEAD ("**Grantor**"), whose mailing address is **2514 N. Hickory, Sherman, Texas 75092**, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) cash and other good and valuable consideration to Grantor in hand paid by **M&G HOME BUILDERS LLC, a Texas limited liability company** ("**Grantee**"), whose mailing address is **1218 N. Brents, Sherman, Texas 75090**, the receipt and sufficiency of which consideration is hereby acknowledged and confessed, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto Grantee, the following real property, together with all improvements thereon (the "**Property**"):

BEING A PART OF LOT 8 AND THE EAST HALF OF LOT 7, BLOCK 10, JONES AND WAINWRIGHTS ADDITION TO THE CITY OF SHERMAN, TEXAS, BEING MORE FULLY DESCRIBED BY METES AND BOUNDS ON THE ATTACHED EXHIBIT "A".

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in any way belonging unto the said Grantee, its successors and assigns forever; and Grantor does hereby bind Grantor, their heirs, executors and administrators to WARRANT AND FOREVER DEFEND all and singular the Property unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, provided, however, that this conveyance is made by Grantor and accepted by Grantee subject to (i) the liens securing payment of ad valorem taxes for the current and all subsequent years and (ii) easements, liens, reservations, covenants, conditions, and restrictions of record in **Grayson County, Texas**, or visible or apparent on the ground to the extent the foregoing affect the Property. By acceptance of this deed, Grantee assumes and agrees to perform all of the obligations of Grantor under said easements, reservations, covenants, conditions and restrictions, and agrees to pay and indemnifies and agrees to hold Grantor harmless from and against all ad valorem taxes relating to the Property, for the current and all subsequent years.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED AS OF the date set forth in the acknowledgement herein, EFFECTIVE for all purposes as of the 22 day of **October, 2020.**

GRANTOR:

RAYMOND STONE

ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF Grayson §

Before me, a Notary Public, on the 22 day of **October, 2020**, personally appeared **RAYMOND STONE,** who acknowledged that he did sign the foregoing instrument, and acknowledged to me that he executed the same for the uses and purposes and consideration therein expressed.

DORIS C. CASTON
Notary Public, State of Texas
Comm. Expires 02-06-2021
Notary ID 1076036-7

Notary Public, State of Texas

PREPARED IN THE OFFICE OF:

THE HAY LEGAL GROUP PLLC
611 W. 5th Street, Suite 300
Austin, Texas 78701

EXHIBIT A

SITUATED in the City of Sherman, County of Grayson, State of Texas, being out of the Samuel Blagg Survey, Abstract No. 56, being a part of Lot 8 and the East Half of Lot 7, Block 10, Jones and Wainwrights Addition to the City of Sherman, Texas, recorded in Volume 35, Page 96, Deed Records, Grayson County, Texas, being the same tract of land conveyed by Special Warranty Deed from Ronald Polk and others to Raymond Stone on May 17, 2018 and recorded in Document No. 2018-17109, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 1/2 inch capped rebar set, stamped "RPLS 6578" at the intersection of the North line of Centennial Street, a public street, with the East line of said Branch Street, a public street, at the Southwest corner of said Lot 8 and said Stone tract;

THENCE North 16 deg. 42 min. 03 sec. West, with the East line of said Branch Street and the West line of said Lot 8, a distance of 50.00 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" at the Southwest corner of both said Lot 7 and the Charlie W. Nelson and Thelma V. Nelson tract of land known as the West 100 ft. of said Lot 7 as recorded in Volume 1255, Page 502, said Deed Records and the Northwest corner of said Lot 8, at the most Western Northwest corner of said Stone tract, **SAID** rebar bears South 16 deg. 42 min. 03 sec. East, 100.00 ft. from a 1/2 inch capped rebar found, stamped "RPLS 3694" at the Northwest corner of Lot 6, said Block 10;

THENCE North 73 deg. 59 min. 44 sec. East, with the South line of both said Lot 7 and Nelson tract and the North line of said Lot 8, a distance of 146.07 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" at an Ell corner of said Stone tract;

THENCE North 16 deg. 42 min. 03 sec. West, over and across said Lot 7 and with a West line of said Stone tract, a distance of 50.00 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" in the South line of said Lot 6 and the North line of said Lot 7, at the most Northern Northwest corner of said Stone tract;

THENCE North 73 deg. 59 min. 44 sec. East, with the North line of said Lot 7 and the South line of said Lot 6, passing a 1/2 inch capped rebar found "RPLS 3694" at a distance of 121.06 ft., and continuing on said course for a **TOTAL** distance of 146.07 ft. to a point in the center of Branch Creek, at the Southeast corner of said Lot 6 and the Northeast corner of both said Lot 7 and Stone tract;

THENCE South 11 deg. 07 min. 06 sec. East, with the center of said Branch Creek maintaining the East line of both Lots 7 and 8, a distance of 80.28 ft. to a point in center of said creek, at the Northeast corner of the 100 ft. by 20 ft. tract of land conveyed out of said Lot 8 to the City of Sherman, recorded in Volume 1076, Page 693, said Deed Records and the most Eastern Southeast corner of said Stone tract;

THENCE South 73 deg. 59 min. 44 sec. West, with the North line of said City of Sherman tract, a distance of 101.71 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" at the Northwest corner of said City of Sherman tract and an Ell corner of said Stone tract;

THENCE South 16 deg. 00 min. 16 sec. East, with the West line of said City of Sherman tract, a distance of 20.00 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" in the North line of said Centennial Street and the South line of said Lot 8, at the Southwest corner of said City of Sherman tract and the most Southern Southeast corner of said Stone tract;

THENCE South 73 deg. 59 min. 44 sec. West, with the North line of said Centennial Street and the South line of said Lot 8, a distance of 182.38 ft. to the **PLACE OF BEGINNING** and containing **0.445 ACRES** of land.

Sherman
CLASSIC TOWN. BROAD HORIZON.

CITY OF SHERMAN

New Residential Building Permit

#20-003098 | Issued on: 12/23/2020 at 1:44 PM

Project Description: CONSTRUCT SINGLE FAMILY RESIDENTIAL

ADDRESS	LEGAL	PERMIT HOLDER	OWNERS	OTHER CONTACTS
1227 S BRANCH St Sherman, TX	Jones & Wainrights Addn, Block 10, Lot 8 & E 193' 7	M&G HOME BUILDERS LLC *MARTIN COVARRUBIAS* (903) 870-8212	• Raymond Stone	• M&G HOME BUILDERS LLC *MARTIN COVARRUBIAS* (903) 870-8212

INFORMATION FIELDS

Subcontractor	M&G HOME BUILDERS	Square Feet	1446
Bedrooms	3	Bathrooms	2
Number of Stories	1	Number of Acres	0.5
Type of Construction List	Wood Frame	Off Street Parking	3
Tax Abatement	Yes	Sewer Disposal	Public Sewer
Water Supply	Public	Heating	Electric
Permit Certification	Yes	Proposed Use	ONE FAMILY RESIDENTIAL
Former Use	NONE	Firm Name	M&G HOME BUILDERS

FEE	TOTAL	PAID	DUE
Storm Water Fee	$ 25.00	$ 25.00	$ 25.00
TOTALS	$ 25.00	$ 0.00	$ 25.00

NOTICE

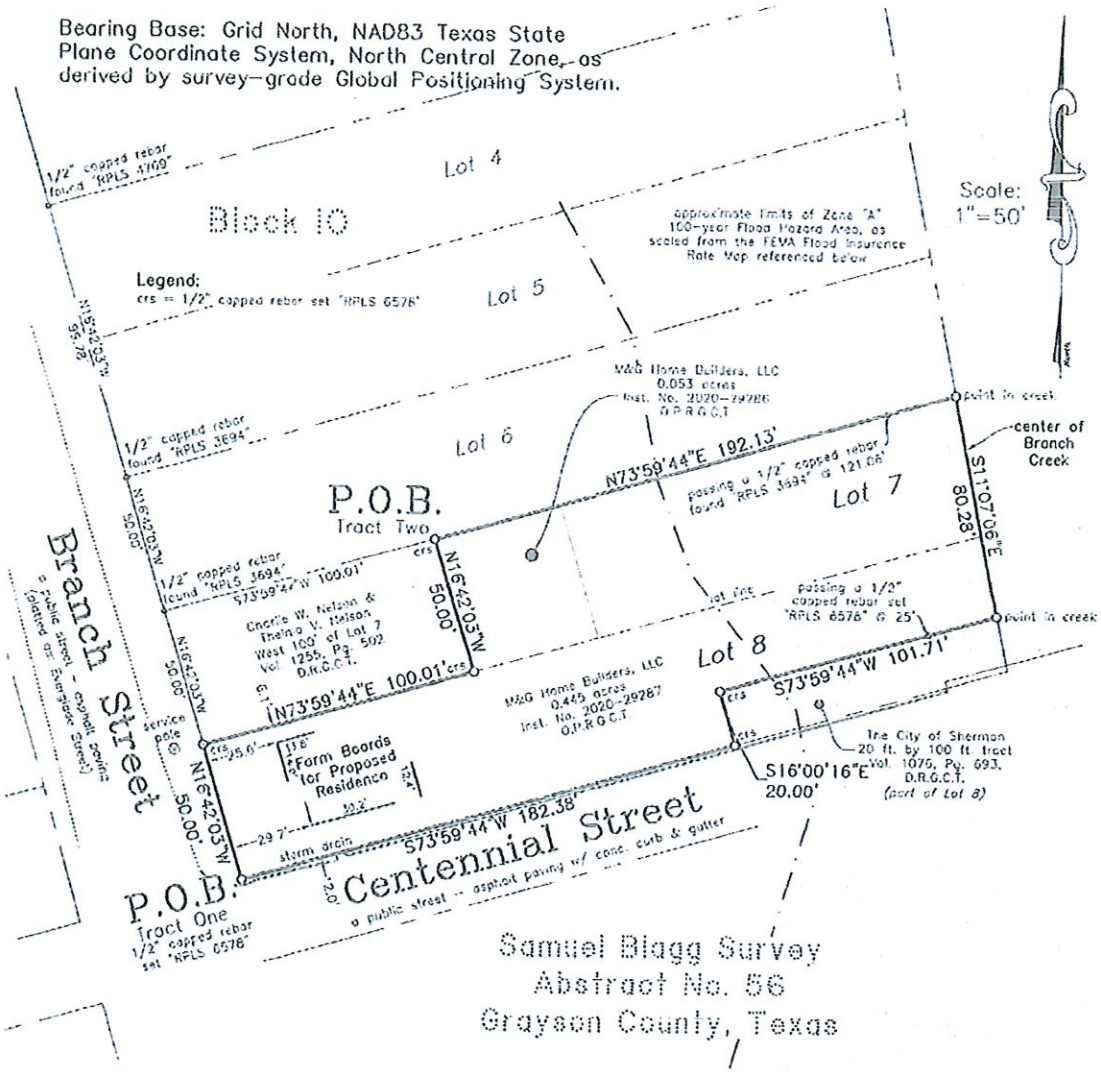
This permit becomes null and void if work or constructions authorized is not commenced within 6 months, or if construction or work is suspended of abandoned for a period of 6 months at any time after work is started.

I hereby certify that I have read and examined this document and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. Granting of a permit does not presume to give authority to violate or cancel the provision of any other state or local law regulating construction or the performance of construction.

(Signature of Contractor or Authorized Agent) — 12-23-2020 Date

(Approved By) Flood Plain Administrator — 1/19/20 Date

(Approved By) Building & Zoning) — 1/19/21 Date



Owner: M&G Home Builders, LLC

Address: 1227 S. Branch Street
Sherman, Texas

This survey is for the sole benefit of the Owner and Buyer Stated hereon and is null and void for any other transaction. Any unauthorized use of this survey without the sole consent of the undersigned surveyor will infringe upon state and federal copyright statutes. Any violation of said statutes will be aggressively pursued.

I, Kate A. Wagner, Registered Professional Land Surveyor, do hereby certify that a survey was performed on the ground of the property shown hereinabove and that this survey with the current Texas Society of Professional Surveyors Manual of Practice for a Category 1A, Condition 3, TSPS Land Title Survey and is a true and correct to the best of my knowledge and belief as shown hereon.

Legal Description is as follows: Part of Lots 7 and 8, Block 10, Jones & Wainrights Addition to the City of Sherman, Texas, as per plat of record in Volume 35, Page 96, Deed Records, Grayson County, Texas. Field Notes attached hereto.

A portion of the subject property shown hereon lies within the limits of a Zone "A" 100-year Flood Hazard Area, as scaled from the "FEMA" Flood Insurance Rate Map for Grayson County, Texas, Map No. 48181C0405 F, Revised Date: September 29, 2010.

STATE OF TEXAS
REGISTERED
KATE A. WAGNER
6578
PROFESSIONAL
LAND SURVEYOR

Job No. BGS371020

Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Ph: (903) 463-6191 Fax: (903) 463-4088
Email: kate@helveywagnersurvey.net
Texas Board of Professional Land Surveying
Firm Registration No. 10088100

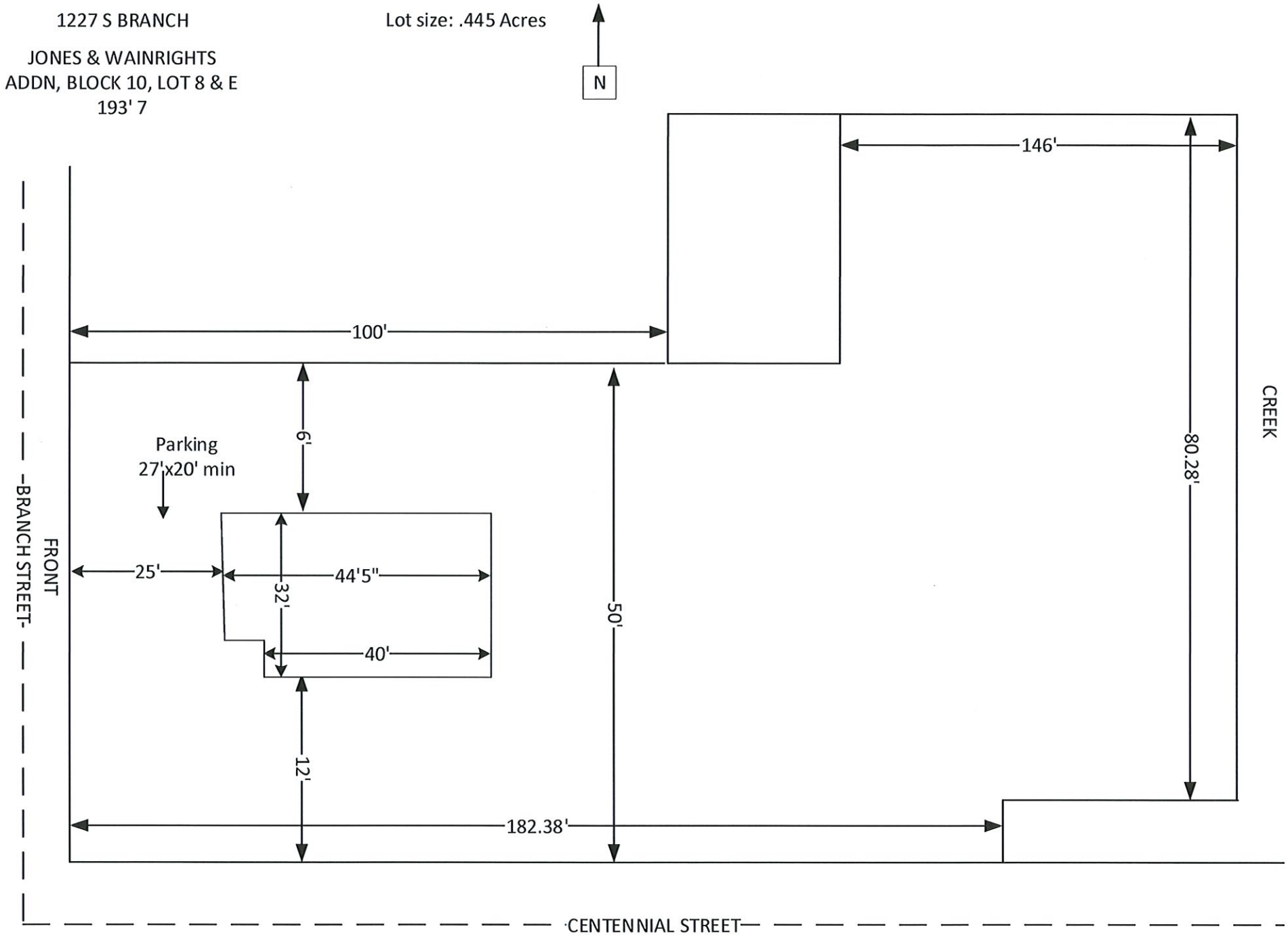
Kate A. Wagner, R. P. L. S. No. 6578
Boundary Survey: October 9, 2020
Locate Form Boards: December 9, 2020

S:\Land Projects RZ\1227-E-Branch-Jones-and-Wainrights-Addition\Civil 3D\1227-S-Branch-Formboard Layout-Legal-Portrait Plot Date: Dec 11 20 Time: 12:59 PM

1227 S BRANCH

JONES & WAINRIGHTS
ADDN, BLOCK 10, LOT 8 & E
193' 7

Lot size: .445 Acres



Sherman
CLASSIC TOWN. BROAD HORIZON.

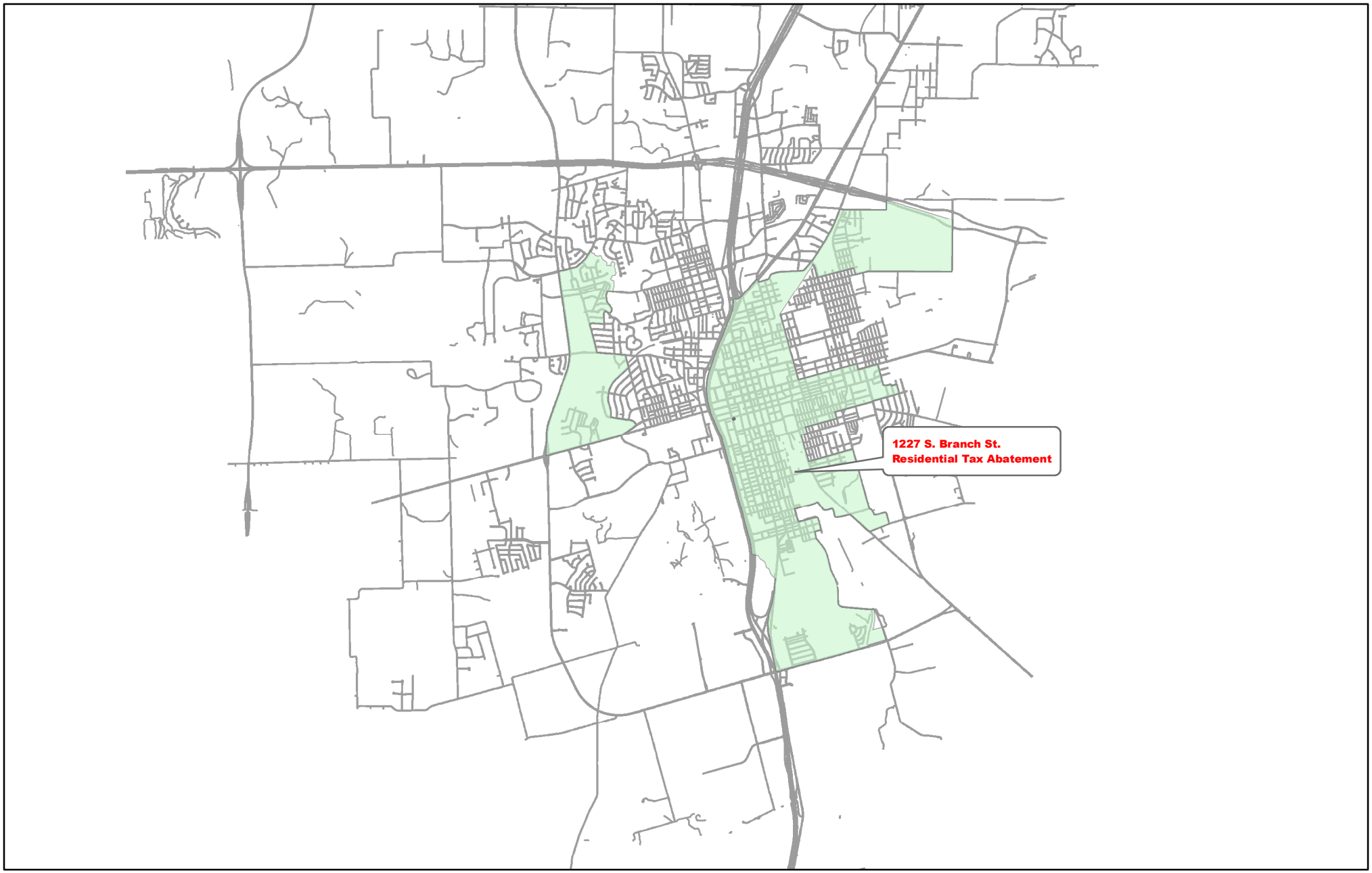
City of Sherman, Texas
Developmental Services Department

1227 S. Branch Street
Residential Tax Abatement

NOT TO SCALE

1 in = 200 ft

1227 South Branch Street



1227 S. Branch Street
Residential Tax Abatement

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

NOT TO SCALE

1 inch = 7,000 feet

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **F. 1.**

Meeting Date: 02/01/2021
Prepared By: Clint Philpott, Assistant City Manager
Approved By: Robby Hefton, City Manager

Caption:

**** REQUEST TO ADVERTISE***

Roof Replacement at Sherman Central Fire Station

Issue:

Requesting permission to advertise for the replacement of the roof at Sherman Central Fire Station

Background:

Located at 318 S. Travis Street, Central Fire Station's current roof has reached the end of its life and is in need of replacement.

Origination:

Building Maintenance Department

Financial Consideration:

Funding of $80,000.00 has been allocated in the fiscal year (FY) Capital Improvement Program (CIP) budget. The cost of advertising is expected to be approximately $200.00.

Staff Recommendation:

It is recommended that the City Council authorize the staff to advertise for public bids to replace the roof at Sherman Central Fire Station.

Alternatives:

As may be directed by the City Council

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 1.**

Meeting Date: 02/01/2021
Prepared By: Tom Pruitt, Utility Engineer
Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS
Repair and Rework the Luella 2 Woodbine Well under an Emergency Designation

Issue:

To allow the reworking and repair of the Luella 2 Woodbine Well under an emergency designation

Background:

The Luella 2 Woodbine Well has suffered a failure that has rendered the well inoperable. The well is a prime producer for the ground water supply zone and is needed to meet summer production demands. Due to the time involved to repair the well, lead time on well parts and the need to return the well to service as soon as possible to meet upcoming Summer demand, it is requested that the Council authorize the staff to proceed on an emergency basis to rework and repair the well.

Origination:

Engineering Department

Financial Consideration:

The City staff's estimated cost to repair the well is $176,067.00. The City's Utility Fund will be utilized to fund the repairs.

Staff Recommendation:

It is recommended that the emergency repairs to the Luella 2 Woodbine Well be approved and that the City Manager be authorized to execute any required contract documents.

Alternatives:

As may be directed by the City Council

Attachments

Quote
Location Map

WEISINGER INCORPORATED
PO Box 909 • Willis, TX 77378
936-756-7721 • 281-353-8484 • 936-756-7723 fax
www.weisingerinc.com

January 8, 2021

City of Sherman
243 La Cima Dr.
Sherman, TX 75090

Attn: Oscar Canales

Ref: Luella 2 Woodbine Well – Revised 2021-01-8

Mr. Canales:

As you requested, we have removed the pumping equipment, performed an inspection of the pumping equipment, and completed a TV Survey of the well. Listed below are our findings and recommendations.

Inspections to the pump found that the Goulds 7CLC/12 stage pump has over tolerance wear to all of the bowl bearings and their respective shaft surfaces. All of the intermediate bowls including the motor adapter contain severe metal washout and one bowl has a small hole in it. All of the impellers are in good condition. The existing SME 175 HP heat exchanger motor megged to ground on all three legs and the rotor is locked. The motor also has a hole blown in it just below the upper bracket. One joint of the 5" pump column contains damaged threads and appeared to have been leaking.

A TV Survey was performed on 11/12/2020 to investigate the conditions of the well after removing the pumping equipment from the well. The static water level was 635' and the total depth viewed was 1133'. Reviewing the survey video revealed scale build-up at 20' onward. The screen perforations are mostly open. There were no structural issues noted at this time. Please consider the following:

Recommended Scope of Services and Materials

Pumping Equipment $153,072.00

- New 400 GPM @ 1075' TDH submersible pump
- New 175 HP, 2P, 460-volt, heat exchanger motor
- 980 ft of new 350 MCM, Paige hydroflex motor cable
- 20 ft of New 5", T&C pump column with 8 round threads
- 2 New 5", 8RD male x female check valves
- Miscellaneous items to make well operational

Installation $22,995.00

- Provide rig, labor, and materials necessary to disinfect the water well, reset pump, return to service, and bacteriological sampling

Grand Total of Pumping Equipment and Services $176,067.00

Note: Lead time on the pump, motor and cable is 3-4 weeks

Thank you for the opportunity to offer you our services as we await your response.

Regards,

.

Francisco Ochoa
Weisinger Incorporated

500000
FM 1417
Tuck 1WB
Tuck 1T
Tuck 2WB
U.S. 75
Luella 3WB
Luella 3T
Shepard EST 750000
Shepard Dr Pump Station
Shepard 1T
Shepard UGST 500000
Shepard 1WB
Luella 2WB Well
Emergency Repair
Luella 2WB
Luella 2T
N
0 1,500 3,000 6,000
Feet
Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 2.**

Meeting Date: 02/01/2021

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Receive Presentation from City Manager Robby Hefton regarding potential debt issuance

Issue:

To receive a presentation from City Manager Robby Hefton regarding potential Certificate of Obligation bond issuance

Background:

At the January 19, 2021 Council Meeting, the City Manager led a discussion on a potential bond issuance for various upcoming capital projects. During the discussion, Council asked the City Manager to bring back a list of potential projects, including the Police Department headquarters, that could be considered for such a bond issuance. This presentation is a follow-up to provide the Council with a list of potential projects, and to set a calendar for future Council action needed as part of a bond issuance program.

Origination:

City Manager Robby Hefton

Financial Consideration:

This agenda item has no financial impact.

Staff Recommendation:

Staff recommends a motion and vote to bring back this item on the February 15, 2021 Regular City Council Meeting to Discuss and Approve a Notice of Intent to issue bonds.

Alternatives:

As directed by City Council.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 3.**

Meeting Date: 02/01/2021

Prepared By: Nate Strauch, Community & Support Services Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Receive an Update on the City of Sherman's Ongoing Projects

Issue:

Staff seeks to provide periodic aerial updates to keep the Council abreast of the newest developments in City projects.

Background:

Using the City of Sherman's drone, City staff has cataloged several projects underway or contemplated around town, including:

- Highway 75 GAP Project
- FM 1417 Construction
- Steeple Chase Drive
- Hilre Drive
- Moore Street
- Washington Meadows
- Bel Air
- Park Street
- Heritage Ranch
- Sherman Crossroads
- Gallagher Hospital

Origination:

City Manager Robby Hefton

Financial Consideration:

None

Staff Recommendation:

The Council need take no action on this agenda item - for information purposes only.

Alternatives:

None

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 4.**

Meeting Date: 02/01/2021

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

**** OTHER BUSINESS***

Replat Approval of East Holley Addition, Block 1, Lot 1, a Replat of part of Lot 6, Block 1, Hall and Jones Addition, being 0.115 acres in the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 6, Block 1, Hall and Jones Addition; Holley Jolly Homes LLC, Owners; Josh Holley, Representative; and Preston Trail Land Surveying, Surveyor (821 North East Street)

Issue:

To consider Replat Approval of East Holley Addition, Block 1, Lot 1, a Replat of part of Lot 6, Block 1, Hall and Jones Addition, being 0.115 acres in the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 6, Block 1, Hall and Jones Addition; Holley Jolly Homes LLC, Owners; Josh Holley, Representative; and Preston Trail Land Surveying, Surveyor (821 North East Street)

Background:

The property is located at 821 North East Street between College and Carter Streets. The property is zoned an R-1 (One Family Residential) District and located in the College Park Overlay District. The owner was approved for a variance to allow a 35.75 foot lot width, 5,005 square foot area at the January 12, 2021, Planning and Zoning Commission Meeting to Replat the property into one lot for residential development.

Origination:

Holley Jolly Homes LLC (Owners)
Josh Holley (Representative)
Preston Trail Land Surveying (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 12, 2021 regular meeting, the Planning and Zoning Board voted unanimously to recommend to the City Council that the Replat be approved subject to the Staff Review Letter.

Alternatives:

None

Attachments

Location Map
Zoning Map
Zoning Sign Photo
East Holley Addition
Staff Review Letter
P&Z Communication

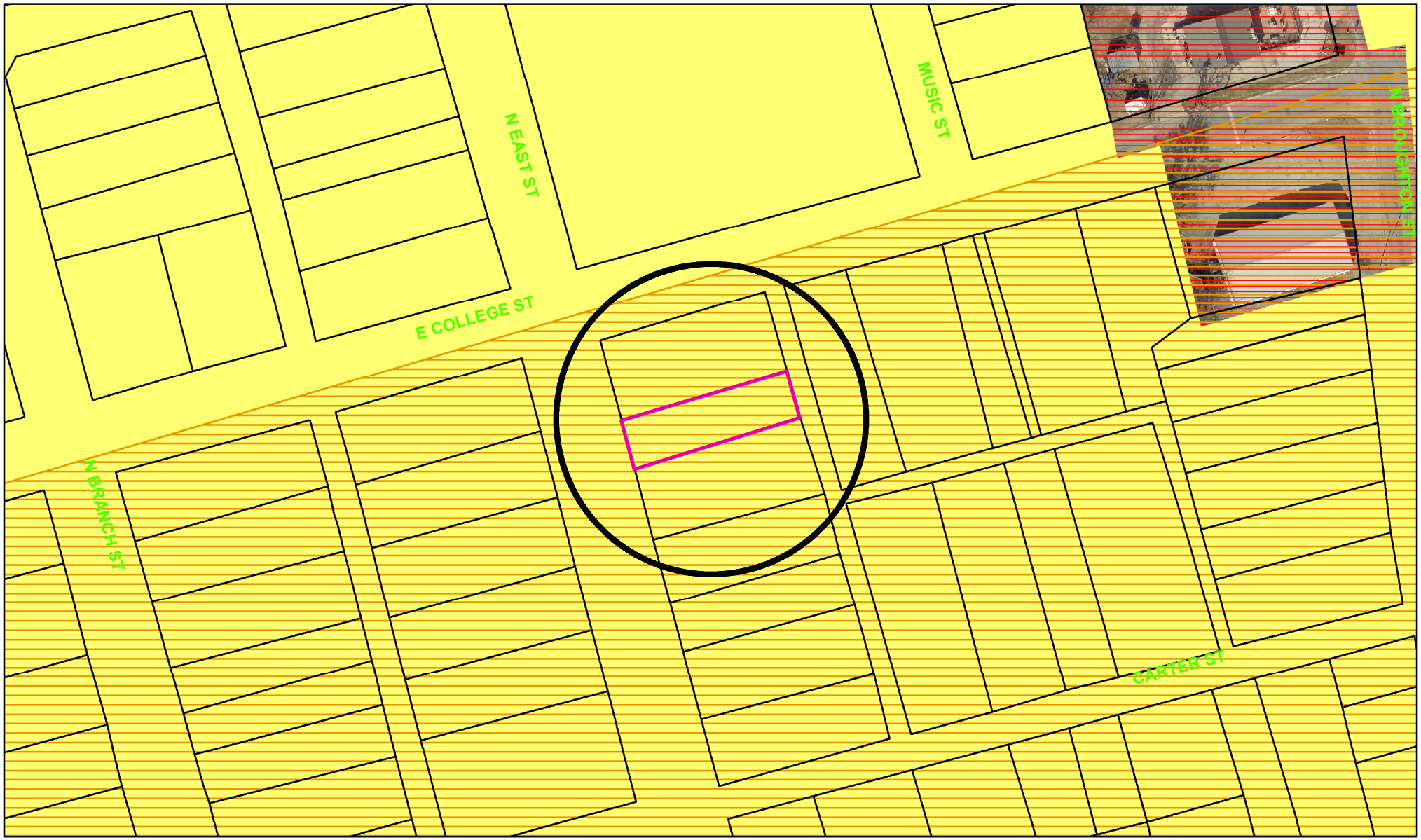
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

821 North East Street

NOT TO SCALE

1 in = 200 ft



Zoning - 821 North East Street

Legend

Parcels_Buffer3

Special Districts Overlay

DISTRICT_NAME

- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor

Representation: ShermGIS.DBO.TransportationCorridor_Rep_1

- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

Zoning Districts

Representation: ShermGIS.DBO.ZoningDistrict_Rep

- Unknown
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing Distgrict
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District
- PD Planned Development

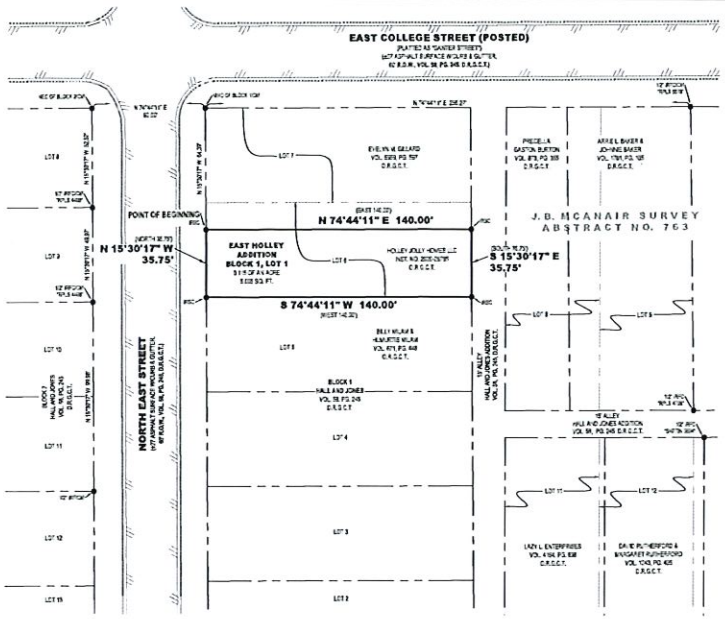
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

NOT TO SCALE

1 in = 98 ft

821 North East Street



All bearings shown are based on grid north of the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

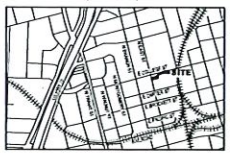
GRAPHIC SCALE IN FEET

LEGEND

●	FOUND MONUMENT	D.R.G.C.T.	DEED RECORDS GRAYSON COUNTY, TEXAS
○	SET MONUMENT		
IRSC	1/2" IRON ROD W/ "PRESTON TRAIL LAND SURVEYING, RPLS 6565" CAP SET	O.R.G.C.T.	OFFICIAL RECORDS GRAYSON COUNTY, TEXAS
IRFC	IRON ROD FOUND, REPLACE CAP	CM	CONTROLLING MONUMENT
IRF	IRON ROD FOUND	VOL., PG.	VOLUME, PAGE
INST. NO.	INSTRUMENT NO.	———	BOUNDARY LINE
NEC	NORTHEAST CORNER	- - - - -	ADJOINER LINE
NWC	NORTHWEST CORNER	.....	ASPHALT

FLOOD STATEMENT:
I have examined the F.E.M.A. Flood Insurance Rate Map for the City of Sherman, Grayson County, Texas, Community Number 485538, effective date 09/26/2018 and that map indicates that this property is within Non-shaded Zone X" defined as "Areas determined to be outside the 0.2% annual chance flood" as shown on Panel 0280 F of said map. This flood statement does not imply that the property and/or structures thereon will be free from flooding or flood damage, on rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. This flood statement shall not provide liability on the part of the surveyor.

VICINITY MAP
(NOT TO SCALE)



PRELIMINARY
THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT

EAST HOLLEY ADDITION
BLOCK 1, LOT 1
BEING A REPLAT OF PART OF LOT 6, BLOCK 1
HALL AND JONES ADDITION
0.115 OF AN ACRE
J.B. MCANAIR SURVEY, ABSTRACT NO. 763
City of Sherman, Grayson County, Texas

OWNER/DEVELOPER:
Holley Jolly Homes LLC
2913 South Polaris Street
Denison, TX 75020
Contact: Josh Holley

SURVEYOR:
Chris Nash, R.P.L.S 6565
Preston Trail Land Surveying LLC
83433 N State Highway 289
Suite No. 5
Pottsboro, TX 75076
Ph: 903-786-6029

Preston Trail LAND SURVEYING
83433 N. State Hwy 289, Suite 5
Pottsboro, TX 75076
www.prestontrailsurveying.com
903-786-6029

TBPLS Firm No. 10194675	Drawn by: BW	Scale: 1"=30'	Project No: 20-0169
	Checked by: CN	Date: 12/10/2020	Sheet No: 1 of 2

STATE OF TEXAS §
COUNTY OF GRAYSON §

OWNER'S CERTIFICATE

WHEREAS HOLLY JOLLY HOMES LLC is the owner of all of that certain tract or parcel of land situated in the J.B. McAnair Survey, Abstract No. 763, City of Sherman, Grayson County, Texas, and being part of Lot 6 in Block 1 of Hall and Jones Addition, according to the plat of record recorded in Volume 58, Page 249, Deed Records of Grayson County, Texas, and being a re-measurement survey of a tract of land described in the deed to Lazy L. Enterprises, recorded in Volume 4166, Page 693, Official Records of Grayson County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod with a plastic cap stamped "PRESTON TRAIL LAND SURVEYING RPLS 6565" (hereinafter referred to as Capped Iron Rod) set for the northwest corner of said Lazy L. Enterprises Tract, common to the southwest corner of a tract of land described in the deed to Evelyn M. Gillard, recorded in Volume 5909, Page 597, said Official Records, and on the easterly line of said Lot 6, and on the easterly right-of-way line of North East Street, and from which the northwest corner of said Block 1 bears North 15°30'17" West, a distance of 64.39 feet, and from the northwest corner of said Block 1, a 1/2-inch iron rod with a plastic cap stamped "RPLS 6575" found for the northwest corner of Lot 9 in said Block 1 bears North 74°44'11" East, a distance of 259.27 feet;

THENCE North 74°44'11" East, with the southerly line of said Lazy L. Enterprises Tract, and with the southerly line of Gillard Tract, and crossing said Lot 6, a distance of 140.00 feet to a Capped Iron Rod set for the northeast corner of said Lazy L. Enterprises Tract, common to the southeast corner of said Gillard Tract, and on the easterly line of said Lot 6, and on the westerly line of a 15-foot alley in said Block 1;

THENCE South 15°30'17" East, with the easterly line of said Lazy L. Enterprises Tract, and with the easterly line of said Lot 6, and with the a westerly line of said 15-foot alley, a distance of 35.75 feet to a Capped Iron Rod set for the southeast corner of said Lazy L. Enterprises Tract, common to the southeast corner of said Lot 6, and common to the northeast corner of Lot 5 in said Block 1;

THENCE South 74°44'11" West, with the southerly line of said Lazy L. Enterprises Tract, and with the southerly line of said Lot 6, and with the northerly line of said Lot 5, a distance of 140.00 feet to a Capped Iron Rod set for the southwest corner of said Lazy L. Enterprises Tract, common to the southeast corner of said Lot 6, and common to the northwest corner of said Lot 5, and on the easterly right-of-way line of aforesaid North East Street;

THENCE North 15°30'17" West, with the westerly line of said Lazy L. Enterprises Tract, and with the easterly line of said Lot 6, and with the easterly right-of-way line of said North East Street, a distance of 35.75 feet to the POINT OF BEGINNING and containing 0.115 of an acre (5,008 square feet) of land, more or less.

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS

That HOLLEY JOLLY HOMES LLC. does hereby adopt this plat designating the hereinbefore described property as **EAST HOLLEY ADDITION, BLOCK 1, LOT 1**, an Addition to the City of Sherman, Grayson County, Texas, and does hereby dedicate to the public use forever all streets, rights-of-way, alleys and easements shown thereon. The City or any public utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs or other improvements or growths in which any way endanger or interfere with the construction, maintenance or efficiency of its respective systems on any of these easements, and the City or any public utility shall at all times have the right of ingress and egress to and from and upon the said easement for the purpose of constructing, reconstructing, inspecting, and patrolling, without the necessity at any time of procuring the permission of anyone. This plat approved subject to all platting ordinances, rules, regulations, and restrictions of the City of Sherman, Texas.

BY: HOLLEY JOLLY HOMES LLC

By _____
Josh Holley

STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Josh Holley, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein.

WITNESS MY HAND AND SEAL OF OFFICE THIS THE ____ DAY OF _____, 20____.

_____
Notary Public in and for the State of Texas

CITY COUNCIL CERTIFICATE OF ACCEPTANCE

Accepted by the City Council of the City of Sherman, Texas.

_____ _____
Mayor, City of Sherman, Texas Date

The undersigned, the City Clerk of the City of Sherman, hereby certifies that the foregoing plat of **EAST HOLLEY ADDITION, BLOCK 1, LOT 1** to the City of Sherman was submitted to the City Council on the _____ day of _____, 20____, and the City Council by formal action then and there accepted the dedication of streets, alleys, easements and public places as shown and set forth in and upon said map or plat and said City Council further authorized the Mayor to note the acceptance thereof by signing his name as hereinabove subscribed.

Witness my hand this _____ day of _____, A.D. 20____.

_____
Clerk, City of Sherman, Texas

PLANNING AND ZONING COMMISSION CERTIFICATE OF ACCEPTANCE

Accepted this _____ day of _____, 20____, by the City Planning and Zoning Commission of the City of Sherman, Texas.

_____ _____
Chairman Secretary

SURVEYORS CERTIFICATE

I, the undersigned, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that this plat is true and correct and was prepared from an actual survey of the property made under my supervision on the ground and that all monuments shown hereon actually actually exist and that their location, size, and material are correctly shown.

_____ _____
Chris R. Nash Date
Registered Professional Land Surveyor No. 6565

PRELIMINARY
THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT

EAST HOLLEY ADDITION
BLOCK 1, LOT 1
BEING A REPLAT OF PART OF LOT 6, BLOCK 1
HALL AND JONES ADDITION
0.115 OF AN ACRE
J.B. MCANAIR SURVEY, ABSTRACT NO. 763
City of Sherman, Grayson County, Texas

OWNER/DEVELOPER:
Holley Jolly Homes LLC
2913 South Polaris Street
Denison, TX 75020
Contact: Josh Holley

SURVEYOR:
Chris Nash, R.P.L.S 6565
Preston Trail Land Surveying LLC
83433 N State Highway 289
Suite No. 5
Pottsboro, TX 75076
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903-786-6029

TBPLS Firm No. 10194675	Drawn by: BW	Scale: N/A	Project No: 20-0169
	Checked by: CN	Date: 12/10/2020	Sheet No: 2 of 2

Sherman
CLASSIC TOWN. BROAD HORIZON.

STAFF REVIEW LETTER

December 31, 2020

Holley Jolly Homes, LLC
2013 South Polaris Street
Denison, TX 75020

Preston Trail Land Surveying, LLC
83493 N. State Highway 289, Ste. 5
Pottsboro, TX 75076

Dear Applicants,

The request for approval of the Final Plat of East Holley Addition has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, January 12, 2021 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

1. Original tax certificates with $0.00 balance for each taxing property involved in plat shall be furnished to the City of Sherman Engineering Department at the time of delivery of final mylar and prints for the purpose of recording the plat.
2. Dedicate a 10' Utility Easement along East Street.
3. Remove directions from East Street and College Street.
4. Owner name in metes and bounds preamble has typo. Correct accordingly.
5. Any other changes made to the plat prior to the final fulfillment of the conditions of the staff review, must be considered minor by staff, as to not require resubmission to the Planning & Zoning Commission.
6. Upon final staff approval, 1 Mylar and 3 paper copies must be submitted in 24"x36" size for recording. Both mylar and paper copies must be split, but not cut, to be 2-24"x18" pages per Grayson County requirements. 1 page must have the legal description (preferably in portrait layout) and the other page must have the image. Both mylar and paper copies must look the same. Both split pages must include the Subdivision Name block and page numbers. Submit digital image to the Engineering department for approval prior to printing mylars and paper copy. CAD file must be submitted digitally at time of final approval.

The Board will not consider a request unless it has representation. You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Wayne Lee, at 903-892-7327 prior to the meeting.

Respectfully,

Clint Philpott, P.E.
Assistant City Manager

cc: Robby Hefton, City Manager
Rob Rae, Incoming Director of Development Services
Billy Hartsfield, Fire Marshal
Scott Shadden, Director of Development Services
Tom Pruitt, Utility Engineer
Clint Philpott, Assistant City Manager
The Law Firm of Abernathy, Roeder, Boyd, & Hughlett, P.C., City Attorney

Planning & Zoning Commission and Board of Adjustments

Agenda Item No. 22.

Meeting Date: 01/12/2021

Prepared by: Patsy Reeves, Developmental Services Coordinator
Rob Rae, Director of Development Services

Clay Mahone, Chairman	
David Downtain, Vice Chairman	Paul Manley, Commissioner
Shawn Davis, Commissioner	Glenn Whitaker, Commissioner
Leigh Ann Sims, Commissioner	Bryan Blagg, Commissioner

Requested Action/Proposed Use:

821 NORTH EAST STREET

The request of Holley Jolly Homes LLC (Owners), Josh Holley (Representative) and Preston Trail Land Surveying (Surveyor) for the property at 821 North East Street, being 0.115 acres in the J.B. McAnair Survey, Abstract No. 763, and being a part of Lot 6, Block 1, Hall and Jones Addition, as follows;

Board of Adjustments

Exception under Ordinance No. 2280, Section 6.2, Subsection (1) to allow a 35.75' wide lot in lieu of the required 60' lot width and a 5,005 square foot lot area in lieu of the required 6,000 square foot for residential dwelling in an R-1 (One-Family Residential) District/College Park Overlay District.

Planning and Zoning Commission

Replat approval of East Holley Addition, Block 1, Lot 1, beina a Replat of part of Lot 6, Block 1, Hall and Jones Addition

Background:

The property is located at 821 North East Street between College and Carter Streets. The property is zoned an R-1 (One Family Residential) District and located in the College Park Overlay District. The owner is requesting a variance to allow a 35.75 foot lot width, 5,005 square foot area to Replat the property into one lot for residential development.

Adjacent Zoning:

R-1 (One Family Residential) District

Origination:

Holley Jolly Homes LLC (Owners)
Josh Holley (Representative)
Preston Trail Land Surveying (Surveyor)

Master Plan Designation:

Auto-Urban Single Family Residential – This character type is the single-family residential category with the greatest density and the shortest building setbacks. Most driveways will face the street as well as the garage. Sidewalks are available for pedestrians. Less lot area is devoted to open space and greenery.

Number of notices mailed:

Replat 46
Exception - 23

Objections Received:

0

Attachments

Location Map
Zoning Map
Zoning Sign Photo
East Holley Addition
Staff Review Letter

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 5.**

Meeting Date: 02/01/2021

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

**** OTHER BUSINESS***

Replat Approval of Lot 5, Block 3, Sherman Town Center, being Lot 5, Block 3, Sherman Town Center; JMCR Sherman LLC, Owners; Raising Cane's Restaurants, LLC, Developer; Benchmark Design Group, LLC, Civil Engineer; and Freeman Surveying & Mapping, LLC, Surveyor (3700 North U.S. Highway 75)

Issue:

To consider Replat Approval of Lot 5, Block 3, Sherman Town Center, being Lot 5, Block 3, Sherman Town Center; JMCR Sherman LLC, Owners; Raising Cane's Restaurants, LLC, Developer; Benchmark Design Group, LLC, Civil Engineer; and Freeman Surveying & Mapping, LLC, Surveyor (3700 North U.S. Highway 75)

Background:

The property is located at 3700 North U.S. Highway 75 between U.S. Highway 82 and Northcreek Drive; formerly Logan Roadhouse Restaurant. The property is zoned a C-1 (Retail Business) District and located in the O-1 (75 & 82) Overlay District. The owners would like to Replat the property into two lots for commercial development.

Origination:

JMCR Sherman LLC (Owner)
Raising Cane's Restaurants, LLC (Developer)
Benchmark Design Group, LLC (Civil Engineer)
Freeman Surveying & Mapping, LLC (Surveyor

Financial Consideration:

None

Staff Recommendation:

At the January 12, 2021 regular meeting, the Planning and Zoning Board voted unanimously to recommend to the City Council that the Replat be approved subject to the Staff Review Letter.

Alternatives:

None

Attachments

Location Map
Zoning Map
Sherman Town Center Replat Lot 5
Staff Review Letter
P&Z Communication

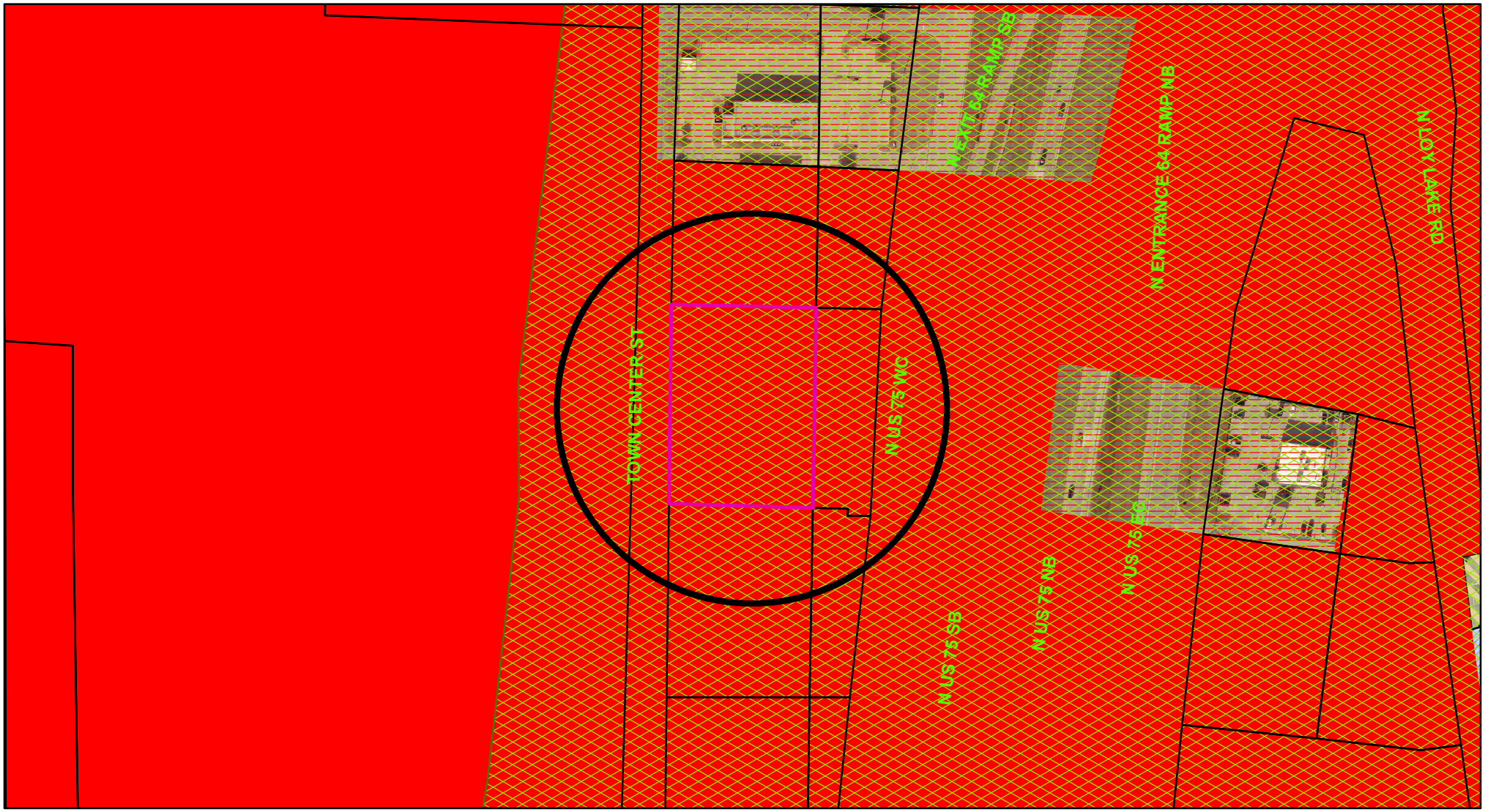
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

3700 North U.S. Highway 75

NOT TO SCALE

1 in = 400 ft



Zoning - 3700 North U.S. Highway 75

Legend

Special Districts Overlay
DISTRICT_NAME
- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor
Representation: ShermGIS.DBO.TransportationCorridor_Rep_1
- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

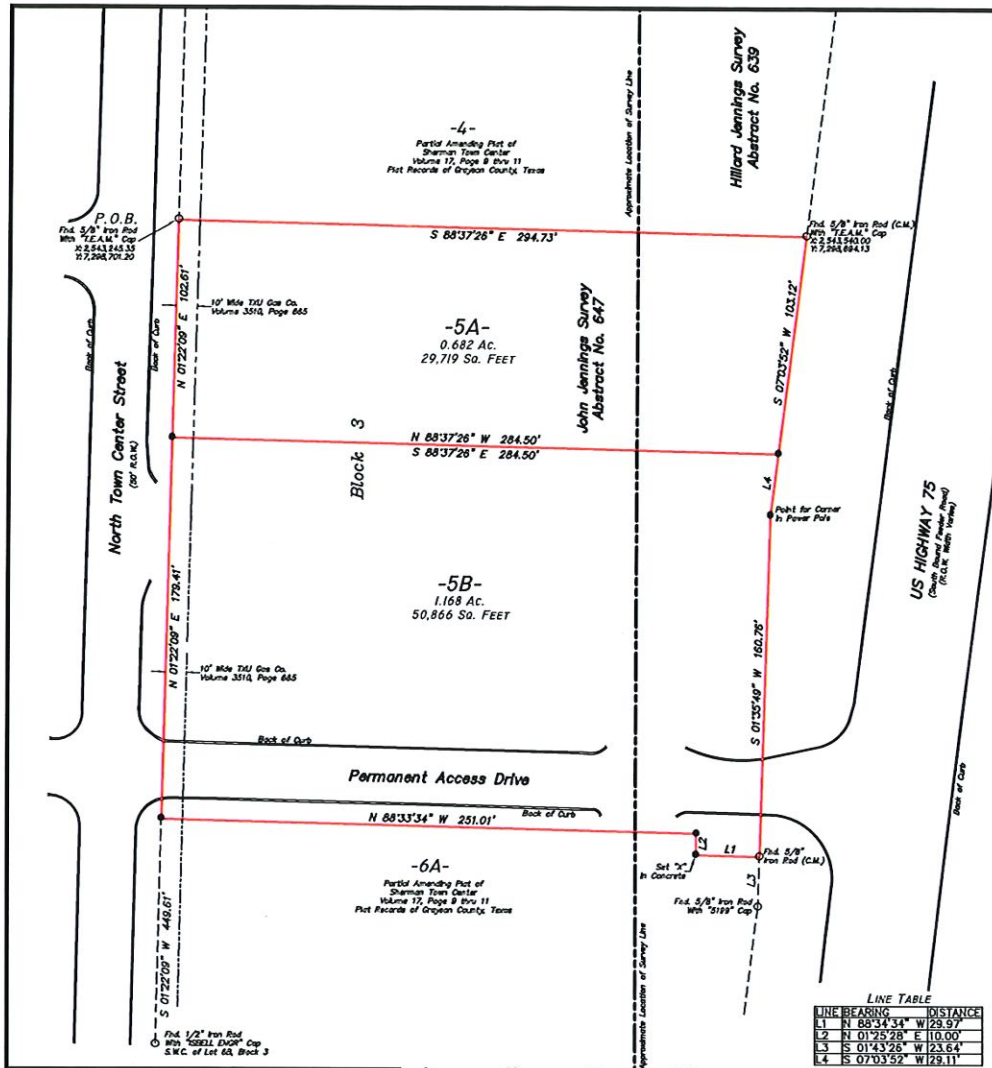
Zoning Districts
Representation: ShermGIS.DBO.ZoningDistrict_Rep
- Unknown
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing Distgrict
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District
- PD Planned Development

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

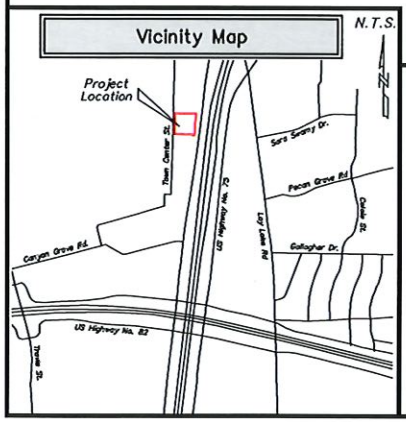
NOT TO SCALE

1 in = 200 ft



LINE TABLE

LINE	BEARING	DISTANCE
L1	N 88°34'34" W	29.97'
L2	N 01°25'26" E	10.00'
L3	S 01°43'26" W	23.64'
L4	S 07°03'52" W	29.11'



General Notes

1. **Notice:** Selling a portion of this addition by metes and bounds is a violation of county regulations and state law and is subject to fines and withholding of utilities and building permits.
2. **Basis of Bearings & Vertical Datum:** Horizontal & Vertical positions were derived from the TopNET VRS Network System, Texas State Plane Coordinate System NAD 83 (2011), Texas North Central Zone (4202), U.S. Survey Feet, Vertical Datum of 1988, (GEOID 18),U.S. Survey Feet.
3. **Electricity:** This addition will be served with electrical service to be provided by Oncor Electrical Delivery Company, LLC ("Oncor").
4. **Water:** This addition is already served with Water provided by the City of Sherman.
5. **Sanitary Sewer:** This addition is already served with Sanitary Sewer provided by the City of Sherman.
6. The owners and builders of this addition shall comply with all other local, state and federal regulations regarding developments of this type.
7. **Floodplain Statement:** According to FIRM Map Panel No. 48181C0220F, dated September 29, 2010, the subject tract appears to lie within Zone "X", areas determined to be outside the 0.2% annual chance floodplain

PROPERTY OWNER
JMCR Sherman, LLC
1601 Elm Street, Suite 4360
Dallas, Texas 75219

DRAWN BY:	BCG & SJF
CHECKED BY:	SJF
Field Book:	466/54-56
DATE:	December 16, 2020
Job No.	20.0304 (Sub Plat)

OWNER'S STATEMENT:

I, Robert Dozier, Manager of JMCR SHERMAN, LLC, an Texas Limited Liability Company, the owner of tract of land described and shown hereon, wishing to subdivide the same, do hereby dedicate all rights of way and easements shown hereon to the use of the public forever.

JMCR SHERMAN, LP

_____
ROBERT DOZIER, MANAGER

STATE OF _____:

COUNTY OF _____:

Before me, the undersigned authority, Notary Public in and for the State of Texas, on this day personally appeared, Robert Dozier, Manager of JMCR SHERMAN, LLC a Texas Limited Liability Company, known to me to be the person whose name is subscribed to the foregoing instrument and he acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacities therein stated.

_____
Notary Public in and for the State of Texas

My Commission Expires:_____

==========

PLANNING AND ZONING COMMISSION APPROVAL:

STATE OF TEXAS:
COUNTY OF GRAYSON:

Approved this_____ Day of _____, 2020 by the Planning and Zoning Commission of the City of Sherman, Texas.

_____
Chairman

_____
Secretary

==========

CERTIFICATE OF ACCEPTANCE OF DEDICATION:

STATE OF TEXAS:
COUNTY OF GRAYSON:

Accepted by the City Council of the City of Sherman, TX

_____
Mayor, City of Sherman, TX DATE

==========

CERTIFICATE OF COMPLIANCE:

The undersigned, the City Clerk of the City of Sherman, hereby certifies that the foregoing final plat of the Amending of Lot 5, Block 3, Sherman Town Center, a Subdivision or Addition to the City of Sherman was submitted to the City Council on the_____ day of_____, 2020, and the City Council by formal action then and there accepted the dedication of streets, alleys, easements, and public places, as shown and set forth in and upon said map or plat, and said City Council further authorized the Mayor to note the acceptance thereof by signing his name as herein above subscribed.

Witness my hand this_____ day of_____, A.D. 2020.

_____
City Clerk, City of Sherman, TX

METES & BOUNDS DESCRIPTION OF 1.850 ACRE OF LAND

Being 1.850 acre of land situated within the city limits of Sherman, Grayson County, Texas and being all of Lot 5, Block 3, Partial Amending Plat of Sherman Town Center, recorded in Volume 17, Page 9 thru 11, Plat Records of Grayson County, Texas, said 1.850 acre tract being more fully described as follows:

BEGINNING: at a 5/8" iron rod found with cap stamped "T.E.A.M." for the northwest corner of Lot 5, same being the southwest corner of Lot 4, Block 3 of said subdivision and being in the east right-of-way line of North Town Center Street said 5/8" iron rod found for the northwest corner of this Lot having a Texas State Plane North Central Coordinate Value of (X: 2,543,245.35; Y: 7,298,701.20)

THENCE: South 88°37'26" East with the north line of Lot 5 and the south line of Lot 4, a distance of 294.73 feet to a 5/8" iron rod found with cap stamped "T.E.A.M." for the northeast corner of Lot 5, same being the southeast corner of Lot 4 and being in the west right-of-way line of U.S. Highway No. 75;

THENCE: South 07°03'52" West, with the east line of Lot 5 and the west right-of-way line of U.S. Highway No. 75, a distance of 132.23 feet to a point for corner in a light pole for an angle break;

THENCE: South 01°35'40" West, continuing with the east line of Lot 5 and the west right-of-way line of U.S. Highway No. 75, a distance of 160.76 feet to a 5/8" iron rod found for the southeast corner of Lot 5 and being the most easterly northeast corner of Lot 6A, from which a 5/8" iron rod found with cap stamped "5199" for an angle break in the east line of Lot 6A bears South 01°43'26 West a distance of 23.64 feet;

THENCE: with south line of Lot 5 and the north line of Lot 6A as follows:

1. North 88°34'34" West, a distance of 29.97 feet to an "X" set in concrete;
2. North 01°25'26" East, a distance of 10.00 feet to a 1/2" iron rod set with yellow cap stamped "Freeman Surveying Property Corner"
3. North 88°33'34" West, a distance of 251.01 feet to a 1/2" iron rod set with yellow cap stamped "Freeman Surveying Property Corner" for the southwest corner of Lot 5, same being the northwest corner of Lot 6 and being in the east right-of-way line of North Town Center Street, from which a 1/2" iron rod found for the southwest corner of Lot 6B, Block 3 of said subdivision bears South 01°22'09" West, a distance of 449.61 feet;

THENCE North 01°22'09" East, with the west line of Lot 5 and the east right-of-way line of Nort Town Street, a distance of 282.03 feet to the **Point of Beginning** containing 1.850 Acres of Land

SURVEYOR'S CERTIFICATION:

I, Steven J. Freeman, II, REGISTERED PROFESSIONAL LAND SURVEYOR No. 6339, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown hereon were properly found or placed under my direct supervision, in accordance with the subdivision regulations of the City of Sherman, Texas.

"PRELIMINARY, THIS PLAT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT"

_____
Steven J. Freeman, II
Registered Professional Land Surveyor
State of Texas No. 6339

PARTIAL AMENDING PLAT

SHERMAN TOWN CENTER

AMENDING OF LOT 5, BLOCK 3,
SHERMAN TOWN CENTER
RECORDED IN VOLUME 17, PAGES 9 THRU 11,
PLAT RECORDS OF GRAYSON COUNTY, TEXAS
JOHN JENNINGS SURVEY, ABSTRACT NO. 647 &
HILLARD JENNINGS SURVEY, ABSTRACT NO. 639
CITY OF SHERMAN, GRAYSON COUNTY, TEXAS

FREEMAN
SURVEYING & MAPPING LLC
T.B.P.E.L.S. FIRM NO. 10194523
10768 County Road 127, Suite D, Flint, Texas 75762
VOICE (903) 504-6314 CELL (903) 520-1890
www.fmsurvey.com office@fmsurvey.com

Sherman
CLASSIC TOWN. BROAD HORIZON.

STAFF REVIEW LETTER

December 31, 2020

JMCR Sherman, LLC
1601 Elm Street, Suite 4360
Dallas, TX 75219

Freeman Surveying & Mapping, LLC
10763 County Road 127, Suite D
Flint, TX 75762

Dear Applicants,

The request for approval of the Replat Sherman Town Center, Replatting Lot 5, Block 3 has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, January 12, 2021 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

1. Must be a Replat. Change does not qualify for Amending Plat
2. Original tax certificates with $0.00 balance for each taxing property involved in plat shall be furnished to the City of Sherman Engineering Department at the time of delivery of final mylar and prints for the purpose of recording the plat.
3. New drive approaches must conform to City of Sherman and TxDOT standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.
4. The width of the right-of-way and pavement for streets shall be shown on the plat.
5. Plat layout does not meet standards.
6. Remove direction (North) from Town Center Street.
7. New and existing Mutual Access to be shown on plat. New Mutual Access required to access Lot 5A. Filing information to be shown for existing Mutual Access.
8. Plat must be in black/gray only. Red will not be permitted.
9. Metes and bounds do not match drawing.
10. Any other changes made to the plat prior to the final fulfillment of the conditions of the staff review, must be considered minor by staff, as to not require resubmission to the Planning & Zoning Commission.
11. Upon final staff approval, 1 Mylar and 3 paper copies must be submitted in 24"x36" size for recording. Both mylar and paper copies must be split, but not cut, to be 2-24"x18" pages per Grayson County requirements. 1 page must have the legal description (preferably in portrait layout) and the other page must have the image. Both mylar and paper copies must look the same. Both split pages must include the Subdivision Name block and page numbers. Submit digital image to the Engineering department for approval prior to printing mylars and paper copy. CAD file must be submitted digitally at time of final approval.

The Board will not consider a request unless it has representation. You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Wayne Lee, at 903-892-7327 prior to the meeting.

Respectfully,

Clint Philpott, P.E.
Assistant City Manager

cc: Robby Hefton, City Manager
Rob Rae, Incoming Director of Development Services
Billy Hartsfield, Fire Marshal
Scott Shadden, Director of Development Services
Tom Pruitt, Utility Engineer
Clint Philpott, Assistant City Manager
The Law Firm of Abernathy, Roeder, Boyd, & Hughlett, P.C., City Attorney

Planning & Zoning Commission and Board of Adjustments

Agenda Item No. 10.

Meeting Date: 01/12/2021

Prepared by: Patsy Reeves, Developmental Services Coordinator
Rob Rae, Director of Development Services

Clay Mahone, Chairman
David Downtain, Vice Chairman
Shawn Davis, Commissioner
Leigh Ann Sims, Commissioner
Paul Manley, Commissioner
Glenn Whitaker, Commissioner
Bryan Blagg, Commissioner

Requested Action/Proposed Use:

*** 3700 NORTH U.S. HIGHWAY 75**

The request of JMCR Sherman LLC (Owner), Raising Cane's Restaurants, LLC (Developer), Benchmark Design Group, LLC (Civil Engineer) and Freeman Surveying & Mapping, LLC (Surveyor) for the property located at 3700 North U.S. Highway 75, being Lot 5, Block 3, Sherman Town Center, as follows;
Planning and Zoning Commission

- Replat approval Lot 5, Block 3, Sherman Town Center
- Site plan approval for Raising Cane's Restaurant

Background:

The property is located at 3700 North U.S. Highway 75 between U.S. Highway 82 and Northcreek Drive; formerly Logan Roadhouse Restaurant. The property is zoned a C-1 (Retail Business) District and located in the O-1 (75 & 82) Overlay District. The owners would like to Replat the property into two lots for commercial development.

Raising Cane's would like to construct a 2,913 square foot drive-thru restaurant. The building's architectural features inclue a standing seam metal awning, masonry facade with the combination of brick with stucco accents. The drive-thru will accommodate more than 20 cars. Thirty-eight parking spaces will be provided. They plan to employ 55 full and part-time employees.

Adjacent Zoning:

C-1 (Retail Business) District

Origination:

JMCR Sherman LLC (Owner)
Raising Cane's Restaurants, LLC (Developer)
Benchmark Design Group, LLC (Civil Engineer)
Freeman Surveying & Mapping, LLC (Surveyor

Master Plan Designation:

Auto Urban Commercial – Require more land for parking than building floor area. Automobiles and parking are the most prominent features. Parking lots reduce building density and prevent any possibility of creating an enclosed space.

Number of notices mailed:

Not required.

Objections Received:

0

Attachments

Location Map
Zoning Map
Narrative
Sherman Town Center Replat Lot 5
Site Plan
Building Elevations
Landscape Plan
Staff Review Letter - Replat
Staff Review Letter - Site Plan

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 6.**

Meeting Date: 02/01/2021

Prepared By: Rob Rae, Director of Development Services

Approved By: Robby Hefton, City Manager

Caption:

**** OTHER BUSINESS***

Replat Approval of Lots 118 and 119, Belmont Addition, being 0.276 acres in the C. Carter Survey, Abstract No. 229, also being all of Lots 118 and 119, Belmont Addition; Jose Castillo Torres and Crisalida Serrano Gonzales, Owners; and Helvey-Wagner Surveying, Inc.,, Surveyor (515 North Colbert Avenue)

Issue:

To consider Replat Approval of Lots 118 and 119, Belmont Addition, being 0.276 acres in the C. Carter Survey, Abstract No. 229, also being all of Lots 118 and 119, Belmont Addition; Jose Castillo Torres and Crisalida Serrano Gonzales, Owners; and Helvey-Wagner Surveying, Inc., Surveyor (515 North Colbert Avenue)

Background:

The property is located at 515 North Colbert Avenue between Pacific Street and Mulberry Street. The property is zoned an R-1 (One Family Residential) District. The owner would like to Replat the property into one lot for residential development.

Origination:

Jose and Crisalida Torres (Owners)
Helvey-Wagner Surveying, Inc. (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the January 12, 2021 regular meeting, the Planning and Zoning Board voted unanimously to recommend to the City Council that the Replat be approved subject to the Staff Review Letter.

Alternatives:

None

Attachments

Location Map
Zoning Map
Zoning Sign Photo
Belmont Addition Replat
Staff Review Letter
P&Z Communication

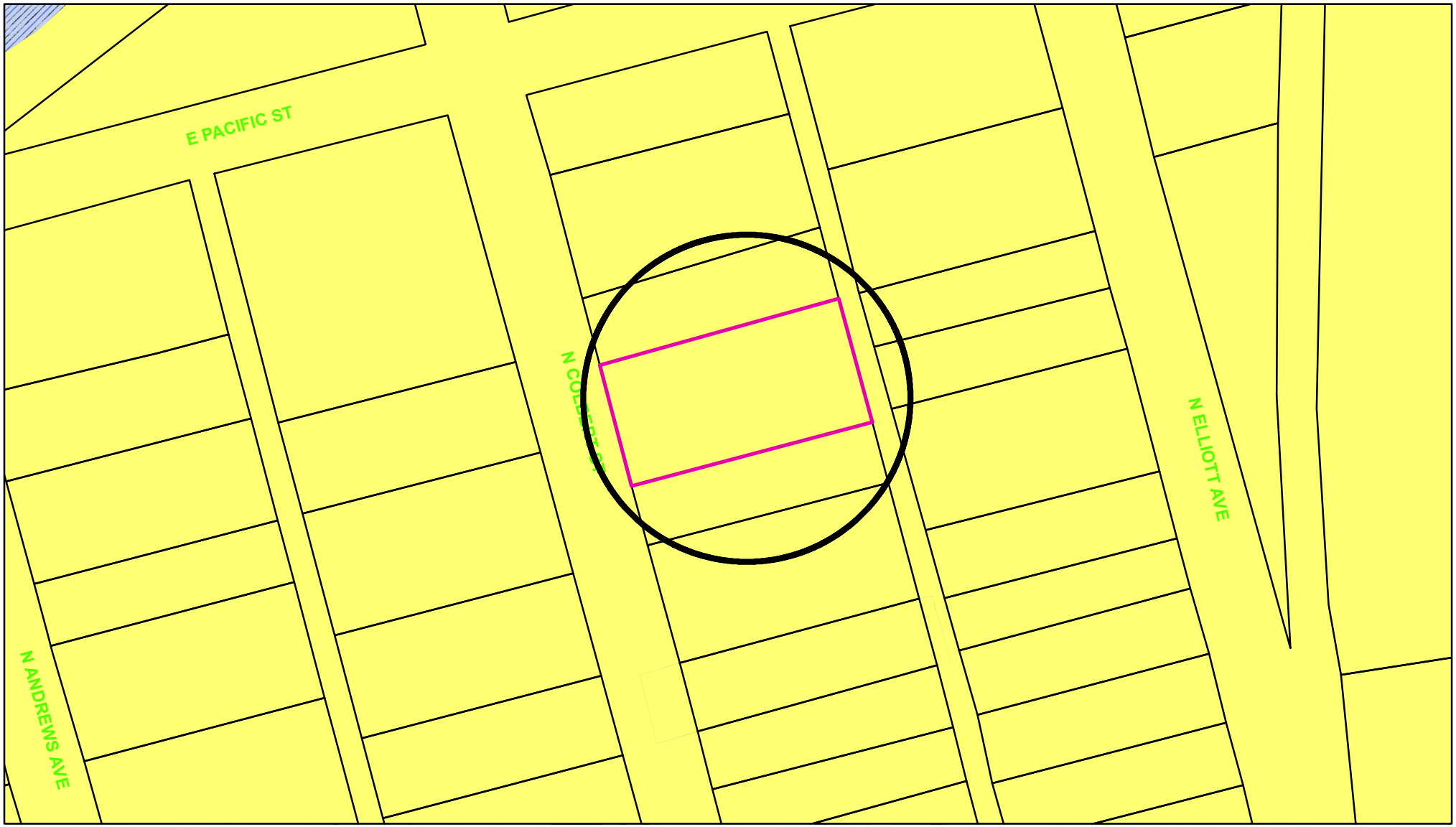
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

515 North Colbert Avenue

NOT TO SCALE

1 in = 150 ft



Zoning - 515 North Colbert Avenue

Legend

Special Districts Overlay
DISTRICT_NAME
- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor
Representation: ShermGIS.DBO.TransportationCorridor_Rep_1
- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

Zoning Districts
Representation: ShermGIS.DBO.ZoningDistrict_Rep
- Unknown
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing Distgrict
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District
- PD Planned Development

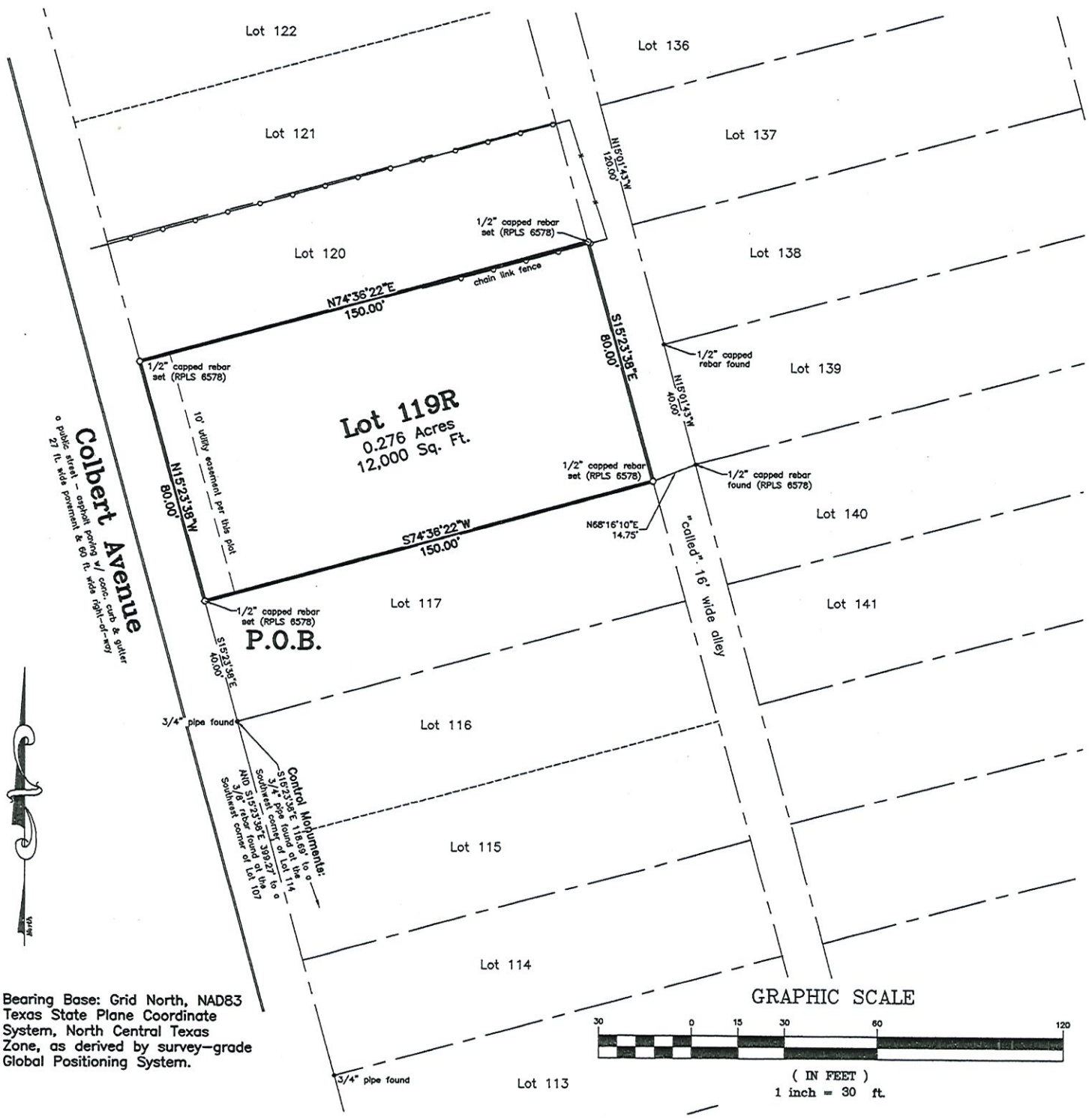
Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department

NOT TO SCALE

1 in = 87 ft

515 North Colbert Avenue



Bearing Base: Grid North, NAD83 Texas State Plane Coordinate System, North Central Texas Zone, as derived by survey-grade Global Positioning System.

Replat of Lots 119 and 118, Belmont Addition
to
City of Sherman, Texas
0.276 Acres
in the
C. Carter Survey
Abstract No. 229

General Notes:

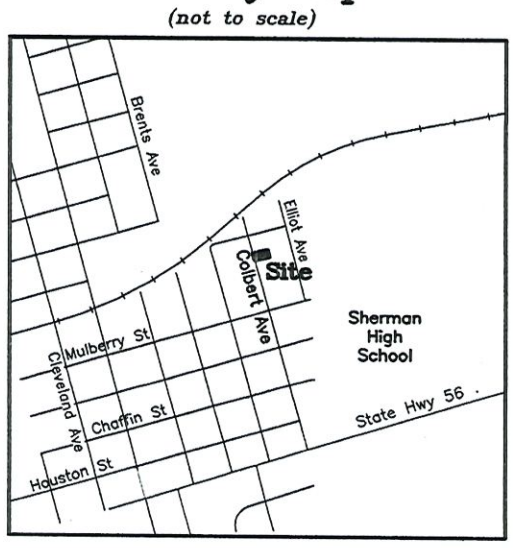
1. Water Supply to be provided by City of Sherman.
2. Sewer service to be provided by City of Sherman.
3. Electrical service is provided by Oncor Electrical Delivery Co..
4. Blocking the flow of water or construction of improvements in drainage easements, and filling or obstruction of the floodway is prohibited.
5. Any existing creeks or drainage channels traversing along or across the addition will remain as open channels and will be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage courses along or across said lots.
6. The City of Sherman will not be responsible for the maintenance and operation of said drainage ways or for the control of erosion.
7. The property shown on the plat hereon lies within a Zone "X" (areas determined to be outside 500-year floodplain) Designation, as shown on the Flood Insurance Rate Map for Grayson County, Texas and Incorporated Areas, Map No. 48181C0290 F, Revised Date: September 29, 2010.
8. Neither the City of Sherman nor the undersigned surveyor will be responsible for any damage, personal injury, or loss of life or property occasioned by flooding or flooding conditions.
9. The owners and builders must comply with all other state and federal regulations regarding developments of this type.

Job No. CGS621220

Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Ph (903) 463-6191 Fax (903) 463-4088
Email: kate@helveywagnersurvey.net
Texas Board of Professional Land Surveying
Firm Registration No. 10088100

Owner:
Jose Castillo Torres and
Crisalida Serrano Gonzales
724 E. Sears Street
Denison, Texas 75020

Vicinity Map
(not to scale)



Sherman
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STAFF REVIEW LETTER

December 31, 2020

Jose Castillo Torres and
Crisalida Serrano Gonzalez
724 E. Sears Street
Denison, TX 75020

Helvey-Wagner Surveying, Inc.
222 W. Main Street
Denison, TX 75020

Dear Applicants,

The request for approval of the Replat of Lots 119 and 118, Belmont Addition has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, January 12, 2021 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

City staff has reviewed your request with regards to engineering and development guidelines and finds the following items need to be addressed:

1. Original tax certificates with $0.00 balance for each taxing property involved in plat shall be furnished to the City of Sherman Engineering Department at the time of delivery of final mylar and prints for the purpose of recording the plat.
2. Drive approaches and sidewalks must conform to City of Sherman standards and a permit with drawing showing dimensions is required from City of Sherman Engineering Department for review and approval prior to any work being done within public right of way.
3. Metes and bounds description must match drawing.
4. The City of Sherman does not maintain alleys.
5. Any other changes made to the plat prior to the final fulfillment of the conditions of the staff review, must be considered minor by staff, as to not require resubmission to the Planning & Zoning Commission.
6. Upon final staff approval, 1 Mylar and 3 paper copies must be submitted in 24"x36" size for recording. Both mylar and paper copies must be split, but not cut, to be 2-24"x18" pages per Grayson County requirements. 1 page must have the legal description (preferably in portrait layout) and the other page must have the image. Both mylar and paper copies must look the same. Both split pages must include the Subdivision Name block and page numbers. Submit digital image to the Engineering department for approval prior to printing mylars and paper copy. CAD file must be submitted digitally at time of final approval.

The Board will not consider a request unless it has representation. You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Wayne Lee, at 903-892-7327 prior to the meeting.

Respectfully,

Clint Philpott, P.E.
Assistant City Manager

cc: Robby Hefton, City Manager
Rob Rae, Incoming Director of Development Services
Billy Hartsfield, Fire Marshal
Scott Shadden, Director of Development Services
Tom Pruitt, Utility Engineer
Clint Philpott, Assistant City Manager
The Law Firm of Abernathy, Roeder, Boyd, & Hughlett, P.C., City Attorney

Planning & Zoning Commission and Board of Adjustments

Agenda Item No. 6.

Meeting Date: 01/12/2021

Prepared by: Patsy Reeves, Developmental Services Coordinator
Rob Rae, Director of Development Services

Clay Mahone, Chairman	
David Downtain, Vice Chairman	Paul Manley, Commissioner
Shawn Davis, Commissioner	Glenn Whitaker, Commissioner
Leigh Ann Sims, Commissioner	Bryan Blagg, Commissioner

Requested Action/Proposed Use:

*** 515 NORTH COLBERT AVENUE**

The request of Jose and Crisalida Torres (Owners) and Helvey-Wagner Surveying, Inc. (Surveyor) for the property located at 515 North Colbert Avenue, being Lots 118 and 119, Belmont Addition, as follows;
Planning and Zoning Commission
Replat approval of Lots 118 and 119, Belmont Addition

Background:

The property is located at 515 North Colbert Avenue between Pacific Street and Mulberry Street. The property is zoned an R-1 (One Family Residential) District. The owner would like to Replat the property into one lot for residential development.

Adjacent Zoning:

R-1 (One Family Residential) District

Origination:

Jose and Crisalida Torres (Owners)
Helvey-Wagner Surveying, Inc. (Surveyor)

Master Plan Designation:

Auto-Urban Single Family Residential – This character type is the single-family residential category with the greatest density and the shortest building setbacks. Most driveways will face the street as well as the garage. Sidewalks are available for pedestrians. Less lot area is devoted to open space and greenery.

Number of notices mailed:

83

Objections Received:

0

Attachments

Location Map
Zoning Map
Zoning Sign Photo
Belmont Addition Replat
Staff Review Letter

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **G. 7.**

Meeting Date: 02/01/2021

Prepared By: Sarah McRae, Tourism/Main Street Manager

Approved By: Robby Hefton, City Manager

Caption:

**** OTHER BUSINESS***

Consider Request of Downtown Sherman NOW to Temporarily Close Certain Streets for "Craft the Night Away" on Saturday, June 19, 2021

Issue:

Assistance for Downtown Sherman NOW's "Craft the Night Away" event on Saturday, June 19, 2021

Background:

Downtown Sherman NOW is requesting to temporarily close Crockett Street (between Lamar Street and Houston Street) and Travis Street (between Lamar Street and Houston Street) on Saturday, June 19, 2021 from 1:00 p.m. to 11:00 p.m. for "Craft the Night Away". After canceling in 2020, this will be the fifth year for this festival, which will feature craft beer, live music, artisan vendors, and food trucks. Texas Old Time Fiddlers Association will host a sanctioned contest at the festival. Downtown Sherman NOW will obtain necessary permits from the Texas Tobacco and Alcohol Commission for the sale of craft beer to the patrons of this event.

Origination:

Mrs. Karen Tooley, Executive Director of Downtown Sherman NOW

Financial Consideration:

Barricades and cones would be provided by the City of Sherman Street Department. Solid waste receptacles would be provided by the City's Solid Waste Department. Downtown Sherman NOW would work with the Sherman Police Department to arrange for security officers necessary for the event. Downtown Sherman NOW has been instructed that emergency vehicle accessibility must be maintained throughout the closed streets at all times.

Staff Recommendation:

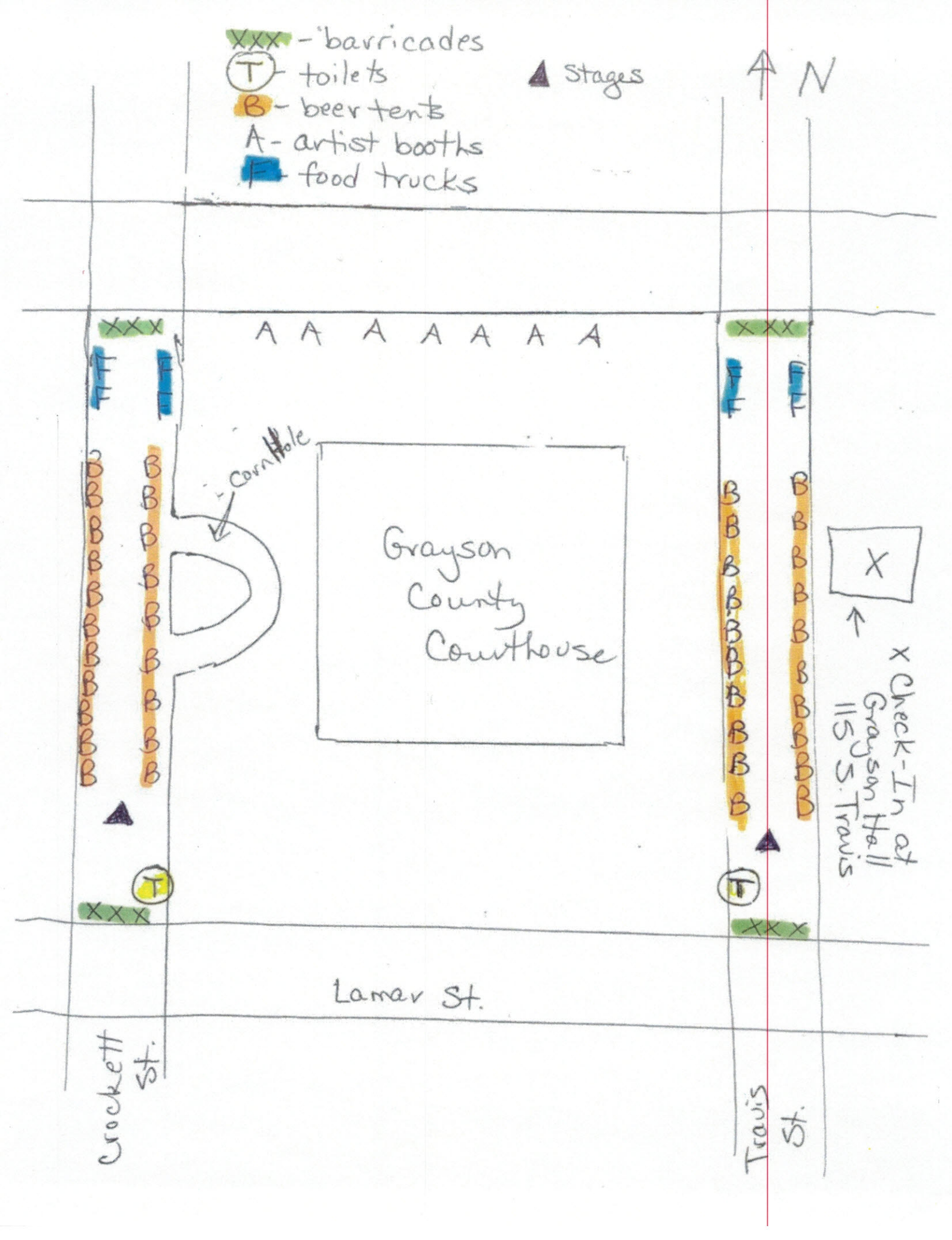
It is recommended that the Council authorize the use of City resources to provide barricades, cones, solid waste receptacles, and security support as requested.

Alternatives:

As directed by the Council

Attachments

Craft the Night Away 2021 Map
Craft the Night Away 2021 Request Letter
Craft the Night Away 2021 Special Event Packet


XXX - barricades
T - toilets
B - beer tents
A - artist booths
F - food trucks
Stages
N
A A A A A A A
Corn Hole
Grayson County Courthouse
X
Check-In at Grayson Hall 115 S. Travis
Lamar St.
Crockett St.
Travis St.

20 January 2021

Ms. Sarah McRae
Sherman Tourism Director/Main Street Manager
PO Box 1106
Sherman, TX 75091

Dear Sarah,

Downtown Sherman NOW would like city approval to hold an event, *Craft the Night Away*. The details are below. If I can answer questions or help clarify this request, please do not hesitate to contact me by email (kctooley@msn.com) or phone (903-816-2811).

Sincerely,

Karen Tooley

Executive Director, Downtown Sherman NOW

Name of Event: Craft the Night Away

Date/Time of Event: Saturday, June 19, 2021, 5:00-10:00 PM

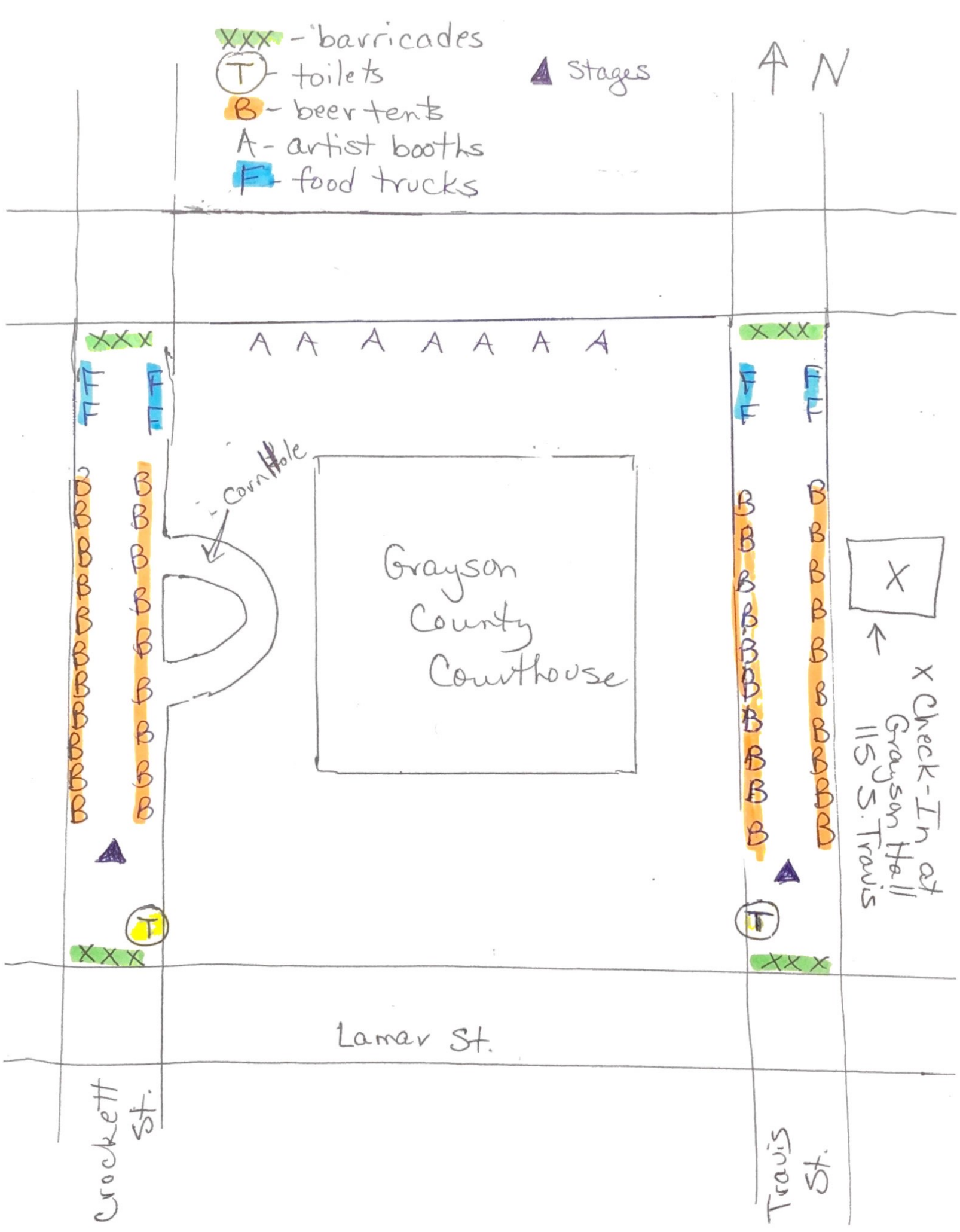
Description of Event:

Craft beer from 30 Texas breweries will be available for tasting. Food trucks will provide food for sale, artisan crafters will display and sell their art, and musicians will perform. Texas Old Time Fiddlers Association will host a sanctioned competition.

Street Closure Request:

From 1:30 PM-11:00 PM: 100 blocks of S Travis and S Crockett

Supplies Requested: 32 rolling trash cans & 50 orange traffic cones (delivered to the east side of the courthouse near the trash dumpsters)


XXX - barricades
T - toilets
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A - artist booths
F - food trucks
Stages
N
A A A A A A A
XXX
XXX
F F F F
F F F F
B B B

Sherman
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Special Event
Date Request Form

Name of Event:	Craft the Night Away
Type of Event (i.e. Carnival, Circus, Festival, 1 Mile/5 K Run, etc.):	craft beer festival
Location of Event:	Courthouse lawn, 100 blocks of S. Crockett + S. Travis
Date of Event:	June 19, 2021
Event Contact Name:	Karen Tooley
Event Contact Address:	PO Box 2054, Sherman 75091
Event Contact Phone:	903 816 2811
Event Contact Email:	Ktooley@msn.com

Completion and approval of the Special Event Date Request Form does not guarantee event approval. The Community and Support Services Department must receive the completed Special Event Application 60 days prior to the event date. If the application is not received the date will be released 60 days prior to the event.

Requester Signature:	KC Tooley	Date:	1-20-2021

*Office Use Only
Date Request Received:
Event Date Hold Approved: YES NO
If NO, reason:
Date 60 Days Prior to the Event Date:
Date Special Event Application Received:
Requested Event Date Released: YES NO Date:
Community and Support Services Department Signature:

Sherman
CLASSIC TOWN. BROAD HORIZON.

Special Event Application

This agreement is between the City of Sherman, hereinafter referred to as City, and an event/event coordinator, hereinafter referred to as event, for the cooperation of planning and operating a Special Event.

City reserves the right to close down or cancel any Event that is in violation of any City Ordinance or deviation from this agreement. The City also reserves the right to close down or cancel the Event if public safety or affected department supervisors deem the event unsafe for public participation.

- Application must be submitted at least 60 days prior to the event date.
- The Event must carry property, bodily injury and municipal liability insurance of $1,000,000.00 per occurrence. The City of Sherman must be shown as an additional named insured on the insurance declaration. One (1) original copy of insurance must be submitted 30 days prior to event date.
- Alcohol distribution or consumption in any City Park and/or street is prohibited, unless approval is granted by motion and order by the City Council. A special event permit for alcohol on private property in conjunction with a Sherman private club may be permitted with a T.A.B.C license. Certain city-owned properties may allow for the consumption of alcohol.
- Please provide all information pertaining to the event as accurately as possible.

General Event Information

Official Name of Event: Craft the Night Away

Type of Event: (i.e. Carnival, Circus, 1 Mile/5 K Run, etc.) craft beer festival

Event Date: June 19, 2021 Event Times: 5-10 pm

Alternate Date: none Event Times: _____

*Alternate date required in case of weather delays

Location of Event: Courthouse lawn + 100 blocks of S. Crockett and S. Travis

Event Contact Name: Karen Tooley

Event Contact Address: PO Box 2054, Sherman 75091

Event Contact Phone: 903 816 2811

Event Contact Email: kctooley@msn.com

Alternate Event Contact Name: Sherry Little

Alternate Event Contact Address: 101 N. Travis St, Sherman 75090

Alternate Event Contact Phone: 903·436·8374

Alternate Event Contact Email: sherrylittle74@gmail.com

Event Day Emergency Contact: Karen Tooley Phone: 903-816-2811

Event Day Emergency Contact: Sherry Little Phone: 903-436-8374

Estimated # of Participants: 1200 Spectators: _____

Is Event Private or Open to the Public? _____ Private Event ✓ Public Event

Description of Event

Include background/history of this event or type of event and a timeline of event. Maps and site plans are required; site plans should include location of concessions, port-a-lets and dumpsters; description of routes to be used, severe weather emergency plan, etc. Clean-up deposit may be required.

After cancelling in 2020, this will be the 5th year for this festival which will feature craft beer, live music, artisan crafters, street food. Texas Old Time Fiddlers Association will host a sanctioned contest at the festival.

Public Services

Will event take place at a public park/facility? _____ Yes ✓ No

If yes, which park/facility? _____

*Park and/or facility reservation(s) required prior to completing this application.

Will you need any public street closures? ✓ Yes ____ No

If Yes, which streets? 100 blocks of S. Crockett and S. Travis

*Closure of TxDOT controlled streets will need prior approval by TxDOT.
*Police and Fire vehicles must have access through street closures if the need arises.

Street closure time: 1:30 pm Time closure removed: 11:00 pm
*Barricades will be provided by the City for the listed street closures. Fees may be required for additional barricade requests.

Where are the parking areas located: (Include on site plan) Lots at Wall/Walnut, Lamar/Houston, Jones/Crockett plus street parking

Does your event require special/additional support? (Fee may be required)

✓ Police
(crowd control, traffic control, etc.)
If yes, contact Jarena Capps, Police Department, 903-892-7397

____ Fire Department
(EMT Support, etc.)
If yes, contact Chief Jones, Fire Department, 903-892-7263

____ Other
(provide detail)

If any special/additional support is checked above it is the responsibility of the event coordinator to contact the person listed above, prior to approval. If no contact is made by the event coordinator, the approval process for your special event will cease.

Number of trash containers and size requested over and above the current level:

32 rolling trash cans

*Per city ordinance, all solid waste services must be provided by the city. Additional fees are possible for solid waste services.

50 orange traffic cones

Concessions

Will food concessions be present at the event? ✓ Yes _____ No

Name, Address & Phone Number for Food Vendors: Unknown at this time. We will require a copy of their festival food handlers permit.

*All food vendors are required to have the appropriate permits required by the city or the county.

Fire Prevention

Will you have any tents at the event? ✓ Yes _____ No

Will any tents be over 200sq. ft.? _____ Yes ✓ No
*No smoking signs and 5lb. ABC extinguishers are required in all tents over 200sq. ft.

Will any tents be enclosed? _____ Yes ✓ No
*A permit ($50.00 fee) must be obtained from the Developmental Services Department for enclosed tents.
*A flame certificate for the tent and a site plan showing the setback from the property lines will be required to obtain this permit.

Will you have bounce houses? _____ Yes ✓ No Number: _____

Will you have other air supported structures? _____ Yes ✓ No

Will there be fireworks? _____ Yes ✓ No

Will there be any temporary structures built or placed on site? _____ Yes ✓ No

If Yes, describe: _____

Miscellaneous

Will you need the use of city water and/or electricity? _____ Yes ✓ No
*Additional fees will apply to the usage of city utilities

Where will restroom facilities be located? Corners of Crockett / Lamar and Travis / Lamar
*Depending on accessibility of restroom facilities, city may require portable toilets to be used

Will there be music or any other use of a loudspeaker? ✓ Yes _____ No

If Yes, please fill out the following:
Type of loudspeakers: Unknown at this time How many: _____

Type of Amplifiers: _____ How many: _____

Type of electrical devices: _____ How many: _____

Date and time loudspeakers/amplifiers/electrical devices will be in use: _____
*Loudspeakers/Amplifiers/Electrical Devices cannot be used during the hours of 9pm to 8am

Will you have any animals at the event? _____ Yes ✓ No

If yes, are any prohibited/regulated animals? _____

*All pet owners must abide by Grayson County leash law

Public Information

Describe signage that will be used for the event, to include placement of signs: Along the perimeter we will have signs which say 'No alcohol beyond this point.'

Describe how you will notify residents affected by the event either living on the route/course or nearby. N/a

*Proof of notification may be required

Overnight Accommodation Needs

Will event produce overnight stays in Sherman hotels, motels or bed and breakfasts? If so, how many rooms potentially? Estimate: 30 rooms

* The Sherman Chamber of Commerce is available for assistance with hotel information and accommodation needs for the event.

Agreement:

Initial XCJ I hereby attest that the information contained in this application is true and correct. I understand that this is only an application and not a guarantee that a permit will be issued. If a permit is issued, I agree that: (1) if any of the information contained in this application is found to be false: or (2) should my conduct, or the conduct of any participants or guests, not adhere to the Special Event Policies and Procedures: or (3) should any applicable city, county, state or federal rules, regulations, codes or laws be violated, any permit issued shall automatically become null and void and any activity associated with this permit will immediately cease.

Initial XCJ Applicant agrees to assume the defense of and indemnify and save harmless the City, its council members, boards, commissions, officers, employees and agents, from all suits, actions, damages or claims to which the City may be subjected of any kind or nature whatsoever resulting from, caused by, arising out of or as a consequence of such temporary street closure and the activities permitted in connection therewith. The city may require, as a condition of issuance of a permit, that the applicant obtain insurance to serve this end, in such an amount and with such terms as the City determines to be appropriate under the circumstances. This shall be a continuing release and shall remain in effect until revoked in writing.

Initial XCJ In case of emergency or for reasons beyond the City's control, the City reserves the right to cancel the permit prior to scheduled use without liability. Refunds will be made if cancellation by the City is necessary.

Initial XCJ Alcohol must be confined to private property. Alcohol consumed on Public property is a violation of city Ordinance and is prohibited.

Signature:

I the undersigned representative have read the policies and procedures with reference to this application. The information contained herein is complete and accurate.

XC Jolly — Signature

1-20-2021 — Date

For Office Use Only

DEPARTMENT APPROVALS

DEPARTMENT	DATE	SIGNATURE
City Council Approval		
Fire Department		
Police Department		
Public Works Department		
Solid Waste & Recycling Department		
Parks & Recreation Department		

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **I. 1.**

Meeting Date: 02/01/2021

Prepared By: Linda Ashby, City Clerk

Approved By: Robby Hefton, City Manager

Caption:

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Animal Control Advisory Committee (1)

Issue:

The Animal Control Advisory Committee was originally designed to include a Licensed Veterinarian, however at the time, no one applied for the position. We have now received an application from Dr. Ken Lawrence, a licensed veterinarian.

Background:

The Texas Health and Safety Code, Section 823.005, requires that the City establish and maintain an Advisory Committee to assist the City's Animal Control Department in carrying out its duties. On February 12, 2020, the City Council approved Resolution No. 6593, creating the Animal Control Advisory Committee. The Committee serves in an advisory capacity to assist the City's Animal Control Department in compliance with city and state regulations concerning the operation of the City's Animal Control facility; to assist the City in communicating awareness to the citizens of Sherman regarding the services, procedures, and compliance with state regulations concerning the operation of animal shelters and coordinating review of programs and services to make recommendations for improvements in those programs and services to better serve the community.

Origination:

This agenda item originated with the Police Department.

Financial Consideration:

There is no financial consideration to the City.

Staff Recommendation:

The staff's recommendation is to appoint Dr. Ken Lawrence to the Animal Control Advisory Committee.

Alternatives:

No alternatives are recommended.

Attachments

Roster
Applicant List
Ken Lawrence Application

MEMBERSHIP ROSTER

ANIMAL CONTROL ADVISORY COMMITTEE **LENGTH OF TERMS: 3 Years**

MEMBER	DISTRICT	TERM BEGINS	TERM EXPIRES	TERMS	MEMBERSHIP REQUIREMENTS
					Licensed Veterinarian
Sandra Melton		A 3/17/2020	3/17/2023		Municipal Official
Morgan Simpson		A 3/17/2020	3/17/2023		Animal Services Supervisor
Stephanie Phillips	n/a	A 3/17/2020	3/17/2022	1	Animal Welfare Organization
Kyle Wiser	1	A 3/17/2020	3/17/2022	1	Sherman Citizen
Amber Doan	3	A 3/17/2020	3/17/2022	1	Sherman Citizen
Raven Schellenberg	3	A 3/17/2020	3/17/2021	0	Sherman Citizen
Mignon Plyler	4	A 3/17/2020	3/17/2021	0	Sherman Citizen

NOTE:

Officers		Term Begins	Term Expires
Chairman	Kyle Wiser	3/17/2020	3/17/2022
Vice Chairman	Stephanie Phillips	3/17/2020	3/17/2022

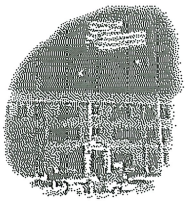
City Staff: Zach Flores, Police Chief
1/27/2021

APPLICANT LIST

Animal Control Advisory Committee **Positions Vacant 1**

Applicant	Address	District	Qualifications
Dr. Ken Lawrence	95 Doubletree Dr., Denison	n/a	**Licensed Veterinarian**

COMMENTS:



CITY OF SHERMAN
APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP

Return completed application to:
City Clerk's Office
220 W. Mulberry
P.O. Box 1106
Sherman, TX 75091
Fax: (903) 892-7394

Please type or use black ink
Please complete one application for each board or commission membership
Please limit attachments to two pages
For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name: KENNETH (KEN) LAWRENCE DVM
(Please print legal name and your name as you wish it to appear, if different.)

Name of Board or Commission: ANIMAL CONTROL

☐ Yes, I would be interested in serving on subcommittees that may be formed.

Personal Information	Occupational Information
Home Address: 95 DOGWOOD DR DENISON 75020	Business Name: TEXOMA VETERINARY HOSP
Mailing Address: SAME	Occupation: VETERINARIAN
Telephone: 903-815-1417 Fax: 1-866-936-6458	Address: 5005 N. FM 1417 SHERMAN, TX
E-Mail: AGGIEDVM@GMAIL.COM	Telephone: 903-868-9434 Fax: 1-866-936-6458
Sherman Resident for ____ years County: GRAYSON	E-Mail: SAME
Drivers License No.: 08252030	
Voter Registration No.: 10249539776 ✓	

Which Council District do you live in? *(see attached map)* I LIVE IN DENISON. BUSINESS IS IN SHERMAN ✓

Prior work experience: *(please include dates)*

Educational Achievement:

High School Graduate? ☒ Yes ☐ No Year Graduated/Left School? 1977
Business College, Correspondence School, Adult Education, Other? ____
Name of College/University: TAMU ☐ Bachelor's ☐ Master's ☒ PhD

Volunteer Work: *(please include dates)*

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☐ Yes ☒ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.

Application held for 12 months from date received

Taxes - None

Are you presently serving on a City board or commission? ☐ Yes ☒ No

If so, which one? _____

Why do you want to become a member of this particular board or commission *(how would you use this experience to benefit the City)*?

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue?

1) STRAY PETS

2) NO KILL US EUTHANASIA

3) PET STERILIZATION

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

DVM

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:

WIFE IS FEMALE DIRECTOR I AM A VETERINARIAN THAT PRACTICES IN SHERMAN

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☐ Yes ☒ No

Comments: _____

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

Signature: _____ DVM *Date:* 1/26/2021

In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.

Sherman
CLASSIC TOWN. BROAD HORIZON.

SHERMAN CITY COUNCIL
Agenda Communication Form

City Council Regular Meeting **M.**

Meeting Date: 02/01/2021

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Attachments

2021 Council Calendar

2021
Council Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

March						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

April						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

May						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

June						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

July						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

August						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

September						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

October						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

November						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

December						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	City Council Called Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

CALLED MEETINGS	
1/19/2021	Rescheduled - Martin Luther King, Jr. Day
7/6/2021	Rescheduled - Independence Day
9/7/2021	Rescheduled - Labor Day