CITY OF SHERMAN
CITY COUNCIL CALLED MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
THURSDAY, NOVEMBER 20, 2008
12:00 NOON

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

Public Hearing

B.1 SECOND READING, PUBLIC HEARING, AND FINAL VOTE ON ORDINANCE NO. 5568
Granting to Enterprise Texas Pipeline, L.L.C., A Texas Limited Liability Company, its Successors and Assigns, a Franchise for the Purpose of Transporting of Gas Through Said Municipality for All Purposes; Providing for the Payment of a Fee or Charge for the Use of the Public Rights-of-Way; Providing That It Shall Be in Lieu of Other Fees and Charges, Excepting Ad Valorem Taxes; Prescribing the Terms, Conditions, Obligations and Limitations Under Which Such Franchise Shall Be Exercised; Providing for an Effective Date

Close Public Hearing and Consider Adoption of Ordinance

B.2 ADOPTION OF ORDINANCES
Consider Adoption of Ordinance Number: 5568

C.1 ADJOURNMENT

COUNCIL CALENDAR

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 11-20-2008

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:** 11-20-2008

Subject: Agenda Item No. B.1

SECOND READING, PUBLIC HEARING,
AND FINAL VOTE ON ORDINANCE NO. 5568
Granting to Enterprise Texas Pipeline, L.L.C., A Texas Limited Liability Company, its Successors and Assigns, a Franchise for the Purpose of Transporting of Gas Through Said Municipality for All Purposes; Providing for the Payment of a Fee or Charge for the Use of the Public Rights-of-Way; Providing That It Shall Be in Lieu of Other Fees and Charges, Excepting Ad Valorem Taxes; Prescribing the Terms, Conditions, Obligations and Limitations Under Which Such Franchise Shall Be Exercised; Providing for an Effective Date

Issue
Pursuant to the City Charter, the City of Sherman is considering a franchise ordinance with Enterprise Texas Pipeline, L.L.C. for access to the City's rights-of-way and the appurtenances in the public roads, streets, alleys, etc., in exchange for the payment of an annual regulation fee and a potential franchise fee.

Background
Enterprise Texas Pipeline contacted the City in an effort to secure permission to cross the City's property at various locations throughout the City for the construction of a 36-inch natural gas pipeline from Erath, Texas to Ambrose, Texas. The only plans for crossing the City's rights-of-way relate to crossings at Farmington Road and South First Street. Pursuant to the City Charter, any ordinance granting a franchise must have two readings, thirty (30) days apart; and no ordinance shall pass any reading except by a majority vote of the City Council members. The first reading, public hearing, and first vote on this ordinance was held at the October 20, 2008 Council meeting.

Origination
Jim Andrews, agent for Enterprise Texas Pipeline, L.L.C.

Financial Consideration
The franchise ordinance provides for an annual regulation fee of $1,000.00 per crossing of the City's public rights-of-way maintained by the City. This will generate revenue of $2,000.00 annually. In addition, the franchise fee shall be at five percent (5%) of the quarterly gross revenues should Enterprise Texas Pipeline distribute and sell gas to the public within the city limits.

Staff Recommendation
Staff recommends approval of the proposed franchise ordinance.

Alternatives
The City Council could choose not to approve this franchise ordinance.

Attachments
Ordinance No. 5568 and Route Maps

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

ORDINANCE NO. 5568

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, GRANTING TO ENTERPRISE TEXAS PIPELINE L.L.C., A TEXAS LIMITED LIABILITY COMPANY, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE FOR THE PURPOSE OF TRANSPORTING OF GAS THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING FOR A MOST FAVORED NATIONS CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. GRANT OF AUTHORITY

A. The City of Sherman, Texas, herein after called "City," hereby grants to Enterprise Texas Pipeline, L.L.C., hereinafter called "Enterprise" or "Company," its successors and assigns, consent to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to transport gas through the City's corporate limits.

B. Said privilege and license being granted by this Ordinance is for a term ending December 30, 2023.

C. The provisions set forth in this Ordinance represent the terms and conditions under which the Company shall construct, operate, and maintain the System within the City and are hereinafter sometimes referred to as the "Franchise." In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of the City Charter or present or future ordinances of the City, except as may be set out herein. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in

the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

SECTION 2. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Affiliate" shall mean in relation to the Company, a Person that controls, is controlled by, or is under common control with the Company. As used in this definition, the term "control" means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.

B. "City" shall mean the City of Sherman, Texas.

C. "City Manager" means City's manager, or his or her designee.

D. "Company" shall mean Enterprise Texas Pipeline, L.L.C., its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section 14.

E. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City.

(1) "Gross revenues" shall include:

(a) revenues derived from the following 'miscellaneous charges':

i. charges to connect, disconnect, or reconnect gas within the City;

ii. charges to handle returned checks from consumers within the City;

iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and

iv. contributions in aid of construction ("CIAC").

(b) revenues billed but not ultimately collected or received by the Company;

(c) gross receipts fees;

(d) all revenues derived by Company from the transportation of gas through the System of Company within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City); and

(e) the value of gas transported by Company for Transport Customers through the System of Company located in the City's Public Rights-of-Way ("Third Party Sales") (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Company's monthly Weighted Average Cost of Gas charged to industrial customers in the City limits, as reasonably near the time that the transportation service is performed.

(2) "Gross revenues" shall not include:

(a) the revenue of any Person including, without limitation, an Affiliate, to the extent that such revenue is also included in Gross Revenues of the Company; and

(b) sales taxes; and

(c) any interest income earned by the Company; and

(d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's Public Right-of Way.

F. "Infrastructure" shall mean any water pipe, wastewater pipe, storm drain, street, alley, or any other overhead or underground structure including associated appurtenances, that are owned by the City and that are utilized for public use.

G. "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit,

but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.

H. "Public Right-of-Way" shall mean public streets, alleys, highways, bridges, public easements, rights-of way, public thoroughfares, and sidewalks of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated with or annexed to the City. "Public Right-of-Way" shall not include parks, schools, playgrounds, greenbelts, or other land owned by the City.

I. "System" or "System Facilities" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to transporting gas through the Public Right-of-Way within the corporate limits of the City.

SECTION 3. <u>CONDITIONS OF OCCUPANCY</u>

A. All construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with all federal and state laws, and in accordance with the ordinances, rules and regulations now in force and that may hereafter be adopted by the City relating to the use of its Public Rights-of-Way. Company's System shall be so constructed as not to unreasonably interfere with any existing water and wastewater lines, storm sewer lines, open drainage areas, cable, fiber optic cable, electric lines, roadways, sidewalks, alleys, traffic control devices, public signs, or any other publicly owned or publicly franchised facility. Prior to the installation of Company's system facilities in the Public Rights-of-Way, the Company shall submit a plan for the location of the proposed system facilities and such plan shall demonstrate, in detail, the location of the existing City infrastructure and publicly owned or publicly franchised facilities. The City must approve the submitted plan prior to the commencement of any work within the Public Rights-of-Way.

B. The Company shall install, maintain, construct, operate and replace its facilities in accordance with applicable city ordinances and so as to interfere as little as possible with traffic. The placement of new facilities in the Public Rights-of-Way shall be subject to the approval of the City Manager. In determining the location of the Company's new facilities within the City, the Company shall minimize interferences with then-existing or documented planned underground structures of the City or with existing facilities of other users of the Public Rights-

of-Way. Company shall attempt to utilize the alleys of the City insofar as is reasonably practicable in conducting its work and activities hereunder. Notwithstanding the foregoing, however, Company may, when reasonably necessary, utilize the streets and other Public Rights-of-Way to perform such work and activities.

C. Any and all excavations and obstructions in and upon the Public Rights-of-Way caused by the Company's operations under this Ordinance shall be repaired and removed as quickly as is reasonably possible, under the circumstances. All excavations shall be repaired in a good and workmanlike manner consistent with applicable City Code and documented City rules, regulations, and policies, and restored to at least the condition that existed prior to the excavation. The public shall be properly warned and protected by barriers and lights or other applicable traffic control devices placed, erected, marked and maintained by the Company in accordance with standards set forth in the current Texas Manual on Uniform Traffic Control Devices (TMUTCD), as well as any other applicable local, state and federal requirements. Company warrants that any such restoration work performed in the Public Rights-of-Way shall be in satisfactory condition for a period of one year, to the extent that such restoration work has not been disturbed by other users of the Public Rights-of-Way. In the event that the Company fails to repair or restore an excavation site within fourteen (14) calendar days after receipt of written notice from the City of a deficiency, the City may, at its option, perform the needed repair or restoration and the Company shall promptly, but in no event later than thirty (30) days, reimburse the City for the cost of such repair or restoration. Any work conducted within the Public Rights-of-Way shall require prior written approval of the City in accordance with city ordinance or documented rule or regulation, except for repairs and day to day maintenance or in cases of emergency conditions, issued by the City prior to commencement of work. In no instance shall the Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, unless the Company has failed to make any necessary repairs or is in default in its reimbursement to the City under this paragraph.

D. Company's property and operations within the Public Rights-of-Way shall be subject to the City's ordinances and the City Charter, including, but not limited to, the provisions of ARTICLE VIII. FRANCHISE AND PUBLIC UTILITIES of the City Charter, whether expressed in this Ordinance or not. This Ordinance shall in no way affect or impair the rights,

obligations or remedies of the parties under the Texas Utilities Code, or other local, state or federal Law.

E. If the City believes that Company has failed to comply with any operational or maintenance standards as required by this Ordinance, City shall give the Company written notice of such failure to comply. Company shall have the reasonable opportunity to cure such failure during a period not to exceed ten (10) working days from receipt of the written notice. If the Company fails to cure the alleged failure to comply within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than ten (10) calendar days prior to the posting date of the agenda for the City Council meeting at which such alleged failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) business days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Ordinance, Company shall pay Five Hundred Dollars ($500.00) per day for each day that such noncompliance continues.

SECTION 4. RELOCATION OF SYSTEM FACILITIES

A. If, during the period of this Franchise, the City shall elect to alter or change the grade or alignment of any street, alley or other Public Easement, or any water pipe, storm drain, wastewater pipe, or any overhead or underground structure, or the if the City shall elect to construct any new infrastructure, so as to conflict with the facilities of the Company, the Company shall remove or relocate, as necessary, all of its facilities at the equally shared expense of the Company and the City. Schedules for this work shall be developed by designated representatives of the Company and the City. If such representatives cannot agree on the schedule, the City Manager, after consultation with the Company, shall establish a schedule. This schedule shall provide for a minimum of thirty (30) days to exist between the time the schedule is furnished to the Company and the time that any specific work to be done by the Company covered in the schedule is to begin.

SECTION 5. LAYING OF LINES IN ADVANCE OF PUBLIC IMPROVEMENTS

A. Whenever the City shall decide to make any public improvements in any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay

its mains or pipes, the Company will be provided the opportunity, at no expense to the City, in advance of such public improvements, to renew such mains or pipes, if defective or inadequate in size, and to lay service lines, or renew same, if inadequate in size or defective, to the property lines where buildings are already located.

B. The Company may be given written notice of the intention of the City to make public improvements in any such Public Right-of-Way. Within thirty (30) days from receipt of such notice, the Company, if it has determined a need, shall initiate work and thereafter proceed in a workmanlike manner to completion of the necessary work, but in no event shall the work exceed ninety (90) days from the date of the notice, unless otherwise agreed to by the parties. If the Company should fail to so proceed, and such street or alley is thereupon paved, except in an emergency or in response to a request for initiation of new service the Company shall for two (2) years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose. All pavement cuts or excavations within the two (2) year period, except in response to an emergency or request for initiation of new service, shall be performed only upon written permission of the Director of Public Works, or his or her designee, under such terms and conditions as the Director of Public Works, or his or her designee, may prescribe. Company shall give notice to the City of emergency work as soon as possible, but in no event later than twenty-four (24) hours, after the commencement of such work. Notice shall be given by contacting the City personnel designated by the City for this purpose.

SECTION 6. RATES

At any time in the future, should Company furnish service to the public, as provided in this Franchise, such service shall be reasonably adequate and at reasonable rates and charges therefor; and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. If applicable, Company shall maintain on file with the City copies of its current tariffs, schedules or rates and charges, customer service provisions, and line extension policies for service to the public as provided by this Franchise. The rates and charges collected from its customers in the City shall be subject to revision and change by either the City or Company in the manner provided by law.

SECTION 7. PAYMENTS TO THE CITY

A. In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business of transporting

gas in a pipeline through the City, Company shall pay an annual regulation fee of One Thousand Dollars ($1000.00) per crossing of the City's Public Rights-of-Way (hereinafter "Regulation fee"). The Regulation fee will be increased each year based on the percentage increase provided by the Consumer Price Index – All Urban Consumers, Dallas/Ft. Worth Area ("CPI"), as published by the Bureau of Labor Statistics, but not in excess of the City's reasonable cost of administering, supervising, inspecting, and otherwise regulating the location of the System in Public Right-of-Way. The parties agree that this amount is and any necessary increases of the Regulatory fee based on the CPI or any increases based on a late payment, as provided for in subsection C. of this paragraph, are expected to represent a reasonable charge for the cost of administering, supervising, inspecting, and otherwise regulating the location of the gas pipeline. Payment of the Regulation fee by the Company will be due October 15th of each fiscal year.

B. In addition, should Company distribute and sell gas to the public within the City limits, in consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Franchise fee payments shall be made on a quarterly basis, on or before the thirtieth (30th) day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to five percent (5%) of the quarterly Gross Revenues, as defined in Section 2.E., for the preceding calendar quarter and shall be for the rights and privileges herein provided during the quarter in which the payment is made .

C. If the Company fails to pay when due any payment provided for in this Section, Company shall pay such amount plus interest at the current prime rate per annum from such due date until payment is received by City.

SECTION 8. RESERVATION OF RIGHTS: GENERAL

A. The City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this Franchise.

B. The rights, privileges, and Franchise granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like

privileges, rights, and franchises as it may see fit to any other Person for the purpose of furnishing gas for light, heat, and power for City and the inhabitants thereof.

C. City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for the City and inhabitants thereof.

D. Nothing herein shall impair the right of the City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by Company to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of the City as same now exists or as such limits may be extended from time to time hereafter.

SECTION 9. RIGHT TO INDEMNIFICATION, LEGAL DEFENSE AND TO BE HELD HARMLESS

A. IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE**,** COMPANY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS COUNCILMEMBERS, OFFICERS, AGENTS, AND EMPLOYEES (CITY AND SUCH OTHER PERSONS AND ENTITIES BEING COLLECTIVELY REFERRED TO HEREIN AS "INDEMNITEES"), FROM AND AGAINST ALL SUITS, ACTIONS OR CLAIMS OF INJURY TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY DEATH, INJURIES TO, OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR FOR DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF, OR OCCASIONED BY COMPANY'S INTENTIONAL AND/OR NEGLIGENT ACTS OR OMISSIONS IN CONNECTION WITH COMPANY'S OPERATIONS, CONSTRUCTION, AND MAINTENANCE OF COMPANY'S SYSTEM, INCLUDING ANY COURT COSTS, EXPENSES AND DEFENSES THEREOF, WHEN SUCH INJURY SHALL HAVE BEEN CAUSED BY THE NEGLIGENT ACT OR OMISSIONS, OR MISCONDUCT, OF COMPANY OR ANY OF ITS OFFICERS, AGENTS, CONTRACTORS, SUBCONTRACTORS, OR EMPLOYEES.

B. The Company's obligation to indemnify Indemnitees under this Ordinance shall not extend to claims, losses, and other matters covered hereunder to the extent caused by the negligence of one or more Indemnitees. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the Company and the City.

C. By entering into this Ordinance, City does not consent to suit, waive any governmental immunity available to the City under Texas law or waive any of the defenses of the parties under Texas law**.**

D. Except for instances of the City's own negligence, City shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Company's construction, reconstruction, maintenance, repair, use, operation or dismantling of System or Company's provision of service.

E. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the Indemnitees, at Company's sole cost and expense, resist and defend the same with legal counsel selected by Company and approved by the City; provided, however, that Company shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company's obligation to defend shall apply regardless of whether City is solely or concurrently negligent**.** The Indemnitees shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 9. Nothing herein shall be deemed to prevent the Indemnitees at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven (7) business days after receipt of Indemnitee's written notice that Indemnitee is invoking its right to indemnification under this Franchise, Indemnitees shall have the right to retain defense counsel on their own behalf, and Company shall be liable for all defense costs incurred by Indemnitees.

SECTION 10. <u>INSURANCE</u>

A. Company shall, at its sole cost and expense, obtain, maintain, and provide, throughout the term of this Franchise, insurance in the amounts, types and coverage's in accordance with the City's requirements. Such insurance may be in the form of self-insurance to the extent permitted by applicable law or by obtaining insurance, as follows:

(1) Commercial general or excess liability on an occurrence or claims made form with minimum limits of five million dollars ($5,000,000.00) per

occurrence and ten million dollars ($10,000,000.00) aggregate. To the extent that coverage is maintained on a claims made form, the minimum limits are ten million dollars ($10,000,000.00) per occurrence and twenty million dollars ($20,000,000.00) aggregate. This coverage shall include, but not be limited to, the following:

(a) Personal injury and property damage.

(b) Contractual liability.

(c) Explosion, collapse, or underground (XCU) hazards.

(2) Automobile liability coverage with a minimum policy limit of one million dollars ($1,000,000.00) combined single limit. This coverage shall include all owned, hired and non-owned automobiles.

(3) Workers compensation and employers liability coverage. Statutory coverage limits for worker's compensation and five hundred thousand dollars ($500,000.00) employers' liability is required. Company must provide the City with a waiver of subrogation for worker's compensation claims.

B. Company must name the City, which includes all authorities, commissions, divisions and departments, as well as elected and appointed officials, agents, and volunteers, as an additional insured under the coverage required herein, except Worker's Compensation Coverage. The certificate of insurance must state that the City is an additional insured.

C. The insurance coverage required herein must include coverage for work performed by Company's contractors and subcontractors.

D. The Company will provide proof of insurance in accordance with this Franchise within thirty (30) days of the effective date of the Franchise and by February 1st of each year thereafter. Company will not be required to furnish separate proof when applying for permits.

SECTION 11. TERMINATION

A. Right to Terminate. In addition to any rights set out elsewhere in this Ordinance, the City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of the Franchise.

B. Procedures for Termination.

(1) The City may, at any time, terminate this Franchise for a continuing material violation by the Company of any of the substantial terms hereof. In such event, the City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to the Company at the address set forth in Section 17 hereof. The Company shall have thirty (30) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that, if the Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated. In no event, however, will the Company's ability to cure such violations under this paragraph exceed ninety days (90) from the date the City notifies the Company of the violation.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Company shall be provided at least fifteen (15) days prior written notice of any public hearing concerning the termination of the Franchise.

(3) The City, after full public hearing, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by the Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if the Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

C. In lieu of terminating the franchise and rights granted herein pursuant to this Section, the City may, in the event of a substantial and material breach by Company of the terms and conditions of this Ordinance, charge and collect from the Company a civil penalty of one thousand dollars ($1000.00) per day for each breach by Company hereof. Provided, however, that the City shall first have furnished to Company the notices, right to public hearing, and opportunity to cure described in this section.

SECTION 12. RENEGOTIATION

If either City or Company requests renegotiation of any term of this Ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

SECTION 13. NO THIRD PARTY BENEFICIARIES

This Franchise is made for the exclusive benefit of the City and the Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION 14. SUCCESSORS AND ASSIGNS

No assignment or transfer of this Franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate without approval of the City Council of the City. Written notice of said transfer or assignment to an Affiliate shall be provided to the City Manager. The City will grant such approval unless withheld for good cause such as: (1) the failure of the proposed Assignee or Transferee to agree to comply with all provisions of this Ordinance and such additional conditions as the Council may prescribe in order to remedy existing conditions of non-compliance, and (2) the failure of the proposed Assignee or

Transferee to provide assurances reasonably satisfactory to the Council of its qualifications, character, the effect of the Transfer and such other matters as the Council deems relevant. Upon approval, the rights, privileges, and Franchise herein granted to Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of the Company.

SECTION 15. COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Sherman City Charter, as amended, and all other generally applicable ordinances of the City of Sherman, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way.

SECTION 16. FORCE MAJEURE

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event either the City or the Company is unable to comply with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which such party is so prevented shall not be counted against such party for any reason. The term "force majeure" as used herein shall mean any cause not reasonably within the control of the party unable to comply with its obligation or undertaking hereunder and includes, but is not limited to, acts of God, wars, riots, orders or decrees of any lawfully constituted federal, state, or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions.

SECTION 17. NOTICES

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by

courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY

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

City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091

COMPANY

Enterprise Texas Pipeline, L.L.C.
Attn: Land Department
P. O. Box 4324
Houston, Texas 77210-4324

SECTION 18. PARAGRAPH HEADINGS, CONSTRUCTION

The paragraph headings contained in this Ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance, and this Ordinance shall not be construed either more or less strongly against or for either party.

SECTION 19. SEVERABILITY

This Ordinance and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. If any term or provision of this Ordinance is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this Ordinance shall not be affected thereby.

SECTION 20. NO WAIVER

Either City or the Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation,

whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION 21. EFFECTIVE DATE

This Franchise shall be effective on _____, 2008 if Company has filed its acceptance as provided by Section 22 herein.

SECTION 22. ACCEPTANCE OF TERMS OF FRANCHISE

The Company shall have thirty (30) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Clerk. If the Company does not file such written acceptance of this Franchise, the Franchise shall be rendered null and void. The effective date shall be determined in accordance with the requirements of Section 21. Company shall pay all publication expense regarding notification of the Franchise ordinance.

SECTION 23. 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 _____, 2008.

ADOPTED on this the _____ day of _____, 2008.

EFFECTIVE DATE on this the _____ day of _____, 2008.

CITY OF SHERMAN, TEXAS

ATTEST:

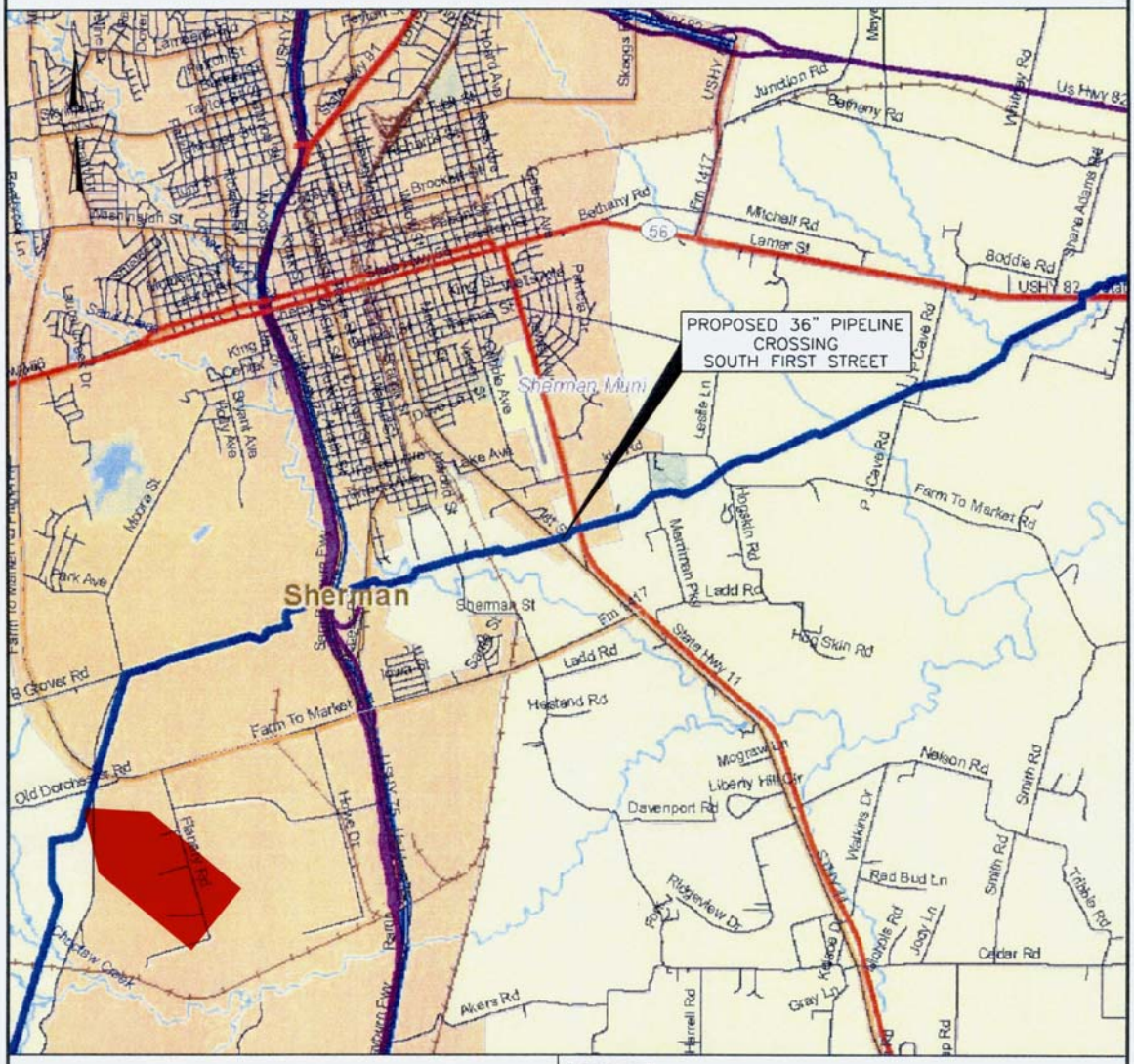
BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
BILL MAGERS, MAYOR

APPROVED AS TO FORM AND CONTENT:

BY: _____
INTERIM CITY ATTORNEY

GRAYSON COUNTY, TEXAS
ROBERT THOMPSON SURVEY, A-1200



Enterprise Texas Pipeline LLC

VICINITY MAP FOR PROPOSED 36" PIPELINE CROSSING UNDER SOUTH FIRST STREET GRAYSON COUNTY, TEXAS

SHEET 1 OF 2

REVISIONS					
NO.	DATE	DESCRIPTION	BY	CHKD	APPR
A		ISSUED FOR PERMIT	UEI	DJ	WAK

DRAWN BY: UEI	DATE: 06/16/08	APPROVED
CHKD. BY: DJ	DATE: 06/16/08	ENGINEERING MANAGER
APPR. BY: WAK	DATE: 06/16/08	DRAWING NO. / REV.
SCALE: N.T.S.	JOB NO.: 9830.000	EPC-9830A-7090V / A

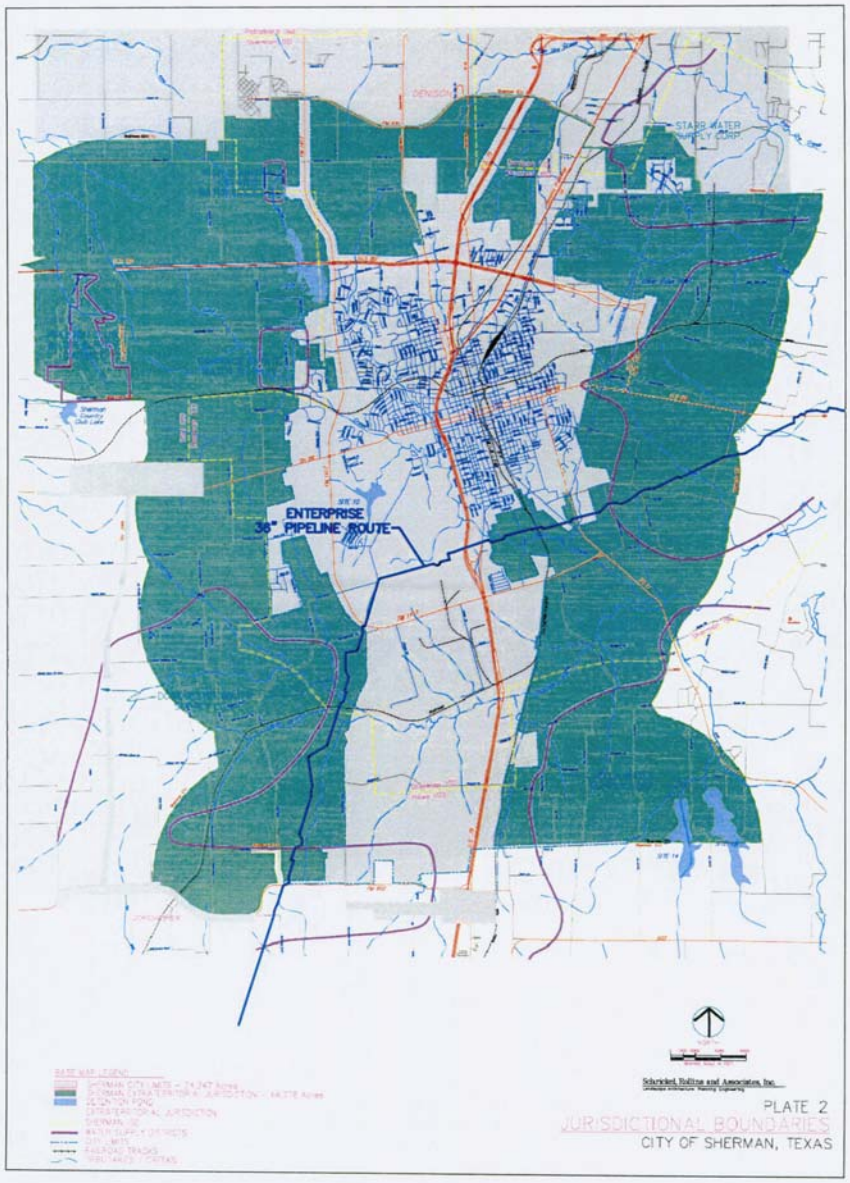


PLATE 2

JURISDICTIONAL BOUNDARIES

CITY OF SHERMAN, TEXAS

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 11-20-2008

Subject: Agenda Item No. B.2

ADOPTION OF ORDINANCES
Consider Adoption of Ordinance Number: 5568

B.1 **SECOND READING, PUBLIC HEARING, AND FINAL VOTE ON ORDINANCE NO. 5568** Granting to Enterprise Texas Pipeline, L.L.C., A Texas Limited Liability Company, its Successors and Assigns, a Franchise for the Purpose of Transporting of Gas Through Said Municipality for All Purposes; Providing for the Payment of a Fee or Charge for the Use of the Public Rights-of-Way; Providing That It Shall Be in Lieu of Other Fees and Charges, Excepting Ad Valorem Taxes; Prescribing the Terms, Conditions, Obligations and Limitations Under Which Such Franchise Shall Be Exercised; Providing for an Effective Date

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 11-20-2008

Subject: Agenda Item No. C.1

ADJOURNMENT

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 11-20-2008

Subject: Agenda Item No. N/A

COUNCIL CALENDAR

2008
CITY COUNCIL MEETINGS

JANUARY

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		

FEBRUARY

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	

MARCH

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					

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
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

JULY

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	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

OCTOBER

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			

01/21/08 - M.L.K., Jr. Birthday - Called Council Meeting on 01/22/08
02/29/08 - 12:00 Noon Called Meeting with Chamber Board
05/10/08 - City Council Election
05/13/08 - 12:00 Noon Called Meeting to Canvass Election Results
05/22/08 - 6:00 PM Called Meeting for Comprehensive Plan Community Forum
05/29/08 - 6:00 PM Called Meeting for Comprehensive Plan Community Forum
06/10/08 - 12:00 Noon Budget Planning Meeting in Council Chambers
07/17-18/08 - Budget Workshop in Council Chambers (adjourned on 07/17/08)

09/01/08 - Labor Day - Called Council Meeting on 09/02/08
09/18/08 - 12:00 Noon Joint Meeting with SEDCO Board
11/20/08 - 12:00 Noon Called Meeting for 2nd Reading, PH and Adoption of Enterprise Texas Pipeline Franchise Ordinance