

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, JANUARY 19, 2009
5:00 P.M.**

- A.1 [CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN](#)
- A.2 [PLEDGE OF ALLEGIANCE](#)
- A.3 [INVOCATION BY COUNCIL MEMBER WILLIE STEELE](#)
- A.4 [APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JANUARY 5, 2009](#)

Public Hearing

- B.1 [INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5586](#)
Amending Chapter 3 of the Code of Ordinances, entitled "Building Regulations", at Article 3.07, entitled "Plumbing Code", to Provide for Section 3.07.007 to be entitled "Minimum Standards for Installation of Irrigation Systems"

Close Public Hearing and Consider Adoption of Ordinances

- B.2 [ADOPTION OF ORDINANCES](#)
Consider Adoption of Ordinance Number: 5586
- B.3 [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

Resolutions

- C.1 [* RESOLUTION NO. 5309](#)
Authorizing Execution of a Professional Services Agreement with Teague, Nall and Perkins, Incorporated for Design of the Travis Street Water Main Replacement between Washington Street and Jones Street
- C.2 [* RESOLUTION NO. 5310](#)
Authorizing Execution of a Development Agreement with Tin Star Homes, LLC for the Construction of Public Facilities in the Country Ridge Subdivision, The Preserve, within the City of Sherman

- C.3** [RESOLUTION NO. 5311](#)
Authorizing Execution of a Consulting Services Agreement with Dunkin Sims Stoffels, Inc. for Phase II of the Pecan Grove Park Development
- C.4** [* RESOLUTION NO. 5312](#)
Authorizing the Purchase of Bleachers through the Texas Local Government Purchasing Cooperative (BuyBoard) for the Parks and Recreation Department

Requests to Advertise

- D.1** [* REQUEST TO ADVERTISE](#)
Benches and Trash Receptacles for the Downtown Square
- D.2** [* REQUEST TO ADVERTISE](#)
Medical Drugs and Supplies

Other Business

- D.3** [OTHER BUSINESS](#)
Receive Leadership Sherman's Presentation on a New "Welcome to Sherman" Sign
- D.4** [OTHER BUSINESS](#)
Receive Biosolids Update from Director of Utilities and Engineering Mark Gibson
- D.5** [OTHER BUSINESS](#)
Consider Rescheduling a Joint Meeting with the Planning and Zoning Commission Called for 12:00 noon on Monday, January 26, 2009, to Review the Draft Comprehensive Master Plan and its Implementation Priorities
- D.6** [CITIZEN REQUESTS](#)
- D.7** [MEDIA QUESTIONS](#)
- D.8** [COUNCIL COMMENTS](#)

Executive Session

- E.1** [EXECUTIVE SESSION](#)
In Accordance with Chapter 551, Government Code, V.T.C.S. (Open Meetings Law), "The City Council Will Now Hold a Closed Executive Meeting Pursuant to the Provisions of the Open Meetings Law, Chapter 551, Government Code, Vernon's Texas Codes Annotated, in Accordance with the Authority Contained in the Following Sections"

- Section 551.071 Consultation with City Attorney Concerning Pending Litigation:
- (a) In the Court of Appeals, Fifth District of Texas at Dallas No. 05-06-00420-CV; The City of Sherman, Texas and The Sherman City Council, Appellants v. James Wayne, Appellee
- Section 551.074 Personnel Matters:
- (a) Consider the Qualifications, Appointment, Employment and Duties of a Public Officer or Employee:
 - (i) City Attorney

The Council reconvenes into General Session

F.1 [OPEN MEETING](#)

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

F.2 [ADJOURNMENT](#)

[COUNCIL CALENDAR](#)



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. A.1

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. A.2

PLEDGE OF ALLEGIANCE

The Honorable Willie Steele, Council Member



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. A.3

INVOCATION BY COUNCIL MEMBER WILLIE STEELE



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. A.4

APPROVE MINUTES
OF THE REGULAR CITY COUNCIL MEETING OF JANUARY 5, 2009

STATE OF TEXAS

§

January 5, 2009

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 Council Chambers of City Hall on January 5, 2009.

MEMBERS PRESENT: MAYOR BILL MAGERS; DEPUTY MAYOR CARY WACKER.
COUNCIL MEMBERS ADAMI, HOWETH, SMITH, SOFTLY,
STEELE.

MEMBERS ABSENT: NONE.

CALL TO ORDER

Mayor Bill Magers called the meeting to order at 5:00 p.m. The Pledge of Allegiance and the Invocation were given by Council Member Chip Adami.

CALL TO ORDER

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of December 15, 2008. Council Member Steele moved to approve the Minutes as presented; Second by Deputy Mayor Wacker. All present voted AYE.
MOTION CARRIED.

APPROVE MINUTES

PROCLAMATION

"DR. MARTIN LUTHER KING, JR. DAY" – JANUARY 19, 2009
Council Member Softly read the proclamation designating January 19, 2009 as "Dr. Martin Luther King, Jr. Day" in Sherman.

DR. MARTIN LUTHER
KING, JR. DAY
(JAN. 19, 2009)

INTRODUCTION AND PUBLIC HEARING OF ORDINANCES

Deputy Mayor Wacker introduced Ordinance 5583 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-2 (GENERAL COMMERCIAL) DISTRICT AT 1905 EAST LAMAR STREET, BEING LOTS 5 AND 7, BLOCK 17 OF THE CHRISTIAN COLLEGE ADDITION (OUTPOST/ LAZY L ENTERPRISES, OWNERS); PROVIDING FOR A REPEALER.

ORD 5583
ZONE CHANGE

Mayor Magers abstained from the public hearing on Ordinance 5583 because of an interest in real property. Deputy Mayor Wacker introduced the ordinance.

No citizens appeared before the City Council to discuss Ordinance 5583.

Deputy Mayor Wacker introduced Ordinance 5584 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 AUTOMOTIVE REPAIR IN A C-2 (GENERAL COMMERCIAL) DISTRICT AT 1905 EAST LAMAR STREET, BEING LOTS 5 AND 7, BLOCK 17 OF THE CHRISTIAN COLLEGE ADDITION (OUTPOST/LAZY L ENTERPRISES, OWNERS); 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.

ORD 5584
SUP FOR
AUTO REPAIR
(1905 E. LAMAR)

Mayor Magers abstained from the public hearing on Ordinance 5584 because of an interest in real property. Deputy Mayor Wacker introduced the ordinance.

No citizens appeared before the City Council to discuss Ordinance 5584.

Mayor Magers introduced Ordinance 5585 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, PROVIDING FOR PERMANENT "NO PARKING" SIGNS RESTRICTING PARKING ALONG PORTIONS OF WEST FERN STREET WITHIN THE CITY LIMITS OF THE CITY OF SHERMAN.

ORD 5585
NO PARKING SIGNS

No citizens appeared before the City Council to discuss Ordinance 5585.

The Ordinances were introduced and the Public Hearing was closed.

CLOSE PUBLIC
HEARING

ADOPTION OF ORDINANCES

Ordinance 5583

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-2 (GENERAL COMMERCIAL) DISTRICT AT 1905 EAST LAMAR STREET, BEING LOTS 5 AND 7, BLOCK 17 OF THE CHRISTIAN COLLEGE ADDITION (OUTPOST/LAZY L ENTERPRISES, OWNERS); PROVIDING FOR A REPEALER.

ORD 5583
ZONE CHANGE

Mayor Magers abstained from the discussion and consideration of Ordinance 5583 because of an interest in real property. Deputy Mayor Wacker presided over the item.

Ordinance 5584

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 AUTOMOTIVE REPAIR IN A C-2 (GENERAL COMMERCIAL) DISTRICT AT 1905 EAST LAMAR

ORD 5584
SUP FOR
AUTO REPAIR
(1905 E. LAMAR)

STREET, BEING LOTS 5 AND 7, BLOCK 17 OF THE CHRISTIAN COLLEGE ADDITION (OUTPOST/LAZY L ENTERPRISES, OWNERS); 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.

Mayor Magers abstained from the discussion and consideration of Ordinance 5584 because of an interest in real property. Deputy Mayor Wacker presided over the item.

ACTION TAKEN.

Motion by Council Member Steele to approve Ordinance Nos. 5583 and 5584, as presented. Second by Council Member Smith.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

ABSTAIN: Magers.

MOTION CARRIED.

Ordinance 5585

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, PROVIDING FOR PERMANENT "NO PARKING" SIGNS RESTRICTING PARKING ALONG PORTIONS OF WEST FERN STREET WITHIN THE CITY LIMITS OF THE CITY OF SHERMAN.

ORD 5585

NO PARKING SIGNS

ACTION TAKEN.

Motion by Council Member Smith to approve Ordinance No. 5585, as presented. Second by Council Member Steele.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.

VOTING NAY: None.

MOTION CARRIED.

CONSENT AGENDA

The Council reviewed the Consent Agenda. Council Member Adami moved to approve the Consent Agenda, as presented. Second by Deputy Mayor Wacker. All present voted AYE.

CONSENT AGENDA

RESOLUTIONS

RESOLUTION NO. 5307 – AUTHORIZING EXECUTION OF AN END USER LICENSE AGREEMENT WITH AFIX TECHNOLOGIES, INC. FOR AN AFIX TRACKER REMOTE WORKSTATION TO BE USED FOR ADVANCED FINGERPRINT ANALYSIS IN CRIMINAL INVESTIGATION BY THE SHERMAN POLICE DEPARTMENT

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN END USER LICENSE AGREEMENT WITH AFIX TECHNOLOGIES, INC. FOR AN AFIX TRACKER REMOTE WORKSTATION TO BE USED FOR ADVANCED FINGERPRINT ANALYSIS IN CRIMINAL INVESTIGATION BY THE SHERMAN POLICE DEPARTMENT.

CONSENT AGENDA.

RES 5307

**AFIX TRACKER
REMOTE WORK-
STATION FOR
POLICE DEPT.**

RESOLUTION NO. 5308 -- AUTHORIZING THE PURCHASE OF A MOTOROLA CONSOLE RADIO THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC) FOR THE SHERMAN POLICE/FIRE DISPATCH COMMUNICATION SERVICES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A MOTOROLA CONSOLE RADIO THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC) FOR THE SHERMAN POLICE/FIRE DISPATCH COMMUNICATION SERVICES.
CONSENT AGENDA.

**REQUEST TO ADVERTISE
POLICE UNIFORMS**

The City Council approved the request of the staff to exercise the option to not renew the existing contract for police uniforms and to advertise for bids seeking a new uniform supplier.

After a bid process, the City enters into a one-year initial contract, including four one-year renewal options, with a vendor to supply uniforms.
CONSENT AGENDA.

OTHER BUSINESS

**RECEIVE DIRECTOR OF UTILITIES AND ENGINEERING
MARK GIBSON'S PRESENTATION ON THE LAKE TEXOMA
PIPELINE EVALUATION PROJECT**

Mark Gibson, Director of Utilities and Engineering, briefed the City Council on the Lake Texoma Pipeline Evaluation Project.

Sherman has two zones for water, the ground water zone in the east and south part of Sherman, and the surface zone in the west and north part of Sherman. The surface water comes from Lake Texoma to the Water Treatment Plant through a single pipeline which has been in service for approximately 20 years.

The North Texas Municipal Water District is proposing to install two larger pumps to increase the capacity from 90 million gallons a day to 125 million gallons a day, which will increase the pressure on this pipeline.

Since the line has been underground for 20 years and has not seen that amount of pressure, it has been recommended that the line be removed from service and reviewed for any possible problem areas. These problems would then be addressed prior to the new pumps coming on line.

Mr. Gibson said the City will receive 20% of the increased capacity if they decide to participate in the project. The City is unable to pump their allotment with the pumps that are in place now.

RES 5308
POLICE DEPT.
CONSOLE RADIO

REQ TO ADVERTISE
POLICE UNIFORMS

LAKE TEXOMA
PIPELINE
EVALUATION
PROJECT

The pipeline evaluation project should take approximately two weeks and the line will be out of service during that period. This means that no surface water will be available during that period.

In the past the entire City was served by ground water. With the two zones, changes had been made to the system to separate the ground water zone from the surface water zone. The system can be adapted to serve the entire City with ground water during the pipeline evaluation project.

The City is in the process of working with a consultant to develop a computer model of the water system. As a part of that project, the consultant, using normal February water demands, has manipulated the computer model to see if it is possible to serve all citizens with ground water. The results of the study indicate that it is possible.

The City has notified major industries to make sure there would not be a problem with their particular processes. All are able to adapt to the change in water sources. The City has also contacted secondary water users such as dialysis centers and hospitals and they are also able to adapt to the change.

The distribution system and the production facilities have been checked and repaired or cleaned as needed for the project.

Mayor Magers asked if citizens will see a decrease in water pressure. Mr. Gibson said some areas in the extreme southeast of Sherman along First Street, and maybe in the Constitution Village area may see a slight decrease in water pressure. There may be a slight increase in the southwest areas such as Country Ridge. Everyone will have adequate pressure, above 30 psi.

Citizens currently on well water will probably not notice a difference during the project. Citizens on surface water will move from hard water to soft water.

Because the different waters are disinfected differently, there may be some cloudiness. The water will be safe to drink, however the flow reversals will stir up sediment in the mains. He urged citizens to call the Water Control Department with any problems they may experience during the project. One problem is expected to be the 24 inch water line along FM 1417.

Mr. Gibson said the benefit of the project will be to assure the City's water needs in the future if a big water main happened to break. The City will be prepared for any problems and know how to switch the City to ground water in an emergency.

NTMWD has scheduled their part of the project for February 19 through 28, 2009. The City of Sherman will probably begin the first part of that week so any problems can be dealt with before the Water Treatment Plant goes off-line.

Mr. Olson said the report tonight is a kick-off to the marketing campaign to make sure citizens are aware of the project and the changes they will encounter. The process will benefit the City in the long run.

Council Member Howeth verified that there will be no impact to fire protection or the response from the Fire Department if any fires occur during the project time period.

Mr. Gibson said the City may experience some water main breaks due to increased pressure. The staff is ready and will try to minimize the inconvenience to citizens.

Mayor Magers asked for a fact sheet with bullet points for the City Council so when citizens call they will have all the information at hand.

FINAL PLAT APPROVAL OF CUPID BROUGHTON TWO ADDITION; BARTON CAPITAL, LTD., OWNER AND SARTIN & ASSOCIATES, SURVEYORS (1201 AND 1205 NORTH BROUGHTON STREET)

The City Council approved the Final Plat of the Cupid Broughton Two Addition, located at 1201 and 1205 North Broughton Street, between Sycamore and Richards Streets. The owner would like to divide the property into two 50 foot lots for residential development. The Planning and Zoning Commission recommended approval of the Final Plat.
CONSENT AGENDA.

APPROVE FINAL PLAT
CUPID BROUGHTON
TWO ADDITION
(1201 & 1205 N.
BROUGHTON)

REPLAT APPROVAL OF LOTS 9 AND 10, BLOCK 3 OF O'HANLON RANCH ESTATES, PHASE 2; SHERMAN BIBLE CHURCH, OWNERS, LESTER TERRELL, REPRESENTATIVE, AND SARTIN & ASSOCIATES, SURVEYORS (2515 WEST LAMBERTH ROAD AND 2916 OVERLAND TRAIL)

APPROVE REPLAT
O'HANLON RANCH
ESTATES
(2515 W. LAMBERTH
& 2916 OVERLAND TR.)

ACTION TAKEN.

Motion by Council Member Steele to approve the Replat of Lots 9 and 10, Block 3 of O'Hanlon Ranch Estates, Phase 2, as presented. Second by Council Member Smith.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele.

VOTING NAY: None.

ABSTAIN: Wacker.

MOTION CARRIED.

CITIZENS REQUESTS

There were no citizen's requests.

CITIZENS REQUESTS

MEDIA QUESTIONS

There were no media questions.

MEDIA QUESTIONS

COUNCIL COMMENTS

WATER PROJECT

Mayor Magers said he appreciated the staff input on the water pipeline project. Many towns would have problems switching the water.

WATER PROJECT

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

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.

EXECUTIVE SESSION

SECTION 551.071 --

CONSULTATION WITH CITY ATTORNEY CONCERNING PENDING OR CONTEMPLATED LITIGATION:
IN THE COURT OF APPEALS, FIFTH DISTRICT OF TEXAS AT DALLAS NO. 05-06-00420-CV; THE CITY OF SHERMAN, TEXAS AND THE SHERMAN CITY COUNCIL, APPELLANTS v. JAMES WAYNE, APPELLEE

CONSULTATION WITH CITY ATTORNEY CONCERNING LEGAL MATTERS:
GROUNDWATER CONSERVATION DISTRICT

SECTION 551.072

DELIBERATIONS REGARDING REAL PROPERTY:
DELIBERATE REGARDING THE POTENTIAL PURCHASE OF A PIECE OF REAL PROPERTY:
TXDOT'S SURPLUS PROPERTY AT 3711 U.S. HIGHWAY 75 SOUTH, SHERMAN, GRAYSON COUNTY, TEXAS

SECTION 551.087

DELIBERATIONS REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS:
DELIBERATE REGARDING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM BUSINESS PROSPECTS AND DELIBERATE ANY OFFERS OR INCENTIVES TO THE BUSINESS PROSPECTS, INCLUDING THE FOLLOWING:
PROPOSED GRAYSON COUNTY JAIL

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:23 p.m.

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

OPEN MEETING

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

OPEN MEETING

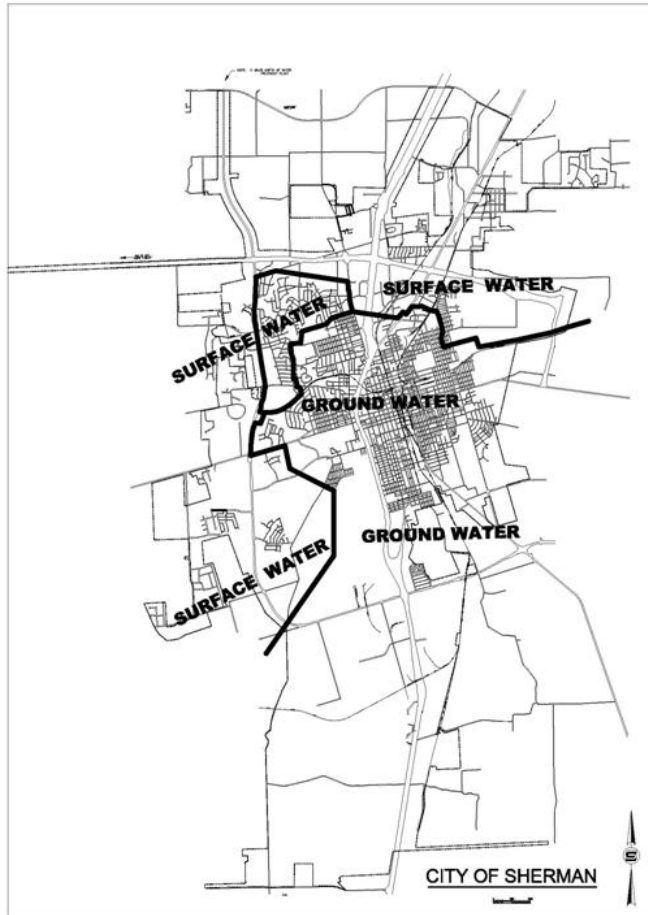
ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 6:21 p.m.

ADJOURNMENT

MAYOR

CITY CLERK



PIPELINE EVALUATION

EXISTING CONDITIONS

■ Two Zones

- Groundwater Zone - East and South
- Surface Zone - West and North

■ Surface Water

- Lake Texoma to Water Treatment Plant via single pipeline

ISSUE

- NTMWD Proposes to Install Larger Pumps- Increase Capacity from 90 MGD to 125 MGD - Change will Increase Pressure on Pipeline
- Inspect and Evaluate Pipeline before Pump Installation to Insure Integrity of Pipeline

- Take Pipeline Out of Service - Clean Interior, Inspect and Test Pipe
- Duration - Two Weeks $\pm$
- No Surface Water During Test Period

GROUNDWATER

- Entire City Served by Groundwater in Past
- Distribution Changes to Accommodate Utilization of Groundwater
- Now Split 50 - 50 Ground / Surface

Preparations

- Computer Model of System in Progress
Modified to Reflect Winter Demands and
Entire City Groundwater
- Results Indicate Groundwater Feasible
- Notified Industries Advance Notice
- Contact All Known Secondary Users

- **Distribution System Modifications**

- Valves, Cleaning, Flushing, Etc.

- **Production Facilities**

- Pumps, Wells, Switchgear, Inspected and Repaired

Results

- Surface Water Zone Converts to Groundwater
- Can Serve Entire City Based on Information and Study
- Surface Zone Change in Characteristics
 - Hard to Soft
- Initial Mixing of Water

- Flow Reversal in Mains
- Flush In Problem Areas
- Respond to Reported Problems
- Contact Water Control 903-892-7258

BENEFIT OF PROCESS

VERIFY AND CONDUCT TRANSITION
FOR FUTURE EMERGENCY



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. B.1

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5586

**Amending Chapter 3 of the Code of Ordinances, entitled “Building Regulations”,
at Article 3.07, entitled “Plumbing Code”, to Provide for Section 3.07.007
to be entitled “Minimum Standards for Installation of Irrigation Systems”**

Issue

To consider amending Chapter 3 of the Code of Ordinances, “Building Regulations”, to add a new section adopting minimum standards for the installation of irrigation systems

Background

During the 2007 legislative session, the Texas Legislature adopted House Bill 1656 which amended Chapter 401 of the Texas Local Government Code to require a city with a population of 20,000 or more to regulate the installation of irrigation systems within the corporate limits of the city as well as within the city’s extraterritorial jurisdiction. The installer of an irrigation system must be licensed with the Texas Commission on Environmental Quality (TCEQ) and must obtain a permit before installing an irrigation system. This ordinance will adopt standards and specifications for designing, installing, and operating irrigation systems and include, at a minimum, any rules adopted by the TCEQ related to landscape irrigation.

Origination

Texas Legislature House Bill 1656

Staff Recommendation

It is recommended that the City adopt the proposed ordinance and the mandated standards and specifications for designing, installing and operating irrigation systems and include, at a minimum any rules adopted by the TCEQ related to landscape irrigation.

Alternatives

As may be directed by the City Council

Attachments

Ordinance No. 5586

House Bill 1656

Prepared by:
Scott Shadden, Development Services Director

Approved by:
George Olson, City Manager

ORDINANCE NO. 5586

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 3 OF THE CODE OF ORDINANCES, ENTITLED "BUILDING REGULATIONS", AT ARTICLE 3.07, ENTITLED "PLUMBING CODE", TO PROVIDE FOR SECTION 3.07.007 TO BE ENTITLED "MINIMUM STANDARDS FOR INSTALLATION OF IRRIGATION SYSTEMS"; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY PROVISION FOR VIOLATION OF THE CODE; PROVIDING FOR A REPEALER; 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 Council of the City of Sherman, Texas has determined that water conservation and environmental protection are important issues and concerns affecting the city; and

WHEREAS, properly-installed irrigation systems will conserve water, help avoid wasteful use, and improve the overall quality of life for the citizens of Sherman, Texas; and

WHEREAS, during the 2007 legislative session, the Texas Legislature adopted House Bill 1656; and

WHEREAS, House Bill 1656 amended Chapter 401 of the Texas Local Government Code to require a city with a population of 20,000 or more to regulate the installation of irrigation systems within the corporate limits of the city as well as within the city's extraterritorial jurisdiction; and

WHEREAS, the provisions herein are necessary to promote and protect the health, safety, and welfare of the public by creating an urban environment that is protective of the city's water supply and provides an enhanced quality of life for the citizens of the City of Sherman, Texas;

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

SECTION 1. That Chapter 3, Article 3.07 of the Code of Ordinances of the City of Sherman, Texas, shall be and is hereby amended by adding Section 3.07.007, said section to read as follows:

Sec. 3.07.007 Minimum Standards for Installation of Irrigation Systems.

Definitions

The following words and terms, when used in this ordinance, have the following meanings, unless the context clearly indicates otherwise.

- (1) **Air gap**--A complete physical separation between the free flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel.*
- (2) **Atmospheric Vacuum Breaker**--An assembly containing an air inlet valve, a check seat, and an air inlet port. The flow of water into the body causes the air inlet valve to close the air inlet port. When the flow of water stops the air inlet valve falls and forms a check against back-siphonage. At the same time it opens the air inlet port allowing air to enter and satisfy the vacuum. Also known as an Atmospheric Vacuum Breaker Back-Siphonage Prevention Assembly.*
- (3) **Backflow prevention**--The mechanical prevention of reverse flow, or back siphonage, of nonpotable water from an irrigation system into the potable water source.*
- (4) **Backflow prevention assembly**--Any assembly used to prevent backflow into a potable water system. The type of assembly used is based on the existing or potential degree of health hazard and backflow condition.*
- (5) **Completion of irrigation system installation**--When the landscape irrigation system has been installed, all minimum standards met, all tests performed, and the irrigator is satisfied that the system is operating correctly.*
- (6) **Consulting**--The act of providing advice, guidance, review or recommendations related to landscape irrigation systems.*
- (7) **Cross-connection**--An actual or potential connection between a potable water source and an irrigation system that may contain contaminants or pollutants or any source of water that has been treated to a lesser degree in the treatment process.*
- (8) **Design**--The act of determining the various elements of a landscape irrigation system that will include, but not be limited to, elements such as collecting site specific information, defining the scope of the project, defining plant watering needs, selecting and laying out emission devices, locating system components, conducting hydraulics calculations, identifying any local regulatory requirements, or scheduling irrigation work at a site. Completion of the various components will result in an irrigation plan.*
- (9) **Design pressure**--The pressure that is required for an emission device to operate properly. Design pressure is calculated by adding the operating pressure necessary at an emission device to the total of all pressure losses accumulated from an emission device to the water source.*

(10) **Double Check Valve**--An assembly that is composed of two independently acting, approved check valves, including tightly closed resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. Also known as a Double Check Valve Backflow Prevention Assembly.

(11) **Emission device**--Any device that is contained within an irrigation system and that is used to apply water. Common emission devices in an irrigation system include, but are not limited to, spray and rotary sprinkler heads, and drip irrigation emitters.

(12) **Employed**--Engaged or hired to provide consulting services or perform any activity relating to the sale, design, installation, maintenance, alteration, repair, or service to irrigation systems. A person is employed if that person is in an employer-employee relationship as defined by Internal Revenue Code, 26 United States Code Service, §3212(d) based on the behavioral control, financial control, and the type of relationship involved in performing employment related tasks.

(13) **Head-to-head spacing**--The spacing of spray or rotary heads equal to the manufacturer's published radius of the head.

(14) **Health hazard**--A cross-connection or potential cross-connection with an irrigation system that involves any substance that may, if introduced into the potable water supply, cause death or illness, spread disease, or have a high probability of causing such effects.

(15) **Hydraulics**--The science of dynamic and static water; the mathematical computation of determining pressure losses and pressure requirements of an irrigation system.

(16) **Inspector**--A licensed plumbing inspector, water district operator, other governmental entity, or irrigation inspector who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor.

(17) **Installer**--A person who actually connects an irrigation system to a private or public raw or potable water supply system or any water supply, who is licensed according to Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations).

(18) **Irrigation inspector**--A person who inspects irrigation systems and performs other enforcement duties for a municipality or water district as an employee or as a contractor and is required to be licensed under Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations).

(19) **Irrigation plan**--A scaled drawing of a landscape irrigation system which lists required information, the scope of the project, and represents the changes made in the installation of the irrigation system.

(20) **Irrigation services**--Selling, designing, installing, maintaining, altering, repairing, servicing, permitting, providing consulting services regarding, or connecting an irrigation system to a water supply.

(21) **Irrigation system**--An assembly of component parts that is permanently installed for the controlled distribution and conservation of water to irrigate any type of landscape vegetation in any location, and/or to reduce dust or control erosion. This term does not include a system that is used on or by an agricultural operation as defined by Texas Agricultural Code, §251.002.

(22) **Irrigation technician**--A person who works under the supervision of a licensed irrigator to install, maintain, alter, repair, service or supervise installation of an irrigation system, including the connection of such system in or to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations).

(23) **Irrigation zone**--A subdivision of an irrigation system with a matched precipitation rate based on plant material type (such as turf, shrubs, or trees), microclimate factors (such as sun/shade ratio), topographic features (such as slope) and soil conditions (such as sand, loam, clay, or combination) or for hydrological control.

(24) **Irrigator**--A person who sells, designs, offers consultations regarding, installs, maintains, alters, repairs, services or supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply, and who is required to be licensed under Title 30, Texas Administrative Code, Chapter 30.

(25) **Irrigator-in-Charge**--The irrigator responsible for all irrigation work performed by an exempt business owner, including, but not limited to obtaining permits, developing design plans, supervising the work of other irrigators or irrigation technicians, and installing, selling, maintaining, altering, repairing, or servicing a landscape irrigation system.

(26) **Landscape irrigation**--The science of applying the necessary amount of water to promote or sustain healthy growth of plant material or turf.

(27) **License**--An occupational license that is issued by the Texas Commission on Environmental Quality under Title 30, Texas Administrative Code, Chapter 30 to an individual that authorizes the individual to engage in an activity that is covered by Title 30, Texas Administrative Code, Chapter 30.

(28) **Mainline**--A pipe within an irrigation system that delivers water from the water source to the individual zone valves.

(29) **Maintenance checklist**--A document made available to the irrigation system's owner or owner's representative that contains information regarding the operation and maintenance of the irrigation system, including, but not limited to: checking and repairing the irrigation system, setting the automatic controller, checking the rain or moisture sensor, cleaning filters, pruning grass and plants away from irrigation emitters, using and operating the irrigation system, the precipitation rates of each irrigation zone within the system, any water conservation measures currently in effect from the water purveyor, the name of the water purveyor, a suggested seasonal or monthly watering schedule based on current evapotranspiration data for the

geographic region, and the minimum water requirements for the plant material in each zone based on the soil type and plant material where the system is installed.

(30) **Major maintenance, alteration, repair, or service**--*Any activity that involves opening to the atmosphere the irrigation main line at any point prior to the discharge side of any irrigation zone control valve. This includes, but is not limited to, repairing or connecting into a main supply pipe, replacing a zone control valve, or repairing a zone control valve in a manner that opens the system to the atmosphere.*

(31) **Master valve**--*A remote control valve located after the backflow prevention device that controls the flow of water to the irrigation system mainline.*

(32) **Matched precipitation rate**--*The condition in which all sprinkler heads within an irrigation zone apply water at the same rate.*

(33) **New installation**--*An irrigation system installed at a location where one did not previously exist.*

(34) **Pass-through contract**--*A written contract between a contractor or builder and a licensed irrigator or exempt business owner to perform part or all of the irrigation services relating to an irrigation system.*

(35) **Potable water**--*Water that is suitable for human consumption.*

(36) **Pressure Vacuum Breaker**--*An assembly containing an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. Also known as a Pressure Vacuum Breaker Back-siphonage Prevention Assembly.*

(37) **Reclaimed water**--*Domestic or municipal wastewater which has been treated to a quality suitable for beneficial use, such as landscape irrigation.*

(38) **Records of landscape irrigation activities**--*The irrigation plans, contracts, warranty information, invoices, copies of permits, and other documents that relate to the installation, maintenance, alteration, repair, or service of a landscape irrigation system.*

(39) **Reduced Pressure Principle Backflow Prevention Assembly**--*An assembly containing two independently acting approved check valves together with a hydraulically operating mechanically independent pressure differential relief valve located between the two check valves and below the first check valve.*

(40) **Static water pressure**--*The pressure of water when it is not moving.*

(41) **Supervision**--*The on-the-job oversight and direction by a licensed irrigator who is fulfilling his or her professional responsibility to the client and/or employer in compliance with local or state requirements. Also a licensed installer working under the direction of a licensed*

irrigator or beginning January 1, 2009, an irrigation technician who is working under the direction of a licensed irrigator to install, maintain, alter, repair or service an irrigation system.

*(42) **Water conservation**--The design, installation, service, and operation of an irrigation system in a manner that prevents the waste of water, promotes the most efficient use of water, and applies the least amount of water that is required to maintain healthy individual plant material or turf, reduce dust, and control erosion.*

*(43) **Zone flow**--A measurement, in gallons per minute or gallons per hour, of the actual flow of water through a zone valve, calculated by individually opening each zone valve and obtaining a valid reading after the pressure has stabilized. For design purposes, the zone flow is the total flow of all nozzles in the zone at a specific pressure.*

*(44) **Zone valve**--An automatic valve that controls a single zone of a landscape irrigation system.*

Valid License Required

Any person who connects an irrigation system to the water supply within the city or the city's extraterritorial jurisdiction, commonly referred to as the ETJ, must hold a valid license, as defined by Title 30, Texas Administrative Code, Chapter 30 and required by Chapter 1903 of the Texas Occupations Code, or as defined by Chapter 365, Title 22 of the Texas Administrative Code and required by Chapter 1301 of the Texas Occupations Code.

Exemptions

A property owner is not required to be licensed in accordance with Texas Occupations Code, Title 12, §1903.002(c)(1) if he or she is performing irrigation work in a building or on a premises owned or occupied by the person as the person's home. A home or property owner who installs an irrigation system must meet the standards contained in Title 30, Texas Administrative Code, Chapter 344 regarding spacing, water pressure, spraying water over impervious materials, rain or moisture shut-off devices or other technology, backflow prevention and isolation valves. See Texas Occupations Code §1903.002 for other exemptions to the licensing requirement.

Permit Required

Any person installing an irrigation system within the territorial limits or extraterritorial jurisdiction of the city is required to obtain a permit from the city. Any plan approved for a permit must be in compliance with the requirements of this chapter.

Exemptions

- (1) An irrigation system that is that an on-site sewage disposal system, as defined by Section 355.002, Health and Safety Code; or*
- (2) An irrigation system used on or by an agricultural operation as defined by Section 251.002, Agriculture Code; or*

- (3) *An irrigation system connected to a groundwater well used by the property owner for domestic use.*

Backflow Prevention Methods and Devices

(a) *Any irrigation system that is connected to the potable water supply must be connected through a backflow prevention method approved by the Texas Commission on Environmental Quality (TCEQ). The backflow prevention device must comply with the International Plumbing Code® and/or the Uniform Plumbing Code® and must be certified by the American Society of Sanitary Engineers (ASSE); or the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California; or International Code Council – Evaluation Service (ICC-ES); or the International Association of Plumbing and Mechanical Officials – Research and Testing (IAPMO R&T); or any other certifying agencies that has equivalent capabilities for both the laboratory and field evaluation of backflow prevention assemblies. The backflow prevention device must be installed in accordance with the laboratory approval standards or if the approval does not include specific installation information, the manufacturer's current published recommendations.*

(b) *If conditions that present a health hazard exist, one of the following methods must be used to prevent backflow;*

- (1) *An air gap may be used if:*

(A) *there is an unobstructed physical separation; and*

(B) *the distance from the lowest point of the water supply outlet to the flood rim of the fixture or assembly into which the outlet discharges is at least one inch or twice the diameter of the water supply outlet, whichever is greater.*

- (2) *Reduced pressure principle backflow prevention assemblies may be used if:*

(A) *the device is installed at a minimum of 12 inches above ground in a location that will ensure that the assembly will not be submerged; and*

(B) *drainage is provided for any water that may be discharged through the assembly relief valve.*

- (3) *Pressure vacuum breakers may be used if:*

(A) *no back-pressure condition will occur; and*

(B) *the device is installed at a minimum of 12 inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler.*

- (4) *Atmospheric vacuum breakers may be used if:*
- (A) *no back-pressure will be present;*
 - (B) *there are no shutoff valves downstream from the atmospheric vacuum breaker;*
 - (C) *the device is installed at a minimum of six inches above any downstream piping and the highest downstream opening. Pop-up sprinklers are measured from the retracted position from the top of the sprinkler;*
 - (D) *there is no continuous pressure on the supply side of the atmospheric vacuum breaker for more than 12 hours in any 24-hour period; and*
 - (E) *a separate atmospheric vacuum breaker is installed on the discharge side of each irrigation control valve, between the valve and all the emission devices that the valve controls.*

(c) *Backflow prevention devices used in applications designated as health hazards must be tested upon installation and annually thereafter.*

(d) *If an existing irrigation system without a backflow-prevention assembly requires major maintenance, alteration, repair, or service, the system must be connected to the potable water supply through an approved, properly installed backflow prevention method before any major maintenance, alteration, repair, or service is performed.*

(e) *The irrigator shall ensure the backflow prevention device is tested by a licensed Backflow Prevention Assembly Tester prior to being placed in service and the test results provided to the local water purveyor and the irrigation system's owner or owner's representative within ten business days of testing of the backflow prevention device*

Specific Conditions and Cross-Connection Control

(a) *Before any chemical is added to an irrigation system connected to the potable water supply, the irrigation system must be connected through a reduced pressure principle backflow prevention assembly or air gap.*

(b) *Connection of any additional water source to an irrigation system that is connected to the potable water supply can only be done if the irrigation system is connected to the potable water supply through a reduced-pressure principle backflow prevention assembly or an air gap.*

(c) *Irrigation system components with chemical additives induced by aspiration, injection, or emission system connected to any potable water supply must be connected through a reduced pressure principle backflow device.*

(d) If an irrigation system is designed or installed on a property that is served by an on-site sewage facility, as defined in Title 30, Texas Administrative Code, Chapter 285, then:

- (1) all irrigation piping and valves must meet the separation distances from the On-Site Sewage Facilities system as required for a private water line in Title 30, Texas Administrative Code, Section 285.91(10);*
- (2) any connections using a private or public potable water source that is not the city's potable water system must be connected to the water source through a reduced pressure principle backflow prevention assembly as defined in Title 30, Texas Administrative Code, Section 344.50; and*
- (3) any water from the irrigation system that is applied to the surface of the area utilized by the On-Site Sewage Facility system must be controlled on a separate irrigation zone or zones so as to allow complete control of any irrigation to that area so that there will not be excess water that would prevent the On-Site Sewage Facilities system from operating effectively.*

Water Conservation

All irrigation systems shall be designed, installed, maintained, altered, repaired, serviced, and operated in a manner that will promote water conservation as defined in the Definitions section of this ordinance.

Irrigation Plan Design: Minimum Standards

(a) An irrigator shall prepare an irrigation plan for each site where a new irrigation system will be installed. A paper or electronic copy of the irrigation plan must be on the job site at all times during the installation of the irrigation system. A drawing showing the actual installation of the system is due to each irrigation system owner after all new irrigation system installations. During the installation of the irrigation system, variances from the original plan may be authorized by the licensed irrigator if the variance from the plan does not:

- (1) diminish the operational integrity of the irrigation system;*
- (2) violate any requirements of this ordinance; and*
- (3) go unnoted in red on the irrigation plan.*

(b) The irrigation plan must include complete coverage of the area to be irrigated. If a system does not provide complete coverage of the area to be irrigated, it must be noted on the irrigation plan.

(c) All irrigation plans used for construction must be drawn to scale. The plan must include, at a minimum, the following information:

- (1) *the irrigator's seal, signature, and date of signing;*
- (2) *all major physical features and the boundaries of the areas to be watered;*
- (3) *a North arrow;*
- (4) *a legend;*
- (5) *the zone flow measurement for each zone;*
- (6) *location and type of each:*
 - (A) *controller; and*
 - (B) *sensor (for example, but not limited to, rain, moisture, wind, flow, or freeze);*
- (7) *location, type, and size of each:*
 - (A) *water source, such as, but not limited to a water meter and point(s) of connection;*
 - (B) *backflow prevention device;*
 - (C) *water emission device, including, but not limited to, spray heads, rotary sprinkler heads, quick-couplers, bubblers, drip, or micro-sprays;*
 - (D) *valve, including but not limited to, zone valves, master valves, and isolation valves;*
 - (E) *pressure regulation component; and*
 - (F) *main line and lateral piping.*
- (8) *the scale used; and*
- (9) *the design pressure.*

Design and Installation: Minimum Requirements

- (a) *No irrigation design or installation shall require the use of any component, including the water meter, in a way which exceeds the manufacturer's published performance limitations for the component.*

(b) Spacing.

- (1) The maximum spacing between emission devices must not exceed the manufacturer's published radius or spacing of the device(s). The radius or spacing is determined by referring to the manufacturer's published specifications for a specific emission device at a specific operating pressure.*
- (2) New irrigation systems shall not utilize above-ground spray emission devices in landscapes that are less than 48 inches not including the impervious surfaces in either length or width and which contain impervious pedestrian or vehicular traffic surfaces along two or more perimeters. If pop-up sprays or rotary sprinkler heads are used in a new irrigation system, the sprinkler heads must direct flow away from any adjacent surface and shall not be installed closer than four inches from a hardscape, such as, but not limited to, a building foundation, fence, concrete, asphalt, pavers, or stones set with mortar.*
- (3) Narrow paved walkways, jogging paths, golf cart paths or other small areas located in cemeteries, parks, golf courses or other public areas may be exempted from this requirement if the runoff drains into a landscaped area.*

(c) Water pressure. Emission devices must be installed to operate at the minimum and not above the maximum sprinkler head pressure as published by the manufacturer for the nozzle and head spacing that is used. Methods to achieve the water pressure requirements include, but are not limited to, flow control valves, a pressure regulator, or pressure compensating spray heads.

(d) Piping. Piping in irrigation systems must be designed and installed so that the flow of water in the pipe will not exceed a velocity of five feet per second for polyvinyl chloride (PVC) pipe.

(e) Irrigation Zones. Irrigation systems shall have separate zones based on plant material type, microclimate factors, topographic features, soil conditions, and hydrological requirements.

(f) Matched precipitation rate. Zones must be designed and installed so that all of the emission devices in that zone irrigate at the same precipitation rate.

(g) Irrigation systems shall not spray water over surfaces made of concrete, asphalt, brick, wood, stones set with mortar, or any other impervious material, such as, but not limited to, walls, fences, sidewalks, streets, etc.

(h) Master valve. When provided, a master valve shall be installed on the discharge side of the backflow prevention device on all new installations.

(i) PVC pipe primer solvent. All new irrigation systems that are installed using PVC pipe and fittings shall be primed with a colored primer prior to applying the PVC cement in accordance with the Uniform Plumbing Code (Section 316) or the International Plumbing Code (Section 605).

(j) Rain or moisture shut-off devices or other technology. All new automatically controlled irrigation systems must include sensors or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall. Rain or moisture shut-off technology must be installed according to the manufacturer's published recommendations. Repairs to existing automatic irrigation systems that require replacement of an existing controller must include a sensor or other technology designed to inhibit or interrupt operation of the irrigation system during periods of moisture or rainfall.

(k) Isolation valve. All new irrigation systems must include an isolation valve between the water meter and the backflow prevention device.

(l) Depth coverage of piping. Piping in all irrigation systems must be installed according to the manufacturer's published specifications for depth coverage of piping.

(1) If the manufacturer has not published specifications for depth coverage of piping, the piping must be installed to provide minimum depth coverage of six inches of select backfill, between the top of the pipe and the natural grade of the topsoil. All portions of the irrigation system that fail to meet this standard must be noted on the irrigation plan. If the area being irrigated has rock at a depth of six inches or less, select backfill may be mounded over the pipe. Mounding must be noted on the irrigation plan and discussed with the irrigation system owner or owner's representative to address any safety issues.

(2) If a utility, man-made structure, or roots create an unavoidable obstacle, which makes the six-inch depth coverage requirement impractical, the piping shall be installed to provide a minimum of two inches of select backfill between the top of the pipe and the natural grade of the topsoil.

(3) All trenches and holes created during installation of an irrigation system must be backfilled and compacted to the original grade.

(m) Wiring irrigation systems.

(1) Underground electrical wiring used to connect an automatic controller to any electrical component of the irrigation system must be listed by Underwriters Laboratories as acceptable for burial underground.

(2) Electrical wiring that connects any electrical components of an irrigation system must be sized according to the manufacturer's recommendation.

(3) Electrical wire splices which may be exposed to moisture must be waterproof as certified by the wire splice manufacturer.

(4) Underground electrical wiring that connects an automatic controller to any electrical component of the irrigation system must be buried with a minimum of six inches of select backfill.

(n) Water contained within the piping of an irrigation system is deemed to be non-potable. No drinking or domestic water usage, such as, but not limited to, filling swimming pools or decorative fountains, shall be connected to an irrigation system. If a hose bib (an outdoor water faucet that has hose threads on the spout) is connected to an irrigation system for the purpose of providing supplemental water to an area, the hose bib must be installed using a quick coupler key on a quick coupler installed in a covered purple valve box and the hose bib and any hoses connected to the bib must be labeled "non potable, not safe for drinking." An isolation valve must be installed upstream of a quick coupler connecting a hose bib to an irrigation system.

(o) Beginning January 1, 2010, either a licensed irrigator or a licensed irrigation technician shall be on-site at all times while the landscape irrigation system is being installed. When an irrigator is not onsite, the irrigator shall be responsible for ensuring that a licensed irrigation technician is on-site to supervise the installation of the irrigation system.

Completion of Irrigation System Installation

Upon completion of the irrigation system, the irrigator or irrigation technician who provided supervision for the on-site installation shall be required to complete four items:

- (1) A final "walk through" with the irrigation system's owner or the owner's representative to explain the operation of the system;*
- (2) The maintenance checklist on which the irrigator or irrigation technician shall obtain the signature of the irrigation system's owner or owner's representative and shall sign, date, and seal the checklist. If the irrigation system's owner or owner's representative is unwilling or unable to sign the maintenance checklist, the irrigator shall note the time and date of the refusal on the irrigation system's owner or owner's representative's signature line. The irrigation system owner or owner's representative will be given the original maintenance checklist and a duplicate copy of the maintenance checklist shall be maintained by the irrigator. The items on the maintenance checklist shall include but are not limited to:*
 - (A) the manufacturer's manual for the automatic controller, if the system is automatic;*
 - (B) a seasonal (spring, summer, fall, winter) watering schedule based on either current/real time evapotranspiration or monthly historical reference evapotranspiration (historical ET) data, monthly effective rainfall estimates, plant landscape coefficient factors, and site factors;*
 - (C) a list of components, such as the nozzle, or pump filters, and other such components; that require maintenance and the recommended frequency for the service; and*
 - (D) the statement, "This irrigation system has been installed in accordance with all applicable state and local laws, ordinances, rules, regulations or*

orders. I have tested the system and determined that it has been installed according to the Irrigation Plan and is properly adjusted for the most efficient application of water at this time."

- (3) A permanent sticker which contains the irrigator's name, license number, company name, telephone number and the dates of the warranty period shall be affixed to each automatic controller installed by the irrigator or irrigation technician. If the irrigation system is manual, the sticker shall be affixed to the original maintenance checklist. The information contained on the sticker must be printed with waterproof ink and include:*
- (4) The irrigation plan indicating the actual installation of the system must be provided to the irrigation system's owner or owner representative.*

Maintenance, Alteration, Repair, or Service of Irrigation Systems

- (a) The licensed irrigator is responsible for all work that the irrigator performed during the maintenance, alteration, repair, or service of an irrigation system during the warranty period. The irrigator or business owner is not responsible for the professional negligence of any other irrigator who subsequently conducts any irrigation service on the same irrigation system.*
- (b) All trenches and holes created during the maintenance, alteration, repair, or service of an irrigation system must be returned to the original grade with compacted select backfill.*
- (c) Colored PVC pipe primer solvent must be used on all pipes and fittings used in the maintenance, alteration, repair, or service of an irrigation system in accordance with the Uniform Plumbing Code (Section 316) or the International Plumbing Code (Section 605).*
- (d) When maintenance, alteration, repair or service of an irrigation system involves excavation work at the water meter or backflow prevention device, an isolation valve shall be installed, if an isolation valve is not present.*

Advertisement Requirements

- (a) All vehicles used in the performance of irrigation installation, maintenance, alteration, repair, or service must display the irrigator's license number in the form of "LI_____" in a contrasting color of block letters at least two inches high, on both sides of the vehicle.*
- (b) All forms of written and electronic advertisements for irrigation services must display the irrigator's license number in the form of "LI_____." Any form of advertisement, including business cards, and estimates which displays an entity's or individual's name other than that of the licensed irrigator must also display the name of the licensed irrigator and the licensed irrigator's license number. Trailers that advertise irrigation services must display the irrigator's license number.*

(c) The name, mailing address, and telephone number of the commission must be prominently displayed on a legible sign and displayed in plain view for the purpose of addressing complaints at the permanent structure where irrigation business is primarily conducted and irrigation records are kept.

Contracts

(a) All contracts to install an irrigation system must be in writing and signed by each party and must specify the irrigator's name, license number, business address, current business telephone numbers, the date that each party signed the agreement, the total agreed price, and must contain the statement, "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-178, P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.tx.us." All contracts must include the irrigator's seal, signature, and date.

(b) All written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system(s) must include the irrigator's name, license number, business address, current business telephone number(s), and the statement: "Irrigation in Texas is regulated by the Texas Commission On Environmental Quality (TCEQ) (MC-178), P.O. Box 13087, Austin, Texas 78711-3087. TCEQ's web site is: www.tceq.state.tx.us."

(c) An individual who agrees by contract to provide irrigation services as defined in Title 30, Texas Administrative Code, Section 344.30 (relating to License Required) shall hold an irrigator license issued under Title 30, Texas Administrative Code, Chapter 30 (relating to Occupational Licenses and Registrations) unless the contract is a pass-through contract as defined in Title 30, Texas Administrative Code, Section 344.1(36) (relating to Definitions). If a pass-through contract includes irrigation services, then the irrigation portion of the contract can only be performed by a licensed irrigator. If an irrigator installs a system pursuant to a pass-through contract, the irrigator shall still be responsible for providing the irrigation system's owner or through contract, the irrigator shall still be responsible for providing the irrigation system's owner or owner's representative a copy of the warranty and all other documents required under this chapter. A pass-through contract must identify by name and license number the irrigator that will perform the work and must provide a mechanism for contacting the irrigator for irrigation system warranty work.

(d) The contract must include the dates that the warranty is valid.

Warranties for Systems

(a) On all installations of new irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative with a written warranty covering materials and labor furnished in the new installation of the irrigation system. The irrigator shall be responsible for adhering to terms of the warranty. If the irrigator's warranty is less than the manufacturer's warranty for the system components, then the irrigator shall provide the irrigation system's owner or the owner's representative with applicable information regarding the manufacturer's

warranty period. The warranty must include the irrigator's seal, signature, and date. If the warranty is part of an irrigator's contract, a separate warranty document is not required.

(b) An irrigator's written warranty on new irrigation systems must specify the irrigator's name, business address, and business telephone number(s), must contain the signature of the irrigation system's owner or owner's representative confirming receipt of the warranty and must include the statement: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality (TCEQ), MC-178, P.O. Box 130897, Austin, Texas 78711-3087. TCEQ's website is: www.tceq.state.tx.us."

(c) On all maintenance, alterations, repairs, or service to existing irrigation systems, an irrigator shall present the irrigation system's owner or owner's representative a written document that identifies the materials furnished in the maintenance, alteration, repair, or service. If a warranty is provided, the irrigator shall abide by the terms. The warranty document must include the irrigator's name and business contact information.

Duties and Responsibilities of City Irrigation Inspectors

A licensed irrigation inspector shall enforce the ordinance of the city, and shall be responsible for:

- (1) Verifying that the appropriate permits have been obtained for an irrigation system and that the irrigator and installer or irrigation technician, if applicable, are licensed;*
- (2) Inspecting the irrigation system;*
- (3) Determining that the irrigation system complies with the requirements of this chapter;*
- (4) Determining that the appropriate backflow prevention device was installed, tested, and test results provided to the city;*
- (5) Investigating complaints related to irrigation system installation, maintenance, alteration, repairs, or service of an irrigation system and advertisement of irrigation services; and*
- (6) Maintaining records according to this chapter.*

Items not covered by this ordinance

Any item not covered by their ordinance and required by law shall be governed by the Texas Occupations Code, the Texas Water Code, Title 30 of the Texas Administrative Code, and any other applicable state statute or Texas Commission on Environmental Quality rule.

Fees

The city council may create a schedule of fees for obtaining and renewing an irrigation permit. These fees will be in amounts sufficient to cover the city's costs in issuing and renewing the permits, including, but not limited to, staff time and other overhead costs. This schedule will be kept at the city offices.

Enforcement

(a) The city shall have the power to administer and enforce the provisions of this chapter as may be required by governing law. Any person, firm, corporation or agent who shall violate a provision of this code, or fails to comply therewith, or with any of the requirements thereof, is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of the ordinance codified in this chapter is declared to be a nuisance.

(b) Any person violating any provision of chapter shall, upon conviction, be fined a sum not exceeding \$2000.00. Each day that a provision of this chapter is violated shall constitute a separate offense. An offense under this chapter is a Class C misdemeanor, punishable by a fine of up to \$2000.00.

(c) Nothing in this chapter shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this chapter and to seek remedies as allowed by law, including, but not limited to the following:

- (1) Injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and*
- (2) Other available relief.*

SECTION 3. That it is the intention of the City Council of the City of Sherman, Texas, that the provisions of this ordinance shall become a part of the Code of Ordinances of the City of Sherman, Texas, and that sections of this ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 4. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

SECTION 5. That violators of this ordinance shall be subject to criminal penalty, Class C misdemeanor not to exceed Two Thousand Dollars (\$2,000.00).

SECTION 6. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 7. That, because this ordinance has a penalty for violation, it shall become effective upon its publication as required by the city charter (home rule), which date is expected to be January 19, 2009.

SECTION 8. 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 _____ day of _____, 2009.

ADOPTED on this the _____ day of _____, 2009.

EFFECTIVE DATE on this the _____ day of _____, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

H.B. No. 1656

AN ACT

relating to regulation of irrigation systems and irrigators.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1903.251, Occupations Code, is amended to read as follows:

Sec. 1903.251. LICENSE REQUIRED. (a) A person must hold a license issued by the commission under Chapter 37, Water Code, if the person:

- (1) sells, designs, installs, maintains, alters, repairs, or services an irrigation system;
- (2) provides consulting services relating to an irrigation system; [or]
- (3) connects an irrigation system to a private or public, raw or potable water supply system or any water supply; or
- (4) inspects an irrigation system for a municipality or water district.

(b) A person is ineligible for a license under Subsection (a)(4) if the person engages in or has a financial or advisory interest in an entity that engages in an activity under Subsection (a)(1), (2), or (3).

SECTION 2. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.238 to read as follows:

Sec. 49.238. IRRIGATION SYSTEMS. (a) A district may adopt and enforce rules that require an installer of an irrigation system:

(1) to hold a license issued under Section 1903.251, Occupations Code; and

(2) to obtain a permit before installing a system within the boundaries of the district.

(b) If a district adopts rules under Subsection (a), the rules shall include minimum standards and specifications for designing, installing, and operating irrigation systems in accordance with Section 1903.053, Occupations Code, and any rules adopted by the Texas Commission on Environmental Quality under that section.

(c) A district may employ or contract with a licensed plumbing inspector, a licensed irrigation inspector, the district's operator, or another governmental entity to enforce the rules.

(d) A district may charge an installer of an irrigation system a fee for obtaining or renewing a permit under Subsection (a)(2). The district shall set the fee in an amount sufficient to enable the district to recover the cost of administering this section.

(e) This section does not apply to:

- (1) an on-site sewage disposal system, as defined by Section 366.002, Health and Safety Code; or
- (2) an irrigation system;

(A) used on or by an agricultural operation as defined by Section 251.002, Agriculture Code; or
(B) connected to a groundwater well used by the property owner for domestic use.

SECTION 3. Chapter 401, Local Government Code, is amended by adding Section 401.006 to read as follows:

Sec. 401.006. IRRIGATION SYSTEMS. (a) A municipality with a population of 20,000 or more by ordinance shall require an installer of an irrigation system:

(1) to hold a license issued under Section 1903.251, Occupations Code; and

(2) to obtain a permit before installing a system within the territorial limits or extraterritorial jurisdiction of the municipality.

(b) The ordinance shall include minimum standards and specifications for designing, installing, and operating irrigation systems in accordance with Section 1903.053, Occupations Code, and any rules adopted by the Texas Commission on Environmental Quality under that section.

(c) A municipality may employ or contract with a licensed plumbing inspector or a licensed irrigation inspector to enforce the ordinance.

(d) A municipality may charge an installer of an irrigation system a fee for obtaining or renewing a permit under Subsection (a)(2). The municipality shall set the fee in an amount sufficient to enable the municipality to recover the cost of administering this section.

(e) This section does not apply to:

(1) an on-site sewage disposal system, as defined by Section 366.002, Health and Safety Code; or

(2) an irrigation system:

(A) used on or by an agricultural operation as defined by Section 251.002, Agriculture Code; or

(B) connected to a groundwater well used by the property owner for domestic use.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 1656 was passed by the House on May 1, 2007, by the following vote: Yeas 116, Nays 26, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1656 was passed by the Senate on May
22, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____
Date

Governor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. B.2

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Number: 5586

B.1 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5586

Amending Chapter 3 of the Code of Ordinances, entitled "Building Regulations", at Article 3.07, entitled "Plumbing Code", to Provide for Section 3.07.007 to be entitled "Minimum Standards for Installation of Irrigation Systems"



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. B.3

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**

C.1 * RESOLUTION NO. 5309

Authorizing Execution of a Professional Services Agreement with Teague, Nall and Perkins, Incorporated for Design of the Travis Street Water Main Replacement between Washington Street and Jones Street

C.2 * RESOLUTION NO. 5310

Authorizing Execution of a Development Agreement with Tin Star Homes, LLC for the Construction of Public Facilities in the Country Ridge Subdivision, The Preserve, within the City of Sherman

C.4 * RESOLUTION NO. 5312

Authorizing the Purchase of Bleachers through the Texas Local Government Purchasing Cooperative (BuyBoard) for the Parks and Recreation Department

D.1 * REQUEST TO ADVERTISE

Benches and Trash Receptacles for the Downtown Square

D.2 * REQUEST TO ADVERTISE

Medical Drugs and Supplies



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. C.1

*** RESOLUTION NO. 5309**

**Authorizing Execution of a Professional Services Agreement with
Teague, Nall and Perkins, Incorporated for Design of the Travis Street Water Main
Replacement between Washington Street and Jones Street**

Issue

Contract for professional engineering services with Teague, Nall and Perkins, Incorporated for the design of the Travis Street Water Main Replacement between Washington Street and Jones Street

Background

The Capital Improvement Program contains a project to replace the existing water main along Travis Street between Washington Street and Jones Street. Engineering services are required to design the project.

Origination

Utilities and Engineering, Department 119

Financial Consideration

The fee for engineering services will be \$20,000.00. Surveying costs are anticipated to be \$6,000.00. Funds are available in the Utility Improvement Fund.

Staff Recommendation

It is recommended that the contract for engineering services with Teague, Nall and Perkins, Incorporated to design the replacement of the Travis Street water main between Washington Street and Jones Street be approved.

Alternatives

As may be directed by the City Council

Attachments

Resolution No. 5309

Professional Services Agreement

Location Map

Prepared by:
Mark Gibson, Utilities & Engineering Director

Approved by:
George Olson, City Manager

RESOLUTION NO. 5309

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH TEAGUE, NALL AND PERKINS, INCORPORATED FOR DESIGN OF THE TRAVIS STREET WATER MAIN REPLACEMENT BETWEEN WASHINGTON STREET AND JONES STREET; 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 by the Interim City Attorney, to execute a professional services agreement with Teague, Nall and Perkins, Incorporated for the design of the Travis Street Water Main Replacement between Washington Street and Jones Street, in the same or substantially the same form as the contract documents attached hereto and incorporated herein 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.

PASSED AND APPROVED on this the _____ day of _____, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF SHERMAN**, a Home-Rule Municipality, organized and existing under the laws of the state of Texas, hereinafter referred to as "City or Owner", and **TEAGUE, NALL & PERKINS, INC.**, a **TEXAS** Corporation, hereinafter referred to as "Engineer", to be effective upon the date indicated below.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to provide a proposal for preliminary engineering services in connection with the replacement of the Travis Street water main between Washington Street and Jones Street, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

1. **Employment of the Engineer.** The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.
2. **Scope of Work.** The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "1", which is attached hereto and made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City. Engineer agrees to submit all final documents in a form acceptable to the City.
3. **Time of the Essence.** Time is of the essence. Engineer agrees to commence work immediately upon execution of this Agreement and to proceed diligently to completion except for delays beyond Engineer's reasonable control.
4. **Compensation and Method of Payment.** The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount described and set forth in Exhibit "1". The contract amount specified in Exhibit "1" shall not be exceeded without the written permission of the City.
5. **Contracts.** Any contracts for contractors or subcontractors for services rendered under this Agreement on behalf of the City shall be in a contract form provided and approved by the Interim City Attorney.

6. **Access to the Site.** City agrees to provide access to the Project area necessary for Engineer to complete its work.

7. **Insurance.** Prior to commencement of the work, the Engineer shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons, damages to property, or any errors and omissions relating to the performance of any work by the Engineer, its agents, employees or subcontractors under this Agreement, as follows:

1. Workers' Compensation as required by law.
2. Professional Liability Insurance in an amount not less than \$1,000,000 in the aggregate.
3. Commercial General Liability and Property Damage Insurance with minimum limits of \$1,000,000 for injury or death of any one person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence of damage to or destruction of property.
4. Automobile and Truck Liability Insurance covering owned, hired, and non-owned vehicles, with minimum limits of \$1,000,000 for injury or death of any one person, \$1,000,000 for each occurrence, and \$1,000,000 for property damage.
5. The Engineer shall include the City as an additional insured under the policies, with the exception of the Professional Liability Insurance and Workers' Compensation. Certificates of Insurance and endorsements shall be furnished to the City before work commences that demonstrates that the required coverage, conditions, and limits required by this Contract are in full force and effect. Certificates shall state that coverage shall not be suspended, voided, canceled, and/or reduced in coverage or in limits (Change in Coverage) prior to the receipt of written notice provided to the CITY at least thirty (30) days prior to the effective date of such Change in Coverage.

8. **Indemnity.** ENGINEER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM THE SERVICES PROVIDED BY ENGINEER AND TO THE EXTENT CAUSED BY THE NEGLIGENT ACT OR OMISSION OR INTENTIONAL WRONGFUL ACT OR OMISSION OF ENGINEER, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR THE ENGINEER'S AGENT, ENGINEER UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL. THIS AGREEMENT DOES NOT WAIVE, NOR SHALL IT BE DEEMED TO WAIVE, ANY IMMUNITY OR DEFENSE, INCLUDING, BUT NOT LIMITED TO, GOVERNMENTAL IMMUNITY, THAT WOULD OTHERWISE BE AVAILABLE TO THE CITY AGAINST CLAIMS ARISING FROM THE EXERCISE OF GOVERNMENTAL POWERS AND FUNCTIONS.

9. **Independent Contractor.** Engineer is an independent contractor and not an officer, agent, servant or employee of City. Engineer shall have exclusive control of and exclusive right

to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

10. Assignment and Subletting. The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

11. Contract Termination. The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination. In the event this Agreement is terminated, the City shall have the option of entering into an Agreement with another party for the completion of the work.

12. Ownership of Documents. If applicable, any original drawings and specifications developed for the Project are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications, if any, for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. If drawings are developed as a part of the Project, upon completion of the work or any earlier termination of this Agreement under Paragraph 10, Engineer will revise drawings, if necessary due to changes in the specifications or work, and he will promptly furnish the City with one (1) complete set of reproducible record prints and one set of "As Builts" in electronic media format. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. Engineer also acknowledges that such information shall become subject to the Public Information Laws of this State.

a. **WAIVER.** ONCE THE INFORMATION IS SUBMITTED TO THE CITY, ENGINEER AGREES TO WAIVE ANY COPYRIGHT CLAIMS TO THE INFORMATION AND HEREBY RELEASES, DISCHARGES, AND CONVENANTS NOT TO SUE THE CITY, ITS OFFICERS, SERVANTS, AGENTS, OR EMPLOYEES (HEREINAFTER REFERRED TO AS RELEASEES) FROM ANY AND ALL LIABILITY, CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION WHATSOEVER ARISING OUT OF OR RELATED TO ANY LOSS, DAMAGE, OR INJURY, THAT MAY BE SUSTAINED BY ENGINEER, PERTAINING TO ANY CLAIMS THAT THE DOCUMENTS ARE COPYRIGHTED BY CONSULTANT. ENGINEER ALSO ACKNOWLEDGES

THAT SUCH INFORMATION SHALL BECOME SUBJECT TO THE PUBLIC INFORMATION LAWS OF THIS STATE AND THAT THE CITY CAN RELEASE SUCH INFORMATION TO THE PUBLIC WITHOUT ANY RECOURSE BY THE ENGINEER, INCLUDING, WITHOUT LIMITATION, CLAIMS FOR COMPENSATION, DEFAMATION, OR INVASION OF PRIVACY, OR OTHER INFRINGEMENTS OR VIOLATIONS OF COPYRIGHT, PERSONAL, OR PROPERTY RIGHTS OF ANY SORT WHATSOEVER.

13. Complete Contract. This Agreement, including Exhibit "1", constitutes the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. To the extent the terms in this contract conflict with the terms in Exhibit "1," the terms of this Contract control over any terms set forth in Exhibit "1." This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by both parties to this Agreement.

14. Special Provisions.

The "Provisions" on page 11 in the attached Exhibit "A" are modified as follows:

Paragraph 7, Termination	Deleted in its entirety and not applicable to this Contract.
Paragraph 8 Arbitration	Deleted in its entirety and not applicable to this Contract
Paragraph 9 Legal Expenses	Deleted in its entirety and not applicable to this Contract
Paragraph 11 Limitation of Liability	Deleted in its entirety and not applicable to this Contract
Paragraph 13 Sales Tax	Deleted in its entirety and not applicable to this Contract
Paragraph 17 Drainage Clause	Deleted in its entirety and not applicable to this Contract
Paragraph 18 Project Site Safety	Deleted in its entirety and not applicable to this Contract.

15. Miscellaneous.

A. Paragraph Headings. The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation. Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law. The parties agree that the laws of the State of Texas shall govern this Agreement. Exclusive venue shall lie in Grayson County, Texas.

D. Successors and Assigns. City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability. In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term,

condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date. This Agreement shall be effective from and after execution by both parties hereto.

SIGNED on the date indicated below.

CITY OF SHERMAN

ENGINEER

TEAGUE, NALL & PERKINS, INC.

George Olson
City Manager

BY: _____

TITLE: _____

DATE: _____

DATE: _____

APPROVED AS TO FORM:

BY: _____

Interim City Attorney

EXHIBIT 1



Civil Engineering · Surveying · Landscape Architecture · Planning

AUTHORIZATION FOR PROFESSIONAL SERVICES

PROJECT NAME: Travis Street Water Line Replacement from Washington Street to Jones Street

TNP PROJECT NUMBER: SHN XXXXX

CLIENT: Mark Gibson, PE
Director of Utility Services

ADDRESS: City Of Sherman
P.O. Box 1106
Sherman, TX 75091-1106
903 892 7210
903 870 7802 - fax

The City of Sherman (the CLIENT) hereby requests and authorizes Teague Nall and Perkins, Inc., (the ENGINEER) to perform the following services:

Article I

SCOPE: Provide Civil Engineering services for the replacement of the existing water main with a 10" water main along Travis Street from Washington Street to Jones Street. A detailed scope of **BASIC SERVICES** is included as Attachment 'A' and is made a part hereto.

Article II

COMPENSATION: Compensation will be on a basis of the following:

1) **BASIC SERVICES:** The CLIENT agrees to pay the ENGINEER a fixed fee as follows:

a) Surveying \$6,000

b) Engineering

i) Design Phase \$16,500

ii) Bidding Phase \$1,500

iii) Construction \$2,000

Total Engineering \$20,000

2) **ADDITIONAL SERVICES:** Services provided by the ENGINEER which are not specifically included in BASIC SERVICES as defined above or delineated in Attachment 'A' shall be reimbursed on an

hourly basis at standard TNP hourly rates. Examples of **ADDITIONAL SERVICES** are shown at Attachment 'B'.

- 3) **BASIC SERVICES** and **ADDITIONAL SERVICES** shall be billed monthly based on the percentage of work complete. The CLIENT shall pay promptly upon receipt of invoice. Delays of payment in excess of 21 days after receiving the invoice or 30 days of the invoice date may result in cessation of services until full payment is received. Time shall be added to the project schedule for any work stoppages resulting from the CLIENT's failure to render timely payment.

Agreement to this contract acknowledges available funding for the proposed engineering and surveying services. Payment for engineering and surveying services shall not be contingent upon the CLIENT's available project-specific funds, or anticipated future funding.

SCHEDULE: The proposed services shall begin within 5 working days of authorization to proceed. A project design schedule is included as Attachment 'C', and made a part hereto.

PROJECT LOCATION: Attachment 'E', which is included and made a part hereto, shows the approximate location of the project.

SUPPLEMENTAL PROVISIONS: The attached supplemental provisions are incorporated and made a part of this agreement.

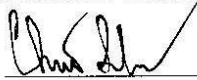
Article III

Please execute and return a signed copy for our files.

Approved by CLIENT:
George Olsen
City Manager
City of Sherman

By: _____
Title: _____
Date: _____

Accepted by ENGINEER:
Chris Schmitt PE
Office Manager
Teague Nall and Perkins, Inc.

By:  _____
Title: Principal
Date: 1/7/09

PROVISIONS

1. AUTHORIZATION TO PROCEED

Signing this form shall be construed as authorization by CLIENT for TNP, Inc. to proceed with the work, unless otherwise provided for in the authorization.

2. LABOR COSTS

TNP, Inc.'s Labor Costs shall be the amount of salaries paid TNP, Inc.'s employees for work performed on CLIENTS Project plus a stipulated percentage of such salaries to cover all payroll-related taxes, payments, premiums, and benefits.

3. DIRECT EXPENSES

TNP, Inc.'s Direct Expenses shall be those costs incurred on or directly for the CLIENT's Project, including but not limited to necessary transportation costs including mileage at TNP, Inc.'s current rate when its, or its employee's, automobiles are used, meals and lodging, laboratory tests and analyses, computer services, word processing services, telephone, printing and binding charges. Reimbursement for these EXPENSES shall be on the basis of actual charges when furnished by commercial sources and on the basis of usual commercial charges when furnished by TNP, Inc.

4. OUTSIDE SERVICES

When technical or professional services are furnished by an outside source, when approved by CLIENT, an additional amount shall be added to the cost of these services for TNP, Inc.'s administrative costs, as provided herein.

5. ENGINEER'S OPINION OF PROBABLE COST

Any cost opinions provided by TNP, Inc. will be on a basis of experience and judgment, but since it has no control over market conditions or bidding procedures TNP, Inc. cannot warrant that bids or ultimate construction costs will not vary from these cost opinions.

6. PROFESSIONAL STANDARDS

TNP, Inc. shall be responsible, to the level of competency presently maintained by other practicing professional engineers in the same type of work in CLIENT's community, for the professional and technical soundness, accuracy, and adequacy of all design, drawings, specifications, and other work and materials furnished under this Authorization. TNP, Inc. makes no other warranty, expressed or implied.

7. TERMINATION

Either CLIENT or TNP, Inc. may terminate this authorization by giving 30 days written notice to the other party. In such event CLIENT shall forthwith pay TNP, Inc. in full for all work previously authorized and performed prior to effective date of termination. TNP shall deliver all such work to CLIENT in all then existing forms, including electronic CAD systems. If no notice of termination is given, relationships and obligations created by this Authorization shall be terminated upon completion of all applicable requirements of this Authorization.

8. ARBITRATION

All claims, disputes, and other matters in question arising out of, or relating to, this Authorization or the breach thereof may be decided by arbitration in accordance with the rules of the American Arbitration Association then obtaining. Either CLIENT or TNP, Inc. may initiate a request for such arbitration, but consent of the other party to such procedure shall be mandatory. No arbitration arising out of, or relating to this Authorization shall include, by consolidation, joinder, or in any other manner, any additional party not a party to this Authorization.

9. LEGAL EXPENSES

In the event legal action is brought by CLIENT or TNP, Inc. against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses as may be set by the court.

10. PAYMENT TO TNP, INC.

Monthly invoices will be issued by TNP, Inc. for all work performed under the terms of this agreement. Invoices are due and payable within 30 days of receipt. Interest at the rate of 1½% per month will be charged on all past-due amounts, unless not permitted by law, in which case, interest will be charged at the highest amount permitted by law.

11. LIMITATION OF LIABILITY

TNP, Inc.'s liability to the CLIENT for any cause or combination of causes is in the aggregate, limited to an amount no greater than the fee earned under this agreement.

12. ADDITIONAL SERVICES

Services in addition to those specified in Scope will be provided by TNP, Inc. if authorized in writing by CLIENT. Additional services will be paid for by CLIENT as indicated in attached Basis of Compensation or as negotiated.

13. SALES TAX

In accordance with the State Sales Tax Codes, certain surveying services are taxable. Applicable sales tax is not included in the above proposed fee. Sales tax at an applicable rate will be indicated on invoice statements.

14. SURVEYING SERVICES

In accordance with the Professional Land Surveying Practices Act of 1989, the CLIENT is informed that any complaints about surveying services may be forwarded to the Texas Board of Professional Land Surveying, 7701 N. Lamar, Suite 400, Austin, Texas 78752, (512) 452-9427.

15. INVALIDITY CLAUSE

In case any one or more of the provisions contained in this Agreement shall be held illegal, the enforceability of the remaining provisions contained herein shall not be impaired.

16. PROJECT SITE SAFETY

TNP, Inc. has no duty or responsibility for site safety.

17. DRAINAGE CLAUSE

TNP, Inc. in the performance of its services may be required to assess the impact of the Project on neighboring property owners. The parties to this Agreement recognize that the development of real property has the potential to increase water runoff on downstream properties, and that such increase in runoff increases the possibility of water damage to downstream properties. The CLIENT agrees to indemnify and hold the ENGINEER harmless from any and all claims and damages arising, directly or indirectly, from water or drainage damage to downstream properties resulting from the development and construction of the Project. CLIENT shall not be required to reimburse ENGINEER for any claims or expenses arising out of the Project if it is determined by a court of competent jurisdiction that ENGINEER was negligent in the performance of its duties and obligations, and that ENGINEER's negligence was the direct cause of damage to a property downstream of the Project.

18. CONSTRUCTION MEANS AND METHODS

Means and methods of construction are the sole responsibility of the contractor.

ATTACHMENT 'A'

BASIC SERVICES

SURVEY PHASE

The ENGINEER will provide the existing topographic design survey in order to locate all above ground visible improvements.

FEASIBILITY PHASE

ENGINEER has already provided these services under a separate contract. Feasibility report was delivered to City in August 2008.

DESIGN PHASE

The ENGINEER will prepare contract documents and plans and specifications in conjunction with City Criteria and Design Standards for the construction of approximately 2,200 linear feet of 10" **water line** along Travis Street from Washington Street to Jones Street.

The ENGINEER will contact franchise utilities as necessary to assist in relocation of utilities as necessary to avoid conflicts.

The Plan set will include:

- Site Layout Plan
- Dimensional Control Plan
- Traffic Control Plan
- Standard Details

An Opinion of Probable Construction Costs (OPCC) will also be provided to the CLIENT during the design phase of the project.

ENGINEER will prepare necessary application for TxDOT permit as required for Lamar and Houston Street crossing(s) and will attend coordination meetings as necessary to facilitate approval.

BIDDING PHASE

Once final plans have been delivered to the CLIENT, the ENGINEER will assist with advertising the job and provide, as necessary, any supplemental documents or information required to clarify the Contract Documents. This clarification may be in the form of written Addendums or verbal interpretations of the Contract Documents. The ENGINEER will also confer with the CLIENT when responding to questions that arise during the Bidding Phase of the project.

The ENGINEER will evaluate the bids and proposals once received and make recommendation to the CLIENT to award the construction contract.

CONSTRUCTION PHASE

ENGINEER will advise owner and act as owners representative as necessary. ENGINEER will provide final inspection and assist with job close out procedures as necessary. The ENGINEER will also provide the CLIENT with As Built information in both electronic and a set of 24"X36" reproducible drawings.

ATTACHMENT 'B'

ADDITIONAL SERVICES

ADDITIONAL SERVICES: **ADDITIONAL SERVICES** shall be any service provided by the ENGINEER which is not specifically included in **BASIC SERVICES** as defined above or delineated in Attachment 'A'. **ADDITIONAL SERVICES** shall include, but not be limited to:

- a) Trips and meetings beyond a 50-mile radius of Sherman;
- b) Subcontract charges not described in **BASIC SERVICES** or Attachment 'A';
- c) Printing, copying, plotting and document reproduction beyond that required to complete the **BASIC SERVICES**, as described herein;
- d) Revisions to plans to reduce costs after bidding;
- e) Environmental Assessments or permitting;
- f) Additional Surveying required to accommodate scope of either onsite or offsite design efforts;
- g) Preparing applications and supporting documents for government loans, grants or planning advances and providing data for detailed applications;
- h) Construction Staking;
- i) Franchise Utility Design;
- j) S.U.E.
- k) Water and/or Sewer Studies and modeling;
- l) Correspondence and work requests related to Franchise Utility Design;
- m) Serving as right of way and easement acquisition agent;
- n) Any *offsite* improvements: *street improvements, drainage improvements, grading improvements, water or sanitary sewer improvements not defined in the Basic Services;*
- o) Preparation of easements or ROW documents;
- p) Permitting or inspection fees;
- q) Filing/Inspection fees will be paid by the **CLIENT**.

ADDITIONAL SERVICES shall be considered additional work and shall be reimbursed at standard TNP hourly rates or TNP standard rates as outlined in Attachment 'D'.

ATTACHMENT 'C'

PROJECT DESIGN SCHEDULE

ENGINEER shall endeavor to accomplish the work in accordance with the following schedule:

1. Complete the design survey within 14 calendar days after receiving a signed contract from the CLIENT
2. Complete Design Documents within 21 days of receiving approval of preliminary design layout from owner.

ENGINEER shall endeavor to complete the work per the above schedule. It is understood and agreed that the objective of all involved in this project is to produce and provide quality and complete information and deliverables, which requires a considerable amount of coordination and cooperation, as well as adequate time for research, analysis and development. It is also understood that ENGINEER's ability to perform the scope of service is dependent upon timely receipt of information and data from the CLIENT, as well as other requested materials as may be needed to complete the work. Adjustments in schedule may be required should information or data from the CLIENT become delayed or not provided in a timely manner.

ATTACHMENT 'D'
TEAGUE NALL AND PERKINS, INC.
Standard Rate Schedule for Reimbursable/Multiplier Contracts
Effective January 1, 2008 to December 31, 2008*

Engineering / Technical	From	-	To	
Principal	\$150	-	\$220	Per Hour
Project Manager	\$115	-	\$175	Per Hour
Senior Engineer	\$110	-	\$210	Per Hour
Engineer	\$80	-	\$120	Per Hour
Landscape Architect / Planner	\$70	-	\$160	Per Hour
Designer	\$85	-	\$110	Per Hour
Senior Designer	\$100	-	\$135	Per Hour
CAD Technician	\$60	-	\$85	Per Hour
Senior CAD Technician	\$75	-	\$100	Per Hour
IT Consultant	\$120	-	\$140	Per Hour
IT Technician	\$70	-	\$100	Per Hour
Clerical	\$50	-	\$75	Per Hour
Resident Project Representative	\$70	-	\$100	Per Hour
Surveying				
Survey Office Manager	\$145	-	\$165	
Registered Professional Land Surveyor	\$105	-	\$135	
S.I.T.	\$70	-	\$90	
Senior Survey Technician	\$70	-	\$90	
Junior Survey Technician	\$60	-	\$75	
2-Person Field Crew w/Equipment	\$100			
3-Person Field Crew w/Equipment	\$110			
4-Person Field Crew w/Equipment	\$135			
1-Person G.P.S. Crew w/Equipment	\$110			
2-Person G.P.S. Crew w/Equipment	\$130			
3-Person G.P.S. Crew w/Equipment	\$150			
1-Person Robotic Crew w/Equipment	\$90			
2-Person Robotic Crew w/Equipment	\$110			
Direct Cost Reimbursables				
Photocopies, Scans & PDF Files:	\$0.10/page	letter and legal size bond paper, B&W		
	\$0.20/page	11" x 17" size bond paper, B&W		
	\$1.00/page	letter, legal and 11" x 17" size bond paper, color		
	\$2.00/page	22" x 34" and larger bond paper or vellum, B&W		
	\$4.00/page	22" x 34" and larger bond paper or vellum, color		
Plots:	\$1.00/page	11" x 17" size bond paper, B&W		
	\$2.00/page	11" x 17" size bond paper, color		
	\$4.00/page	22"x34" and larger bond paper or vellum, B&W		
	\$6.00/page	22"x34" and larger bond paper or vellum, color		
	\$6.00/page	22"x34" and larger mylar or acetate, B&W		
Mileage	\$0.505/mile			

All Subcontracted and outsourced services billed at rates comparable to TNP's billing rates shown above.

- Rates shown are for calendar year 2008 and are subject to change in subsequent years.

PROJECT YEAR: 2008-2009

PROJECT NAME: Travis Street Water Line
Washington St. to Jones St.

DESCRIPTION: Replace existing line with an 8" water main.

ESTIMATED COST: \$250,000

ESTIMATED O&M COST: Not Applicable

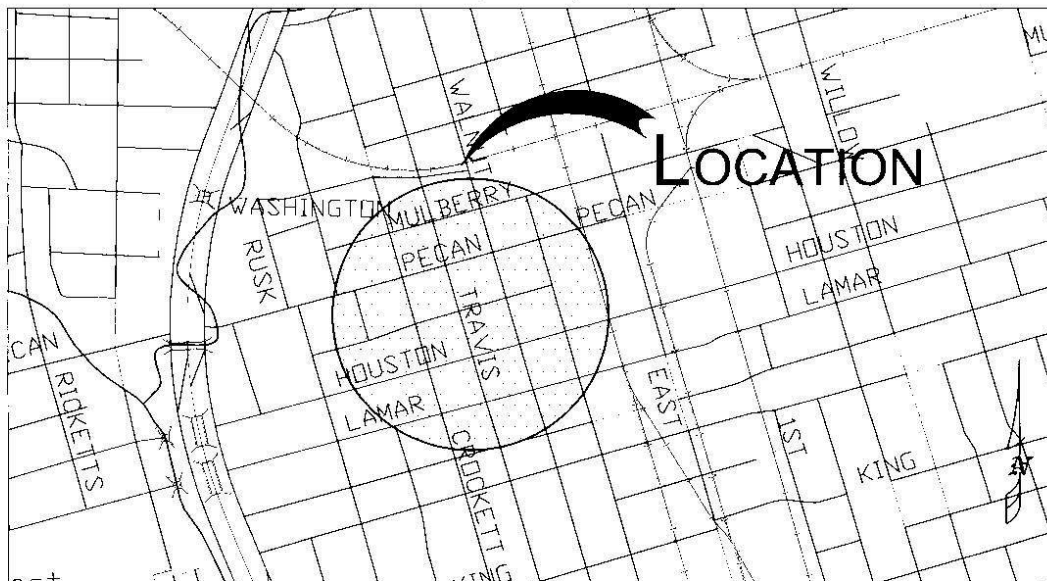
PROPOSED FINANCING: Utility Improvement Fund

PROJECT NECESSITY: Replacement is due to a badly deteriorated line requiring frequent service interruptions and costly repairs.

DEPARTMENT/DIRECTOR: Utility and Engineering Services, Mark Gibson

PROPOSED START DATE: June, 2009

PROPOSED END DATE: September, 2009





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. C.2

*** RESOLUTION NO. 5310**

**Authorizing Execution of a Development Agreement with Tin Star Homes, LLC
for the Construction of Public Facilities in the Country Ridge Subdivision, The Preserve,
within the City of Sherman**

Issue

To consider approval of a Development Agreement with Tin Star Homes, LLC for the construction of The Preserve Phase 1 subdivision

Background

The Developer wishes to construct The Preserve Phase 1 subdivision. A Development Agreement is required prior to the start of construction.

Origination

Department of Utilities and Engineering

Financial Consideration

The Developer will pay the City the required review and inspection fee of \$38,682.55.

Staff Recommendation

It is recommended that the Development Agreement be approved and that the City Manager be authorized to execute the Agreement.

Alternatives

As directed by the City Council

Attachments

Resolution No. 5310

Development Agreement

Location Map

Prepared by:
Mark Gibson, Director of Utilities & Engineering

Approved by:
George Olson, City Manager

RESOLUTION NO. 5310

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT WITH TIN STAR HOMES, LLC FOR THE CONSTRUCTION OF PUBLIC FACILITIES IN THE COUNTRY RIDGE SUBDIVISION, THE PRESERVE, WITHIN THE CITY OF SHERMAN; 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 by the Interim City Attorney, to execute a Development Agreement with Tin Star Homes, LLC for the construction of public facilities in the Country Ridge Subdivision, The Preserve, to the City of Sherman, Grayson County, Texas, in the same or substantially same form as the contract documents to be attached hereto and incorporated herein 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.

PASSED AND APPROVED on this the _____ day of _____, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

**DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SHERMAN AND TIN STAR HOMES, LLC.**

THIS DEVELOPMENT AGREEMENT ("Agreement"), made and entered into this _____ day of _____, 2009 (the "Effective Date"), by and among the CITY OF SHERMAN ("City"), a municipal corporation organized under the laws of the State of Texas, and TIN STAR HOMES, LLC. ("Developer"),

WITNESSETH:

WHEREAS, City recognizes the importance of its continued role in local economic development; and

WHEREAS, Developer is developing a portion of the City and making improvements to the City; and

WHEREAS, Developer owns or controls lands located in Sherman, Texas, and described in the final plat of The Preserve Phase I submitted to the City by the Developer and attached hereto and made a part hereof as if fully set out in this paragraph as Exhibit "A" and hereinafter referred to as the "Property", and Developer intends to develop the Property by constructing improvements thereon; and

WHEREAS, the Developer desires that the City accept the dedication of the streets, utilities, and other improvements as reflected on the plans and specifications submitted by the Developer as a part of the public facilities of the City, as indicated in Paragraph 2 of Article I; and

WHEREAS, the City is willing to provide, in accordance with the provisions of this Agreement and the prevailing state and local laws, City services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive City services;

NOW THEREFORE, in consideration of the mutual covenants and obligations herein, the parties agree as follows:

ARTICLE I.

SPECIFIC CONTRACT PROVISIONS

1. **Assurance of Title:** At the time of execution of this Agreement, the Developer agrees to deliver to City a copy of a Title Insurance Policy or an opinion of title from a qualified attorney-at-law addressed to the City in a form and substance satisfactory

to City with respect to the Property, which opinion shall include a current report on the status of the title, setting out the name of the legal title holders and the outstanding mortgages, taxes, liens and covenants. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in this Agreement.

2. **Assurance of Accuracy of Documents:** Developer has caused the subdivision plat of the Property (the "plat") and all plans and specifications (the "plans") for the streets, utilities and other improvements to be developed on the Property (collectively the "Project") as part of the public facilities of the City, to be prepared by a Registered Professional Engineer and that Plat and Plans accurately depict such subdivision and the improvements comprising the Project. Developer understands that the City will rely on the accuracy of the Plat and Plans in making its determination as to whether the documents comply with all City ordinances, state and federal law.
3. **Development Documents:** Upon the execution of this Agreement, the Plat, Plans, and orders of the City Planning and Zoning Commission and the City Council, made in connection with the approval of the Subdivision depicted on the Plat (hereinafter the "Subdivision") are confirmed, ratified, and agreed upon by both parties and attached hereto as Exhibit "B". Developer agrees to comply with such orders and Ordinance No. 2684, and any amendments, as of the date of the execution of the contract as applicable to the Subdivision; and all of the work of the Project will be done under the supervision of the City Engineer (as defined in Paragraph 8 of this Article) to City standards, and in accordance with applicable City regulations. The Plat, Plans, and orders of the City Planning and Zoning Commission, and the City Council and Ordinance No. 2684 (hereinafter collectively referred to as the "Development Documents") are incorporated into this Agreement and made a part thereof for all purposes.
4. **Delivery of Improvements:** The Developer will pay for and deliver to the City, free and clear of all liens and costs, all of the improvements provided in the Development Documents.
5. **Performance Bond:** No work shall be performed within the Subdivision until the Developer presents to the City Manager a satisfactory Performance Bond and Payment Bond, as provided by Chapter 2253 of the Texas Government Code, from the Contractor in favor of the Developer and the City. Such bond shall be made for 100% of the contract price for all streets and utilities and public works to be installed in the Subdivision, and shall be in a form containing all other provisions set forth in Chapter 2253 of the Texas Government Code, including, but not limited to, Section 2253.021 of that Chapter.
6. **Failure to Complete Development:** If the Developer does not complete the Improvements contained in the Development Documents on or before July 1, 2010, City may, at its election, use the Performance Bond to complete such Improvements. The date in this Paragraph may be extended by the mutual agreement of the parties. Such extension shall be in writing, as provided in Paragraph 13 of Article II.

7. **Availability of Public Facilities:** No public facilities will be made available to any lot within any segment of this Subdivision until the work on each segment is performed and approved as agreed upon in this Agreement.
8. **Registered Civil Engineer:** All of the plans and specifications for the improvements herein mentioned in the Development Documents shall be prepared by a Registered Professional Civil Engineer, and all of the improvements shall be built under the supervision of such engineer, and the engineer shall certify to the City that, as each segment is built, such segment as built is true and correct in accordance with the plans and specifications, and that the same was built under his supervision, and the certificate shall be signed and sealed by such engineer. All of the expense of such engineering shall be paid for by the Developer.
9. **City Engineer:** Before work is begun on any improvement, the City shall designate a person, hereinafter identified as "City Engineer", who shall be notified and arrangements made for inspection by the City Engineer at such stages of construction as required by him, and no improvement constructed underground shall be covered by the Developer until inspected by the City Engineer and approved by him. At any time any construction is contrary to the plans and specifications, the City Engineer shall be, and is, empowered to stop construction and require correct construction and installation at the Developer's risk and without liability to the City.
10. **Coordination of Work:** The work will be coordinated between the City and the Developer so that the utilities will be in place before the permanent improvements are installed.
11. **Utility Arrangements:** The Developer will make its own arrangements with gas, electric, and telephone service providers for extensions of their utilities; and, upon complying with this Agreement, the City utilities will be furnished.
12. **Fees:** Other fees normally charged by the City for building permits, water taps, service connections, and similar fees will be paid as required to the City by the Developer.
13. **Guarantee or Maintenance Bond:**
 - A. If, within one year after the acceptance, defects should appear in the materials or workmanship, the Developer shall have such defects promptly repaired at its own expense, and shall leave the work as intended by the plans and specifications. This guarantee will apply to all parts of the work which have been accepted by the City.
 - B. Instead of the Guarantee set forth in subparagraph (a) of this paragraph, Developer may provide a Maintenance Bond to the City at the time of final acceptance of the improvements by the City Engineer. The bond shall name the City as an obligee under the bond and the bond shall provide a one (1) year guarantee on all the improvements contained in the Development Documents.

14. **WAIVER OF RIGHTS UNDER STATE LAW:**

WAIVER OF RIGHTS:

SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE

- A. Developer understand that, pursuant to Section 212.904 of the Texas Local Government Code, the Developer is entitled to an apportionment of the municipal infrastructure cost and that such apportionment must be done by a professional engineer. Developer hereby agrees that any land or property it donates to the City, as reflected on the Final Plat, is roughly proportionate to the need for such land. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said donation are related both in nature and extent to the impact of the development of the Property and its needs related thereto. BY MY DEVELOPER'S SIGNATURE ON THIS AGREEMENT, I CONTRACT ON ITS EXECUTION; DEVELOPER HEREBY FREELY, KNOWINGLY AND VOLUNTARILY WAIVES ITS RIGHTS UNDER SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE, OR ANY OTHER RELATED CLAIMS. I AGREE AND DEVELOPER AGREES THAT THE DEVELOPER'S AGREEMENT MAY PROCEED WITHOUT THE REQUIREMENTS IMPOSED ON THE CITY UNDER SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE, EXCEPT DEVELOPER SPECIFICALLY RESERVES ITS RIGHT TO APPEAL THE APPORTIONMENT IN ACCORDANCE WITH SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE. I CONSENT TO THIS WAIVER AFTER HAVING THE OPPORTUNITY TO REVIEW THIS AGREEMENT AND WAIVER PROVISION WITH MY ATTORNEY OR, IF I HAVE NOT REVIEWED THIS WITH AN ATTORNEY, THAT I HAVE HAD THE OPPORTUNITY TO DO SO AND HAVE VOLUNTARILY CHOSEN NOT TO SEEK THE ADVICE OF AN ATTORNEY.
- B. BOTH DEVELOPER AND THE CITY FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY *DOLAN V. TOWN OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN THE DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE FOREGOING, INCLUDING ALL DEDICATIONS OF LAND, PARKLAND, AND ANY INFRASTRUCTURE REFERENCED HEREIN. I CONSENT TO THIS WAIVER AFTER HAVING THE OPPORUTNITY TO REVIEW THIS AGREEMENT AND WIAVER PROVISION WITH MY ATTORNEY, OR IF I HAVE NOT REVIEWED THIS WITH AN ATTORNEY, THAT I HAVE HAD THE OPPORUTNITY TO DO SO AND HAVE

VOLUNTARILY CHOSEN NOT TO SEEK THE ADVICE OF AN ATTORNEY.

15. Other Provisions:

- A. Upon Completion of the Subdivision, one electronic copy and one set of reproducible "Record" drawings will be supplied to the City.
- B. The Developer shall pay to the City an engineering plan review, inspection, and testing fee equal to Thirty-Eight Thousand Six Hundred Eighty-Two Dollars and Fifty-Five Cents (\$38,682.55).
- C. Developer agrees that the development, as set forth in the Development Documents, will comply with federal, state and local laws relating to the discharge of storm water upon completion of the development.

ARTICLE II.

GENERAL CONTRACT PROVISIONS

- 1. **Force Majeure.** If the performance of any of the parties hereto is delayed by reason of war, civil commotion, acts of God, inclement weather, unanticipated subsurface conditions, fire or other casualty, court injunction or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed. The terms above shall not apply to extend the time permitted for any payment obligations set forth in this Agreement.
- 2. **INDEMNIFICATION AND HOLD HARMLESS.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, DEVELOPER OBLIGATES ITSELF TO THE CITY TO FULLY AND UNCONDITIONALLY PROTECT, INDEMNIFY AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY FOR INJURIES TO PROPERTY, INJURIES TO PERSONS (INCLUDING DEVELOPER'S EMPLOYEES), INCLUDING DEATH, AND FROM ANY OTHER COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITIES OF ANY AND EVERY NATURE WHATSOEVER ARISING IN ANY MANNER, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION HERewith, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF DEVELOPER, ITS OFFICERS, AGENTS OR EMPLOYEES. THIS INDEMNIFICATION AND SAVE HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY. This indemnity does not waive any

governmental immunity available to the City under Texas law and does not waive any defenses of the parties under Texas law.

3. **Authority to Bind.** Each general partner or member executing this Agreement on behalf of the Developer represents that, by executing this Agreement in such capacity, it acts within the scope of its authority and does not exceed the bounds of its authority to act to bind such party regarding the obligations and assurances contained in this Agreement. City represents that the execution of this Agreement as provided below has been duly authorized by the City Council as provided in the Approval Resolution.
4. **Events of Default.** A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement. The non-defaulting party shall immediately notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event which would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the notifying party requires or proposes to require with respect to curing the default.
5. **Remedies Available to City.** If a default by Developer shall occur and continue after thirty (30) day's notice to cure default, City may, at its option, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law and including, but not limited to, using the Performance Bond to complete the work, without the necessity of further notice to or demand upon Developer. City shall not, however, have the right to exercise such remedies for so long as Developer proceeds in good faith and with due diligence to remedy and correct the default, provided that Developer has commenced to cure such default within thirty (30) days following notice, pursues such cure with reasonable diligence, and completes such cure within one hundred eighty (180) days.
6. **No Waiver of Defenses.** Nothing in this Agreement shall be construed or intended to waive any defenses available to the City, including, but not limited to, governmental immunity.
7. **Venue and Governing Law.** This Agreement is performable in Grayson County, Texas; and venue of any action arising out of this Agreement shall be exclusively in Grayson County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.
8. **Notices.** Any notice required by this Agreement shall be deemed to be properly served to the designees below: (i) three (3) days following deposit if deposited in the U.S. mail by certified letter, return receipt requested; (ii) on the next business day if sent by nationally recognized overnight delivery service; or (iii) upon receipt if transmitted by facsimile or electronic transmission, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described:

CITY: CITY OF SHERMAN

Designee: Mark Gibson

Address: 220 West Mulberry Street
Sherman, Texas 75090

Phone: (903) 892-7210

Fax: (903) 870-7802

DEVELOPER: TIN STAR HOMES, LLC.

Designee: Steve Palmer and Joe Oblas

Address: 4200 Quail Run Road
Sherman, Texas 75092

Phone: (903) 815-1407 or (903) 818-8263

Fax: _____

9. **Legal Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
10. **Counterparts.** This Agreement may be executed in any number of counterparts, which may be transmitted originally or electronically, each of which shall be deemed an original and constitute one and the same instrument.
11. **Captions.** The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
12. **Successors and Assigns.** The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto, provided, however, this Agreement shall not be assigned by Developer without prior written approval by the City Manager of the City, which approval shall not be unreasonably withheld or delayed. City may assign or delegate any of its rights or obligations under this Agreement but the same shall not constitute a novation.
13. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement and, except as otherwise provided

herein, cannot be modified without written agreement of both the parties to be attached to and made a part of this Agreement.

14. **Interpretation of Agreement.** This is a negotiated Agreement. If any part of this agreement is in dispute, the parties stipulate that the Agreement shall not be construed more favorably for either party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate on this _____ day of _____, 2009, with an original to each party.

DEVELOPER: TIN STAR HOMES, LLC.

BY: _____

NAME: Steve Palmer

TITLE: Owner

ATTEST:

BY: _____

NAME: _____

TITLE: _____

CITY: CITY OF SHERMAN, TEXAS

BY: _____

NAME: George Olson

TITLE: City Manager

ATTEST:

BY: _____

NAME: Linda Ashby

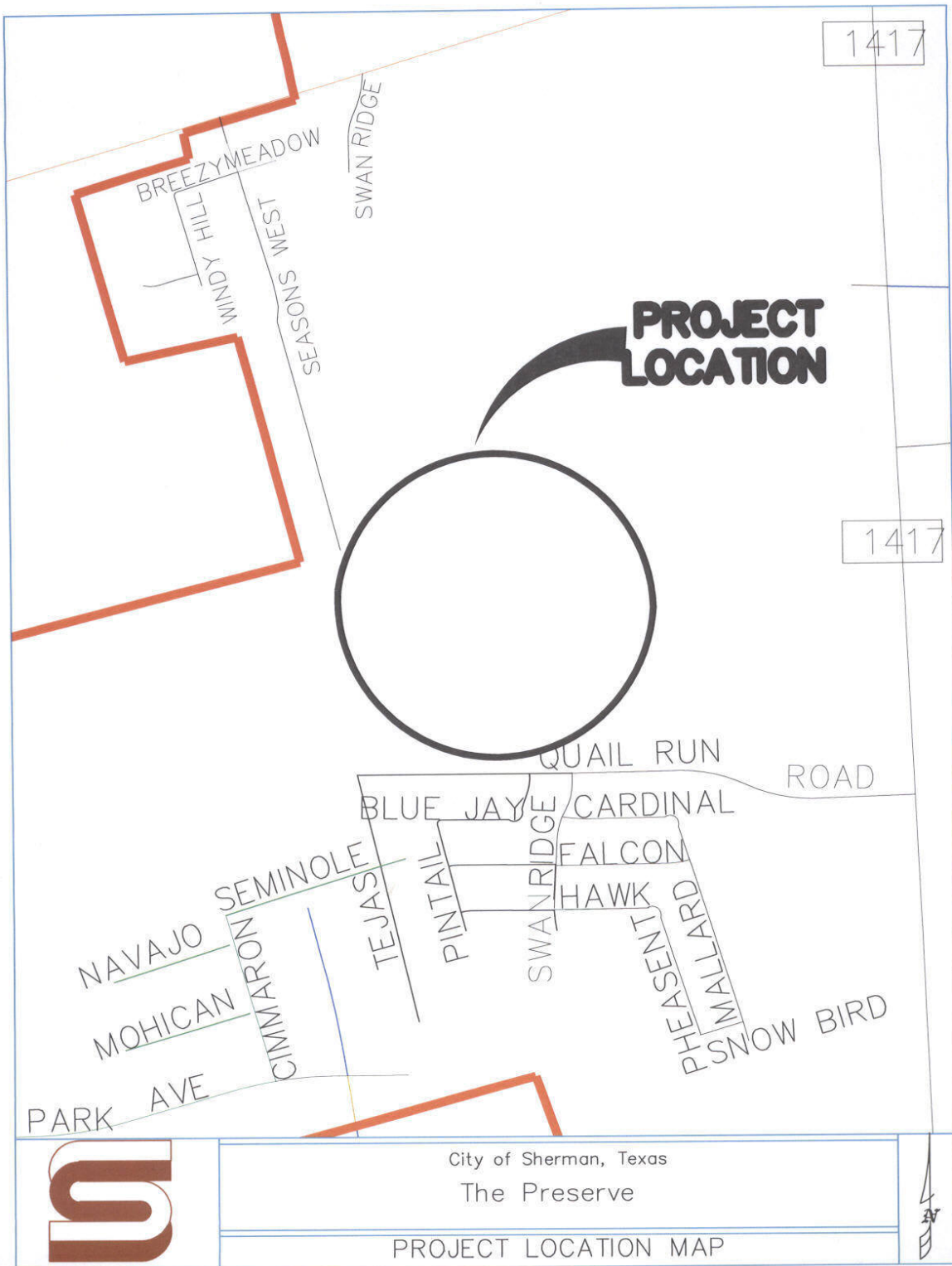
TITLE: City Clerk

APPROVED AS TO FORM:

BY: _____

NAME: Peter K. Munson

TITLE: City Attorney





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. C.3

RESOLUTION NO. 5311

Authorizing Execution of a Consulting Services Agreement with Dunkin Sims Stoffels, Inc. for Phase II of the Pecan Grove Park Development

Issue

To consider approval of a resolution to authorize execution of a Consulting Services Agreement with Dunkin Sims Stoffels, Inc. for Phase II of the Pecan Grove Park development

Background

The Sherman City Council has approved \$2.4 million for the Pecan Grove Park Phase II development, which includes two parking areas, an amphitheatre, an extensive walking trail, multiple pavilions and a playground, as well as a fishing pier and restroom/concession facilities. This agreement will provide basic design services and construction documents, as well as construction review for this phase of the project.

Origination

Sherman City Council 2008-2009 Capital Improvement Program

Financial Consideration

Certificates of Obligation will be issued to fund this project, which will amount to \$2.4 million for the Phase II development. These funds have been appropriated in the current budget. The summary of fees for this agreement totals \$200,000.00.

Staff Recommendation

It is recommended that the City Council approve the Resolution and the Consulting Services Agreement for the Phase II development of Pecan Grove Park.

Alternatives

As recommended by the City Council

Attachments

Resolution No. 5311

Consulting Services Agreement with Exhibit A (Scope of Services)

Center Street Park Master Plan

2008-2009 CIP Project with Location Map

Prepared by:

Kevin Winkler, Parks & Recreation Administrator

Approved by:

George Olson, City Manager

RESOLUTION NO. 5311

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CONSULTING SERVICES AGREEMENT WITH DUNKIN SIMS STOFFELS, INC. FOR PHASE II OF THE PECAN GROVE PARK DEVELOPMENT; 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 by the Interim City Attorney, to execute an Agreement with Dunkin Sims Stoffels, Inc. for consulting services in the development of Pecan Grove Park – Phase II, 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.

PASSED AND APPROVED on this the ____ day of _____, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF SHERMAN**, a Home-Rule Municipality, organized and existing under the laws of the State of Texas, hereinafter referred to as "City", and **DUNKIN SIMS STOFFELS, INC.**, hereinafter referred to as "Consultant", to be effective upon the date indicated below.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Consultant, as indicated in Exhibit "A" for Pecan Grove Park, Phase II and to perform other related services for the City, which is herein referred to as the "Project"; and

WHEREAS, the Consultant desires to render such services for the City upon the terms and conditions provided herein;

NOW, THEREFORE, in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

1. **Employment of the Consultant.** The City hereby agrees to retain the Consultant to perform professional services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement and to the standards recognized in Consultant's industry.
2. **Scope of Work.** The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and made a part of this Agreement for all purposes. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City. Consultant agrees to submit all final documents in a form acceptable to the City.
3. **Contracts.** Any contracts for contractors or subcontractors for services rendered under this Agreement on behalf of the City shall be in a contract form provided and approved by the City's Attorney.
4. **Time of the Essence.** Time is of the essence. Consultant agrees to commence work immediately upon execution of this Agreement and to proceed diligently to completion except for delays beyond Consultant's reasonable control.
5. **Compensation and Method of Payment.** The parties agree that Consultant shall be compensated for all services provided pursuant to this Agreement in the amount described and set forth in Exhibit "A". The contract amount specified in Exhibit "A" shall not be exceeded without the written permission of the City.

6. Insurance. Consultant agrees to procure the following insurance:

- a. Workers' Compensation as required by law.
- b. Professional Liability Insurance in an amount not less than \$1,000,000 in the aggregate.
- c. Comprehensive General Liability and Property Damage Insurance with minimum limits of \$1,000,000 for injury or death of any one person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence of damage to or destruction of property.
- d. Comprehensive Automobile and Truck Liability Insurance covering owned, hired, and non-owned vehicles, with minimum limits of \$1,000,000 for injury or death of any one person, \$1,000,000 for each occurrence, and \$1,000,000 for property damage.
- e. The Consultant shall include the City as an additional insured under the policies, with the exception of the Professional Liability Insurance and Workers' Compensation. Certificates of Insurance and endorsements shall be furnished to the City before work commences. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, and/or reduced in coverage or in limits ("Change in Coverage") except with prior written consent of the City and only after the City has been provided with written notice of such Change in Coverage, such notice to be sent to the City either by hand delivery to the City Manager or by certified mail, return receipt requested, and received by the City no fewer than thirty (30) days prior to the effective date of such Change in Coverage. Prior to commencing services under this Contract, Consultant shall furnish City with Certificates of Insurance, or formal endorsements as required by this Contract, issued by Consultant's insurer(s), as evidence that policies providing the required coverage, conditions, and limits required by this Contract are in full force and effect.

7. Indemnity and Duty to Defend.

- A. CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM THE SERVICES PROVIDED BY CONSULTANT AND TO THE EXTENT CAUSED BY THE NEGLIGENT ACT OR OMISSION OR INTENTIONAL WRONGFUL ACT OR OMISSION OF CONSULTANT, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE.
- B. Consultant is expressly required to defend the City against all Claims for which the City becomes liable. In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing by the City Manager, approved by the City Attorney, and properly

authorized by the City's Council. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Consultant's obligation to defend the City or as a waiver of Consultant's obligation to indemnify the City pursuant to this Contract. Consultant shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City in defense of Claims for which Consultant is liable under this Paragraph.

- C. This indemnification and duty to defend is subject to and does not waive any governmental immunity available to the City under Texas law and any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

8. Independent Contractor. Consultant is an independent contractor and not an officer, agent, servant or employee of the City. Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

9. Assignment and Subletting. Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant from its full obligations to the City as provided by this Agreement.

10. Contract Termination. The parties agree that the City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Consultant. In the event of such termination, Consultant shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Consultant in connection with this Agreement. Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination. In the event this Agreement is terminated, the City shall have the option of entering into an Agreement with another party for the completion of the work.

11. Ownership of Documents and Waiver of Copyright Claims.

- a. The Project is the property of the City; and Consultant may not use the photogrammetric mapping and related documents therefore for any purpose not relating to the Project without City's consent. All such photogrammetric mapping and related documents shall be the property of the City who may use them without

Consultant's permission for any proper purpose including, but not limited to, additions to or completion of the Project.

- b. **WAIVER.** ONCE THE INFORMATION IS SUBMITTED TO THE CITY, CONSULTANT AGREES TO WAIVE ANY COPYRIGHT CLAIMS TO THE INFORMATION AND HEREBY RELEASES, DISCHARGES, AND CONVENANTS NOT TO SUE THE CITY, ITS OFFICERS, SERVANTS, AGENTS, OR EMPLOYEES (HEREINAFTER REFERRED TO AS RELEASEES) FROM ANY AND ALL LIABILITY, CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION WHATSOEVER ARISING OUT OF OR RELATED TO ANY LOSS, DAMAGE, OR INJURY THAT MAY BE SUSTAINED BY CONSULTANT, PERTAINING TO ANY CLAIMS THAT THE DOCUMENTS ARE COPYRIGHTED BY CONSULTANT. CONSULTANT ALSO ACKNOWLEDGES THAT SUCH INFORMATION SHALL BECOME SUBJECT TO THE PUBLIC INFORMATION LAWS OF THIS STATE AND THAT THE CITY CAN RELEASE SUCH INFORMATION TO THE PUBLIC WITHOUT ANY RECOURSE BY THE CONSULTANT, INCLUDING, WITHOUT LIMITATION, CLAIMS FOR COMPENSATION, DEFAMATION, OR INVASION OF PRIVACY, OR OTHER INFRINGEMENTS OR VIOLATIONS OF COPYRIGHT, PERSONAL, OR PROPERTY RIGHTS OF ANY SORT WHATSOEVER.

12. Complete Contract. This Agreement, including Exhibit "A", constitutes the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. To the extent that any of the provisions in Exhibit "A" conflict with this Agreement, the provisions in the Agreement control over the provisions in the exhibit. Except as provided by Section 2 of this Agreement, this Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by both parties.

13. Mailing of Notices. Unless instructed otherwise in writing, Consultant agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City Manager
P. O. Box 1106
Sherman, Texas 75091-1106

City agrees that all notices or communications to Consultant permitted or required under this Agreement shall be addressed to Consultant at the following address:

Dennis Sims, ASLA, Principal
Dunkin Sims Stoffels, Inc.
9603 White Rock Trail, Suite 210
Dallas, Texas 75238
(214) 553-5778

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

14. **Miscellaneous.**

- A. Paragraph Headings. The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.
- B. Contract Interpretation. Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.
- C. Venue/Governing Law. **The parties agree that the laws of the State of Texas shall govern this Agreement. Exclusive venue shall lie in Grayson County, Texas.**
- D. Successors and Assigns. City and Consultant, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- E. Severability. In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.
- F. Effective Date. This Agreement shall be effective from and after execution by both parties hereto.

The remainder of this page is left intentionally blank.

SIGNED on the date indicated below.

CITY OF SHERMAN

CONSULTANT:
DUNKIN SIMS STOFFELS, INC.
A For-Profit Corporation

By: _____
George Olson
City Manager

By: _____
Printed Name: _____
Title: _____

DATE: _____

DATE: _____

ATTEST:

ATTEST:

By: _____
Linda Ashby
City Clerk

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Interim City Attorney

Exhibit "A"
SCOPE OF SERVICES

**DUNKIN
SIMS
STOFFELS
Inc.**



January 7, 2009

Mr. Kevin Winkler
Parks and Recreation Administrator
City of Sherman
407 W. Washington
Sherman, Texas 75091

Dear Mr. Winkler:

We appreciate the opportunity to submit this Scope of Services for the Pecan Grove Park – Phase II.. This proposal is being submitted for your review and approval. The Scope of Services is divided into two Phases: Phase I – Basic Design Services and Construction Documents; and Phase II - Additional Services.

PHASE I - BASIC DESIGN SERVICES AND CONSTRUCTION DOCUMENTS

Design Development Services

An opinion of probable cost for construction will be prepared for the programs elements identified by the City for construction in this phase of the project. It is our understanding the City has budgeted \$2,400,000.00 for the project budget which includes professional fees.

The services in this phase are divided into three sections: (1) construction documents and specifications; (2) bidding and contract award; and (3) construction administration. Each section sets forth the services to be performed.

Construction Documents and Specifications

Construction documents and specifications will be prepared for the park elements outlined in the opinion of probable cost for construction. The consulting team will perform the following tasks in this section of the project:

- Grading Plan(s), which will establish grades for the parking lot.
- Layout Plan(s) locating by dimensions all structures, walks, etc.
- Construction Details providing plans, sections, elevations of the individual elements of the plans.
- Prepare proposal forms and appropriate add or deduct alternates.
- Prepare the project manual

Bidding and Contract Award

The Consultant will be responsible for the following tasks in this phase:

- Answer questions and interpret drawing during the bidding period.
- Assist the City in receiving bids.
- Prepare and distribute any required addendum.
- Attend the bid opening and prepare a bid tabulation sheet for completion at the bid opening.
- Analyze the bids and make a written recommendation to the City for awarding a contract.

Construction Administration

We will perform the following tasks during this phase of the project:

- Consultation and advice to the City.
- Preparation of elementary and supplementary sketches required to resolve field conditions.
- Approval of submittals and shop drawings submitted by contractors for conformance with the design concept.
- The consulting team shall make periodic site visits to determine if the project is proceeding in accordance with the contract documents. The consulting team shall not be responsible or liable for the Contractor's failure to perform the construction work in accordance with the contract documents.
- Review and approval of all certificates for payment submitted by the Contractor.
- Prepare Change Orders for the City's approval and execution.
- Coordinate final site walk through with the City at the conclusion of the construction and provide a punch list to Contractor to complete the project.

PHASE II - ADDITIONAL SERVICES

The following items set forth below are services provided in addition to Basic Design Services. Costs for each item listed have been provided as a reimbursable expense.

Plan and Specification Printing & TDLR Fees

The Consultant will invoice the City at cost plus 10% for all out-of-house printing of plans, specifications and plotting of AutoCAD files. Requested mounting or laminating of master plans will also be invoiced at the incurred cost.

In-house printing of check prints for use in preparing the construction documents are included in the basic design services.

Postage and delivery expenses will not be invoiced during the Design Phase of the contract. Courier, express mail, or overnight delivery charges, as well as, the cost of mailing sets of contract documents to prospective bidders will be charged to the City. We would recommend the City budget \$6,000.00 for this task. Texas Department of Licensing and Regulation (TDLR) fees for review and inspection will be \$2,000.00.

Topographical Survey

An on the ground topographical survey will be performed to establish grades and natural features. We would recommend the City budget \$11,000.00 for this task.

Geotechnical Report

A geotechnical report will be needed to provide soil analysis and recommendations for the construction of various elements in the park. Based on our experience, we recommend the City allow \$5,000.00 for this service.

Additional Services

Additional Services which are not included in this proposal include:

- Preparation of final or preliminary plats
- Detail site plans required by the City Planning Department

Summary of Fees

Phase I – Basic Design Services and Construction Documents.....	\$ 176,000.00
(Based on \$2,200,000.00 Construction Budget)	
Phase I Total:	\$ 176,000.00
Phase II – Additional Services:	
Plan and Specification Printing, TDLR Review Fee and Inspection.....	\$ 8,000.00
Topographical Survey.....	\$ 11,000.00
Geotechnical Report.....	\$ 5,000.00
Phase II Total:	\$ 24,000.00
TOTAL SERVICES FEES:	\$ 200,000.00

Preparation of Alternates

The Consultant's fees are based upon the total dollars allocated for construction of the project. The Consultant will prepare an estimate for probable cost of construction. This estimate will be based on the design development phase of the project. Should the City request design alternates be prepared for bidding, the consulting team will invoice the City in addition to the original contract amount, the agreed percentage of construction cost for preparation of plans, construction documents and specifications for the alternates. Any such expenses shall be pre-authorized by the City in advance of work being performed.

You may acknowledge your acceptance of this proposal by signing below. The consulting team appreciates the opportunity to submit this Scope of Services and we look forward to working with you and the City of Sherman. If you have any questions, do not hesitate to call me.

Sincerely,



Dennis Sims, ASLA
Principal



PROJECT YEAR: 2008-2009

PROJECT NAME: Pecan Grove Park Development - Phase II

DESCRIPTION: Complete the park by including fishing accessibility, nature trails, picnic facilities and other passive activities.

ESTIMATED COST: \$2,400,000

ESTIMATED O&M COST: \$3,500

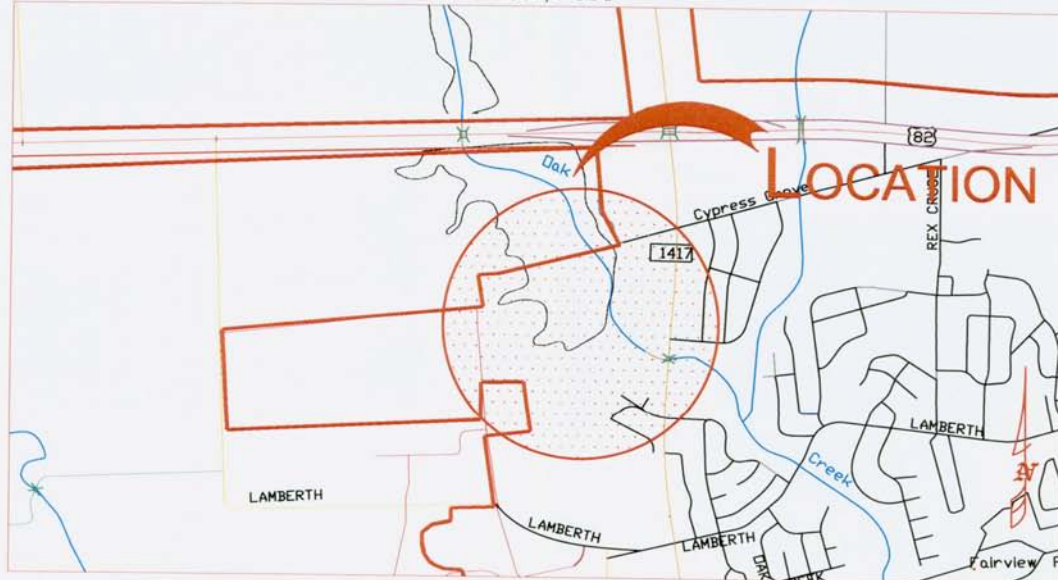
PROPOSED FINANCING: General Improvement Fund

PROJECT NECESSITY: Recommended in the Parks Master Plan

DEPARTMENT/DIRECTOR: City Manager, George Olson

PROPOSED START DATE: July, 2009

PROPOSED END DATE: October, 2009





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. C.4

*** RESOLUTION NO. 5312**

**Authorizing the Purchase of Bleachers through the Texas Local Government
Purchasing Cooperative (BuyBoard) for the Parks and Recreation Department**

Issue

To consider the purchase of aluminum bleachers to replace the wooden bleachers located throughout Old Settlers Park, Rosedale Park and Fairview Park

Background

As part of the continuing process to keep our Parks and Recreation facilities in a safe and viable working condition, we are replacing the existing bleachers to better serve the citizens of Sherman.

The Texas Local Government Purchasing Cooperative was created to increase the purchasing power of government entities and to simplify their purchasing by using a customized electronic purchasing system, called the BuyBoard.

Origination

Parks and Recreation Department

Financial Consideration

The replacement bleachers will be purchased at a total cost of \$131,388.00. Funds for the purchase were appropriated in the fiscal year 2008-2009 Capital Improvement Program budget.

Staff Recommendation

It is recommended that the staff be authorized to purchase the replacement bleachers from BSN/Collegiate Pacific of Dallas, Texas, through the BuyBoard.

Alternatives

None recommended

Attachments

Resolution No. 5312

BuyBoard Quote

Texas Local Government Purchasing Cooperative Interlocal Participation Agreement

2008-2009 CIP Project with Location Map

Prepared by:

Kevin Winkler, Parks and Recreation Administrator

Approved by:

George Olson, City Manager

RESOLUTION NO. 5312

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF BLEACHERS THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD) FOR THE PARKS AND RECREATION DEPARTMENT; 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 to purchase from BSN/Collegiate Pacific of Dallas, Texas, through the Texas Local Government Purchasing Cooperative (BuyBoard), twelve (12) sets of bleachers for use within the Parks and Recreation Department at the total purchase price of One Hundred Thirty-One Thousand Three Hundred Eighty-Eight Dollars and No Cents (\$131,388.00), in accordance with the terms and conditions of the Interlocal Participation Agreement attached hereto and made a part hereof for all purposes. Any agreements related to the purchase must be approved by the Interim City Attorney.

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.

PASSED AND APPROVED on this the ____ day of _____, 2009.

CITY OF SHERMAN, TEXAS

BY: _____
BILL MAGERS, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM:

BY: _____
INTERIM CITY ATTORNEY

Winkler, Kevin

From: rpodowski@bsncp.com
Sent: Wednesday, January 07, 2009 2:06 PM
To: Winkler, Kevin
Subject: Quotation 20223695 from BSN/Collegiate Pacific

BSN/Collegiate Pacific
PO Box 7726
Dallas TX 75209

Tel: 1-800-527-7510
Fax: 1-800-899-0149

Quotation
Document Number : 20223695
PO Number :
Document Creation Date : 01/07/2009
Customer Number : 1029767
Sales Representative : ROB PODOWSKI

This is NOT a Bill - DO NOT PAY

Sold To: CITY OF SHERMAN
SHERMAN TX 75091-1106

Ship To: CITY OF SHERMAN
SHERMAN TX 75091-1106

Payer: CITY OF SHERMAN
SHERMAN TX 75091-1106

You can check your Quotation status at
www.bsncp.com/?&zip=75091-1106&ProgramID=20223695

We deliver according to the following terms and conditions:
Terms of Payment : Net 30

Item	Material	SKU	Delv Dt(s)	Delv Qty	Ord Qty Unit	Price	Ext Price
	Description				Program ID		
000010	K72483	K72483			12 EA	10,699.000	128,388.000
	First Class Bleacher 4x 31						
		01/27/2009					

MDSE Total	:	\$	128,388.00
Min Order Surcharge	:	\$	
Shipping & Handling	:	\$	3,000.00
Rebate/Coupon	:	\$	
Sales Tax	:	\$	0.00
Gift Cert. Redemption:	:	\$	
Final Amount	:	\$	131,388.00

RECEIVED JUL 15 2002

YOUR COPY

INTERLOCAL PARTICIPATION AGREEMENT

RECEIVED JUL 15 2002

for the

Texas Local Government Purchasing Cooperative

This Interlocal Participation Agreement ("Agreement") is made and entered into by and between the Texas Local Government Purchasing Cooperative ("Cooperative"), an administrative agency of cooperating local governments, acting on its own behalf and the behalf of all participating local governments, and the undersigned local government of the State of Texas ("Cooperative Member"). The purpose of this Agreement is to facilitate compliance with state bidding requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Cooperative Members.

WITNESSETH:

WHEREAS, the Cooperative Members are authorized by Chapter 791, et seq., The Interlocal Cooperation Act of the Government Code ("the Act"), to agree with other local governments to form purchasing cooperatives; and

WHEREAS, the Cooperative is an administrative agency of local governments cooperating in the discharge of their governmental functions; and

WHEREAS, the Cooperative Member does hereby adopt the Organizational Interlocal Agreement, together with such amendments as may be made in the future, reflecting the evolving mission of the Cooperative and further agrees to become an additional party to that certain Organizational Interlocal Agreement promulgated on the 26th day of January, 1998.

NOW, THEREFORE, BE IT RESOLVED that the undersigned Cooperative Member in consideration of the agreement of the Cooperative and the Cooperative Members to provide services as detailed herein does agree to the following terms, conditions, and general provisions.

In return for the payment of the contributions and subject to all terms of this Agreement, the parties agree as follows:

TERMS AND CONDITIONS

1. **Adopt Organizational Interlocal Cooperation Agreement.** The Cooperative Member by the adoption and execution of this Agreement hereby adopts and approves the Organizational Interlocal Agreement dated January 26, 1998, together with such amendments as may be made in the future and further agrees to become a Cooperative Member.
2. **Term.** The initial term of this Agreement shall commence at 12:01 a.m. on the date executed and signed and shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement. The terms, conditions, and general provisions set forth below shall apply to the initial term and all renewals.
3. **Termination.**
 - a. By the Cooperative Member. This Agreement may be terminated by the Cooperative Member at any time by thirty (30) days prior written notice to the Cooperative; provided all charges owed to the Cooperative and any vendor have been fully paid.
 - b. By the Cooperative. The Cooperative may terminate this Agreement by:
 1. Giving ten (10) days notice by certified mail to the Cooperative Member if the Cooperative Member fails or refuses to make the payments or contributions as herein provided; or
 2. Giving thirty (30) days notice by certified mail to the Cooperative Member.

- c. **Termination Procedure.** If the Cooperative Member terminates its participation during the term of this Agreement or breaches this Agreement, or if the Cooperative terminates participation of the Cooperative Member under any provision of this Article, the Cooperative Member shall bear the full financial responsibility for any purchases occurring after the termination date, and for any unpaid charges accrued during its term of membership in the Cooperative. The Cooperative may seek the whole amount due, if any, from the terminated Cooperative Member. The Cooperative Member will not be entitled to a refund of membership dues paid.
4. **Payments.**
- a. The Cooperative Member agrees to pay membership fees based on a plan developed by the Cooperative. Membership fees are payable by Cooperative Member upon receipt of an invoice from the Cooperative, Cooperative Contractor or vendor. A late charge amounting to the maximum interest allowed by law, but not less than the rate of interest under Section 2251.021, et seq., Texas Government Code, shall begin to accrue daily on the 31st day following the due date and continue to accrue until the contribution and late charges are paid in full. The Cooperative reserves the right to collect all funds that are due to the Cooperative in the event of termination by Cooperative Member or breach of this Agreement by Cooperative Member.
 - b. The Cooperative Member will make timely payments to the vendor for the goods, materials and services received in accordance with the terms and conditions of the Invitation to Bid and related procurement documents. Payment for goods, materials and services and inspections and acceptance of goods, materials and services ordered by the procuring party shall be the exclusive obligation of the procuring Cooperative Member.
5. **Cooperative Reporting.** The Cooperative will provide periodic activity reports to the Cooperative Member. These reports may be modified from time to time as deemed appropriate by the Cooperative.
6. **Administration.** Cooperative Member will use the BuyBoard purchasing application in accordance with instruction from the Cooperative; discontinue use upon termination of participation; maintain confidentiality and prevent unauthorized use; maintain equipment, software and testing to operate the system at its own expense; report all purchase orders generated to Cooperative or its designee in accordance with instructions of the Cooperative; and make a final accounting to Cooperative upon termination of membership.
7. **Amendments.** The Board may amend this agreement, provided that notice is sent to each participant at least 60 days prior to the effective date of any change described in such amendment which, in the opinion of the Board, will have a material effect on the Cooperative Members participation in the Cooperative.

GENERAL PROVISIONS

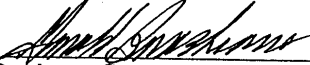
1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.
2. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable policies and procedures established by the Cooperative.
3. **Compensation.** The parties agree that the payments under this Agreement and all related exhibits and documents are amounts that fairly compensate the Cooperative for the services or functions performed under the Agreement, and that the portion of gross sales paid by participating vendors enables the Cooperative to pay the necessary licensing fees, marketing costs, and related expenses required to operate a statewide system of electronic commerce for the local governments of Texas.
4. **Cooperation and Access.** The Cooperative Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Cooperative. The Cooperative reserves the right to audit the relevant records of any Cooperative Member. Any breach of this Article shall be considered material and shall make the Agreement subject to termination on ten (10) days written notice to the Cooperative Member.

5. **Coordinator.** The Cooperative Member agrees to appoint a program coordinator who shall have express authority to represent and bind the Cooperative Member, and the Cooperative will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Cooperative Member. The Cooperative Member reserves the right to change the coordinator as needed by giving written notice to the Cooperative. Such notice is not effective until actually received by the Cooperative.
6. **Current Revenue.** The Cooperative Member hereby warrants that all payments, contributions, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the Cooperative Member.
7. **Defense and Prosecution of Claims.** The Cooperative Member authorizes the Cooperative to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Cooperative and/or any past or current Cooperative Member in any litigation, claim or dispute, and to engage counsel and appropriate experts, in the Cooperative's sole discretion, with respect to such litigation, claim or disputes. The Cooperative Member does hereby agree that any suit brought against the Cooperative or a Cooperative Member may be defended in the name of the Cooperative or the Member by the counsel selected by the Cooperative, in its sole discretion, or its designee, on behalf of and at the expense of the Cooperative as necessary for the prosecution or defense of any litigation. Full cooperation by the Cooperative Member shall be extended to supply any information needed or helpful in such prosecution or defense. Subject to specific revocation, the Cooperative Member hereby designates the Cooperative to act as a class representative on its behalf in matters arising out of this Agreement.
8. **Governance.** The Board of Trustees (Board) will govern the Cooperative in accordance with the Bylaws. Travis County, Texas will be the location for filing any dispute, claim or lawsuit.
9. **Limitations of Liability.** COOPERATIVE, ITS ENDORSERS (TEXAS ASSOCIATION OF SCHOOL BOARDS, TEXAS ASSOCIATION OF COUNTIES, AND TEXAS MUNICIPAL LEAGUE) AND SERVICING CONTRACTOR (TEXAS ASSOCIATION OF SCHOOL BOARDS) DO NOT WARRANT THAT THE OPERATION OR USE OF COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. COOPERATIVE, ITS ENDORSERS AND SERVICING CONTRACTORS, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT IN REGARD TO ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
10. **Merger.** This Interlocal Participation Agreement, Terms and Conditions, and General Provisions, together with the Bylaws, Organizational Interlocal Agreement, and Exhibits, represents the complete understanding of the Cooperative, and Cooperative Member electing to participate in the Cooperative.
11. **Notice.** Any written notice to the Cooperative shall be made by first class mail, postage prepaid, and delivered to the Associate Executive Director Financial Planning, Texas Association of School Boards, Inc., P.O. Box 400, Austin, Texas 78767-0400.
12. **Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Travis County, Texas.
13. **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, sign this Agreement as of the date indicated.

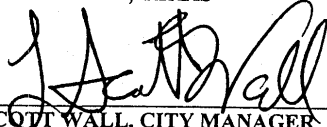
TO BE COMPLETED BY THE COOPERATIVE:

TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE, as acting on behalf of all other Cooperative Members

By:  Date: 7-15-02
Gerald Brashears, Cooperative Administrator

TO BE COMPLETED BY COOPERATIVE MEMBER:

CITY OF SHERMAN, TEXAS

By:  Date: 5/28/2002
L. SCOTT WALL, CITY MANAGER

Coordinator for the Cooperative Member is:

Name: MARYANN WINKLER
Address: 405 N. RUSK STREET
SHERMAN, TEXAS 75090
Phone: (903) 892-7285
Fax: (903) 891-0255
Email: PURCH@TEXOMA.NET

PROJECT YEAR: 2008-2009

PROJECT NAME:

Bleacher Renovation

DESCRIPTION:

Replace wooden bleachers throughout Old Settlers Park and Fairview Park

ESTIMATED COST:

\$200,000

ESTIMATED O&M COST:

\$2,000

PROPOSED FINANCING:

General Improvement Fund

PROJECT NECESSITY:

Parks Board Recommendation

DEPARTMENT/DIRECTOR:

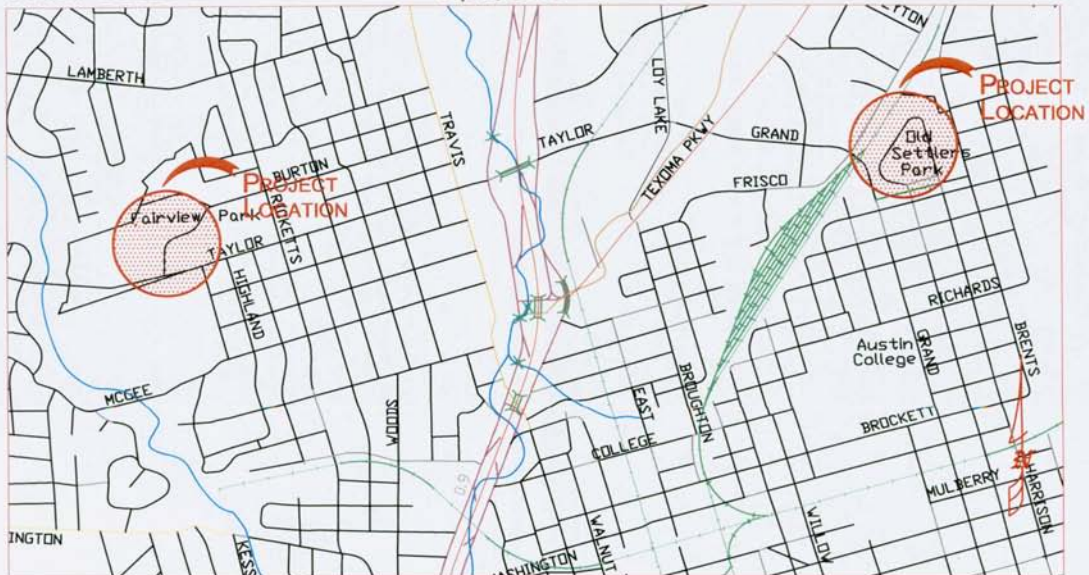
City Manager, George Olson

PROPOSED START DATE:

February, 2009

PROPOSED END DATE:

April, 2009





SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. D.1

*** REQUEST TO ADVERTISE**

Benches and Trash Receptacles for the Downtown Square

Issue

Permission to request to advertise for Downtown improvement benches and trash receptacles

Background

In accordance with the Downtown Tax Increment Financing (TIF) Improvement Policy, City staff proposes to seek bids to facilitate the purchase of benches and improved trash receptacles, primarily on the Downtown Square. Purchase of these items is only one phase of the improvement policy with additional enhancements, such as planter boxes and lighting, planned for the future.

Origination

City Manager's Office/Public Works Department

Financial Consideration

Funds to purchase the benches and trash receptacles are available in the current fiscal year 2008-2009 budget. The cost to advertise is expected to be less than \$150.00.

Staff Recommendation

Advertise for bids to purchase benches and trash receptacles for the Downtown Square.

Alternatives

Those as may be recommended by the City Council

Attachments

None

Prepared by:
Jeff Miller, Director of Public Works

Approved by:
George Olson, City Manager



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. D.2

*** REQUEST TO ADVERTISE**
Medical Drugs and Supplies

Issue

Requesting permission to advertise for Emergency Medical Service (EMS) drugs and supplies

Background

The existing EMS medicine and supply contract with BoundTree, which merged with Tri-Anim, will expire on March 31, 2009.

Origination

Jeffrey J. Jones, Fire Chief

Financial Consideration

The fiscal year 2008-2009 projected expense for EMS supplies is \$91,550.00. Most supplies are reimbursed through our EMS billing contract. Funds are available in the 2008-2009 budget for advertising for the purchase of these goods and for the payment of the goods.

Staff Recommendation

It is recommended that the City Council approve the request to advertise these supplies for bid.

Alternatives

As may be directed by the City Council

Attachments

None

Prepared by:
Jeffrey J. Jones, Fire Chief

Approved by:
George Olson, City Manager



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. D.3

OTHER BUSINESS

Receive Leadership Sherman's Presentation on a New "Welcome to Sherman" Sign

Issue

Receive a presentation from Brad Morgan on a planned new "Welcome to Sherman" sign

Background

As part of a final project for the 2009 Leadership Sherman class, the group has taken on a project to design, fund, and construct a "Welcome to Sherman" sign along Highway 75 south near the Sherman city limits. The project has received approval from the Texas Department of Transportation; and Mr. Morgan has had conversations with City staff about the design, construction, and maintenance of the sign. Mr. Morgan will make a brief PowerPoint presentation and present a handout summarizing the project.

Origination

Sherman Chamber of Commerce/Leadership Sherman

Financial Consideration

None

Council Action Requested

This presentation is for information only and requires no action by the City Council.

Attachments

None

Prepared by:
Jeffrey R. Miller, Director of Public Works

Approved by:
George Olson, City Manager



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. D.4

OTHER BUSINESS

**Receive Biosolids Update
from Director of Utilities and Engineering Mark Gibson**



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. D.5

OTHER BUSINESS

**Consider Rescheduling a Joint Meeting with the Planning and Zoning Commission
Called for 12:00 noon on Monday, January 26, 2009, to Review the Draft
Comprehensive Master Plan and its Implementation Priorities**

Issue

To consider rescheduling the joint meeting of the City Council and the Planning and Zoning Commission called for Monday, January 26th

Background

The City Council approved a project, as part of the fiscal year (FY) 2007-2008 budget, to update the City's Comprehensive Master Plan. Kendig Keast Collaborative was retained at the City Council's January 22, 2008 meeting to prepare the Comprehensive Master Plan Update. At the City Council's November 17th meeting, Gary Mitchell of Kendig Keast briefed the City Council on the current status of the project. As one of the final steps in the Comprehensive Master Plan Update process, the City Council and the Planning and Zoning Commission are asked to hold a workshop during January 2009 on the overall draft Comprehensive Master Plan and the plan's implementation priorities.

At the December 1, 2008 meeting, the City Council called a joint meeting with the Planning and Zoning Commission for 12:00 noon on Monday, January 26th. The City Manager is asking the City Council to postpone the called meeting until February, to provide sufficient time for staff to review the draft Comprehensive Master Plan prior to it being provided to the City Council and Planning and Zoning Commission.

Origination

City Manager

Staff Recommendation

It is recommended that the City Council reschedule their Joint Meeting with the Planning and Zoning Commission for 12:00 noon on Wednesday, February 25, 2009 in the City Council Chambers.

Alternatives

The City Council could set the meeting for 12:00 noon on Thursday, February 26th or for another date, time or location more convenient.

Attachments

None

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. D.6

CITIZEN REQUESTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. D.7

MEDIA QUESTIONS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. D.8

COUNCIL COMMENTS

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. E.1

EXECUTIVE SESSION

**In Accordance with Chapter 551, Government Code, V.T.C.S. (Open Meetings Law),
“The City Council Will Now Hold a Closed Executive Meeting Pursuant to the Provisions
of the Open Meetings Law, Chapter 551, Government Code, Vernon’s Texas Codes
Annotated, in Accordance with the Authority Contained in the Following Sections”**

**Section 551.071 Consultation with City Attorney Concerning Pending
Litigation:**
**(a) In the Court of Appeals, Fifth District of Texas
at Dallas No. 05-06-00420-CV; The City of
Sherman, Texas and The Sherman City Council,
Appellants v. James Wayne, Appellee**

Section 551.074 Personnel Matters:
**(a) Consider the Qualifications, Appointment,
Employment and Duties of a Public Officer or
Employee:**
(i) City Attorney

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. F.1

OPEN MEETING

**Reconvene into Open Meeting and consider action, if any,
on items discussed in Executive Session**

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. F.2

ADJOURNMENT

The Honorable Bill Magers, Mayor



SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager

Date: 1-19-2009

Subject: Agenda Item No. N/A

COUNCIL CALENDAR

2009
CITY COUNCIL MEETINGS

JANUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		6	7	8	9	10
4	5					
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

FEBRUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		3	4	5	6	7
1	2					
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

MARCH

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		3	4	5	6	7
1	2					
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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		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		

01/19/09 - M.L.K., Jr. Birthday / Regular Council Meeting
04/26/09 - 12 Noon Joint Meeting w/P&Z Commission re: Comprehensive Plan
02/16/09 - Washington's Birthday / Regular Council Meeting
02/25/09 - Proposed Joint Meeting w/P&Z Commission re: Comprehensive Plan
09/07/09 - Labor Day / Called Council Meeting on 09/08/09