

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, NOVEMBER 6, 2017
5:00 P.M.**

- A. 1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A. 2. PLEDGE OF ALLEGIANCE LED BY COUNCIL MEMBER PAMELA L. HOWETH**
- A. 3. INVOCATION BY COUNCIL MEMBER PAMELA L. HOWETH**
- A. 4. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF OCTOBER 16, 2017**

Public Hearing

- B. 1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6072**
Authorizing the Issuance of "CITY OF SHERMAN, TEXAS, TAX AND MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2017A"; Providing for the Payment of Said Certificates of Obligation by the Levy of an Ad Valorem Tax Upon All Taxable Property within the City and a Pledge of the Net Revenues of the City's Municipal Drainage Utility System; Specifying the Terms and Features of Such Certificates of Obligation; Resolving Other Matters Incident and Relating to the Issuance, Payment, Security, Sale, and Delivery of Said Certificates, Including the Approval and Execution of a Paying Agent/Registrar Agreement and the Approval and Distribution of an Official Statement; and Providing for an Effective Date
- B. 2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6073**
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Tattoo Studio (Permanent Makeup) in a C-1 (Retail Business) District/Central Business District at 112 North Travis Street, being the North 22' of Lot 5 and the South 50' of Lot 8, Block 2, OTP Sherman (Glenn T. Nix, Jr., Owner; Sarah Groves and Stephanie Graves, Sculpted Brow & Lash Studio, Tenants); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00

- B. 3. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6074**
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Liquor Store in a C-2 (General Commercial) District/O-1 (75 & 82 Overlay) District at 2520 Texoma Parkway, being 0.69 acres in the Reuben Hendrix Survey, Abstract No. 504 (C Squared Automotive, Inc., Owner; Harry Dhesi, Texoma Liquor, Proposed Tenant; Mangrum Commercial, LLC, Representative; and Sartin & Associates, Inc., Surveyor); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00
- B. 4. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6075**
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow Patio Homes in an R-1 (One Family Residential) District in the 1400-1600 blocks of South F.M. 1417 (Heritage Parkway), being 4.08 acres in the Elizabeth Jones Survey, Abstract No. 625 (SSCGC Holdings, LLC, Owner; Joe Gilbert Construction, LLC, Prospective Buyer; and Vilbig and Associates, PLLC, Civil Engineer/Surveyor); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00
- B. 5. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6076**
Amending Section 12, Ordinance No. 2280, so as to Include Certain Properties within the C-1 (Retail Business) District in the 3300-3400 blocks of North F.M. 1417 (Heritage Parkway), being 11.74 acres in the Uriah Burns Survey, Abstract No. 121 (Joe Wilson, Owner; and Vilbig and Associates, PLLC, Civil Engineer/Surveyor)
- B. 6. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6077**
Amending Section 12, Ordinance No. 2280, so as to Include Certain Properties within the C-1 (Retail Business) District in the 3500-3600 blocks of North F.M. 1417 (Heritage Parkway), being 28.86 acres in the Uriah Burns Survey, Abstract No. 121 (Joe Wilson, Owner; and Vilbig and Associates, PLLC, Civil Engineer/Surveyor)
- B. 7. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6078**
Amending Section 12, Ordinance No. 2280, so as to Include Certain Properties within the C-1 (Retail Business) District in the 2600 block of North Travis Street and the 100-200 blocks of West McLain Street, being the proposed Lot 3 of the Replat of Lot 2R, McLain Addition (JKL Partners, LLC, Owners; BWG Architecture, Architect; and Underwood Drafting and Surveying, Surveyor)
- B. 8. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6079**
Amending Chapter 8 of the Code of Ordinances, entitled "Offenses and Nuisances", Article 8.03, entitled "Offenses Involving Public Peace and Order", at Section 8.03.004, entitled "Right-of-Way Safety Regulations"; Providing for an Effective Date

Close Public Hearing and Consider Adoption of Ordinances

- B. 9. ADOPTION OF ORDINANCES**
Consider Adoption of Ordinance Numbers: 6072, 6073, 6074, 6075, 6076, 6077, 6078 and 6079

B. 10. 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. 6286

Awarding a Bid to and Authorizing Execution of an Agreement with Crossland Construction, Inc., as Construction Manager-at-Risk (CMAR), for the Construction of Fire Station No. 4

C. 2. RESOLUTION NO. 6287

Authorizing Execution of an Advance Funding Agreement between the City of Sherman and the State of Texas, Acting By and Through the Texas Department of Transportation, for Project Management Services Rendered by a Local Government [FM 1417 (Heritage Parkway) from US 82 to SH 56]

C. 3. RESOLUTION NO. 6288

Authorizing the Execution of Supplemental Agreement No. 3 to Resolution No. 6095 Contract for Engineering Services for the Widening of F.M. 1417 (Heritage Parkway) from Houston Street (S.H. 56) to Just South of U.S. Highway 82 Project with H.W. Lochner, Inc.

C. 4. RESOLUTION NO. 6289

Authorizing Execution of a Development Agreement with Homes by Lakeland for the Construction of Public Facilities in Parkhaven Estates, Phase 1, a 5.446-acre Development with 23 Residential Lots East of South Baker Park Drive and North of West Center Street in the City of Sherman

C. 5. * RESOLUTION NO. 6290

Authorizing Execution of a Professional Engineering Services Agreement with Freeman-Millican, Inc. for the Sherman Wastewater Treatment Plant Operations Building Addition and Remodel

C. 6. RESOLUTION NO. 6291

Authorizing Execution of an Agreement with Nancy Spiller Sims d/b/a Texoma Neon Co. under the City of Sherman's Central Business District Historic Building Restoration and Improvement Grant Program for Improvements to 214 East Houston Street

C. 7. * RESOLUTION NO. 6292

Awarding a Bid to and Authorizing Execution of a Contract with Shipman Communications, Inc. for Two-Way Radio and Early Warning Siren Maintenance

- C. 8. *** RESOLUTION NO. 6293**
Authorizing the Purchase of a 2017 Kubota S Series Tracked Skid Steer for the Park Maintenance Department from Six & Mango Equipment, LLP through the Texas Local Government Purchasing Cooperative (BuyBoard)
- C. 9. **RESOLUTION NO. 6294**
Authorizing the Purchase of Two (2) New 2018 Peterbilt 348 Dump Trucks for the Street Maintenance Department from Rush Truck Center through the Texas Local Government Purchasing Cooperative (BuyBoard)
- C. 10. **RESOLUTION NO. 6295**
Authorizing the Purchase of a New Wirtgen Micro Planer for the Street Maintenance Department from Kirby-Smith through the Texas Local Government Purchasing Cooperative (BuyBoard)
- C. 11. **RESOLUTION NO. 6296**
Authorizing the Purchase of a New Komatsu Front End Loader for the Street Maintenance Department from Kirby-Smith through the Texas Local Government Purchasing Cooperative (BuyBoard)
- C. 12. **RESOLUTION NO. 6297**
Authorizing the Purchase of a New Caterpillar CB34B Steel Wheel Roller for the Street Maintenance Department from HOLT through the Texas Local Government Purchasing Cooperative (BuyBoard)
- C. 13. **RESOLUTION NO. 6298**
Authorizing the Purchase of a New Caterpillar Wheel Excavator for the Street Maintenance Department from HOLT through the Texas Local Government Purchasing Cooperative (BuyBoard)
- C. 14. **RESOLUTION NO. 6299**
Authorizing the Purchase of a New Trantex Model 300A Palletized Paint System for the Street Maintenance Department from Centerline Supply, LTD through the Texas Local Government Purchasing Cooperative (BuyBoard)

Requests to Advertise

- D. 1. **REQUEST TO ADVERTISE**
Setting Suns Drainage Project Phase I

Change Orders

- E. 1. *** CHANGE ORDER NO. 2**
Approving the Greater Texoma Utility Authority's Intent to Execute Change Order No. 2; Sherman Water Treatment Plant Expansion Project; H2O Innovation, Inc.; \$99,770.65 Increase

Other Business

F. 1. * OTHER BUSINESS

Consider Request of True Options Pregnancy Center to Temporarily Close Certain Streets for the Second Annual "Turkey Trot 5K & Fun Run" on Saturday, November 18, 2017, with a Rain Date of Saturday, November 25, 2017

F. 2. OTHER BUSINESS

Consider Request of the Sherman Tourism/Main Street Manager to Temporarily Close Certain Streets for the Annual Sherman Christmas Parade and Snowflake Festival on Saturday, December 2, 2017, with a Rain/Make-Up Date of Friday, December 8, 2017

F. 3. OTHER BUSINESS

Consider Request of Grayson Honors College and the Grayson County Law Enforcement Association to Temporarily Close Certain Streets for the "Beat the Heat 5K Run/Walk" on Saturday, April 28, 2018 with an alternate rain date of Saturday, May 5, 2018

F. 4. * OTHER BUSINESS

Replat Approval of Part of Alcoholic Services Addition, Block 1, Lots 2R-A, 6R-A1 and 6R-A2, being all of Lot 2R in Block 1 of Helen Perkins Addition and all of Lot 6R-A, Block 1, Alcoholic Services Addition, containing 4.054 acres; Alcoholic Services of Texoma, Owners; and Preston Trail Land Surveying, LLC, Surveyor (1500 block of Baker Drive)

F. 5. * OTHER BUSINESS

Final Plat Approval of BAC Sherman RE Addition, being 4.643 acres in the J. Hendrix Survey, Abstract No. 503 and the W. Patterson Survey, Abstract No. 969; Buffalo Gap Street Properties, LLC, Owners; and Helvey-Wagner Surveying, Inc., Surveyor (4113 North Frisco Road)

F. 6. * OTHER BUSINESS

Replat Approval of Lot 2R, McLain Addition, a Replat of Lot 2 of McLain Addition, being 3.126 acres in the J.B. McAnair Survey, Abstract No. 763, also being Lot 2, McLain Addition; JKL Partners, LLC, Owners; and Underwood Drafting and Surveying, Surveyor (2600 block of North Travis Street and 100-200 blocks of West McLain Street)

G. CITIZEN REQUESTS

H. MEDIA QUESTIONS

Consider Board/Commission Appointments

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

(a) Library Board (1)

J. COUNCIL COMMENTS

Executive Session

K. 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 or Contemplated Litigation

Section 551.087 Deliberation Regarding Economic Development Negotiations:
(a) Deliberate Regarding Commercial or Financial Information that the City has Received from a Business Prospect and Deliberate any Offers or Incentives to the Business Prospect

The Council reconvenes into General Session

L. 1. OPEN MEETING

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

M. ADJOURNMENT

COUNCIL CALENDAR

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on November 3, 2017 at 2:00 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 3rd day of November, 2017
City of Sherman, Texas

City Clerk

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

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

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

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

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

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

Mayor

David Plyler

Deputy Mayor

Jason Sofey

Council Members

Willie Steele, Council-At-Large, PL #1

Jason Sofey, Council-At-Large, PL #2

Shawn C. Teamann, Council – District #1

Terrence R. Steele, Council – District #2

Pamela L. Howeth, Council – District #3

Charles H. Brown, Sr., Council – District #4



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

A.4.

Meeting Date: 11/06/2017

Prepared By: Linda Ashby, City Clerk

Approved By: Robby Hefton, City Manager

Caption:

APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF OCTOBER 16, 2017

Attachments

October 16, 2017

STATE OF TEXAS § **October 16, 2017**
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 October 16, 2017.

**MEMBERS PRESENT: MAYOR DAVID PLYLER; DEPUTY MAYOR JASON SOFEY.
COUNCIL MEMBERS BROWN, HOWETH, T. STEELE,
W. STEELE, TEAMANN.**

MEMBERS ABSENT: NONE.

CALL TO ORDER

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

APPROVE MINUTES

The Council reviewed the Minutes of the Called City Council Meeting (held jointly with the Sherman Economic Development Corporation Board of Directors) on September 25, 2017, and the Regular City Council Meeting of October 2, 2017. Council Member Howeth moved to approve the Minutes as presented; Second by Deputy Mayor Sofey. All present voted AYE.

MOTION CARRIED.

WELCOME TO LEADERSHIP SHERMAN PARTICIPANTS

Eddie Brown, Chamber of Commerce President, introduced participants in the 32nd class of Leadership Sherman. The program was started in 1980, and this year's class is the largest with 35 participants. The program has provided many leaders in the community.

INTRODUCTION AND PUBLIC HEARING OF ORDINANCES

Mayor Plyler introduced Ordinance No. 6064 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING ORDINANCE NO. 6051 TO APPOINT ELECTION OFFICIALS AND ADD EARLY VOTING LOCATIONS FOR AN ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF SHERMAN, TEXAS, ON THE 7TH DAY OF NOVEMBER, 2017, FOR THE PURPOSE OF ELECTING TWO (2) DISTRICT CITY COUNCIL MEMBERS FOR SAID CITY.

Robby Hefton, City Manager, explained that the first three ordinances relate to the November 7, 2017 Election. These ordinances amend the original ordinances that called the Election, and appoint officials.

No citizens appeared before the City Council to discuss Ordinance No. 6064.

Mayor Plyler introduced Ordinance No. 6065 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING ORDINANCE NO. 6056 TO APPOINT ELECTION OFFICIALS AND ADD EARLY VOTING LOCATIONS FOR A SPECIAL ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF SHERMAN, TEXAS, ON THE 7TH DAY OF NOVEMBER, 2017, FOR THE PURPOSE OF ELECTING ONE (1) AT-LARGE, PLACE 1 CITY COUNCIL MEMBER TO FILL AN UNEXPIRED TERM UNTIL NOVEMBER 2018 FOR SAID CITY.

ORD 6065
SPECIAL ELECTION
(AT-LARGE, PLACE 1)

No citizens appeared before the City Council to discuss Ordinance No. 6065.

Mayor Plyler introduced Ordinance No. 6066 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING ORDINANCE NO. 6052 TO APPOINT ELECTION OFFICIALS, ADD EARLY VOTING LOCATIONS, AND RENAME AMENDMENTS FOR A SPECIAL ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF SHERMAN, TEXAS, ON THE 7TH DAY OF NOVEMBER, 2017, FOR THE PURPOSE OF AMENDING THE CITY CHARTER OF THE CITY OF SHERMAN, TEXAS.

ORD 6066
SPECIAL ELECTION
(CHARTER
AMENDMENTS)

No citizens appeared before the City Council to discuss Ordinance No. 6066.

Mayor Plyler introduced Ordinance No. 6067 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 TWO HOTELS AND AN EVENT CENTER IN A C-1 (RETAIL BUSINESS) DISTRICT AT 811 GRAHAM DRIVE, BEING LOT 3, BLOCK 1, SHERMAN TOWN CENTER, SECTION TWO (MOE HOSPITALITY, LLC, OWNERS; ANIL RAM, ADR-DESIGNS, LLC, REPRESENTATIVE/ ARCHITECT); PROVIDING FOR A REPEALER CLAUSE; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00.

ORD 6067
SUP FOR TWO
HOTELS & EVENT
CENTER
(811 GRAHAM DR.)

Scott Shadden, Director of Development Services, said this is a Specific Use Permit for two hotels and an event center, to be located on the north end of Town Center. The Planning and Zoning Commission recommended approval, subject to the Staff Review Letter.

No citizens appeared before the City Council to discuss Ordinance No. 6067.

Mayor Plyler introduced Ordinance No. 6068 and called for a public hearing:

ORD 6068
ZONE CHANGE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTIES WITHIN THE C-1 (RETAIL BUSINESS) DISTRICT AT 19325 WEST U.S. HIGHWAY 82, BEING 2.893 ACRES IN THE J.M. HAMBRIGHT SURVEY, ABSTRACT NO. 538 (JOBABY, LLC, DEREK IRVIN, OWNER; MADELYN GREENWOOD, REPRESENTATIVE; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYORS); PROVIDING FOR A REPEALER.

(19325 W. US
HWY 82)

Mr. Shadden said this is a zone change from R-A to C-1, and is in compliance with the City's Master Plan. The Planning and Zoning Commission recommended approval, subject to the Staff Review Letter.

No citizens appeared before the City Council to discuss Ordinance No. 6068.

Mayor Plyler introduced Ordinance No. 6069 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A TATTOO STUDIO (PERMANENT MAKEUP) IN A C-1 (RETAIL BUSINESS) DISTRICT AT 19311 WEST U.S. HIGHWAY 82, BEING 2.893 ACRES IN THE J.M. HAMBRIGHT SURVEY, ABSTRACT NO. 538 (JOBABY, LLC, DEREK IRVIN, OWNER; MADELYN GREENWOOD, REPRESENTATIVE; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYORS); PROVIDING FOR A REPEALER CLAUSE; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00.

ORD 6069
SUP FOR TATTOO
STUDIO
(19311 W. US
HWY 82)

Mr. Shadden said this is a permanent makeup, tattoo studio, and requires a license by the State of Texas. The Planning and Zoning Commission recommended approval, subject to the Staff Review Letter.

No citizens appeared before the City Council to discuss Ordinance No. 6069.

Mayor Plyler introduced Ordinance No. 6070 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 SF-1 (SINGLE FAMILY RESIDENTIAL) DISTRICT AT 112 WEST STAPLES STREET, BEING A PART OF BLOCK B, STAPLES ADDITION, CONTAINING 6,292 SQUARE FEET OF LAND (YOUNG ENTERPRISES, OWNER; TODD YOUNG, REPRESENTATIVE; AND HELVEY-WAGNER SURVEYING, INC., SURVEYORS); PROVIDING FOR A REPEALER.

ORD 6070
ZONE CHANGE
(112 W. STAPLES)

Mr. Shadden said this request is for a zone change from C-1 to SF-1, for construction of a new home.

COUNCIL MINUTES – OCTOBER 16, 2017

No citizens appeared before the City Council to discuss Ordinance No. 6070.

Mayor Plyler introduced Ordinance No. 6071 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 R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AT 1714 NORTH WOODS STREET, BEING THE NORTH 15' OF LOT 17 AND THE SOUTH 45' OF LOT 15, BLOCK B, MAXEY ADDITION (BARTON CAPITAL, LTD, OWNER; AND SARTIN & ASSOCIATES, INC., SURVEYORS); PROVIDING FOR A REPEALER.

ORD 6071
ZONE CHANGE
(1714 N. WOODS)

Mr. Shadden said the row of houses are zoned Commercial and this request is for a zone change on one lot to change to SF-1, for construction of a new home. The Planning and Zoning Commission recommended approval, subject to the Staff Review Letter.

No citizens appeared before the City Council to discuss Ordinance No. 6071.

The Public Hearing was closed.

ADOPTION OF ORDINANCES

Ordinance 6064

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING ORDINANCE NO. 6051 TO APPOINT ELECTION OFFICIALS AND ADD EARLY VOTING LOCATIONS FOR AN ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF SHERMAN, TEXAS, ON THE 7TH DAY OF NOVEMBER, 2017, FOR THE PURPOSE OF ELECTING TWO (2) DISTRICT CITY COUNCIL MEMBERS FOR SAID CITY.

ORD 6064
REGULAR ELECTION

Ordinance 6065

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING ORDINANCE NO. 6056 TO APPOINT ELECTION OFFICIALS AND ADD EARLY VOTING LOCATIONS FOR A SPECIAL ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF SHERMAN, TEXAS, ON THE 7TH DAY OF NOVEMBER, 2017, FOR THE PURPOSE OF ELECTING ONE (1) AT-LARGE, PLACE 1 CITY COUNCIL MEMBER TO FILL AN UNEXPIRED TERM UNTIL NOVEMBER 2018 FOR SAID CITY.

ORD 6065
SPECIAL ELECTION
(AT-LARGE, PLACE 1)

Ordinance 6066

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING ORDINANCE NO. 6052 TO APPOINT ELECTION OFFICIALS, ADD EARLY VOTING LOCATIONS, AND RENAME AMENDMENTS FOR A SPECIAL ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF SHERMAN, TEXAS, ON THE 7TH DAY OF NOVEMBER, 2017, FOR THE PURPOSE OF AMENDING THE CITY CHARTER OF THE CITY OF SHERMAN, TEXAS.

ORD 6066
SPECIAL ELECTION
(CHARTER
AMENDMENTS)

Ordinance 6067

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW TWO HOTELS AND AN EVENT CENTER IN A C-1 (RETAIL BUSINESS) DISTRICT AT 811 GRAHAM DRIVE, BEING LOT 3, BLOCK 1, SHERMAN TOWN CENTER, SECTION TWO (MOE HOSPITALITY, LLC, OWNERS; ANIL RAM, ADR-DESIGNS, LLC, REPRESENTATIVE/ ARCHITECT); PROVIDING FOR A REPEALER CLAUSE; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00.

ORD 6067
SUP FOR TWO
HOTELS & EVENT
CENTER
(811 GRAHAM DR.)

Ordinance 6068

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTIES WITHIN THE C-1 (RETAIL BUSINESS) DISTRICT AT 19325 WEST U.S. HIGHWAY 82, BEING 2.893 ACRES IN THE J.M. HAMBRIGHT SURVEY, ABSTRACT NO. 538 (JOBABY, LLC, DEREK IRVIN, OWNER; MADELYN GREENWOOD, REPRESENTATIVE; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYORS); PROVIDING FOR A REPEALER.

ORD 6068
ZONE CHANGE
(19325 W. US
HWY 82)

Ordinance 6069

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A TATTOO STUDIO (PERMANENT MAKEUP) IN A C-1 (RETAIL BUSINESS) DISTRICT AT 19311 WEST U.S. HIGHWAY 82, BEING 2.893 ACRES IN THE J.M. HAMBRIGHT SURVEY, ABSTRACT NO. 538 (JOBABY, LLC, DEREK IRVIN, OWNER; MADELYN GREENWOOD, REPRESENTATIVE; AND UNDERWOOD DRAFTING & SURVEYING, SURVEYORS); PROVIDING FOR A REPEALER CLAUSE; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00.

ORD 6069
SUP FOR TATTOO
STUDIO
(19311 W. US
HWY 82)

Ordinance 6070

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 SF-1 (SINGLE FAMILY RESIDENTIAL) DISTRICT AT 112 WEST STAPLES STREET, BEING A PART OF BLOCK B, STAPLES ADDITION, CONTAINING 6,292 SQUARE FEET OF LAND (YOUNG ENTERPRISES, OWNER; TODD YOUNG, REPRESENTATIVE; AND HELVEY-WAGNER SURVEYING, INC., SURVEYORS); PROVIDING FOR A REPEALER.

ORD 6070
ZONE CHANGE
(112 W. STAPLES)

Ordinance 6071

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 R-1 (ONE FAMILY RESIDENTIAL) DISTRICT AT

ORD 6071
ZONE CHANGE
(1714 N. WOODS)

1714 NORTH WOODS STREET, BEING THE NORTH 15' OF LOT 17 AND THE SOUTH 45' OF LOT 15, BLOCK B, MAXEY ADDITION (BARON CAPITAL, LTD, OWNER; AND SARTIN & ASSOCIATES, INC., SURVEYORS); PROVIDING FOR A REPEALER.

ACTION TAKEN.

Motion by Council Member Terrence Steele to adopt Ordinance Nos. 6064, 6065, 6066, 6067, 6068, 6069, 6070, and 6071, as presented. Second by Council Member Shawn Teamann.

VOTING AYE: Brown, Howeth, Sofey, T. Steele, W. Steele, Teamann.

VOTING NAY: None.

MOTION CARRIED.

CONSENT AGENDA

The Council reviewed the Consent Agenda. Deputy Mayor Sofey asked to remove Item F-3, entitled "Replat Approval of Part of Block 2, Birge's Addition, being the east 15' of Lot 10, all of Lots 11, 12, 13 and 14, and a part of Lot 15, Block 2 of Birge's Addition; Sofey Construction & Design, LLC, Owners; and Underwood Drafting & Surveying, Inc., Surveyor (320 West Birge Street and the 900 Block of North Sam Rayburn Freeway)," from the Consent Agenda for consideration in its regular order of business.

Council Member Howeth moved to approve the Consent Agenda, with the exception of Item F-3, which will be considered in its regular order of business. Second by Council Member Willie Steele. All Council Members present voted AYE.

RESOLUTIONS

RESOLUTION NO. 6280 – AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE SHERMAN MUSEUM FOR EXPENDITURE OF A PORTION OF THE FUNDS COLLECTED BY THE CITY OF THE HOTEL/MOTEL OCCUPANCY TAX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH THE SHERMAN MUSEUM FOR EXPENDITURE OF A PORTION OF THE FUNDS COLLECTED BY THE CITY OF THE HOTEL-MOTEL OCCUPANCY TAX.

Steve Ayers, Assistant City Manager, said the staff is recommending that the Council authorize a contract with the Sherman Museum, which will continue the partnership that the City and the Museum have had for many years.

The proposed contract will be consistent with the contract that has been in effect for several years, and will be paid in quarterly installments from the Hotel/Motel Occupancy Tax. The grant will total \$70,000 for the year.

CONSENT AGENDA

**RES 6280
SHERMAN MUSEUM
FUNDING**

ACTION TAKEN.

Motion by Council Member Teamann to adopt Resolution No. 6280, as presented. Second by Council Member Willie Steele.

VOTING AYE: Brown, Howeth, Sofey, T. Steele, W. Steele, Teamann.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6281 – AUTHORIZING THE EXECUTION OF A CONTRACT WITH HALFF ASSOCIATES, INC. FOR FLOODPLAIN MAPPING UPDATES AND REGIONAL DETENTION ANALYSIS

**RES 6281
FLOODPLAIN
MAPPING UPDATES**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF A CONTRACT WITH HALFF ASSOCIATES, INC. FOR FLOODPLAIN MAPPING UPDATES AND REGIONAL DETENTION ANALYSIS.

Clint Philpott, Director of Engineering, said the next four items relate to the City's Stormwater Program, and is the first step toward improving the floodplain in the stormwater system.

This item is a contract with Halff Associates, to update the City's floodplain maps and will analyze the best location for a new regional detention facility.

The other three items are property acquisition, specifically one commercial property and seven residential structures. All the structures flooded in the most recent August 2017 flood. All are located in the floodplain and have flood insurance.

ACTION TAKEN.

Motion by Council Member Howeth to adopt Resolution No. 6281, as presented. Second by Council Member Terrence Steele.

VOTING AYE: Brown, Howeth, Sofey, T. Steele, W. Steele, Teamann.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6282 – AUTHORIZING THE EXECUTION OF A CONTRACT WITH ACCEPTANCE OF A CONVEYANCE DOCUMENT FROM THE APPLIED PSYCHOLOGY GROUP OF TEXOMA, P.A. FOR THE CONVEYANCE AND ACQUISITION OF PROPERTY LOCATED AT 1721 WEST LAMAR STREET, BEING 0.761 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 IN THE CITY OF SHERMAN, COUNTY OF GRAYSON, STATE OF TEXAS

**RES 6282
PURCHASE OF
PROPERTY IN
FLOODPLAIN
(1721 W. LAMAR)**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF A CONTRACT AND ACCEPTANCE OF A CONVEYANCE DOCUMENT FROM THE APPLIED PSYCHOLOGY GROUP OF TEXOMA, P.A. FOR THE CONVEYANCE AND ACQUISITION

OF PROPERTY LOCATED AT 1721 WEST LAMAR STREET, BEING 0.761 ACRES IN THE J.B. McANAI SURVEY, ABSTRACT NO. 763 IN THE CITY OF SHERMAN, COUNTY OF GRAYSON, STATE OF TEXAS.

Mayor Plyler referenced the part that the Federal Emergency Management Agency is playing in the purchase of these properties.

Mr. Hefton said the plan for this area was to purchase all the properties that flooded, which was estimated to cost about \$1 million to \$1.1 million. Because these properties either had FEMA insurance or were part of the FEMA grant that the City received, the City's portion, through the newly created Stormwater Program, would be \$200,000 to \$300,000, instead of \$1.1 million. Therefore, the City is leveraging local dollars at a three or four-to-one match with Federal money.

Mr. Hefton felt this was a great, first use of the Stormwater Program. Council Member Howeth confirmed that the property owners that are selling their property to the City are happy about the sale, because their property has flooded.

Council Member Teamann confirmed that the plan was to demolish the structures that were located on the property and create green space. Mr. Hefton said there will be some maintenance on the property.

In the future, it is hoped that these properties will become a part of the City's park inventory, even if it's open green space or part of a trail system. Deed restrictions will also be added, so structures can't be built on the property in the future.

Council Member Willie Steele confirmed that there are three buildings on Regency Circle that weren't purchased. These three are furthest from the creek and the owner did not want to sell them.

ACTION TAKEN.

Motion by Council Member Terrence Steele to adopt Resolution No. 6282, as presented. Second by Council Member Willie Steele.

VOTING AYE: Brown, Howeth, Sofey, T. Steele, W. Steele, Teamann.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6283 – AUTHORIZING THE ACCEPTANCE OF A CONVEYANCE DOCUMENT FROM RALPH COURTNEY AND JACQUELINE COURTNEY FOR THE CONVEYANCE AND ACQUISITION OF PROPERTIES LOCATED AT 621-623, 625-627 AND 633-635 REGENCY CIRCLE AND AT 1134-1136 AND 1138-1140 WEST WASHINGTON STREET, BEING LOTS 4, 5, 7 AND 9 OF THE REPLAT OF BELAIRE THIRD ADDITION TO THE CITY OF SHERMAN, TEXAS, AS SHOWN BY PLAT OF RECORD IN VOLUME 3, PAGE 2 OF THE PLAT RECORDS OF

RES 6283
PURCHASE OF
PROPERTY IN
FLOODPLAIN
(REGENCY CIRCLE
& W. WASHINGTON)

GRAYSON COUNTY, TEXAS, AND APPROXIMATELY 0.22 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763, ALL PROPERTIES BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE ACCEPTANCE OF A CONVEYANCE DOCUMENT FROM RALPH COURTNEY AND JACQUELINE COURTNEY FOR THE CONVEYANCE AND ACQUISITION OF PROPERTIES LOCATED AT 621-623, 625-627 AND 633-635 REGENCY CIRCLE AND AT 1134-1136 AND 1138-1140 WEST WASHINGTON STREET, BEING LOTS 4, 5, 7, AND 9 OF THE REPLAT OF BELAIRE THIRD ADDITION TO THE CITY OF SHERMAN, TEXAS, AS SHOWN BY PLAT OF RECORD IN VOLUME 3, PAGE 2 OF THE PLAT RECORDS OF GRAYSON COUNTY, TEXAS, AND APPROXIMATELY 0.22 ACRES IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763, ALL PROPERTIES BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES.

ACTION TAKEN.

Motion by Council Member Teamann to adopt Resolution No. 6283, as presented. Second by Council Member Howeth

VOTING AYE: Brown, Howeth, Sofey, T. Steele, W. Steele, Teamann.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6284 – AUTHORIZING THE ACCEPTANCE OF A CONVEYANCE DOCUMENT FROM RALPH COURTNEY AND JACQUELINE COURTNEY FOR THE CONVEYANCE AND ACQUISITION OF PROPERTIES LOCATED AT 629-631 AND 638-640 REGENCY CIRCLE, BEING LOTS 6 AND 8 OF THE REPLAT OF BELAIRE THIRD ADDITION TO THE CITY OF SHERMAN, TEXAS, AS SHOWN BY PLAT OF RECORD IN VOLUME 3, PAGE 2 OF THE PLAT RECORDS OF GRAYSON COUNTY, TEXAS, SAID PROPERTIES BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE ACCEPTANCE OF A CONVEYANCE DOCUMENT FROM RALPH COURTNEY AND JACQUELINE COURTNEY FOR THE CONVEYANCE AND ACQUISITION OF PROPERTIES LOCATED AT 629-631 AND 638-640 REGENCY CIRCLE, BEING LOTS 6 AND 8 OF THE REPLAT OF BELAIRE THIRD ADDITION TO THE CITY OF SHERMAN, TEXAS, AS SHOWN BY PLAT OF RECORD IN VOLUME 3, PAGE 2 OF THE PLAT RECORDS OF GRAYSON COUNTY, TEXAS, SAID PROPERTIES BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES.

RES 6284
PURCHASE OF
PROPERTY IN
FLOODPLAIN
(REGENCY CIRCLE)

ACTION TAKEN.

Motion by Council Member Howeth to adopt Resolution No. 6284, as presented. Second by Deputy Mayor Sofey.

VOTING AYE: Brown, Howeth, Sofey, T. Steele, W. Steele, Teamann.

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 6285 – AUTHORIZING EXECUTION OF A CONTRACT WITH PARSONS COMMERCIAL ROOFING FOR ROOF REPAIRS TO THE EQUIPMENT SERVICE CENTER THROUGH THE TIPS PURCHASING COOPERATIVE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CONTRACT WITH PARSONS COMMERCIAL ROOFING FOR ROOF REPAIRS TO THE EQUIPMENT SERVICES CENTER THROUGH THE TIPS PURCHASING COOPERATIVE.

CONSENT AGENDA.

RES 6285
ROOF REPAIRS AT
EQUIPMENT
SERVICE CENTER

**REQUEST TO ADVERTISE
CONSTRUCTION OF NORTHGATE DRIVE EXTENSION
NORTH TO THE INTERSECTION OF THE FUTURE WEST
TRAVIS STREET**

Mr. Philpott said this project would extend Northgate Drive northward to West Travis Street, and is necessary for the future development of the Fire Station. The Sherman Economic Development Corporation has already authorized funding for the project.

REQ TO ADVERTISE
NORTHGATE DRIVE
EXTENSION TO
WEST TRAVIS STREET

ACTION TAKEN.

Motion by Council Member Howeth to approve the request to advertise for the construction of Northgate Drive Extension north to the intersection of the future West Travis Street, as presented. Second by Council Member Terrence Steele.

VOTING AYE: Brown, Howeth, Sofey, T. Steele, W. Steele, Teamann.

VOTING NAY: None.

MOTION CARRIED.

**CHANGE ORDER NO. 1
APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S
INTENT TO EXECUTE CHANGE ORDER NO. 1; SHERMAN
INDUSTRIAL PARK REPLACEMENT SEWER; LYNN VESSELS
CONSTRUCTION, LLC; \$5,376.51 INCREASE**

The City Council approved the Greater Texoma Utility Authority's intention to execute Change Order No. 1 to Lynn Vessels Construction, LLC, for a \$5,376.51 increase in the cost of the Sherman Industrial Park Replacement Sewer project.

CHANGE ORDER
SHERMAN
INDUSTRIAL PARK
REPLACEMENT
SEWER

The change order provides additional compensation to purchase an alternate pipe at pipe prices that were in effect prior to Hurricane Harvey. Due to the impact of the hurricane

on the Gulf Coast, Petro Chemical Industries, the manufacturers of the pipe resins and pipe itself, have not been able to produce PVC pipe since the hurricane.

Existing supplies of PVC pipe have been exhausted resulting in disruption of material supply chains. Manufacturers have enacted Force Majeure provisions in supply agreements with some manufacturers cancelling existing orders or only shipping produce at increased prices.

The contractor for the Industrial Sewer project has obtained the ribbed PVC pipe bid as an alternate pipe product, at the pre-hurricane price from a supplier. The cost of this pipe alternate was \$5,376.51 more expensive than the solid wall PVC pipe that was bid for the project. They propose to use this alternate pipe for the initial portion of the project.

CONSENT AGENDA.

OTHER BUSINESS

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

**EXCELLENCE IN
FINANCIAL
REPORTING**

Mary Lawrence, Director of Finance, thanked the City Council and Mr. Hefton for their support of the Finance Department. She said the auditors, Adami Lindsey & Company, are helpful and the process goes on throughout the year.

She said for the past two years, Tammy Davis, Controller, has "taken ownership" of the Audit and has done a great job. She also thanked the Finance Department staff for their hard work.

**APPROVE THE QUARTERLY INVESTMENT REPORTS FOR
QUARTER ENDED SEPTEMBER 30, 2017**

**QUARTERLY
INVESTMENT
REPORTS**

The City Council approved the Quarterly Investment Reports for the quarter ended September 30, 2017. A separate report was included for the Debt Proceeds portfolio that includes the Tax Note and 2016 and 2017 Certificates of Obligation proceeds, as required by the Investment Policy.

As of September 30, 2017, the portfolios were in compliance with State laws, but not in compliance with the City's internal Investment Policy. The weighted-average maturity for the operating portfolio was at 510 days; but the Investment Policy maximum is set at 500 days.

This situation was identified on October 6, 2017; and the portfolio was brought back into compliance at that time. There was no additional risk of loss associated with this instance of non-compliance; the portfolio limits were simply outside the target set by the policy.

The Operating investment portfolio had a book value of about \$14 million, a decrease of about \$3.1 million from the prior quarter of \$17.1 million, due to the maturity of a U.S. Agency

COUNCIL MINUTES – OCTOBER 16, 2017

Security, maturities of several State of Texas Obligations, and withdrawals from Local Government Investment Pools.

The underlying investments were adequately diversified among four different types of securities. This portfolio is appropriately liquid and its weighted-average maturity was about 510 days, an increase of 12 days from last quarter.

The portfolio yield of 1.29% for the quarter is two basis points below the benchmark yield of 1.31%. The portfolio value on the City's books is essentially equal to the market value of the overall portfolio.

The Debt Proceeds portfolio balance of \$21.4 million was invested in a Local Government Investment Pool, an FDIC Insured Investment Account, and a U.S. Agency security.

Current period transactions included the addition of interest income and approximately \$2.1 million for project payments. The yield of 1.05% was above the benchmark yield of .96% for this portfolio. Book value and market value were about the same.

CONSENT AGENDA.

REPLAT APPROVAL OF PART OF BLOCK 2, BIRGE'S ADDITION, BEING THE EAST 15' OF LOT 10, ALL OF LOTS 11, 12, 13 AND 14, AND A PART OF LOT 15, BLOCK 2 OF BIRGE'S ADDITION; SOFEY CONSTRUCTION & DESIGN, LLC, OWNERS; AND UNDERWOOD DRAFTING & SURVEYING, INC., SURVEYOR (520 WEST BIRGE STREET AND THE 900 BLOCK OF NORTH SAM RAYBURN FREEWAY)

Deputy Mayor Sofey asked to remove Item F-3 from the Consent Agenda for consideration in its regular order of business.

The City Council considered the Replat of part of Block 2, Birge's Addition, being the east 15' of Lot 10, all of Lots 11, 12, 13 and 14, and a part of Lot 15, Block 2 of Birge's Addition, located at 520 West Birge Street and the 900 block of North Sam Rayburn Freeway.

The owners, Sofey Construction & Design, LLC, would like to replat the property into three lots. The Planning and Zoning Commission recommended approval of the Replat, subject to the Staff Review Letter.

ACTION TAKEN.

Motion by Council Member Terrence Steele to approve the Replat of part of Block 2, Birge's Addition, being the east 15' of Lot 10, all of Lots 11, 12, 13 and 14, and a part of Lot 15, Block 2 of Birge' Addition, as presented.

Second by Council Member Willie Steele.

VOTING AYE: Brown, Howeth, T. Steele, W. Steele, Teamann.

VOTING NAY: None.

ABSTAIN: Sofey.

MOTION CARRIED.

APPROVE REPLAT
BIRGE'S ADDITION
(520 W. BIRGE &
900 BLOCK N.
SAM RAYBURN FRWY)

FINAL PLAT APPROVAL OF SWEETWATER SPRINGS SUBDIVISION, BEING 17.112 ACRES IN THE JOHN HENDRIX SURVEY, ABSTRACT NO. 503 AND THE E. CANTON SURVEY, ABSTRACT NO. 221; BARTON CAPITAL, LTD, OWNER; KJE ENVIRONMENTAL & CIVIL ENGINEERING, CIVIL ENGINEER; AND SARTIN & ASSOCIATES, INC., SURVEYOR (4700 BLOCK OF MARSHALL STREET AND 3800-3900 BLOCKS OF DRIPPING SPRINGS ROAD)

The City Council approved the Final Plat of Sweetwater Springs Subdivision, being 17.112 acres in the John Hendrix Survey Abstract No. 503 and the E. Canton Survey, Abstract No. 221, located in the 4700 block of Marshall Street and the 3800 to 3900 blocks of Dripping Springs Road.

The property is zoned R-1 (One Family Residential) District and the owner, Barton Capital LTD., would like to plat the property into 61 lots for residential development.

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

FINAL PLAT APPROVAL OF RMT VISIONS ADDITION, BEING A REPLAT OF LOT 59, WESTERN ACRES INSTALLMENT FOUR AND A 37.856 ACRE TRACT IN THE JASON STAMPS SURVEY, ABSTRACT NO. 1115, BEING A 37.856 ACRE TRACT IN THE JASON STAMPS SURVEY, ABSTRACT NO. 1115 AND ALL OF LOT 59 OF WESTERN ACRES INSTALLMENT FOUR, CONTAINING 39.030 ACRES; RMT VISIONS, INC. AND THE WILLIAM O'DONNELL TRUST, OWNERS; AND UNDERWOOD DRAFTING AND SURVEYING, INC., SURVEYOR (2700-2800 BLOCKS OF SOUTH FRIENDSHIP ROAD AND 5200 WEST MEADOWRIDGE ROAD)

The City Council approved the Final Plat of the RMT Visions Addition, being a Replat of Lot 59, Western Acres Installment Four and a 37.856 acre tract in the Jason Stamps Survey, Abstract No. 1115, being a 37.856 acre tract in the Jason Stamps Survey, Abstract No. 1115 and all of Lot 59 of Western Acres Installment Four, containing 39.030 acres, and located in the 2700 through 2800 blocks of South Friendship Road and 5200 West Meadowridge Road.

The owners, RMT Visions, Inc. and the William O'Donnell Trust, would like to replat the property into a total of three lots. The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.
CONSENT AGENDA.

FINAL PLAT APPROVAL OF EPSTEIN AT HAZELWOOD ADDITION, BEING 0.37 ACRES IN THE G.B. PILANT SURVEY, ABSTRACT NO. 963; CUPID INVESTMENTS, INC., OWNER; AND SARTIN & ASSOCIATES, INC., SURVEYOR (1004 EAST EPSTEIN STREET)

The City Council approved the Final Plat of the Epstein at Hazelwood Addition, being 0.37 acres in the G.B. Pilant Survey, Abstract No. 963, located at 1004 East Epstein Street.

APPROVE FINAL PLAT
SWEETWATER
SPRINGS
SUBDIVISION
(4700 BLOCK OF
MARSHALL ST. &
3800-3900 BLOCKS OF
DRIPPING SPRINGS
RD)

APPROVE FINAL PLAT
RMT VISIONS
ADDITION
(2700-2800 BLOCKS
OF S. FRIENDSHIP
RD & 5200 W.
MEADOWRIDGE RD)

APPROVE FINAL PLAT
EPSTEIN AT
HAZELWOOD
ADDITION
(1004 E. EPSTEIN ST)

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The property is zoned R-1 (One Family Residential) District, and the owner, Cupid Investments, Inc., would like to plat the property into two lots for residential development. The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.

CONSENT AGENDA.

FINAL PLAT APPROVAL OF TRAILS END SUBDIVISION IN THE CITY OF SHERMAN'S EXTRA TERRITORIAL JURISDICTION (ETJ), BEING 7.671 ACRES IN THE AARON BURLESON SURVEY, ABSTRACT NO. 61; JACK GURLEY, OWNER; 44-40 BUILDERS, LLC, DEVELOPER; AND HELVEY-WAGNER SURVEYING, INC., SURVEYOR (10409 EAST HIGHWAY 56 AND THE 100 BLOCK OF MITCHELL ROAD)

The City Council approved the Final Plat of the Trails End Subdivision in the City's Extra Territorial Jurisdiction, being 7.671 acres in the Aaron Burleson Survey, Abstract No. 61, located at 10409 East Highway 56 and the 100 block of Mitchell Road.

The owner, Jack Gurley, would like to plat the property into five lots. The Planning and Zoning Commission recommended approval of the Final Plat, subject to the Staff Review Letter.

CONSENT AGENDA.

CITIZENS REQUESTS

PARTNERSHIP WITH DOWNTOWN SHERMAN NOW

Karen Tooley, Executive Director of Downtown Sherman Now, thanked the City Council for their continued support and partnership with the City for their events, especially their Coffee With the Mayor, "which wouldn't be the same without the Mayor."

She presented each Council Member, Mr. Hefton, and Mr. Ayers with a gift to acknowledge "building Downtown Sherman, one block at a time."

SHERMAN MUSEUM

Bea Harmon, President of the Sherman Museum, said the Museum has been very busy and outlined recent activities to improve the Museum. They have also extended the operating hours and are now open Wednesday through Sunday, with more late evenings, to better accommodate visitors.

She said a lot of information was moved to the Sherman Museum from the Public Library, prior to the recent fire. She also thanked the City Council and staff for their support of the Museum.

MEDIA QUESTIONS

There were no media questions.

APPROVE FINAL PLAT
TRAILS END
SUBDIVISION
(10409 E. HWY 56 &
100 BLOCK OF
MITCHELL RD)

PARTNERSHIP WITH
DOWNTOWN
SHERMAN NOW

SHERMAN MUSEUM

MEDIA QUESTIONS

COUNCIL COMMENTS

LEVERAGE OF FEDERAL MONEY

Council Member Teamann thanked the staff for working hard to leverage the City's tax money with FEMA money to work on the stormwater projects and keep the cost low.

**LEVERAGE OF
FEDERAL MONEY**

NEW HOME CONSTRUCTION

Council Member Terrence Steele said there are many new homes being built in Sherman and said he is happy with what he's seeing happen in the community. He has read where citizens in other communities are fighting with their elected officials, and you don't see that in Sherman. He said the citizens may not agree with everything that's done, but everyone works well together.

**NEW HOME
CONSTRUCTION**

He felt it "moved Sherman forward" when the citizens support the Council and the Council supports the staff. He said he's happy with what he sees when he drives around the community.

SERVING ON CITY COUNCIL

Council Member Brown recognized Linda Ashby, City Clerk, for her comments last year when he decided to run for City Council, in reference to the deadline to remove his name from the ballot.

**SERVING ON
CITY COUNCIL**

He also thanked Mr. Hefton for his hard work supporting Council Member Brown's quest for entertainment for the youth in Sherman. He said the community would see the results soon.

ANNOUNCEMENTS

Mayor Plyler announced the following:

- The North Texas Young Professionals will sponsor a Municipal Election Forum on Wednesday, October 18, 2017, at 6:30 p.m., at Grayson Hall. The event will feature candidates for the City's Election.
- Trick-or-Treat on Travis will be held on Thursday, October 26, 2017, from 6:00 p.m. until 8:00 p.m.
- The Sherman Police Department will host the Annual Fright Fest on Tuesday, October 31, 2017, beginning at 6:00 p.m., on the Municipal Building Grounds.

ANNOUNCEMENTS

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

COUNCIL MINUTES – OCTOBER 16, 2017

**SECTION 551.071 – CONSULTATION WITH CITY
ATTORNEY CONCERNING
PENDING OR CONTEMPLATED
LITIGATION**

**SECTION 551.087 -- DELIBERATE REGARDING
ECONOMIC DEVELOPMENT
NEGOTIATIONS:
DELIBERATE REGARDING
COMMERCIAL OR FINANCIAL
INFORMATION THAT THE CITY
HAS RECEIVED FROM A
BUSINESS PROSPECT AND
DELIBERATE ANY OFFERS OR
INCENTIVES TO THE BUSINESS
PROSPECT**

**On Motion duly made and carried, the Open Meeting recessed
and reconvened in Executive Session at 5:34 p.m.**

**On Motion duly made and carried, the Executive Session
recessed at 5:55 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
5:56 p.m.**

ADJOURNMENT

MAYOR

CITY CLERK



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.1.

Meeting Date: 11/06/2017

Prepared By: Mary Lawrence, Director of Finance

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6072

Authorizing the Issuance of "CITY OF SHERMAN, TEXAS, TAX AND MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2017A"; Providing for the Payment of Said Certificates of Obligation by the Levy of an Ad Valorem Tax Upon All Taxable Property within the City and a Pledge of the Net Revenues of the City's Municipal Drainage Utility System; Specifying the Terms and Features of Such Certificates of Obligation; Resolving Other Matters Incident and Relating to the Issuance, Payment, Security, Sale, and Delivery of Said Certificates, Including the Approval and Execution of a Paying Agent/Registrar Agreement and the Approval and Distribution of an Official Statement; and Providing for an Effective Date

Issue:

To consider all matters incident and related to the issuance and sale of \$4,000,000 City of Sherman, Texas, Tax and Municipal Drainage Utility System Revenue Certificates of Obligation, Series 2017A, including the adoption of an ordinance authorizing the issuance of such certificates of obligation.

Background:

At the September 18, 2017 Council Meeting, the Council approved the Notice of Intention to Issue \$7,000,000 of Certificates of Obligation. Since that meeting, the City has determined that more favorable funding for some projects is available from the Texas Water Development Board (TWDB). The City has estimated that about \$3,000,000 of the projects will qualify for TWDB funding with the remainder funded by these Certificates of Obligation. This Ordinance authorizes the City to issue \$4,000,000 of Certificates, which will be repaid over twenty years. The proceeds from the issuance are expected to be received in December. The source of repayment for these bonds will be the stormwater fee collected on utility bills, although the Certificates call for a pledge of both taxes and the stormwater revenues as security.

Origination:

City Manager's Office

Financial Consideration:

The cost of issuance will be about \$55,000.00, which will be netted against the proceeds.

Staff Recommendation:

The staff recommends that the Council approve this Ordinance as presented.

Alternatives:

No alternatives can be recommended by staff at this time.

Attachments

Ordinance No. 6072

Exhibit A - Paying Agent/Registrar Agreement

ORDINANCE NO. 6072

AN ORDINANCE authorizing the issuance of "CITY OF SHERMAN, TEXAS, TAX AND MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2017A"; providing for the payment of said certificates of obligation by the levy of an ad valorem tax upon all taxable property within the City and a pledge of the net revenues of the City's Municipal Drainage Utility System; specifying the terms and features of such certificates of obligation; resolving other matters incident and relating to the issuance, payment, security, sale, and delivery of said Certificates, including the approval and execution of a Paying Agent/Registrar Agreement and the approval and distribution of an Official Statement; and providing an effective date.

WHEREAS, notice of the City Council's intention to issue certificates of obligation in the maximum principal amount not to exceed \$7,000,000 for the purpose of paying contractual obligations to be incurred for (i) drainage improvements, including the acquisition, construction, improvement, and repair of structures, equipment, land, and facilities for the City's Municipal Drainage Utility System and (ii) the payment of professional services rendered in relation to such projects and the financing thereof, has been duly published in the *Herald Democrat*, a newspaper hereby found and determined to be of general circulation in the City of Sherman, Texas on September 24, 2017 and October 1, 2017, the date of the first publication of such notice being not less than thirty-one (31) days prior to the tentative date stated therein for the passage of the ordinance authorizing the issuance of such certificates; and

WHEREAS, no petition protesting the issuance of the certificates of obligation and bearing valid petition signatures of at least 5% of the qualified electors of the City, has been presented to or filed with the City Clerk of the City on or prior to the date of the passage of this Ordinance; and

WHEREAS, the City Council hereby finds and determines that the certificates of obligation described in the aforesaid notice should be issued and sold at this time in the amount and manner as hereinafter provided; now, therefore,

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

SECTION 1. Authorization - Designation - Principal Amount - Purpose.

Certificates of obligation of the City shall be and are hereby authorized to be issued in the aggregate principal amount of \$4,000,000, to be designated and bear the title "CITY OF SHERMAN, TEXAS, TAX AND MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2017A" (hereinafter referred to as the "Certificates"), for the purpose of paying contractual obligations to be incurred for (i) drainage improvements, including the acquisition, construction, improvement, and repair of structures, equipment, land, and facilities for the City's Municipal Drainage Utility System (the "System") and (ii) the payment of professional services rendered in relation to such projects and the financing thereof, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Texas Local Government Code, Subchapter C of Chapter 271, as amended.

SECTION 2. Fully Registered Obligations - Certificate Date - Authorized Denominations - Stated Maturities - Interest Rates. The Certificates are issuable in fully registered form only, shall be dated December 6, 2017 (the “Certificate Date”), and shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity), and the Certificates shall become due and payable on August 15 in each of the years (the “Stated Maturities”) and in principal amounts and bear interest at the per annum rate(s) in accordance with the following schedule:

<u>Year of Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2018	\$130,000	
2019	145,000	
2020	150,000	
2021	155,000	
2022	160,000	
2023	165,000	
2024	170,000	
2025	180,000	
2026	185,000	
2027	195,000	
2028	200,000	
2029	210,000	
2030	220,000	
2031	225,000	
2032	230,000	
2033	240,000	
2034	245,000	
2035	255,000	
2036	265,000	
2037	275,000	

The Certificates shall bear interest on the unpaid principal amounts from the date of their delivery to the initial purchasers, anticipated to be December 6, 2017 (the “Delivery Date”) at the rates per annum shown above in this Section (calculated on the basis of a 360-day year of twelve 30-day months); and such interest shall be payable on February 15 and August 15 of each year, commencing August 15, 2018, until maturity or prior redemption.

SECTION 3. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Certificates, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Certificates (hereinafter called the “Holders”) appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, to serve as Paying Agent/Registrar for the Certificates (the “Paying Agent/Registrar”) is hereby approved and confirmed. Books and records relating to the registration, payment, transfer, and exchange of the Certificates (the “Security Register”), shall

at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement", substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Mayor or Mayor Pro Tem and the City Clerk are authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Certificates. The City retains the right to replace the Paying Agent/Registrar and the City covenants to maintain and provide a Paying Agent/Registrar at all times until the Certificates are paid and discharged; and any successor Paying Agent/Registrar shall be a commercial bank, trust company organized under the laws of the State of Texas, financial institution, or other entity duly qualified and legally authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States mail, first-class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Certificates, shall be payable at the Stated Maturities or upon prior redemption thereof only upon presentation and surrender of the Certificates to the Paying Agent/Registrar at its designated offices, initially in East Syracuse, New York or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"). Interest on the Certificates shall be paid to the Holders whose names appear in the Security Register at the close of business on the "Record Date" (the last business day of the month next preceding the interest payment date) and shall be paid by the Paying Agent/Registrar (i) by check sent by United States mail, first-class, postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by and at the risk and expense of the Holder. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4. Redemption.

(a) **Optional Redemption.** The Certificates having Stated Maturities on and after August 15, 2028 shall be subject to redemption prior to maturity, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar) on August 15, 2027, or any date thereafter, at the redemption price of par plus accrued interest to the date of redemption.

(b) Exercise of Redemption Option. At least forty-five (45) days prior to a redemption date for the Certificates (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of the decision to redeem Certificates, the principal amount of each Stated Maturity to be redeemed, and the date of redemption therefor.

(c) Selection of Certificates for Redemption. If less than all Outstanding Certificates of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall treat such Certificates as representing the number of Certificates Outstanding, which is obtained by dividing the principal amount of such Certificates by \$5,000, and shall select the Certificates to be redeemed within such Stated Maturity by lot or by any other customary method that results in a random selection.

(d) Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Certificates, a notice of redemption shall be sent by United States mail, first-class, postage prepaid, in the name of the City and at the City's expense, to each Holder of a Certificate to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder.

All notices of redemption shall: (i) specify the date of redemption for the Certificates, (ii) identify the Certificates to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Certificates, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, provided moneys sufficient for the payment of such Certificate (or the principal amount thereof to be redeemed at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar), and (v) specify that payment of the redemption price for the Certificates, or the principal amount thereof to be redeemed, shall be made at the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon presentation and surrender of the Certificate. If a Certificate is subject by its terms to prior redemption and has been called for redemption and notice of redemption has been duly given as hereinabove provided, such Certificate (or the principal amount thereof to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys sufficient for the payment of such Certificate (or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

(e) Conditional Notice of Redemption. With respect to any optional redemption of the Certificates, unless certain prerequisites to such redemption required by this Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption. If a conditional notice of redemption is given and such prerequisites to redemption are not satisfied or if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

SECTION 5. Registration - Transfer - Exchange of Certificates - Predecessor Certificates. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every owner of the Certificates issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Certificate may be transferred or exchanged for Certificates of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender of any Certificate (other than the Initial Certificate(s) authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Certificates, of authorized denominations and having the same Stated Maturity, bearing the same rate of interest, and of a like aggregate principal amount as the Certificate or Certificates surrendered for transfer.

At the option of the Holder, Certificates (other than the Initial Certificate(s) authorized in Section 8 hereof) may be exchanged for other Certificates of authorized denominations and having the same Stated Maturity, bearing the same rate of interest, and of like aggregate principal amount as the Certificates surrendered for exchange upon the surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Certificates are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates to the Holder requesting the exchange.

All Certificates issued in any transfer or exchange of Certificates shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States mail, first-class, postage prepaid to the Holders and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Certificates surrendered in such transfer or exchange.

All transfers or exchanges of Certificates pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Certificates cancelled by reason of an exchange or transfer pursuant to the provisions of hereof are hereby defined to be "Predecessor Certificates," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate or Certificates registered and delivered in the exchange or transfer. Additionally, the term "Predecessor Certificates" shall include any mutilated, lost, destroyed, or stolen Certificate for which a replacement Certificate has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 27 hereof and such new replacement Certificate shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Certificate.

Neither the City nor the Paying Agent/Registrar shall be required to issue or transfer to an assignee of a Holder any Certificate called for redemption, in whole or in part, within 45 days of the date fixed for the redemption of such Certificate; provided, however, such limitation on

transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Certificate called for redemption in part.

SECTION 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 3, 4, and 5 of this Ordinance relating to the payment, transfer, and exchange of the Certificates, the City hereby approves and authorizes the use of “Book-Entry-Only” securities clearance, settlement and transfer system provided by The Depository Trust Company (“DTC”), a limited purpose trust company organized under the laws of the State of New York, in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representations by and between the City and DTC (the “Depository Agreement”).

Pursuant to the Depository Agreement and the rules of DTC, the Certificates shall be deposited with DTC who shall hold said Certificates for its participants (the “DTC Participants”). While the Certificates are held by DTC under the Depository Agreement, the Holder of the Certificates on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Certificate (the “Beneficial Owners”) being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Certificates or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Certificates, the City covenants and agrees with the Holders of the Certificates to cause Certificates to be printed in definitive form and issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Certificates in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Certificates shall be made in accordance with the provisions of Sections 3, 4 and 5 of this Ordinance.

SECTION 7. Execution - Registration. The Certificates shall be executed on behalf of the City by the Mayor or Mayor Pro Tem under its seal reproduced or impressed thereon and countersigned by the City Clerk. The signature of said officers on the Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the City, notwithstanding that one or more of such individuals shall cease to hold such offices prior to the delivery of the Certificates to the initial purchaser(s) and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Certificate shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Certificate either a certificate of registration substantially in the form provided in **Exhibit B**, manually executed by the Comptroller of Public Accounts of the State of Texas or his or her duly authorized agent, or a certificate of registration substantially in the form provided in **Exhibit B**, manually executed by an authorized officer, employee, or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly certified, registered, and delivered.

SECTION 8. Initial Certificate(s). The Certificates herein authorized shall be initially issued either (i) as a single fully-registered certificate in the total principal amount stated in Section 1 above with principal installments to become due and payable as provided in Section 2

and numbered T-1 or (ii) as multiple fully-registered certificates, being one certificate for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (the "Initial Certificate(s)") and, in either case, the Initial Certificate(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Certificate(s) shall be submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s), or the designee thereof. Any time after the delivery of the Initial Certificate(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Certificate(s) delivered hereunder and exchange therefor definitive Certificates of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms. The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Certificates, shall be substantially in the forms set forth in **Exhibit B** with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Certificates, or any maturities thereof, are purchased with insurance and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Certificates as evidenced by their execution. Any portion of the text of any Certificate may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Certificate.

The definitive Certificates and the Initial Certificate(s) shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Certificates as evidenced by their execution thereof.

SECTION 10. Definitions. For purposes of this Ordinance and for clarity with respect to the issuance of the Certificates herein authorized, and the levy of taxes and appropriation of Net Revenues therefor, the following words or terms, whenever the same appears herein without qualifying language, are defined to mean as follows:

(a) The term "Additional Obligations" shall mean combination tax and revenue obligations hereafter issued which by their terms are payable from ad valorem taxes and additionally are payable from and secured by a parity lien on and pledge of the Net Revenues of the System of equal rank and dignity with the lien and pledge securing the payment of the Certificates.

(b) The term "Certificate Fund" shall mean the special fund created and established under the provisions of Section 11 of this Ordinance.

(c) The term "Certificates" shall mean the \$4,000,000 "City of Sherman, Texas, Tax and Municipal Drainage Utility System Revenue Certificates of Obligation, Series 2017A" authorized by this Ordinance.

(d) The term "Collection Date" shall mean, when reference is being made to the levy and collection of annual ad valorem taxes, the date the annual ad valorem taxes levied each year by the City become delinquent.

(e) The term "Fiscal Year" shall mean the twelve month financial accounting period used by the City in connection with the operation of the System which may be any twelve consecutive month period established by the City.

(f) The term "Government Securities" shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable State law that may be used to defease obligations such as the Certificates.

(g) The term "Gross Revenues" shall mean all income, receipts, and revenues of every nature derived or received from the operation and ownership (excluding restricted gifts, grants in aid of construction, and any amounts received from drainage charges specifically provided by ordinance for contribution to the funding of future drainage system construction) of the System, including earnings and income derived from the investment or deposit of moneys in any special funds or accounts created and established for the payment and security of the Prior Lien Obligations and other obligations payable solely from and secured only by a lien on and pledge of the Net Revenues.

(h) The term "Net Revenues" shall mean Gross Revenues of the System, with respect to any period, after deducting the System's Operating and Maintenance Expenses for such period.

(i) The term "Operating and Maintenance Expenses" shall mean all current expenses of operating and maintaining the System, including all salaries, labor, materials, repairs, extension, and other expenses reasonably and properly charged and necessary to render efficient service; provided, however, that only such repairs and extensions, as in the judgment of the City Council, reasonably and fairly exercised, are necessary to maintain the operations and render adequate service to the City and the inhabitant thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair obligations payable from Net Revenues shall be deducted in determining "Net Revenues". Depreciation charges shall not be considered Operating and Maintenance Expenses.

(j) The term "Outstanding" when used in this Ordinance with respect to Certificates means, as of the date of determination, all Certificates theretofore issued and delivered under this Ordinance, except:

(1) those Certificates cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Certificates for which payment has been duly provided by the City in accordance with the provisions of Section 29 hereof; and

(3) those Certificates that have been mutilated, destroyed, lost, or stolen and replacement Certificates have been registered and delivered in lieu thereof as provided in Section 27 hereof.

(k) The term "Prior Lien Obligation" shall mean all revenue bonds or other obligations hereafter issued, payable from, and secured, in whole or in part, by a lien on and pledge of all or a portion of the Net Revenues of the System prior to the right and claim on the Net Revenues of the System securing the payment of the Certificates.

(l) The term "System" shall mean all land, easements and interest in land, together with all structures, equipment and facilities used in draining benefitted property (within the meaning of the Act), including, but not limited to, bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses, together with all future extensions, improvements, replacements and additions thereto.

SECTION 11. Certificate Fund. For the purpose of paying the interest on and to provide a sinking fund for the payment, redemption, and retirement of the Certificates, there shall be and is hereby created a special account or fund on the books and records of the City known as the "SPECIAL SERIES 2017A TAX AND MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE CERTIFICATE OF OBLIGATION FUND"(the "Certificate Fund"), and all moneys deposited to the credit of such fund shall be kept and maintained in a special banking account at the City's official depository. The Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Director of Finance and City Clerk of the City, individually or collectively, are hereby authorized and directed to make withdrawals from said fund sufficient to pay the principal of and interest on the Certificates as the same become due and payable, and, shall cause to be transferred to the Paying Agent/Registrar from moneys on deposit in the Certificate Fund an amount sufficient to pay the amount of principal and/or interest falling due on the Certificates, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the last business day next preceding each interest and principal payment date for the Certificates.

Pending the transfer of funds to the Paying Agent/Registrar, money in the Certificate Fund may, at the option of the City, be invested in obligations identified in, and in accordance with the provisions of the "Public Funds Investment Act" (Texas Government Code, Chapter 2256, as amended) relating to the investment of "bond proceeds"; provided that all such investments shall be made in such a manner that the money required to be expended from said fund will be available at the proper time or times. All interest and income derived from deposits and investments in the Certificate Fund shall be credited to, and any losses debited to the Certificate Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Certificates.

SECTION 12. Tax Levy. To provide for the payment of the "Debt Service Requirements" on the Certificates being (i) the interest on said Certificates and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied a sufficient tax, within the limitations

prescribed by law, on each one hundred dollars' valuation of taxable property in said City, adequate to pay such Debt Service Requirements while the Certificates remain Outstanding, full allowance being made for delinquencies and costs of collection; and said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Certificate Fund. The City Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the said Debt Service Requirements, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness.

The amount of taxes to be provided annually for the payment of the principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(a) Prior to the date the City Council establishes the annual tax rate and passes an ordinance levying ad valorem taxes each year, the City Council shall determine:

(1) The amount on deposit in the Certificate Fund after (a) deducting therefrom the total amount of Debt Service Requirements to become due on Certificates prior to the Collection Date for the ad valorem taxes to be levied and (b) adding thereto the amount of the Net Revenues of the System, together with any other lawfully available revenues of the City, appropriated and allocated to pay such Debt Service Requirements prior to the Collection Date for the ad valorem taxes to be levied.

(2) The amount of Net Revenues of the System, together with any other lawfully available revenues of the City appropriated and to be set aside for the payment of the Debt Service Requirements on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(3) The amount of Debt Service Requirements to become due and payable on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(b) The amount of taxes to be levied annually each year to pay the Debt Service Requirements on the Certificates shall be the amount established in paragraph (3) above less the sum total of the amounts established in paragraphs (1) and (2), after taking into consideration delinquencies and costs of collecting such annual taxes.

SECTION 13. Pledge of Net Revenues. The City hereby covenants and agrees that, subject to the prior lien on and pledge of the Net Revenues of the System to the payment and security of Prior Lien Obligations, the Net Revenues of the System are hereby irrevocably pledged, equally and ratably, to the payment of the principal of and interest on the Certificates and Additional Obligations, if issued, and the pledge of Net Revenues of the System herein made for the payment of the Certificates shall constitute a lien on the Net Revenues of the System, all in accordance with the terms and provisions hereof. Furthermore, such lien on and pledge of the Net Revenues securing the payment of the Certificates shall be valid and binding and fully perfected from and after the date of the adoption of this Ordinance without physical delivery or transfer of control of the Net Revenues, the filing of this Ordinance, or any other act; all as provided in Chapter 1208 of the Texas Government Code, as amended ("Chapter 1208").

Chapter 1208 applies to the issuance of the Certificates and the pledge of the Net Revenues of the System granted by the City under this Section, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Certificates are Outstanding such that the pledge of the Net Revenues granted by the City under this Section is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, as amended, then in order to preserve to the Holders of the Certificates the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code, as amended, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 14. System Fund. The City covenants and agrees that all Gross Revenues (excluding earnings from the investment of money held in any special funds or accounts created for the payment and security of the Prior Lien Obligations) shall be deposited as collected into a fund maintained at an official depository of the City and known on the books of the City as the "Municipal Drainage Utility System Fund" (hereinafter called the "System Fund"). All moneys deposited to the credit of the System Fund shall be allocated, dedicated, and disbursed to the extent required for the following purposes and in the order of priority shown, to wit:

First: To the payment of reasonable and proper Operating and Maintenance and Expenses of the System as defined herein or required by statute to be a first charge on and claim against the Gross Revenues of the System.

Second: To the payment of all amounts required to be deposited in the special funds created and established for the payment, security and benefit of Prior Lien Obligations in accordance with the terms and provisions of the ordinance(s) authorizing the issuance of Prior Lien Obligations.

Third: To the payment, equally and ratably, of the amounts pledged to the payment of the Previously Issued Certificates, the Certificates and Additional Obligations, if issued

Any Net Revenues remaining in the System Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other City purpose now or hereafter permitted by law.

SECTION 15. Deposits to Certificate Fund. The City hereby covenants and agrees to cause to be deposited to the credit of the Certificate Fund prior to each principal and interest payment date for the Certificates from the pledged Net Revenues of the System in the System Fund, after the deduction of all payments required to be made to the special Funds or accounts created for the payment and security of the Prior Lien Obligations, an amount equal to one hundred per centum (100%) of the amount required to fully pay the interest and principal then due and payable on the Certificates, such deposits to pay maturing principal and accrued interest on the Certificates to be made in substantially equal monthly installments on or before the last day of each month beginning the month next following the month the Certificates are delivered to the initial purchaser(s).

The deposits to be made to the credit of the Certificate Fund, as hereinabove provided, shall be made until such time as such Fund contains an amount equal to pay the principal of and interest and premium, if any, on the Certificates to maturity or redemption, as the case may

be. Premium, if any, received from the purchaser of the Certificates deposited to the Certificate Fund and ad valorem taxes levied, collected and deposited in the Certificate Fund for and on behalf of the Certificates may be taken into consideration and reduce the amounts otherwise required to be deposited in the Certificate Fund from the Net Revenues of the System. In addition, any surplus proceeds from the sale of the Certificates not expended for authorized purposes shall be deposited in the Certificate Fund, and such amounts so deposited shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes and the Net Revenues of the System.

SECTION 16. Security of Funds. All moneys on deposit in the funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of the State of Texas for the security of public funds, and moneys on deposit in such Funds shall be used only for the purposes permitted by this Ordinance.

SECTION 17. Records and Accounts - Annual Audit. The City further covenants and agrees that so long as any of the Certificates remain Outstanding, it will keep and maintain accurate and complete records and accounts pertaining to the operations of the System in which complete and correct entries shall be made of all transactions relating thereto. The Holders of the Certificates or any duly authorized agent or agents of such Holders shall have the right to inspect the System and all properties comprising the same. The City further agrees that following the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of Certified Public Accountants. Copies of each annual audit shall be furnished to the Executive Director of the Municipal Advisory Council of Texas at his office in Austin, Texas, and, upon written request, to any Holder of 20% or more in principal amount of the Certificates.

SECTION 18. Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in the payments to be made to the Certificate Fund, or (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Ordinance, the Holder of any of the Certificates shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition, or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies and the specification of such remedies shall not be deemed to be exclusive.

SECTION 19. Special Covenants. The City hereby covenants as follows:

(a) That it has the lawful power to pledge the Net Revenues of the System to the payment of the Certificates in the manner herein contemplated and has lawfully exercised such powers under the Constitution and laws of the State of Texas, including said power existing under Subchapter C of Chapter 552, Texas Local Government Code, as amended, Chapter 1502, Texas Government Code, as amended, and Subchapter C of Chapter 271, Texas Local Government Code, as amended.

(b) Other than for the payment of the Certificates, the Net Revenues of the System have not in any manner been pledged to the payment of any debt or obligation of the City or of the System.

SECTION 20. Issuance of Prior Lien Obligations and Additional Obligations. The City hereby expressly reserves the right to hereafter issue Prior Lien Obligations, without limitation as to principal amount but subject to any terms, conditions, or restrictions applicable thereto under law or otherwise, payable, in whole or in part, from the Net Revenues (without impairment of the obligation of the contract with the Holders of the Certificates) upon such terms and conditions as the City Council may determine.

Additionally, the City reserves the right to issue Additional Obligations, without limitation or restriction or condition being applicable to their issuance under the terms of this Ordinance, payable from and secured by a lien on and pledge of the Net Revenues of the System of equal rank and dignity, and on a parity in all respects, with the lien thereon and pledge thereof securing the payment of the Certificates.

SECTION 21. Application of Prior Lien Obligations Covenants and Agreements. It is the intention of this governing body and accordingly hereby recognized and stipulated that the provisions, agreements, and covenants contained herein bearing upon the management and operations of the System, and the administering and application of revenues derived from the operation thereof, shall to the extent possible be harmonized with like provisions, agreements, and covenants contained in the ordinances authorizing the issuance of Prior Lien Obligations, and to the extent of any irreconcilable conflict between the provisions contained herein and in the ordinances authorizing the issuance of the Prior Lien Obligations, the provisions, agreements, and covenants contained therein shall prevail to the extent of such conflict and be applicable to this Ordinance but in all respects subject to the priority of rights and benefits, if any, conferred thereby to the holders of the Prior Lien Obligations.

SECTION 22. Sale of Certificates – Official Statement Approval. Pursuant to a public sale for the Certificates, the bid submitted by _____ (herein referred to as the “Purchaser”) is declared to be the best bid received producing the lowest true interest cost rate to the City; such bid is hereby accepted and incorporated herein by reference as a part of this Ordinance for all purposes; and the sale of the Certificates to said Purchaser at the price of par plus a premium of \$_____ is hereby approved and confirmed. Delivery of the Certificates to the Purchaser shall occur as soon as possible upon payment being made therefor in accordance with the terms of sale. The terms of sale are hereby declared to be in the best interest of the City.

SECTION 23. Official Statement. The use of the Preliminary Official Statement in the offering and sale of the Certificates is hereby ratified, confirmed, and approved in all respects, and the City Council hereby finds that the information and data contained in said Preliminary Official Statement pertaining to the City and its financial affairs is true and correct in all material respects and no material facts have been omitted therefrom which are necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The final Official Statement, which reflects the terms of (together with such changes approved by the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Director of Finance or City Clerk, one or more of said officials), shall be and is hereby in all respects approved and the Purchaser are hereby authorized to use and distribute said final Official Statement, dated November 6, 2017, in the offering, sale and delivery of the Certificates to the public.

SECTION 24. Proceeds of Sale. The proceeds of sale of the Certificates, excluding amounts to pay costs of issuance and premium in the amount of \$_____, shall be deposited in a construction fund maintained at the official depository of the City. Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments in accordance with the provisions of Texas Government Code, Chapter 2256, as amended, including guaranteed investment contracts permitted by Texas Government Code, Section 2256.015 et seq., and the City's investment policies and guidelines, and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Certificate Fund as shall be determined by the City Council. Premium in the above amount as well as all surplus proceeds of sale of the Certificates, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Certificate Fund.

SECTION 25. Notices to Holders - Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-class, postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Certificates. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 26. Cancellation. All Certificates surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Certificates previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Certificates so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Certificates held by the Paying Agent/Registrar shall be returned to the City.

SECTION 27. Mutilated, Destroyed, Lost, and Stolen Certificates. In case any Certificate shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Certificate of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Certificate, or in lieu of and in substitution for such destroyed, lost or stolen Certificate, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Certificate, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Certificate shall be borne by the Holder of the Certificate mutilated, or destroyed, lost or stolen.

Every replacement Certificate issued pursuant to this Section shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Certificates; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Certificates. The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Certificates.

SECTION 28. Covenants to Maintain Tax-Exempt Status

(a) Definitions. When used in this Section, the following terms have the following meanings:

"Closing Date" means the date on which the Certificates are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Certificates.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Certificates are invested and which is not acquired to carry out the governmental purposes of the Certificates.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Certificates has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not

adversely affect the exemption from federal income tax of the interest on any Certificate, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Certificates:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Certificates, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Certificates to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Certificates directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Certificates to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) the City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Certificate is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Certificates with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Certificates by the Purchaser and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States from the construction fund, other appropriate fund, or if permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the Certificate Fund, the amount that when added to the future value of previous rebate payments made for the Certificates equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the

earlier of the Stated Maturity or final payment of the Certificates, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Certificates not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Director of Finance or City Clerk, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Certificates, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

SECTION 29. Satisfaction of Obligations of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Certificates, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied and the Net Revenues of the System under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate and be discharged and satisfied.

Certificates or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Certificates or the principal amount(s) thereof at maturity or on a redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Certificates, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Certificates to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Certificates, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Certificates such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

The City reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the City moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Certificates shall no longer be regarded to be outstanding or unpaid. Provided, however, the City has reserved the option, to be exercised at the time of the defeasance of the Certificates, to call for redemption, at an earlier date, those Certificates which have been defeased to their maturity date, if the City: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Certificates for redemption; (ii) gives notice of the reservation of that right to the Holders immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

SECTION 30. Ordinance a Contract - Amendments. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Certificate remains Outstanding except as permitted in this Section and in Section 31 hereof. The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency or formal defect or omission herein. In addition, the City may, with the consent of Holders holding a majority in aggregate principal amount of the Certificates then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Certificates, no such amendment, addition or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Certificates, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Certificates, (2) give any preference to any Certificate over any other Certificate, or (3) reduce the aggregate principal amount of Certificates required to be held by Holders for consent to any such amendment, addition or rescission.

SECTION 31. Continuing Disclosure Undertaking.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

(b) Annual Reports. The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year of the City beginning in the year 2017, financial information and operating data with respect to the City of the general type included in Appendix A to the final Official Statement in Tables 1 through 4 and 6 through 9 and (2) within twelve months after the end of each fiscal year of the City beginning in the year 2017, the audited financial statements of the City. If the audit of such financial statements is not complete within twelve (12) months after any such fiscal year end, then the City shall file unaudited financial statements by the required time and audited financial statements for the applicable fiscal year, when and if the audit report becomes available. Any financial statements to be

provided shall be (i) prepared in accordance with the accounting principles described in Appendix C to the Official Statement, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and in substantially the form included in the Official Statement, and (ii) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The City shall provide notice of any of the following events with respect to the Certificates to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
7. Modifications to rights of holders of the Certificates, if material;
8. Certificate calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Certificates, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding item 12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or

in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City. The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section while, but only while, the City remains an "obligated person" with respect to the Certificates within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) hereof of any Certificate calls and defeasance that cause the City to be no longer such an "obligated person."

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended,

would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Certificates. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) hereof an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 32. Control and Custody of Certificates. The Mayor of the City shall be and is hereby authorized to take and have charge of all necessary orders and records pending the sale of the Certificates, the investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Certificates, and shall take and have charge and control of the Initial Certificate(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchaser.

SECTION 33. Further Procedures. Any one or more of the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Director of Finance, and City Clerk are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance, sale and delivery of the Certificates. In addition, prior to the delivery of the Certificates, the Mayor, Mayor Pro Tem, City Manager, Assistant City Manager, Director of Finance, City Clerk or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in the Ordinance or such other document, or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Certificates by the Attorney General. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 34. Bond Counsel's Opinion. The Purchaser's obligation to accept delivery of the Certificates is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, approving the Certificates as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Certificates. An executed counterpart of said opinion shall accompany the global certificates deposited with DTC or a reproduction thereof shall be printed on the definitive Certificates in the event the book-entry-only system shall be discontinued.

SECTION 35. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Certificates shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

SECTION 36. Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, and this Ordinance and all its provisions is intended to be and shall be for the sole and exclusive benefit of the City, the Paying Agent/Registrar and the Holders.

SECTION 37. Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 38. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 39. Incorporation of Findings and Determinations. The findings and determinations of the City Council contained in the preamble of this Ordinance are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were related in full in this Section.

SECTION 40. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 41. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 42. Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 43. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 44. Effective Date. In accordance with the provisions of Texas Government Code, Section 1201.028, as amended, this Ordinance shall be in force and effect from and after its passage on the date shown below and it is so ordained.

[remainder of page intentionally left blank]

PASSED AND ADOPTED, this the 6th day of November, 2017.

CITY OF SHERMAN, TEXAS

Mayor

ATTEST:

City Clerk

(City Seal)

EXHIBIT A
PAYING AGENT/REGISTRAR AGREEMENT

EXHIBIT B

FORMS

(a) Form of Definitive Certificates.

REGISTERED
NO. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF SHERMAN, TEXAS,
TAX AND MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE
CERTIFICATES OF OBLIGATION, SERIES 2017A

Certificate Date:	Interest Rate:	Stated Maturity:	CUSIP No.:	Delivery Date:
December 6, 2017	_____ %	August 15, 20____	_____	December 6, 2017

Registered Owner:

Principal Amount:

The City of Sherman (hereinafter referred to as the "City"), a body corporate and municipal corporation in the County of Grayson, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Certificate appearing below (unless this Certificate bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Certificate is prior to the initial interest payment date in which case it shall bear interest from the Delivery Date) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 in each year, commencing August 15, 2018, until maturity or prior redemption. Principal of this Certificate is payable at its Stated Maturity or upon its prior redemption to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided, however, while this Certificate is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Certificate. Interest is payable to the registered owner of this Certificate (or one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for a payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated

Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$_____ (herein referred to as the "Certificates") for the purpose of paying contractual obligations to be incurred for (i) drainage improvements, including the acquisition, construction, improvement, and repair of structures, equipment, land, and facilities for the City's municipal drainage utility system (the "System") and (ii) the payment of professional services rendered in relation to such projects and the financing thereof, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Texas Local Government Code, Subchapter C of Chapter 271, as amended and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance").

The Certificates maturing on and after August 15, 2028, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on August 15, 2027, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to a redemption date, the City shall cause a written notice of such redemption to be sent by United States mail, first-class, postage prepaid, to the registered owners of each Certificate to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon the redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount redeemed.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

With respect to any optional redemption of the Certificates, unless certain prerequisites to such redemption required by the Ordinance have been met and moneys sufficient to pay the

principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption. If a conditional notice of redemption is given and such prerequisites to the redemption are not satisfied or sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

The Certificates are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City and from a pledge of the Net Revenues (as defined in the Ordinance) of the City's Municipal Drainage Utility System (the "System"), and, being junior and subordinate to the lien on and pledge of the Net Revenues securing the payment of "Prior Lien Obligations" (as defined in the Ordinance) hereafter issued by the City. In the Ordinance, the City reserves and retains the right to issue Prior Lien Obligations while the Certificates are outstanding without limitation as to principal amount but subject to any terms, conditions or restrictions as may be applicable thereto under law or otherwise, as well as the right to issue Additional Obligations (identified and defined in the Ordinance) payable from the same sources as the Certificates and, together with the Certificates, equally and ratably secured by a parity lien on and pledge of the Net Revenues of the System.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all the provisions of which the owner or holder of this Certificate by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Certificates; the nature and extent of the pledge of the Net Revenues securing the payment of the Certificates; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the pledge of the Net Revenues and covenants made in the Ordinance may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding thereunder; and for the other terms and provisions contained therein. Capitalized terms used herein have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Certificates of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to payment of principal hereof at its Stated Maturity or upon its prior

redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class, postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates as aforestated. In case any provision in this Certificate shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Certificate to be duly executed under the official seal of the City.

CITY OF SHERMAN, TEXAS

Mayor

COUNTERSIGNED:

City Clerk

(SEAL)

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto (Print or typewrite name, address and zip code of transferee): _____

(Social Security or other identifying number _____) the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Certificate in every particular.

(e) The Initial Certificate(s) shall be in the form set forth in paragraph (a) of this Exhibit B, except that the heading and first paragraph of the form of a single fully registered Initial Certificate shall be modified as follows:

REGISTERED
NO. T-1

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF SHERMAN, TEXAS,
TAX AND MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE
CERTIFICATES OF OBLIGATION, SERIES 2017A

Certificate Date:
December 6, 2017

Delivery Date:
December 6, 2017

Registered Owner: _____

Principal Amount: _____

The City of Sherman (hereinafter referred to as the "City"), a body corporate and municipal corporation in the County of Grayson, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated on August 15 in the years and in principal installments in accordance with the following schedule:

Year of
Stated Maturity

Principal
Installments

Interest
Rate(s)

(Information to be inserted from schedule in Section 2 hereof)

(or so much thereof as shall not have been redeemed prior to maturity) and to pay interest on the unpaid principal amounts hereof from the Delivery Date at the per annum rate(s) of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year, commencing August 15, 2018, until maturity or prior redemption. Principal installments of this Certificate are payable at its Stated Maturity or on a redemption date to the registered owner hereof by The Bank of New York Mellon Trust Company, N.A., Dallas, Texas (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated offices in East Syracuse, New York (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date hereof and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first-class, postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/ Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

PAYING AGENT/REGISTRAR AGREEMENT

THIS AGREEMENT is entered into as of November 6, 2017 (this "Agreement"), by and between The Bank of New York Mellon Trust Company, N.A., a banking association duly organized and existing under the laws of the United States of America (the "Bank") and the City of Sherman, Texas (the "Issuer"),

RECITALS

WHEREAS, the Issuer has duly authorized and provided for the issuance of its "City of Sherman, Texas, Tax and Municipal Drainage Utility System Revenue Certificates of Obligation, Series 2017A" (the "Securities"), dated December 6, 2017, such Securities scheduled to be delivered to the initial purchasers thereof on or about December 6, 2017; and

WHEREAS, the Issuer has selected the Bank to serve as Paying Agent/Registrar in connection with the payment of the principal of, premium, if any, and interest on said Securities and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the Issuer and has full power and authority to perform and serve as Paying Agent/Registrar for the Securities;

NOW, THEREFORE, it is mutually agreed as follows:

ARTICLE ONE APPOINTMENT OF BANK AS PAYING AGENT AND REGISTRAR

Section 1.01 Appointment. The Issuer hereby appoints the Bank to serve as Paying Agent with respect to the Securities, and, as Paying Agent for the Securities, the Bank shall be responsible for paying on behalf of the Issuer the principal, premium (if any), and interest on the Securities as the same become due and payable to the registered owners thereof; all in accordance with this Agreement and the "Authorizing Document" (hereinafter defined). The Issuer hereby appoints the Bank as Registrar with respect to the Securities and, as Registrar for the Securities, the Bank shall keep and maintain for and on behalf of the Issuer books and records as to the ownership of said Securities and with respect to the transfer and exchange thereof as provided herein and in the Authorizing Document.

The Bank hereby accepts its appointment, and agrees to serve as the Paying Agent and Registrar for the Securities.

Section 1.02 Compensation. As compensation for the Bank's services as Paying Agent/Registrar, the Issuer hereby agrees to pay the Bank the fees and amounts set forth in **Annex A** attached hereto.

In addition, the Issuer agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

ARTICLE TWO DEFINITIONS

Section 2.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Acceleration Date" on any Security means the date, if any, on and after which the principal or any or all installments of interest, or both, are due and payable on any Security which has become accelerated pursuant to the terms of the Security.

"Authorizing Document" means the resolution, order, or ordinance of the governing body of the Issuer pursuant to which the Securities are issued, as the same may be amended or modified, including any pricing certificate related thereto, certified by the secretary or any other officer of the Issuer and delivered to the Bank.

"Bank Office" means the designated office of the Bank at the address shown in Section 3.01 hereof. The Bank will notify the Issuer in writing of any change in location of the Bank Office.

"Financial Advisor" means Specialized Public Finance, Inc.

"Holder" and "Security Holder" each means the Person in whose name a Security is registered in the Security Register.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

"Predecessor Securities" of any particular Security means every previous Security evidencing all or a portion of the same obligation as that evidenced by such particular Security (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Security for which a replacement Security has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Authorizing Document).

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to the terms of the Authorizing Document.

"Responsible Officer", when used with respect to the Bank, means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Security Register" means a register maintained by the Bank on behalf of the Issuer providing for the registration and transfers of Securities.

"Stated Maturity" means the date specified in the Authorizing Document the principal of a Security is scheduled to be due and payable.

Section 2.02 Other Definitions. The terms "Bank," "Issuer," and "Securities (Security)" have the meanings assigned to them in the recital paragraphs of this Agreement.

The term "Paying Agent/Registrar" refers to the Bank in the performance of the duties and functions of this Agreement.

ARTICLE THREE PAYING AGENT

Section 3.01 Duties of Paying Agent. As Paying Agent, the Bank shall pay, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, on behalf of the Issuer the principal of each Security at its Stated Maturity, Redemption Date or Acceleration Date, to the Holder upon surrender of the Security to the Bank at the following address:

<u>First Class/Registered/Certified</u>	<u>Express Delivery/Courier</u>	<u>By Hand Only</u>
The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust P.O. Box 396 East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust 111 Sanders Creek Pkwy. East Syracuse, NY 13057	The Bank of New York Mellon Trust Company, N.A. Global Corporate Trust Corporate Trust Window 101 Barclay Street, 1st Floor East New York, NY 10286

As Paying Agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the Issuer, pay on behalf of the Issuer the interest on each Security when due, by computing the amount of interest to be paid each Holder and making payment thereof to the Holders of the Securities (or their Predecessor Securities) on the Record Date (as defined in the Authorizing Document). All payments of principal and/or interest on the Securities to the registered owners shall be accomplished (1) by the issuance of checks, payable to the registered owners, drawn on the paying agent account provided in Section 5.05 hereof, sent by United States mail, first class postage prepaid, to the address appearing on the Security Register or (2) by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder's risk and expense.

Section 3.02 Payment Dates. The Issuer hereby instructs the Bank to pay the principal of and interest on the Securities on the dates specified in the Authorizing Document.

ARTICLE FOUR REGISTRAR

Section 4.01 Security Register - Transfers and Exchanges. The Bank agrees to keep and maintain for and on behalf of the Issuer at the Bank Office books and records (herein sometimes referred to as the "Security Register") for recording the names and addresses of the Holders of the Securities, the transfer, exchange and replacement of the Securities and the payment of the principal of and interest on the Securities to the Holders and containing such

other information as may be reasonably required by the Issuer and subject to such reasonable regulations as the Issuer and the Bank may prescribe. All transfers, exchanges and replacements of Securities shall be noted in the Security Register.

Every Security surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers, such written instrument to be in a form satisfactory to the Bank and duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Securities.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Securities, the exchange or transfer by the Holders thereof will be completed and new Securities delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Securities to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Paying Agent/Registrar.

Section 4.02 Securities. The Issuer shall provide additional Securities when needed to facilitate transfers or exchanges thereof. The Bank covenants that such additional Securities, if and when provided, will be kept in safekeeping pending their use and reasonable care will be exercised by the Bank in maintaining such Securities in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other governments or corporations for which it serves as registrar, or that is maintained for its own securities.

Section 4.03 Form of Security Register. The Bank, as Registrar, will maintain the Security Register relating to the registration, payment, transfer and exchange of the Securities in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Security Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Security Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

Section 4.04 List of Security Holders. The Bank will provide the Issuer at any time requested by the Issuer, upon payment of the required fee, a copy of the information contained in the Security Register. The Issuer may also inspect the information contained in the Security Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Security Register to any person other than to, or at the written request of, an authorized officer or employee of the Issuer, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Security Register, the Bank will notify the Issuer so that the Issuer may contest the court order or such release or disclosure of the contents of the Security Register.

Section 4.05 Return of Cancelled Securities. The Bank will, at such reasonable intervals as it determines, surrender to the Issuer, all Securities in lieu of which or in exchange for which other Securities have been issued, or which have been paid.

Section 4.06 Mutilated, Destroyed, Lost or Stolen Securities. The Issuer hereby instructs the Bank, subject to the provisions of the Authorizing Document, to deliver and issue Securities in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities as long as the same does not result in an overissuance.

In case any Security shall be mutilated, destroyed, lost or stolen, the Bank may execute and deliver a replacement Security of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Security, or in lieu of and in substitution for such mutilated, destroyed, lost or stolen Security, only upon the approval of the Issuer and after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Security, and of the authenticity of the ownership thereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the Issuer and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Security shall be borne by the Holder of the Security mutilated, destroyed, lost or stolen.

Section 4.07 Transaction Information to Issuer. The Bank will, within a reasonable time after receipt of written request from the Issuer, furnish the Issuer information as to the Securities it has paid pursuant to Section 3.01, Securities it has delivered upon the transfer or exchange of any Securities pursuant to Section 4.01, and Securities it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Securities pursuant to Section 4.06.

ARTICLE FIVE THE BANK

Section 5.01 Duties of Bank. The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

Section 5.02 Reliance on Documents, Etc.

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction,

consent, order, bond, note, security or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Securities, but is protected in acting upon receipt of Securities containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, security or other paper or document supplied by the Issuer.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

(g) The Bank is also authorized to transfer funds relating to the closing and initial delivery of the Securities in the manner disclosed in the closing memorandum or letter as prepared by the Issuer, the Financial Advisor or other agent. The Bank may act on a facsimile or e-mail transmission of the closing memorandum or letter acknowledged by the Issuer, the Issuer's financial advisor or other agent as the final closing memorandum or letter. The Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bank's reliance upon and compliance with such instructions.

Section 5.03 Recitals of Issuer. The recitals contained herein with respect to the Issuer and in the Securities shall be taken as the statements of the Issuer, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the Issuer, any Holder or Holders of any Security, or any other Person for any amount due on any Security from its own funds.

Section 5.04 May Hold Securities. The Bank, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer with the same rights it would have if it were not the Paying Agent/Registrar, or any other agent.

Section 5.05 Moneys Held by Bank - Paying Agent Account/Collateralization. A paying agent account shall at all times be kept and maintained by the Bank for the receipt, safekeeping, and disbursement of moneys received from the Issuer under this Agreement for the payment of the Securities, and money deposited to the credit of such account until paid to the Holders of the Securities shall be continuously collateralized by securities or obligations which qualify and are eligible under both the laws of the State of Texas and the laws of the United States of America to secure and be pledged as collateral for paying agent accounts to the extent such money is not insured by the Federal Deposit Insurance Corporation. Payments made from such paying agent account shall be made by check drawn on such account unless the owner of the Securities shall, at its own expense and risk, request an alternative method of payment.

Subject to the applicable unclaimed property laws of the State of Texas, any money deposited with the Bank for the payment of the principal of, premium (if any), or interest on any Security and remaining unclaimed for three years after final maturity of the Security has become

due and payable will be held by the Bank and disposed of only in accordance with Title 6 of the Texas Property Code, as amended. The Bank shall have no liability by virtue of actions taken in compliance with this provision.

The Bank is not obligated to pay interest on any money received by it under this Agreement.

This Agreement relates solely to money deposited for the purposes described herein, and the parties agree that the Bank may serve as depository for other funds of the Issuer, act as trustee under indentures authorizing other bond transactions of the Issuer, or act in any other capacity not in conflict with its duties hereunder.

Section 5.06 Indemnification. To the extent permitted by law, the Issuer agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

Section 5.07 Interpleader. The Issuer and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the state and county where the administrative office of the Issuer is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The Issuer and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction in the State of Texas to determine the rights of any Person claiming any interest herein.

In the event the Bank becomes involved in litigation in connection with this Section, the Issuer, to the extent permitted by law, agrees to indemnify and save the Bank harmless from all loss, cost, damages, expenses, and attorney fees suffered or incurred by the Bank as a result. The obligations of the Bank under this Agreement shall be performable at the principal corporate office of the Bank in the City of Dallas, Texas.

Section 5.08 DTC Services. It is hereby represented and warranted that, in the event the Securities are otherwise qualified and accepted for "Depository Trust Company" services or equivalent depository trust services by other organizations, the Bank has the capability and, to the extent within its control, will comply with the "Operational Arrangements", which establishes requirements for securities to be eligible for such type depository trust services, including, but not limited to, requirements for the timeliness of payments and funds availability, transfer turnaround time, and notification of redemptions and calls.

ARTICLE SIX MISCELLANEOUS PROVISIONS

Section 6.01 Amendment. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 6.02 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 6.03 Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the Issuer or the Bank shall be mailed or delivered to the Issuer or the Bank, respectively, at the addresses shown on the signature page(s) hereof.

Section 6.04 Effect of Headings. The Article and Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 6.05 Successors and Assigns. All covenants and agreements herein by the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 6.06 Severability. In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 6.07 Merger, Conversion, Consolidation, or Succession. Any corporation or association into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Bank shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Bank shall be the successor of the Bank as Paying Agent under this Agreement without the execution or filing of any paper or any further act on the part of either parties hereto.

Section 6.08 Benefits of Agreement. Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

Section 6.09 Entire Agreement. This Agreement and the Authorizing Document constitute the entire agreement between the parties hereto relative to the Bank acting as Paying Agent/Registrar and if any conflict exists between this Agreement and the Authorizing Document, the Authorizing Document shall govern.

Section 6.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 6.11 Termination. This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Securities to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Paying Agent/Registrar has been appointed by the Issuer and such appointment accepted and (b) notice has been given to the Holders of the Securities of the appointment of a successor Paying Agent/Registrar. However, if the Issuer fails to appoint a successor Paying Agent/Registrar within a reasonable time, the Bank may petition a court of competent jurisdiction within the State of Texas to appoint a successor. Furthermore, the Bank and the Issuer mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Securities.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Security Register (or a copy thereof), together with the other pertinent books and

records relating to the Securities, to the successor Paying Agent/Registrar designated and appointed by the Issuer.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

Section 6.12 No Boycott Israel. To the extent this Agreement is a contract for goods or services within the meaning of Section 2270.002 of the Texas Government Code, as amended the Bank hereby verifies that the Bank does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Section 6.13 Representations Regarding Section 2252.151, Texas Government Code. To the extent this Agreement is a governmental contract, within the meaning of Section 2252.151 of the Texas Government Code, as amended, the Bank represents that it is not a company engaged in business with Iran, Sudan, or a foreign terrorist organization (as defined in Section 2252.151(2), Texas Government Code) and that it is not on a list prepared and maintained by the Comptroller of Public Accounts of the State of Texas under Section 806.051, 807.051, or 2252.153, Texas Government Code.

Section 6.14 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

[Remainder of page left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.

By: _____

Title: _____

Attest:

Address: 2001 Bryan Street, 10th Floor
Dallas, Texas 75201

Title: _____

CITY OF SHERMAN, TEXAS

By: _____
Mayor

Address: 220 West Mulberry Street
Sherman, Texas 75090

Attest:

City Clerk



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.2.

Meeting Date: 11/06/2017

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6073

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Tattoo Studio (Permanent Makeup) in a C-1 (Retail Business) District/Central Business District at 112 North Travis Street, being the North 22' of Lot 5 and the South 50' of Lot 8, Block 2, OTP Sherman (Glenn T. Nix, Jr., Owner; Sarah Groves and Stephanie Graves, Sculpted Brow & Lash Studio, Tenants); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00

Issue:

Glenn T. Nix, Jr. (Owner) and Sarah Groves and Stephanie Graves, Sculpted Brow & Lash Studio (Tenants) concerning the property at 112 North Travis Street, being the north 22' of Lot 5 and the south 50 Lot 8, Block 2, OTP Sherman for a Specific Use Permit to allow a tattoo studio for permanent makeup in a C-1 (Retail Business) District/Central Business District.

Background:

The property is located at 112 North Travis Street, between Houston and Laurel Streets. The property is zoned a C-1 (Retail Business) District and also located in the Central Business District. The tenants are requesting a Specific Use Permit to allow permanent makeup (tattoo studio) for their business, Sculpted Brow & Lash Studio, at this location.

Origination:

Glenn T. Nix, Jr. (Owner)

Sarah Groves and Stephanie Graves, Sculpted Brow & Lash Studio (Tenants)

Financial Consideration:

None

Staff Recommendation:

At the October 17, 2017 regular meeting, the Planning and Zoning Board voted 8/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter and limiting it to makeup and Sarah Groves and Stephanie Graves, Sculpted Brow & Lash Studio.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6073

Location Map

Zoning Map

Zoning Sign Photo

Site Plan

Elevations

Staff Review Letter

P&Z Communication

ORDINANCE NO. 6073

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A TATTOO STUDIO (PERMANENT MAKEUP) IN A C-1 (RETAIL BUSINESS) DISTRICT/CENTRAL BUSINESS DISTRICT AT 112 NORTH TRAVIS STREET, BEING THE NORTH 22' OF LOT 5 AND THE SOUTH 50' OF LOT 8, BLOCK 2, OTP SHERMAN (GLENN T. NIX, JR., OWNER; SARAH GROVES AND STEPHANIE GRAVES, SCULPTED BROW & LASH STUDIO, TENANTS); PROVIDING FOR A REPEALER CLAUSE; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

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

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

SECTION 1. That, from and after the passage of this ordinance, Glenn T. Nix, Jr. (Owner) and Sarah Groves and Stephanie Graves, Sculpted Brow & Lash Studio (Tenants) are granted a Specific Use Permit to allow a tattoo studio (permanent makeup) in a C-1 (Retail Business) District/Central Business District at 112 North Travis Street, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

BEING the north 22' of Lot 5 and the south 50' of Lot 8, Block 2, OTP Sherman

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

Zoning:

1. All aspects of the C-1 (Retail Business) District, the Central Business District and the sign ordinance must be followed.
2. Fire access, lanes and codes shall be coordinated with the Fire Marshal (903-892-7267).
3. Shall comply with all EPA, City, Federal and State regulations for this use.
4. Review the zoning and development ordinance for additional requirements.
5. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Planning & Zoning Commission:

6. Limited to makeup and Sarah Groves and Stephanie Graves, Sculpted Brow & Lash Studio.

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

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

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

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

INTRODUCED on this the _____ day of _____, 2017.

ADOPTED on this the _____ day of _____, 2017.

EFFECTIVE DATE on this the _____ day of _____, 2017.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



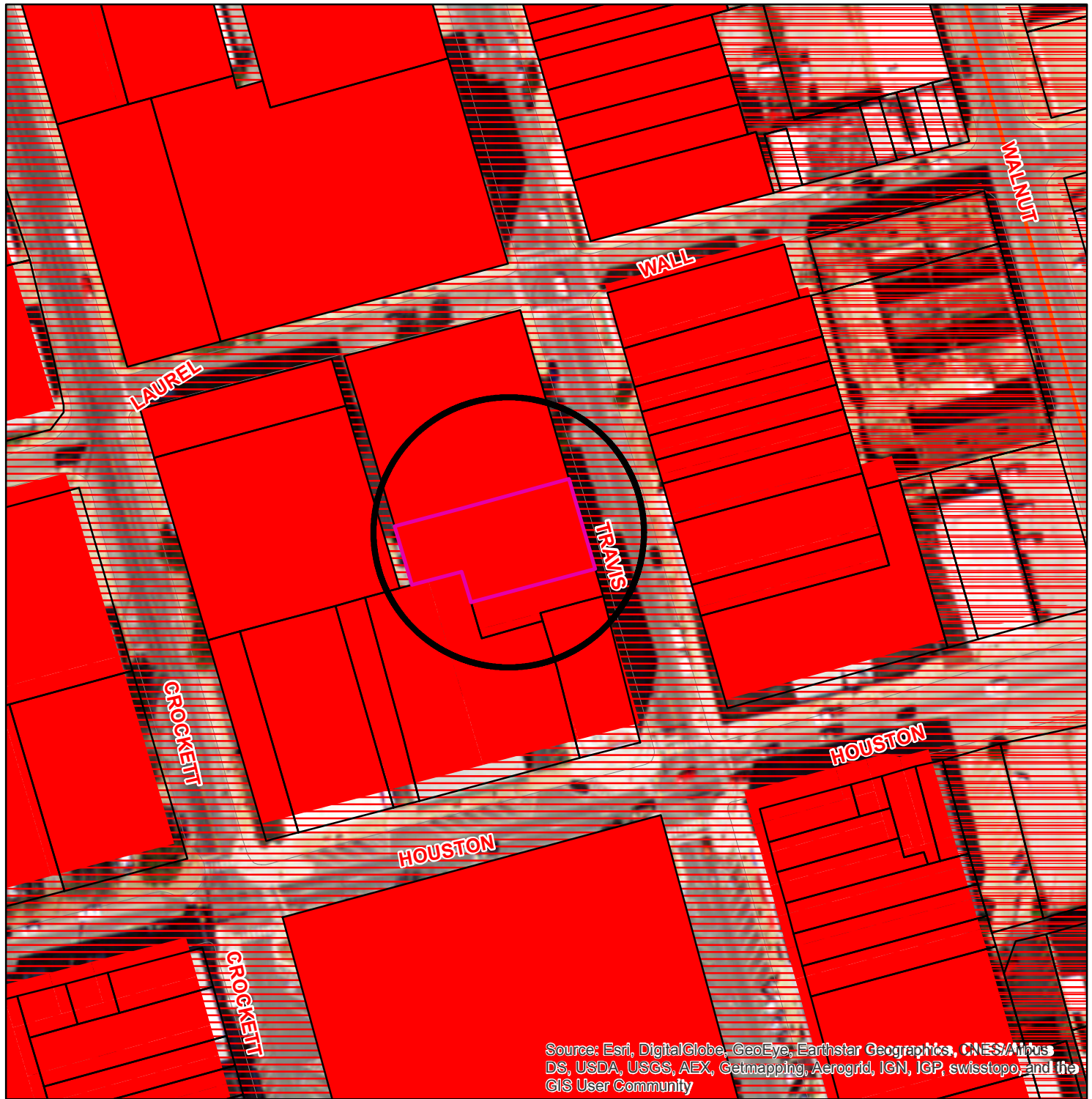
112 N. Travis



NOT TO SCALE

1 in = 200 ft

City of Sherman, Texas
Developmental Services Department



112 N. Travis

Legend

- CountyParcels_Buffer
- ShermGIS.DBO.CountyParcels selection
- Special Districts Overlay**
- Arts and Cultural District
- Blalock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor Zoning Districts

- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing District
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District



City of Sherman, Texas
Developmental Services Department



NOT TO SCALE

1 in = 108 ft

112 N. Travis





112 N TRAVIS ST.

Alley

23.5 ft

24 ft 11 inches

24 ft 11 inches

50 ft

140 ft 4 1/2 inches

175 ft 8 inches

150 ft 9 inches

N TRAVIS ST



STAFF REVIEW LETTER

September 13, 2017

Young Enterprises
PO Box 517
Sherman, TX 75091

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

Todd Young
PO Box 517
Sherman, TX 75091

Dear Applicants,

The request for a zone change and site plan approval from a C-1 (Retail Business) District to an SF-1 (Single Family Residential) District for the property located at 112 West Staples Street has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, September 19, 2017 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

Zoning:

1. All aspects of the SF-1 (Single Family Residential) District and the Residential Tree and Landscaping Ordinance must be followed.
2. Review the zoning and development ordinance for additional requirements.
3. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering:

4. Drive approaches and sidewalks must conform to City of Sherman standards and a permit is required from City of Sherman Engineering Department.
5. The City of Sherman does not maintain alleys.
6. Water shall be extended to serve the development.

Any other changes made to the site plan prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

You are hereby notified to be present, either in person or by your authorized representative to present your request on the date and time stated above.

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

Respectfully,

A handwritten signature in blue ink, reading "Scott Shadden". The signature is fluid and cursive, with a long horizontal line extending to the right.

Scott Shadden
Secretary, Planning and Zoning Board and Board of Adjustment

CC: Robby Hefton, City Manager
Mark Gibson, Director of Utilities
Clint Philpott, P.E., Director of Engineering
Amber Doan, Engineering Coordinator

Danny Fuller, Fire Marshal
Brandon Shelby, City Attorney
Steve Ayers, Asst. City Manager



**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 16.

Meeting Date: 10/17/2017

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

Clay Mahone, Chairman

Kyle Patterson, Vice-Chairman

Joe Gilbert, Commissioner

Eric Elliott, Commissioner

Sean Vanderveer, Commissioner

Shawn Davis, Commissioner

Jeff Adams, Commissioner

David Downtain, Commissioner

Trish Bridges, Commissioner

Requested Action/Proposed Use:

112 N. TRAVIS STREET

The request of Glenn T. Nix, Jr. (Owner) and Sarah Groves and Stephanie Graves, Sculpted Brow & Lash Studio (Tenants) concerning the property at 112 North Travis Street, being the north 22' of Lot 5 and the south 50 Lot 8, Block 2, OTP Sherman, as follows;

Planning and Zoning Commission

Specific Use Permit and site plan approval under Ordinance No. 2280, Section 8, Subsection (5)(a) to allow a tattoo studio (permanent make-up) in a C-1 (Retail Business) District/Central Business District.

Background:

The property is located at 112 North Travis Street between Houston and Laurel Streets. The property is zoned a C-1 (Retail Business) District and also located in the Central Business District. The tenants are requesting a Specific Use Permit to allow permanent makeup (tattoo studio) for their business, Sculpted Brow and Lash Studio at this location.

Adjacent Zoning:

C-1 (Retail Business) District

Origination:

Glenn T. Nix, Jr. (Owner)

Sarah Groves and Stephanie Graves, Sculpted Brow & Lash Studio (Tenants)

Master Plan Designation:

Urban/Downtown – Buildings are two to five stories and are built right up to the sidewalk, creating a sense of enclosure. Sidewalks provide pedestrian access and streetscape amenities. Parking is available along the street or in small parking lots in the rear of the buildings.

Number of notices mailed:

12

Objections Received:

0

Attachments

Location Map

Zoning Map

Zoning Sign Photo

Site Plan

Elevations

Staff Review Letter



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.3.

Meeting Date: 11/06/2017

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6074

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Liquor Store in a C-2 (General Commercial) District/O-1 (75 & 82 Overlay) District at 2520 Texoma Parkway, being 0.69 acres in the Reuben Hendrix Survey, Abstract No. 504 (C Squared Automotive, Inc., Owner; Harry Dhesi, Texoma Liquor, Proposed Tenant; Mangrum Commercial, LLC, Representative; and Sartin & Associates, Inc., Surveyor); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00

Issue:

C Squared Automotive, Inc. (Owner), Mangrum Commercial, LLC (Representative), and Sartin & Associates, Inc. (Surveyor) concerning the property at 2520 Texoma Parkway, being 0.69 acres in the Reuben Hendrix Survey, Abstract No. 504 for a Specific Use Permit to allow a liquor store in a C-2 (General Commercial) District/O-1 (75 & 82 Overlay) District

Background:

The property is located at 2520 Texoma Parkway, the southwest corner of Texoma Parkway and U.S. Highway 82. The property is zoned a C-2 (General Commercial) District and is also located in the O-1 (75 & 82 Overlay) District. The applicants are requesting a Specific Use Permit to allow a liquor store at this location.

Origination:

C Squared Automotive, Inc. (Owner)
Harry Dhesi, Texoma Liquor (Proposed Tenant)
Mangrum Commercial, LLC (Representative)
Sartin & Associates, Inc. (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the October 17, 2017 regular meeting, the Planning and Zoning Board voted 8/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6074

Location Map

Zoning Map

Zoning Sign Photo

Site Plan

Elevations

P&Z Communication

ORDINANCE NO. 6074

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW A LIQUOR STORE IN A C-2 (GENERAL COMMERCIAL) DISTRICT/O-1 (75 & 82 OVERLAY) DISTRICT AT 2520 TEXOMA PARKWAY, BEING 0.69 ACRES IN THE REUBEN HENDRIX SURVEY, ABSTRACT NO. 504 (C SQUARED AUTOMOTIVE, INC., OWNER; HARRY DHESI, TEXOMA LIQUOR, PROPOSED TENANT; MANGRUM COMMERCIAL, LLC, REPRESENTATIVE; AND SARTIN & ASSOCIATES, INC., SURVEYOR); PROVIDING FOR A REPEALER CLAUSE; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

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

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

SECTION 1. That, from and after the passage of this ordinance, C Squared Automotive, Inc. (Owner), Harry Dhesi, Texoma Liquor (Proposed Tenant), Mangrum Commercial, LLC (Representative), and Sartin & Associates, Inc. (Surveyor) are granted a Specific Use Permit to allow a liquor store in a C-2 (General Commercial) District/O-1 (75 & 82 Overlay) District at 2520 Texoma Parkway, and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the City of Sherman, County of Grayson, State of Texas, being a part of the RUBEN HENDRIX SURVEY, Abstract No. 504, being the same property conveyed by Color Tile Supermart, Inc. to Rainbow Properties, Ltd. by deed dated May 15, 1981, recorded in

Volume 1562, Page 404, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows to-wit:

BEGINNING at a found ½ inch square rod on the West right-of-way line of State Highway No. 91 (old U. S. Highway No. 75), and known as Texoma Parkway, said rod maintaining the Northeast corner of said Rainbow Properties tract, the Southeast corner of an 0.88 acre tract of land conveyed by Plitt Plaza Joint Venture to Mike Hughes by deed dated May 9, 1996, recorded in Volume 2468, Page 177, Official Public Records, Grayson County, Texas;

THENCE South 29 deg. 22 min. 00 sec. West, with the West right-of-way line of Texoma Parkway, a distance of 82.86 feet to a found ½ inch rebar maintaining the most Easterly Northeast corner of a 3.915 acre tract of land conveyed by Texas Cinema Corporation to Plitt Plaza Joint Venture by deed dated April 15, 1983, recorded in Volume 1642, Page 278, Deed Records, Grayson County, Texas;

THENCE North 87 deg. 35 min. 45 sec. West, with a North line of said 3.915 acre tract, a distance of 388.50 feet to a set spike nail in asphalt for an ell corner of said 3.915 acre tract;

THENCE North 02 deg. 08 min. 24 sec. East, with an East line of said 3.915 acre tract, a distance of 73.85 feet to a set spike nail in asphalt for another ell corner of said 3.915 acre tract;

THENCE South 87 deg. 35 min. 45 sec. East, with a South line of said 3.915 acre tract, passing its most Westerly Southeast corner, the Southwest corner of the above mentioned 0.88 acre tract, and continuing with the South line of said 0.88 acre tract for a total distance of 426.41 feet to the **PLACE OF BEGINNING AND CONTAINING 0.69 ACRES OF LAND MORE OR LESS.....**

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

Zoning:

1. All aspects of the C-2 (General Commercial) District, the O-1 (75 & 82 Overlay) District, the Specific Use Permit ordinance, the sign ordinance and the Commercial Tree and Landscaping Ordinance must be followed.
2. Fire lanes and codes shall be coordinated with the Fire Marshal, (903.892.7267).
3. All parking shall be on private property and shall not encroach into Texoma Parkway right-of-way.
4. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
5. A parking space is considered to be 9'x20'.

6. Shall comply with all City, Federal and State regulations for this use.
7. Review the zoning and development ordinance for additional requirements.
8. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering:

9. Drive approaches and sidewalks must conform to City of Sherman standards and a permit is required from City of Sherman Engineering Department.
10. Entrances/Exits off of Hwy. 82 Service Road and Hwy. 91 will be Right-in, Right-out only.

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

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

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

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

INTRODUCED on this the _____ day of _____, 2017.

ADOPTED on this the _____ day of _____, 2017.

EFFECTIVE DATE on this the _____ day of _____, 2017.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



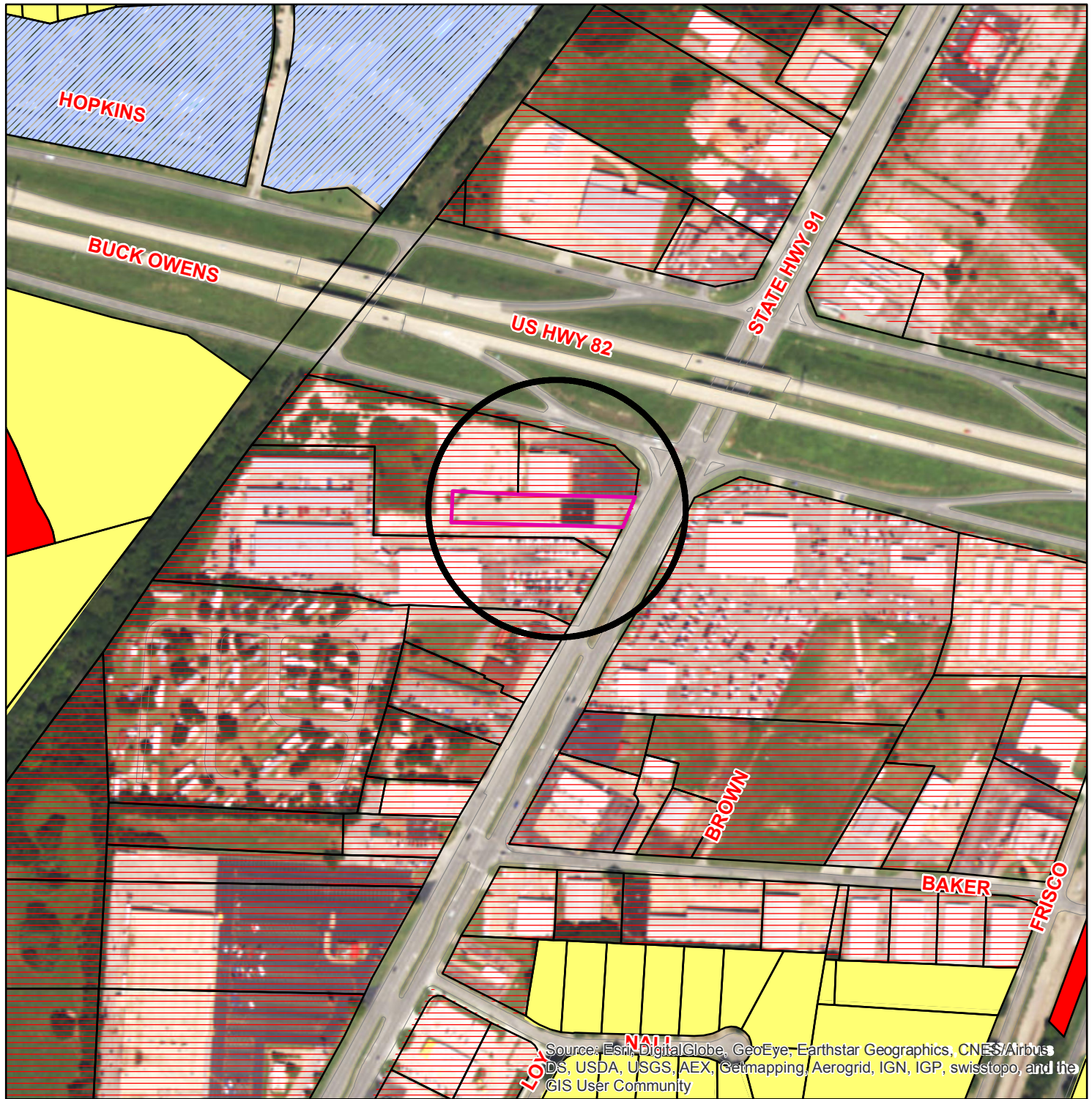
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



2520 Texoma Parkway



1 in = 360 ft



Zoning - 2520 Texoma Parkway

Legend

- CountyParcels_Buffer
- ShermGIS.DBO.CountyParcels.selection

Special Districts Overlay

- Arts and Cultural District
- Bialock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Zoning Districts

- Unknown
- BIP Bialock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing District
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District



City of Sherman, Texas
Developmental Services Department



NOT TO SCALE

1 in = 360 ft

2520 Texoma Parkway



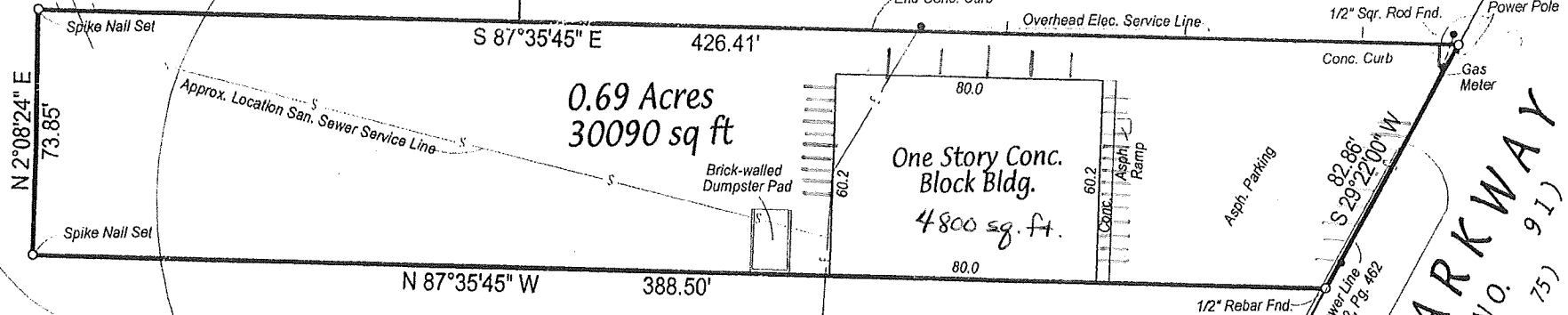
U. S. HIGHWAY NO. 82

"3.915 Ac."
Texas Cinema Corporation
to
Plitt Plaza Joint Venture
Vol. 1642, Pg. 278
April 15, 1983

"0.88 Ac."
Plitt Plaza Joint Venture
to
Mike Hughes
Vol. 2468, Pg. 177
May 9, 1996

10' San. Sewer Esmnt.
per Vol. 1527, Pg. 348

Asphalt Parking



REUBEN HENDRIX SURVEY
ABST. NO. 504

XOMA PARKWAY
(STATE HIGHWAY NO. 91)
(Formerly - U.S. HIGHWAY NO. 75)





**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 5.

Meeting Date: 10/17/2017

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

Clay Mahone, Chairman

Kyle Patterson, Vice-Chairman

Joe Gilbert, Commissioner

Eric Elliott, Commissioner

Sean Vanderveer, Commissioner

Shawn Davis, Commissioner

Jeff Adams, Commissioner

David Downtain, Commissioner

Trish Bridges, Commissioner

Requested Action/Proposed Use:

2520 TEXOMA PARKWAY

The request of C Squared Automotive, Inc. (Owner), Harry Dhesi, Texoma Liquor (Proposed Tenant) Mangrum Commercial, LLC (Representative) and Sartin & Associates, Inc. (Surveyor) concerning the property at 2520 Texoma Parkway, being 0.69 acres in the Reuben Hendrix Survey, Abstract No. 504, as follows;

Planning and Zoning Commission

Specific Use Permit and site plan approval under Ordinance No. 2280, Section 8, Subsection (5)(a) to allow a liquor store in a C-2 (General Commercial) District/O-1 (75 & 82 Overlay) District.

Background:

The property is located at 2520 Texoma Parkway, the southwest corner of Texoma Parkway and U.S. Highway 82. The property is zoned a C-2 (General Commercial) District and also located in the O-1 (75 & 82 Overlay) District. The applicants are requesting a Specific Use Permit to allow a liquor store at this location.

Adjacent Zoning:

C-2 (General Commercial) District

Origination:

C Squared Automotive, Inc. (Owner)

Mangrum Commercial, LLC (Representative)

Sartin & Associates, Inc. (Surveyor)

Master Plan Designation:

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

Number of notices mailed:

4

Objections Received:

0

Attachments

Location Map

Zoning Map

Zoning Sign Photo

Site Plan

Elevations

Staff Review Letter



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.4.

Meeting Date: 11/06/2017

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6075

Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow Patio Homes in an R-1 (One Family Residential) District in the 1400-1600 blocks of South F.M. 1417 (Heritage Parkway), being 4.08 acres in the Elizabeth Jones Survey, Abstract No. 625 (SSCGC Holdings, LLC, Owner; Joe Gilbert Construction, LLC, Prospective Buyer; and Vilbig and Associates, PLLC, Civil Engineer/Surveyor); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00

Issue:

The request of SSCGC Holdings, LLC (Owner), Joe Gilbert Construction, LLC (Prospective Buyer), and Vilbig and Associates, PLLC (Civil Engineer/Surveyor) concerning the property located in the 1400-1600 blocks of South FM 1417 (Heritage Parkway), being 4.08 acres in the Elizabeth Jones Survey, Abstract No. 625 for a Specific Use Permit to allow patio homes in an R-1 (One Family Residential) District

Background:

The property is located in the 1400-1600 blocks of South FM 1417 (Heritage Parkway), between Quail Run Road and West Park Avenue. The prospective buyer would like to plat the property into twenty-four (24) lots for residential development of patio homes.

Origination:

SSCGC Holdings, LLC (Owner)
Joe Gilbert Construction, LLC (Prospective Buyer)
Vilbig and Associates, PLLC (Civil Engineer/Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the October 17, 2017 regular meeting, the Planning and Zoning Board voted 7/0 to recommend to the City Council that the Specific Use Permit be approved subject to the Staff Review Letter. Commission Member Gilbert abstained.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6075

Location Map

Zoning Map

Zoning Sign Photo

Preliminary Plat

Site Plan

Elevations

SUP Staff Review Letter

P&Z Communication

Email from Bill Magers

ORDINANCE NO. 6075

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO ALLOW PATIO HOMES IN AN R-1 (ONE FAMILY RESIDENTIAL) DISTRICT IN THE 1400-1600 BLOCKS OF SOUTH F.M. 1417 (HERITAGE PARKWAY), BEING 4.08 ACRES IN THE ELIZABETH JONES SURVEY, ABSTRACT NO. 625 (SSCGC HOLDINGS, LLC, OWNER; JOE GILBERT CONSTRUCTION, LLC, PROSPECTIVE BUYER; AND VILBIG AND ASSOCIATES, PLLC, CIVIL ENGINEER/SURVEYOR); PROVIDING FOR A REPEALER CLAUSE; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

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

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

SECTION 1. That, from and after the passage of this ordinance, SSCGC Holdings, LLC (Owner), Joe Gilbert Construction, LLC (Prospective Buyer) and Vilbig and Associates, PLLC (Civil Engineer/Surveyor) are granted a Specific Use Permit to allow patio homes in an R-1 (One Family Residential) District in the 1400-1600 Blocks of South F.M. 1417 (Heritage Parkway), and that Section 8, Subsection (5)(a), Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

BEING all of that certain tract or parcel of land situated in the Elizabeth Jones Survey, Abstract No. 625, City of Sherman, Grayson County, Texas, and being part of a called 136.88 acre tract of land described as Tract 2 in the deed to SSCGC Holdings, LLC, recorded in Volume 5232, Page 220, Official Records of Grayson County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2-inch square tube found for the southwest corner of said 136.88 acre tract, common to the northwest corner of Lot 1R of Park Plaza Addition according to the plat thereof recorded in Volume 18, Page 30, Plat Records of Grayson County, Texas, and on the easterly right-of-way line of Heritage Parkway (F.M. 1417);

THENCE North 01° 25' 06" West, with the westerly line of said 136.88 acre tract, and with the easterly right- of-way line of said Heritage Parkway, a distance of 257.40 feet to a 1/2-inch iron rod with plastic cap stamped "PRESTON TRAIL LAND SURVEYING RPLS 6585" {hereinafter referred to as Capped Iron Rod} set for the northwest corner of the herein described tract of land, and from which a TX DOT concrete right-of-way monument found at an angle point on the easterly right-of-way line of said Heritage Parkway bears North 01°25'06" West a distance of 2508.15 feet;

THENCE North 74° 48' 32" East, crossing said 136.88 acre tract, a distance of 711.71 feet to a Capped Iron Rod set for the northeast corner of the herein described tract of land;

THENCE South 01° 25' 06" East, continuing across said 136.88 acre tract, a distance of 257.40 feet to a Capped Iron Rod set for the southeast corner of the herein described tract of land, on the southerly line of said 136.88 acre tract, and on the northerly line of Pebblebrook Phase II according to the plat thereof recorded in Volume 8, Page 117, said Plat Records, and at the northeast corner of Creekview Lane, a fifty-foot wide right-of-way according to said plat of Pebblebrook Phase II;

THENCE South 74° 48' 32" West, with the southerly line of said 136.88 acre tract, and with the northerly line of said Pebblebrook Phase II, passing en route at a distance of 247.11 feet a 1/2-inch iron rod with plastic cap stamped "GEES INC" found for the northwest corner of said Pebblebrook Phase II, common to the northeast corner of aforesaid Lot 1R of Park Plaza Addition, and continuing on said course with the northerly line of said Lot 1R of Park Plaza Addition a total distance of 711.71 feet to the **POINT OF BEGINNING and enclosing 4.085 acres (177,928 square feet) of land, more or less.....**

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

Zoning:

1. All aspects of the R-1 (One Family Residential) District, the O-1.1 (FM 1417 Overlay) District, the patio home ordinance, the screening ordinance, and the Residential Tree and Landscaping Ordinance must be followed.
2. Fire lanes and codes shall be coordinated with the Fire Marshal (903.892.7267).
3. Parking shall be provided for one space per bedroom; a parking space is considered to be 9'x20'.

4. Parking is permitted on paved surfaces only.
5. Side yard setbacks must be uniform for all homes within a given block.
6. The setback along FM 1417 (Heritage Parkway) shall be 25'.
7. Violation of the conditions of the SUP will terminate the Specific Use Permit.
8. Review the zoning and development ordinance for additional requirements.
9. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

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

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

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

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

INTRODUCED on this the _____ day of _____, 2017.

ADOPTED on this the _____ day of _____, 2017.

EFFECTIVE DATE on this the _____ day of _____, 2017.

CITY OF SHERMAN, TEXAS

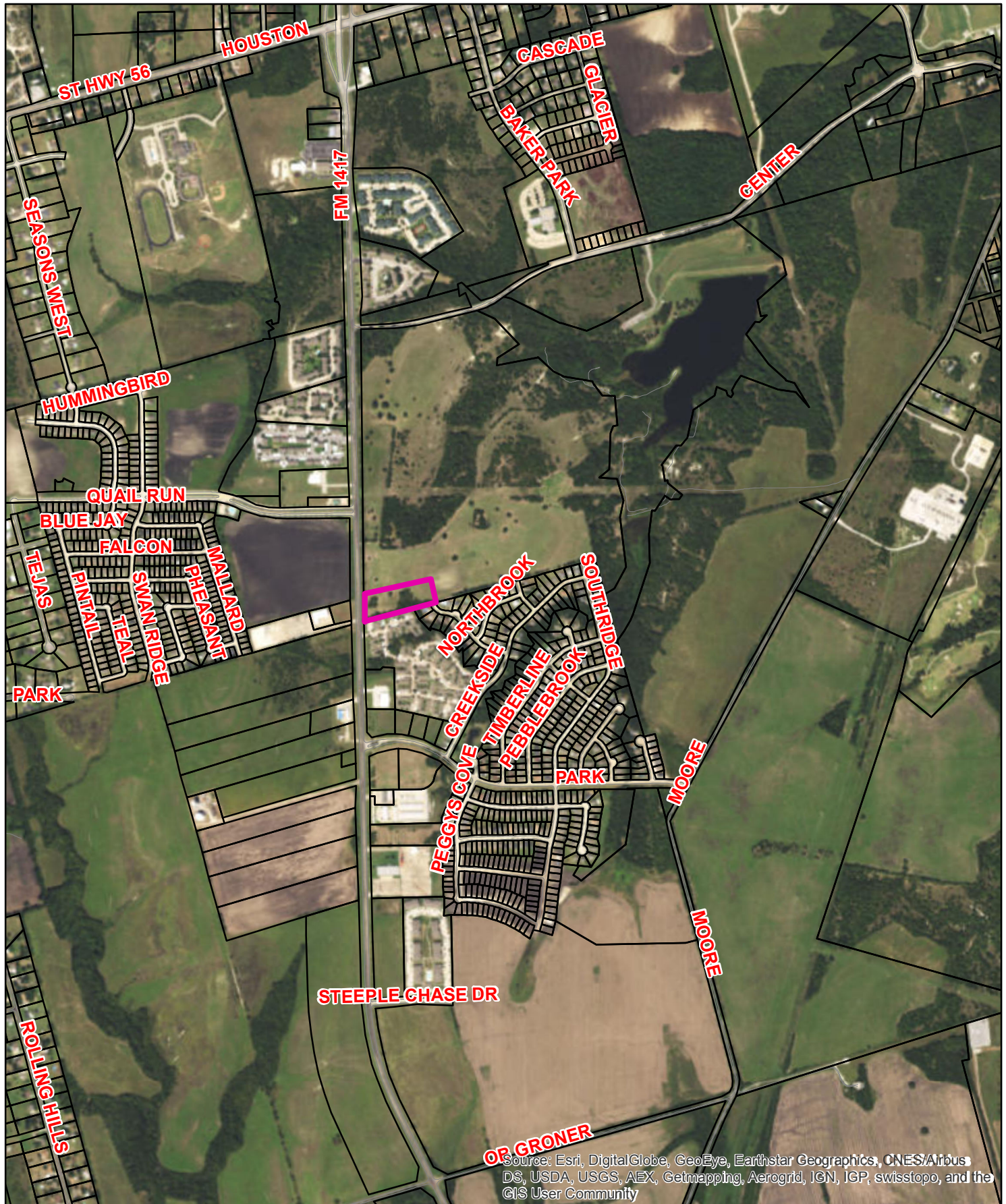
ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



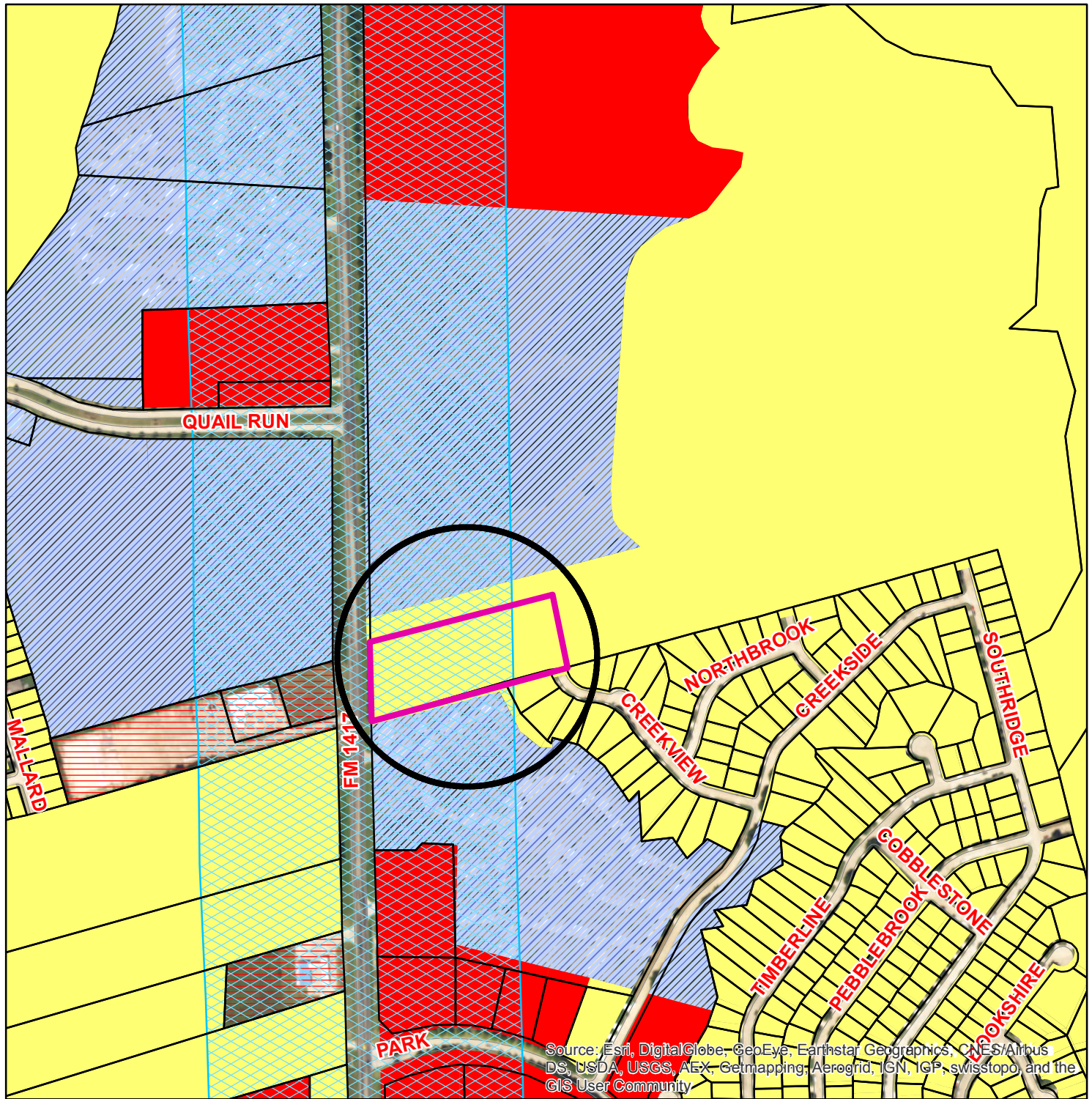
**1400-1600 Blks. S. FM 1417
(Heritage Parkway)**



NOT TO SCALE

1 in = 1,250 ft

City of Sherman, Texas
Developmental Services Department



Zoning - 1400-1600 Blks. S. FM 1417 (Heritage Parkway)

Legend

- CountyParcels_Buffer
- ShermGIS.DBO.CountyParcels.selection
- Special Districts Overlay**
 - Arts and Cultural District
 - Bialock Commercial Overlay District
 - Central Business District
 - College Park District
 - Downtown Overlay District
 - Historic Preservation District

Transportation Corridor Zoning Districts

- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691
- Unknown
- BIP Bialock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing District
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District



City of Sherman, Texas
Developmental Services Department

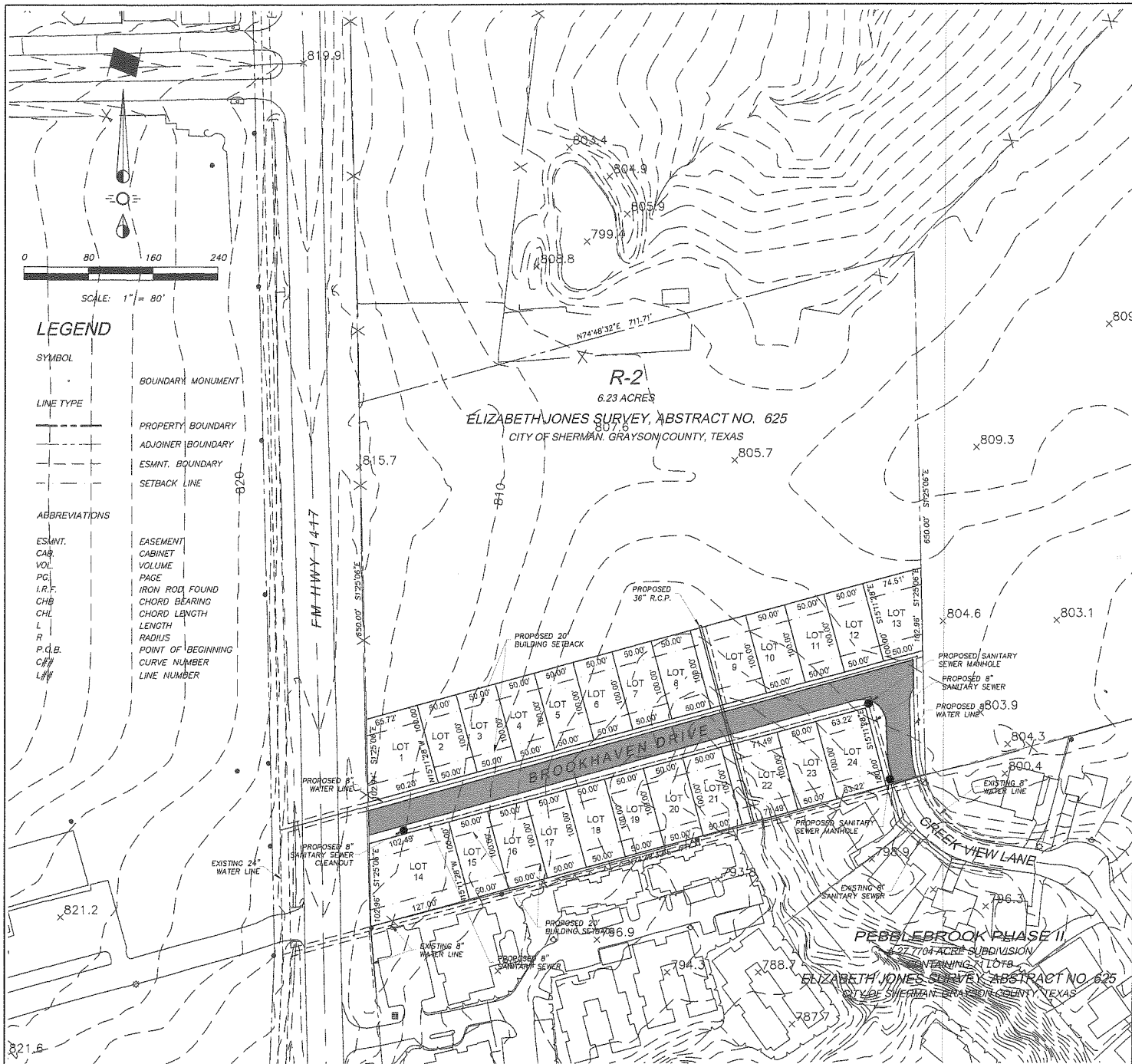


NOT TO SCALE

1 in = 500 ft

1400-1600 Blks. S. FM 1417
(Heritage Parkway)





PRELIMINARY PLAT OF BROOKHAVEN GARDEN HOMES

4.08 ACRES OUT OF THE
ELIZABETH JONES SURVEY, ABST. NO. 625
CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

PREPARATION DATE: SEPTEMBER 21, 2017
CITY PROJECT NO. XXXX

FINAL PLAT, FOR INSPECTION PURPOSES
ONLY. IN NO WAY OFFICIAL OR APPROVED
FOR RECORD PURPOSES.

NOTE: THE PROPERTY DESCRIBED HEREIN DOES LIE WITHIN A 100 YEAR
FLOOD HAZARD AREA IN ACCORDANCE WITH THE DOCUMENT ENTITLED "FLOOD
INSURANCE RATE MAP", PANEL NO. 48181C0270F, DATED SEPTEMBER 29, 2010,
AND PUBLISHED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA).

NOTES:

1. SURVEYOR HAS NOT ABSTRACTED THE SUBJECT PROPERTY.
2. THE BASIS OF BEARING FOR THIS DESCRIPTION IS A BOUNDARY SURVEY PREPARED BY ?
3. ELEVATION AND CONTOUR DATA SHOWN HEREON BASED UPON CITY OF SHERMAN TOPOGRAPHIC MAP DATA.

OWNER:
JOE GILBERT
801 E. TAYLOR
SHERMAN, TX 75090
(903)993-5188

ENGINEER:
VILBIG AND ASSOCIATES, INC.
517 W. WOODARD
DENISON, TX 75020
(214)-352-7333

SHEET:

01

OF 02

SITE PLAN

Joe Gilbert

801 E Taylor St.

Sherman TX 75090

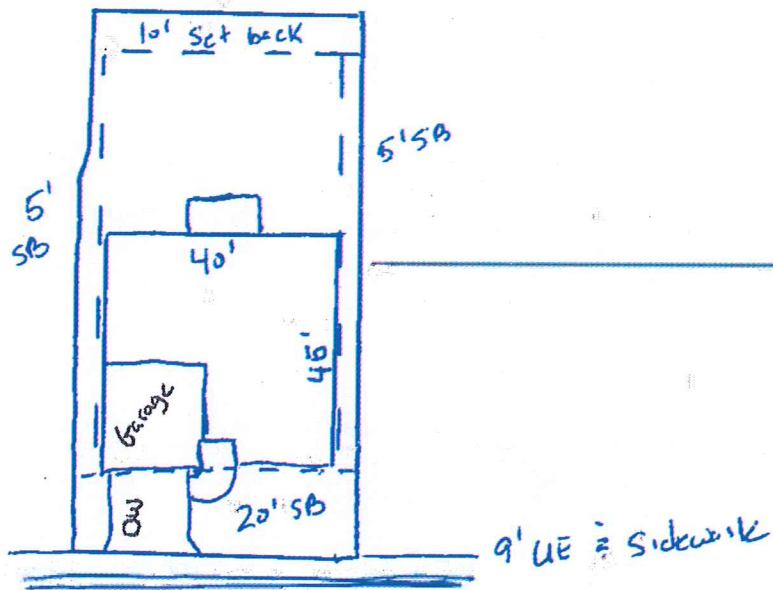
Brookhaven Garden Homes

Typical lot minimum set backs

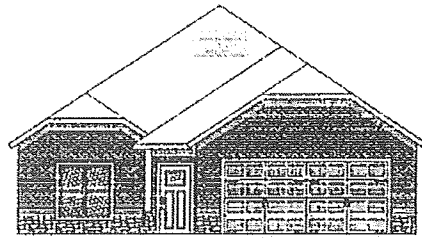
20' front

10' rear

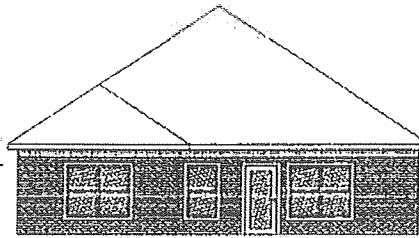
5' sides



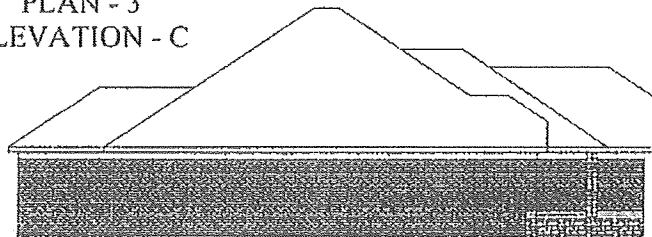
ELEVATION PLAN
PLAN - 3
ELEVATION - C



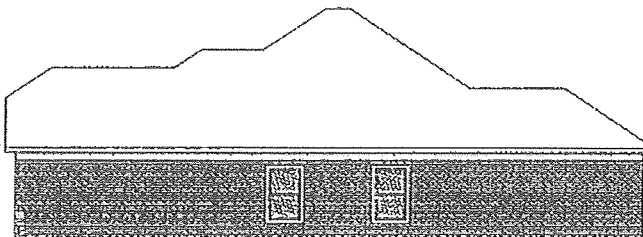
FRONT ELEVATION



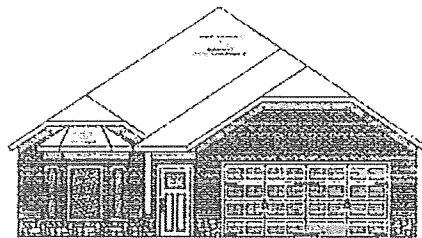
BACK ELEVATION



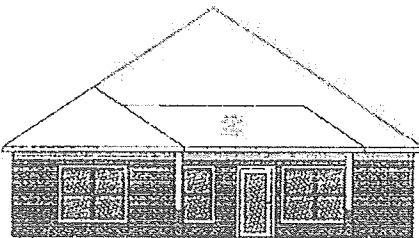
LEFT ELEVATION



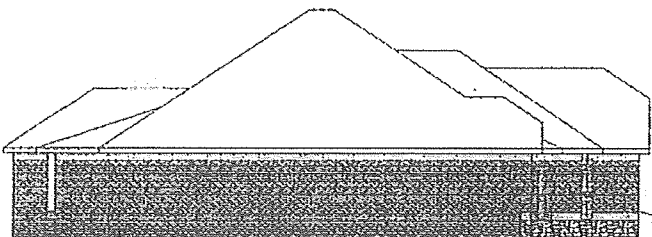
RIGHT ELEVATION



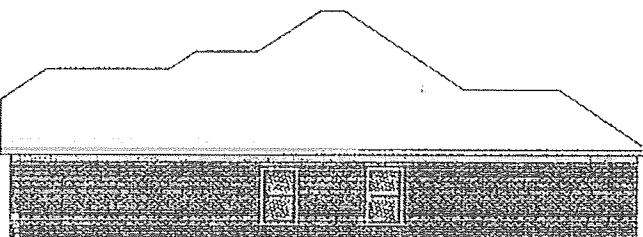
FRONT ELEVATION WITH BAY WINDOW OPTION



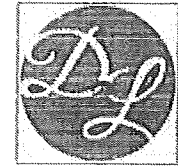
BACK ELEVATION WITH BACK PORCH OPTION



LEFT ELEVATION WITH BAY WINDOW AND BACK PORCH OPTION



RIGHT ELEVATION

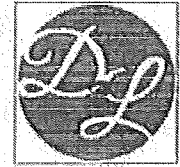


GILBERT

SHADY OAKS LANE
 SHERMAN, TEXAS 75092

D&LDESIGNS@YAHOO.COM

DATE
 09/22/16
 SHEET
 ELEVATION C
 SCALE
 3/32" = 1'



GILBERT

SHADY OAKS LANE
SHERMAN, TEXAS 75092

D&LDESIGNS@YAHOO.COM

DATE

09/22/16

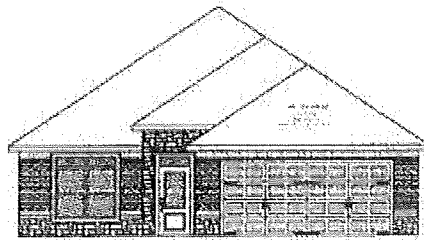
SHEET

ELEVATION A

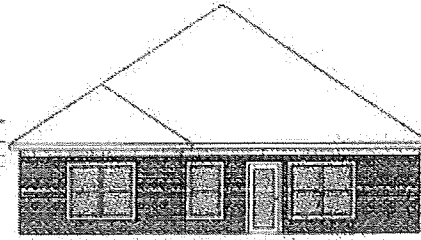
SCALE

3/32" = 1'

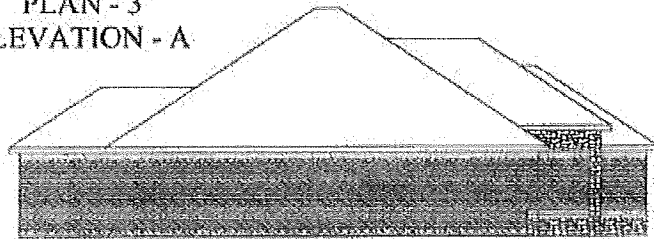
ELEVATION PLAN
PLAN - 3
ELEVATION - A



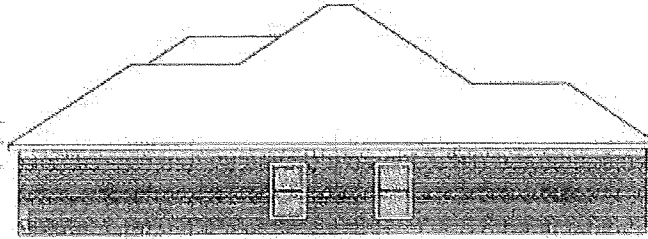
FRONT ELEVATION



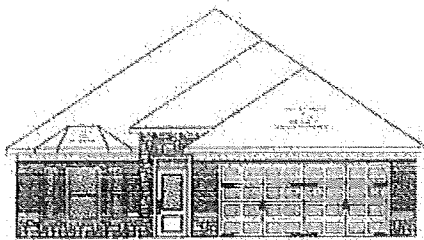
BACK ELEVATION



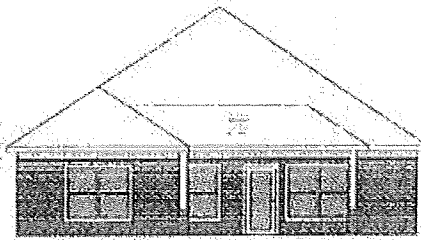
LEFT ELEVATION



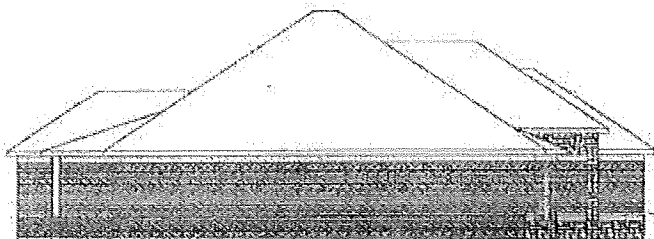
RIGHT ELEVATION



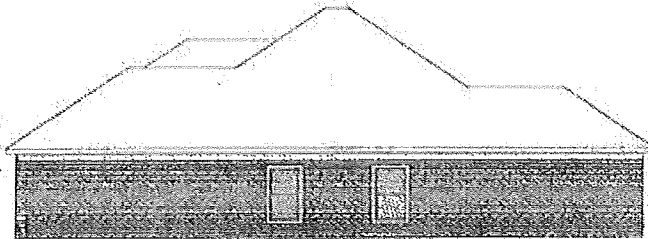
FRONT ELEVATION WITH BAY WINDOW OPTION



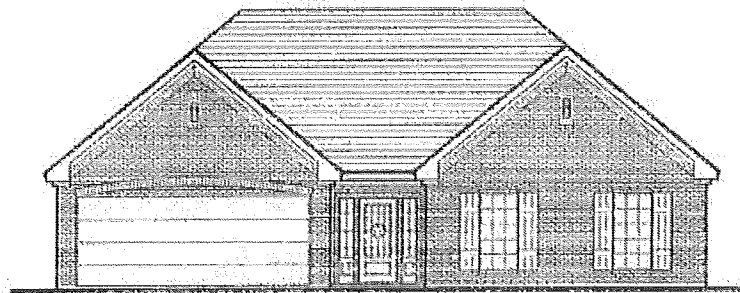
BACK ELEVATION WITH BACK PORCH OPTION



LEFT ELEVATION WITH BAY WINDOW AND BACK PORCH OPTION



RIGHT ELEVATION



FRONT ELEVATION
SCALE

LOT 14 BLOCK D
NORTH HAVEN DRIVE
NORTH HAVEN ADDITION

NOTE: IT IS THE SOLE RESPONSIBILITY
OF THE HOLDER TO VERIFY ALL
ASPECTS OF THIS PLAN AND TO
ENSURE THAT THIS PLAN MEETS ALL
GOVERNING CODES & REQUIREMENTS

This Plan is the property of
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any applicable laws or regulations.

THE PLAN FACTORY
3711 N GREEN CANY BLVD - SUITE C - ARLINGTON TX 76010
METRO (817) 634-9012



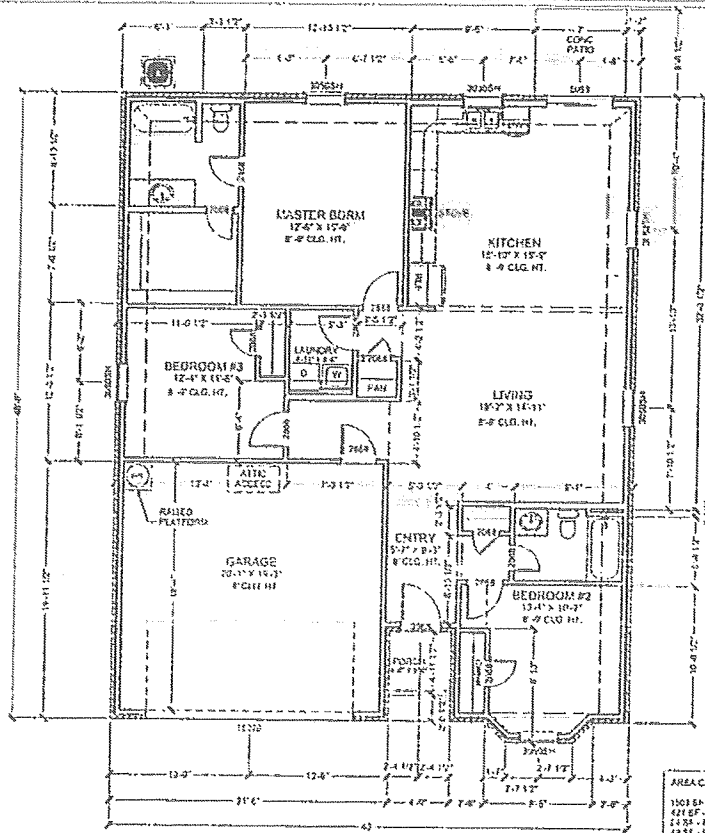
DESCRIPTION	
SQUARE FOOTAGE:	
LOWER	833
UPPER	1
TOTAL A.C.	834
GARAGE	413
PORCH	44
PATIO	84
TOTAL L.R.	541

Drawn: RJS
Rev: 6232
Date: 8/2/02

PLAN NO

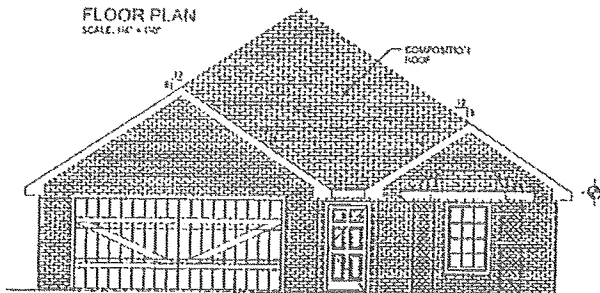
SF00151509

PG 1 OF 5

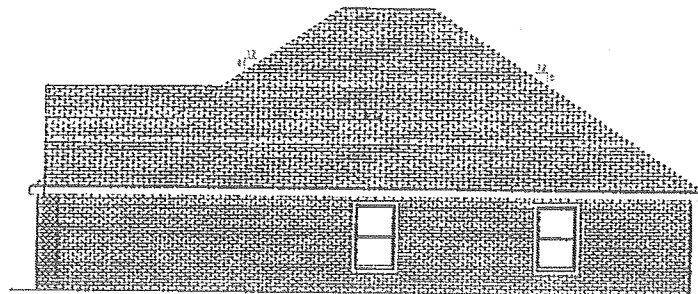


FLOOR PLAN
SCALE: 1/4" = 1'-0"

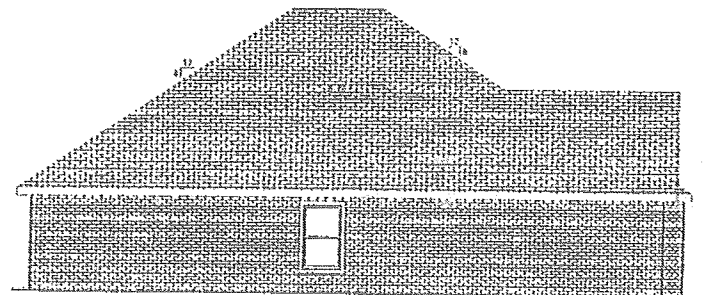
AREA CALCULATIONS
1203 SF - 11782 BATH
621 SF - GARAGE
14 SF - FRONT PORCH
49 SF - REAR PATIO (UNCOVERED)
1918 SF - TOTAL UNDER ROOF



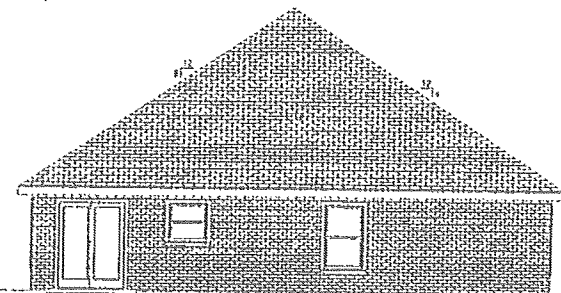
FRONT ELEVATION
SCALE: 1/4" = 1'-0"



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



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



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

A New House for
JCE GILBERT
CREEKSIDE PLAN #7
Shelton, TX 75682

DRAWINGS PROVIDED BY:
HBS Design & Design
303 W. 5th St. Suite 7500
963.692.5420

DATE:
9/1/2016

SCALE:

SHEET:

A-1

STAFF REVIEW LETTER

October 12, 2017

SSCGC Holdings, LLC
4 Timber Creek
Sherman, TX 75092

Vilbig & Associates, PLLC
517 W. Woodard
Denison, TX 75020

Joe Gilbert Construction, LLC
801 E. Taylor St.
Sherman, TX 75090

Dear Applicants,

The request for a Specific Use Permit and site plan approval to allow patio homes in an R-1 (One Family Residential) District for the property located in the 1400-1600 blocks of South FM 1417 (Heritage Parkway) has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, October 17, 2017 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

Zoning:

1. All aspects of the R-1 (One Family Residential) District, the O-1.1 (FM 1417 Overlay) District, the patio home ordinance, the screening ordinance, and the Residential Tree and Landscaping Ordinance must be followed.
2. Fire lanes and codes shall be coordinated with the Fire Marshal (903.892.7267).
3. Parking shall be provided for one space per bedroom; a parking space is considered to be 9'x20'.
4. Parking is permitted on paved surfaces only.
5. Side yard setbacks must be uniform for all homes within a given block.
6. The setback along FM 1417 (Heritage Parkway) shall be 25'.
7. Violation of the conditions of the SUP will terminate the Specific Use Permit.
8. Review the zoning and development ordinance for additional requirements.
9. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Any other changes made to the site plan prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

You are hereby notified to be present, either in person or by your authorized representative to present your request on the date and time stated above.

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

Respectfully,

A handwritten signature in black ink, reading "Scott Shadden". The signature is fluid and cursive, with the first name "Scott" and last name "Shadden" clearly legible.

Scott Shadden
Secretary, Planning and Zoning Board and Board of Adjustment

CC: Robby Hefton, City Manager
Mark Gibson, Director of Utilities
Clint Philpott, P.E., Director of Engineering
Amber Doan, Engineering Coordinator

Danny Fuller, Fire Marshal
Brandon Shelby, City Attorney
Steve Ayers, Asst. City Manager



**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 12.

Meeting Date: 10/17/2017

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

Clay Mahone, Chairman

Kyle Patterson, Vice-Chairman

Joe Gilbert, Commissioner

Eric Elliott, Commissioner

Sean Vanderveer, Commissioner

Shawn Davis, Commissioner

Jeff Adams, Commissioner

David Downtain, Commissioner

Trish Bridges, Commissioner

Requested Action/Proposed Use:

1400-1600 BLOCKS S. FM 1417 (HERITAGE PARKWAY)

The request of SSCGC Holdings, LLC (Owner), Joe Gilbert Construction, LLC (Prospective Buyer) and Vilbig and Associates, PLLC (Civil Engineer/Surveyor) concerning the property located in the 1400-1600 Blocks South FM 1417 (Heritage Parkway), being 4.08 acres in the Elizabeth Jones Survey, Abstract No. 625, as follows:

Planning and Zoning Commission

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

Background:

The property is located in the 1400-1600 blocks of South FM 1417 (Heritage Parkway) between Quail Run Road and West Park Avenue. The prospective buyer would like to plat the property into twenty-four (24) lots for residential development of patio homes.

Adjacent Zoning:

R-1 (One Family Residential) District

R-2 (Multi-Family Residential) District

C-2 (General Commercial) District

Origination:

SSCGC Holdings, LLC (Owner)

Joe Gilbert Construction, LLC (Prospective Buyer)

Vilbig and Associates, PLLC (Civil Engineer/Surveyor)

Master Plan Designation:

Agricultural and Rural – Typically are large parcels that are primarily used for crops or pasture land. These low density regions surrounding the City do not have significant demands on the transportation or utilities network.

Number of notices mailed:

13

Objections Received:

0

Attachments

Location Map

Zoning Map

Zoning Sign Photo

Preliminary Plat

Patio Homes Site Plan

Patio Homes Elevations

Plat Staff Review Letter

Staff Review Letter

Reeves, Patsy

From: Shadden, Scott
Sent: Tuesday, October 17, 2017 12:36 PM
To: Reeves, Patsy
Subject: FW: SSCGC support of Brookhaven Garden Home Development

From: William Magers [<mailto:billmagers@yahoo.com>]
Sent: Tuesday, October 17, 2017 11:35 AM
To: Shadden, Scott <scotts@ci.sherman.tx.us>
Cc: Mike Foster <mfooster@basaresources.com>
Subject: SSCGC support of Brookhaven Garden Home Development

Dear Chairman Mahone and Honorable Commissioners,

After reviewing the request for the Brookhaven Garden Home Development I am writing to inform you that SSCGC Holdings, LLC fully supports the project and hopes it will be approved at tonight's Planning and Zoning meeting. We sincerely believe that it will be an asset to our property and, more importantly, to our community.

Thank you for your consideration,

Bill

Bill Magers
972.978.5721



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.5.

Meeting Date: 11/06/2017

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6076

Amending Section 12, Ordinance No. 2280, so as to Include Certain Properties within the C-1 (Retail Business) District in the 3300-3400 blocks of North F.M. 1417 (Heritage Parkway), being 11.74 acres in the Uriah Burns Survey, Abstract No. 121 (Joe Wilson, Owner; and Vilbig and Associates, PLLC, Civil Engineer/Surveyor)

Issue:

To consider the request of Joe Wilson (Owner) and Vilbig and Associates, PLLC (Civil Engineer/Surveyor) concerning the property located in the 3300-3400 blocks of North F.M. 1417 (Heritage Parkway), being 11.74 acres in the Uriah Burns Survey, Abstract No. 121, for a zone change from an R-1 (One Family Residential) District to a C-1 (Retail Business) District

Background:

The property is located in the 3300-3400 blocks of North F.M. 1417 (Heritage Parkway); the southwest corner of F.M. 1417 and U.S. Highway 82. The owner would like to change the zoning on the property to a C-1 (Retail Business) District for commercial development. The site plan is conceptual and will require additional site plan approval before development.

Origination:

Joe Wilson (Owner)
Vilbig and Associates, PLLC (Civil Engineer/Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the October 17, 2017 regular meeting, the Planning and Zoning Board voted 8/0 to recommend to the City Council that the zone change be approved subject to the Staff Review Letter.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6076

Location Map

Zoning Map

Zoning Sign Photo

Conceptual Site Plan

Staff Review Letter

P&Z Communication

ORDINANCE NO. 6076

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTIES WITHIN THE C-1 (RETAIL BUSINESS) DISTRICT IN THE 3300-3400 BLOCKS OF NORTH F.M. 1417 (HERITAGE PARKWAY), BEING 11.74 ACRES IN THE URIAH BURNS SURVEY, ABSTRACT NO. 121 (JOE WILSON, OWNER; AND VILBIG AND ASSOCIATES, PLLC, CIVIL ENGINEER/SURVEYOR); 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.

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

SECTION 1. That, from and after the passage of this ordinance, the following described property shall be in the C-1 (Retail Business) District in the 3300-3400 blocks of North F.M. 1417 (Heritage Parkway), and that Section 12, Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the County of Grayson, State of Texas, and being a part of the Uriah Burns Survey, Abstract No. 121, and being a part of the 66.253 ac. tract of land conveyed to Joseph E. Wilson, Jr. by Lucile Schleuse Wilson and husband, Joe E. Wilson by Deed dated February 5, 1974 and recorded in Volume 1273, Page 45, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a point in the pavement of West Cypress Grove Road, a public road, in the South line of said Wilson 66.253 ac., at the Southeast corner of the 16.595 ac. tract of land conveyed to the City of Sherman in Volume 1672, Page 57, said Deed Records, at the Southwest corner of the herein described tract;

THENCE North 15 deg. 32 min. 29 sec. West, with the East line of said City of Sherman 16.595 acre, a distance of 544.15 feet to an angle point;

THENCE North 08 deg. 36 min. 03 sec. East, continuing with the East line of said City of Sherman 16.595 acres, a distance of 744.12 feet to a point in the South right-of-way line of U. S. Highway No. 82, at the Northeast corner of said City of Sherman 16.595 acres, at the Northwest corner of the herein described tract;

THENCE East, with the South right-of-way line of said U. S. Highway 82, a distance of 200.00 feet to an angle point;

THENCE South 70 deg. 38 min. 24 sec. East, continuing with the South right-of-way line of said U. S. Highway 82, a distance of 150.86 feet to a point at the intersection of the South right-of-way line of said U.S. Highway 82 with the West right-of-way line of F. M. Highway No. 1417, at the Northeast corner of the herein described tract;

THENCE South 05 deg. 37 min. 00 sec. East, with the West right-of-way line of said F. M. Highway 1417, a distance of 214.08 feet to an angle point;

THENCE Southerly, continuing with the West right-of-way line of said F. M. Highway 1417 and with a curve to the right, having a radius of 5,669.58 feet and a central angle of 7 deg. 29 min. 24 sec. (chord bears South 01 deg. 52 min. 18 sec. East, 740.63 ft.), an arc distance of 741.16 feet to a point at the end of said curve;

THENCE South 19 deg. 16 min. 00 sec. West, continuing with the West right-of-way line of said F. M. Highway 1417, a distance of 168.20 feet to a point at the most Easterly Southeast corner of the herein described tract;

THENCE South 75 deg. 56 min. 00 sec. West, a distance of 37.40 feet to an Ell corner of the herein described tract;

THENCE South 14 deg. 02 min. 08 sec. East, a distance of 22.70 feet to a point in the South line of said Wilson 66.253 acres, at the most Southerly Southeast corner of the herein described tract;

THENCE South 75 deg. 56 min. 00 sec. West, with the South line of said Wilson 66.253 acres, a distance of 274.93 feet to the **PLACE OF BEGINNING and containing 11.74 ACRES of land**.....

SECTION 2. That this ordinance shall not become effective until entered upon the official zoning map as provided in Section 12, Ordinance No. 2280.

SECTION 3. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. 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 _____, 2017.

ADOPTED on this the _____ day of _____, 2017.

EFFECTIVE DATE on this the _____ day of _____, 2017.

CITY OF SHERMAN, TEXAS

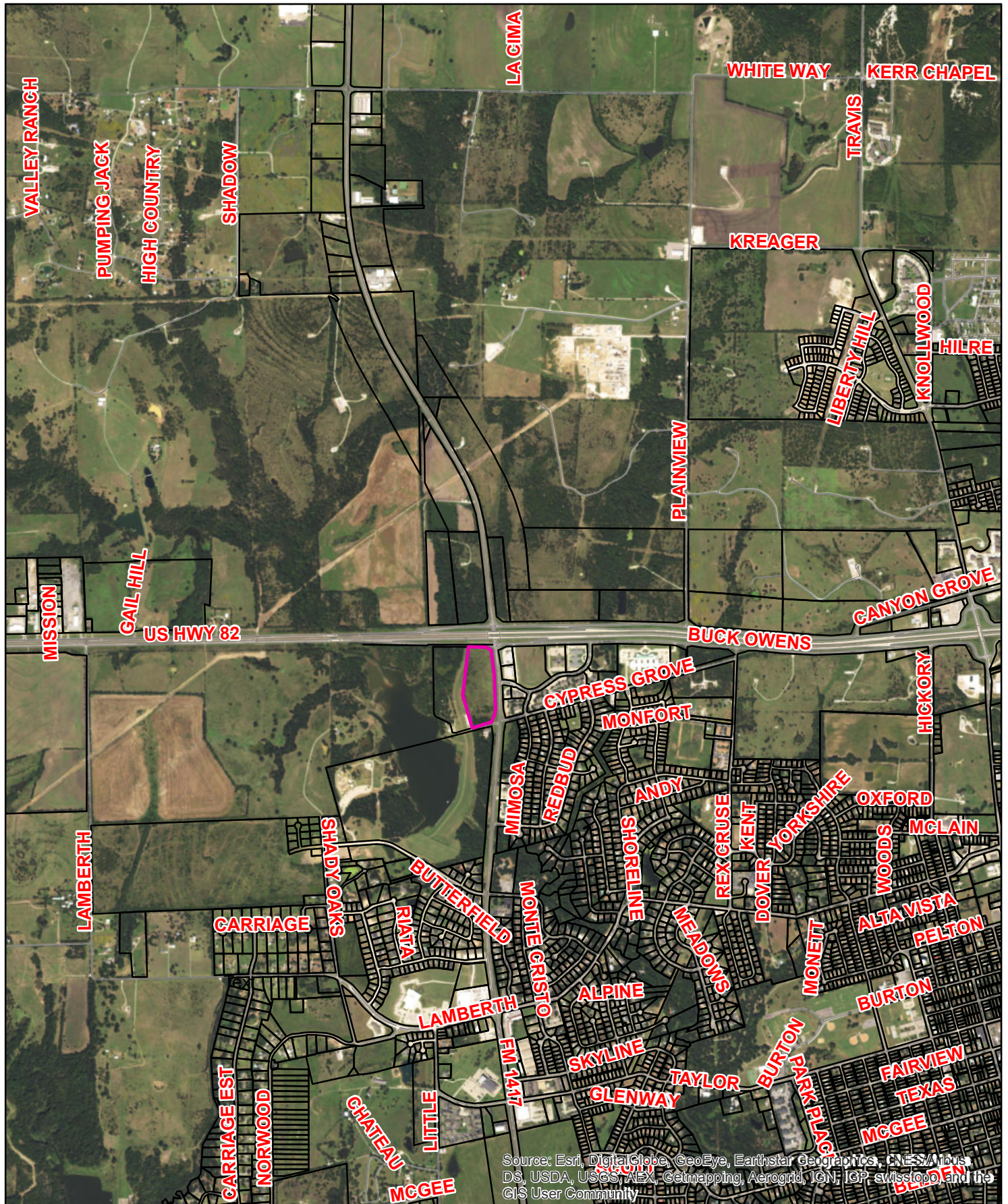
BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**

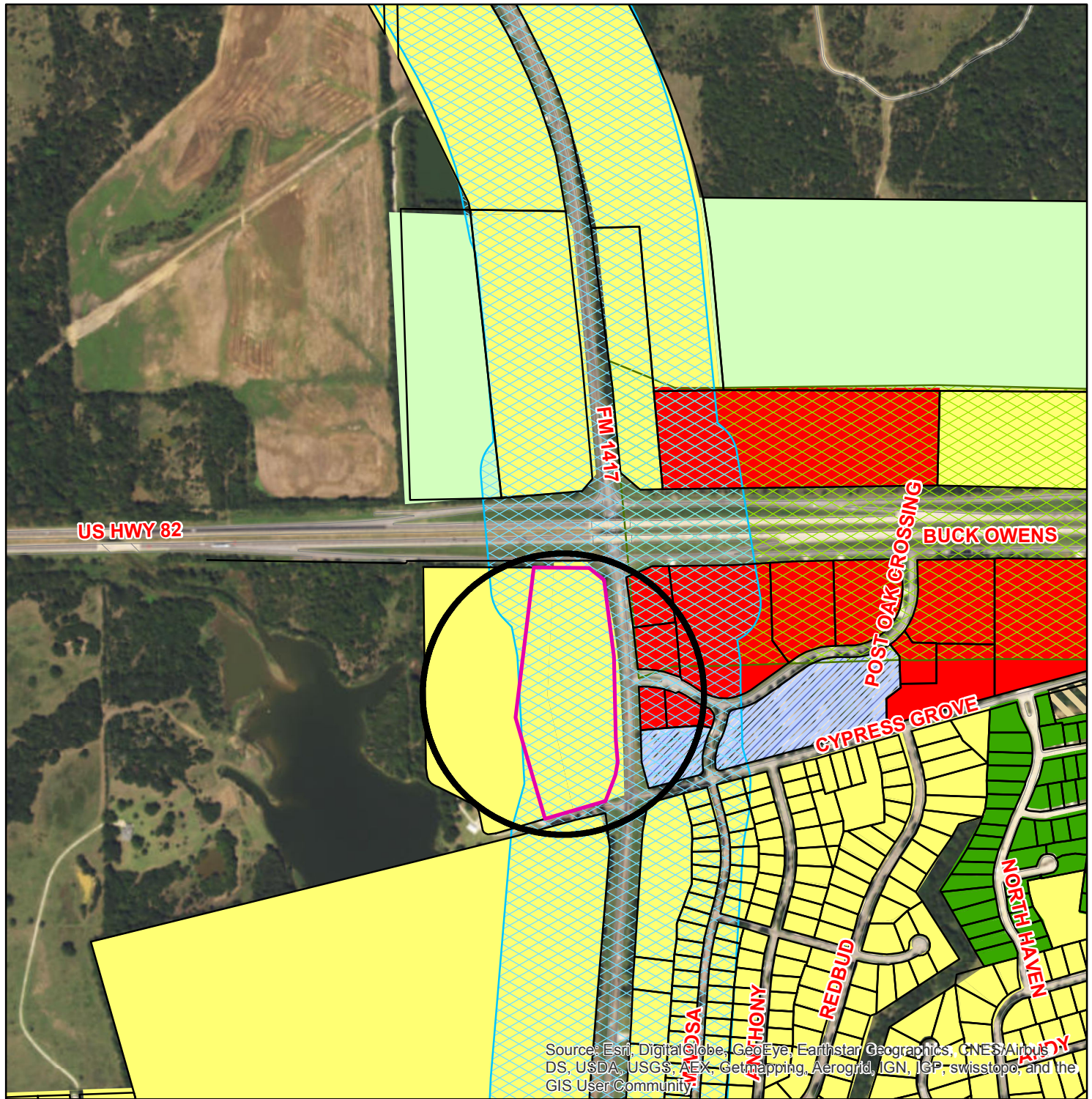


**3300-3400 Blks.N. FM 1417
(Heritage Parkway)**



1 in = 2,000 ft

City of Sherman, Texas
Developmental Services Department



3300-3400 Blks. N. FM 1417 (Heritage Parkway)

Legend

- CountyParcels_Buffer
- ShermGIS.DBO.CountyParcels.selection

Special Districts Overlay

- Arts and Cultural District
- Bialock Commercial Overlay District
- Central Business District
- College Park District
- Downtown Overlay District
- Historic Preservation District

Transportation Corridor Zoning Districts

- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

Unknown

- BIP Bialock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing District
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District



City of Sherman, Texas
Developmental Services Department

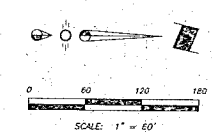
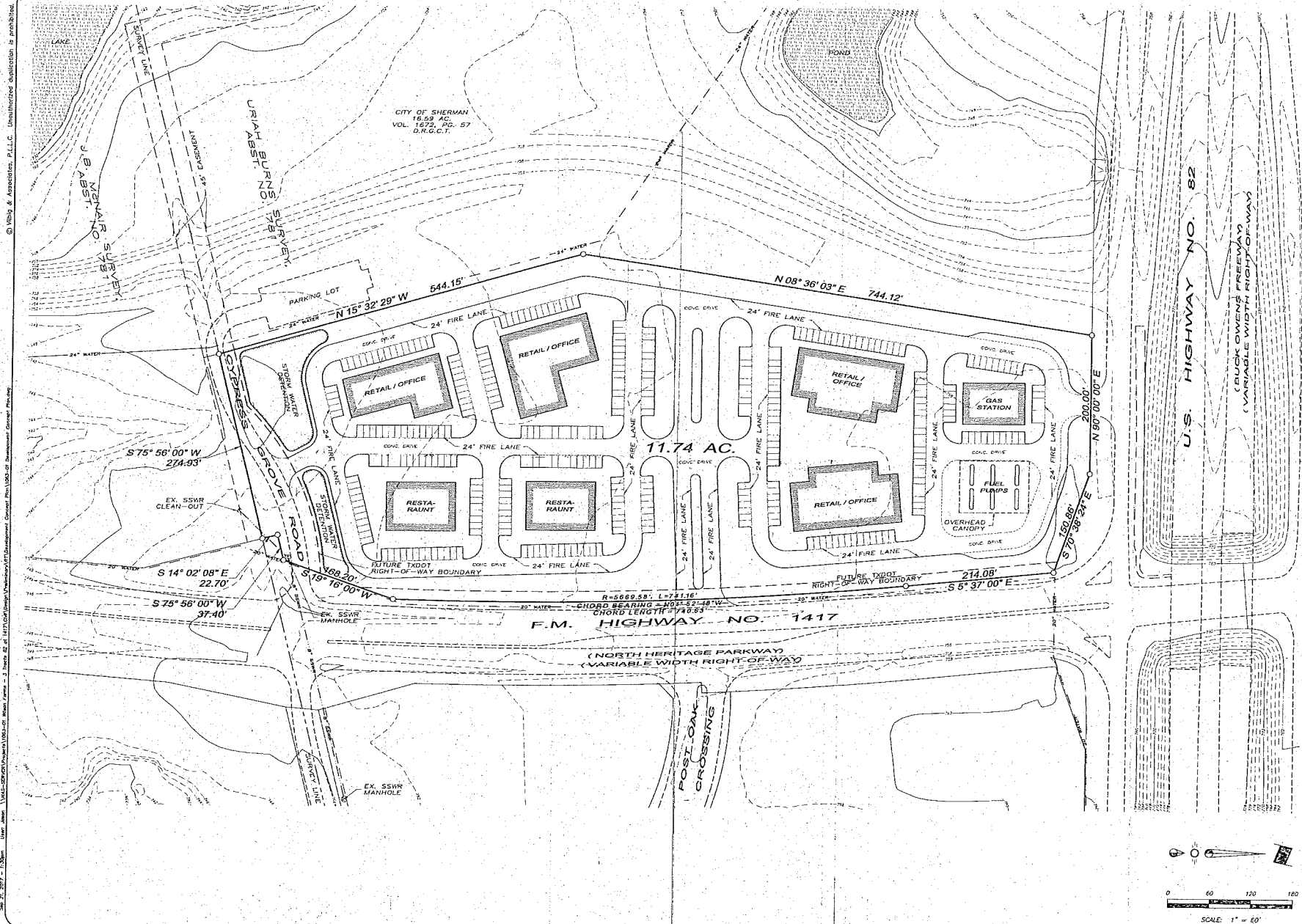


1 in = 700 ft

3300-3400 Blks. N. FM 1417
(Heritage Parkway)



Dec 27, 2017 = 1:30pm User: jason V:\GIS-SHERMAN\Projects\1805-01 Wilson Farms - 2 Sheets of 1805-01 Wilson Farms\1805-01 Wilson Farms - 2 Sheets.dwg Plot Date: 12/27/2017 1:30pm Plot User: jason V:\GIS-SHERMAN\Projects\1805-01 Wilson Farms - 2 Sheets of 1805-01 Wilson Farms\1805-01 Wilson Farms - 2 Sheets.dwg Plot Date: 12/27/2017 1:30pm Plot User: jason



VILBIG & ASSOCIATES, P.L.L.C.
CONSULTING ENGINEERS & SURVEYORS
517 N. WOODWARD, DENVER, TEXAS 75226
TEL: 214.766.1111
FAX: 214.766.1112
TXS ENGINEERING FIRM # 1-5814

THIS DOCUMENT IS RELEASED
FOR REVIEW UNDER THE
INTERIM REVIEW OF THE
MAY 11, 2016, IT IS NOT TO
BE USED FOR ANY PURPOSES
OTHER THAN FOR THE PROJECT
FOR WHICH IT WAS PREPARED.

WILSON FARMS
CITY OF SHERMAN, GRAYSON COUNTY, TX

DEVELOPMENT
CONCEPT PLAN

SUBMITTAL #:	1805-01
SUBMITTAL #:	1805-01
SUBMITTAL #:	1805-01
DESIGN: DAY	DRYING: JMC
DESIGN: DAY	DRYING: JMC
SCALE: 1" = 60'	SCALE: 1" = 60'
DATE: 12/27/2017	DATE: 12/27/2017

SHEET
OF 15

STAFF REVIEW LETTER

October 12, 2017

Joe Wilson
14 Harpers Ferry
Richardson, TX 75080

Vilbig & Associates, PLLC
517 W. Woodard
Denison, TX 75020

Dear Applicants,

The request for a zone change and conceptual site plan approval for the property located in the 3300-3400 blocks of North FM 1417 (Heritage Parkway) has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, October 17, 2017 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

Zoning:

1. All aspects of the C-1 (Retail Business) District, the O-1.1 (FM 1417 Overlay) District, the screening ordinance, the sign ordinance and the Commercial Tree and Landscaping Ordinance must be followed.
2. The site plan is conceptual and will require additional site plan approval before development begins.
3. Review the zoning and development ordinance for additional requirements.
4. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering:

5. Platting of the property is required.
6. Water Pro-Rata will be due at the time of development.
7. Sewer shall be extended to serve development. Sewer capacity shall be verified for proposed use.
8. Internal water and sewer lines will be privately owned and maintained.
9. Drive approaches and sidewalks must conform to City of Sherman and TxDOT standards and a permit is required from City of Sherman Engineering Department.
10. The location of the trash receptors must be approved by the Public Works Department.
11. Privately owned and maintained detention in accordance with City criteria will be required as site develops.
12. All requirements of the Floodplain Ordinance should be followed.
13. Verify fire lane requirements with Fire Marshall.
14. Final site plans, utility, drainage, and grading plan shall be approved by the City Engineering Department.
15. Entrances/Exits off of F.M. 1417 and U.S. Hwy. 82 Service Road will be Right-in, Right-out only.
16. Additional Right-of-Way will be required due to F.M. 1417 expansion.

Any other changes made to the site plan prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

You are hereby notified to be present, either in person or by your authorized representative to present your request on the date and time stated above.

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

Respectfully,

A handwritten signature in black ink that reads "Scott Shadden". The signature is fluid and cursive, with the first name "Scott" and last name "Shadden" clearly legible.

Scott Shadden
Secretary, Planning and Zoning Board and Board of Adjustment

CC: Robby Hefton, City Manager
Mark Gibson, Director of Utilities
Clint Philpott, P.E., Director of Engineering
Amber Doan, Engineering Coordinator

Danny Fuller, Fire Marshal
Brandon Shelby, City Attorney
Steve Ayers, Asst. City Manager



**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 10.

Meeting Date: 10/17/2017

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

Clay Mahone, Chairman

Kyle Patterson, Vice-Chairman

Joe Gilbert, Commissioner

Eric Elliott, Commissioner

Sean Vanderveer, Commissioner

Shawn Davis, Commissioner

Jeff Adams, Commissioner

David Downtain, Commissioner

Trish Bridges, Commissioner

Requested Action/Proposed Use:

3300-3400 BLOCKS OF N. FM 1417 (HERITAGE PARKWAY)

The request of Joe Wilson (Owner) and Vilbig and Associates, PLLC (Civil Engineer) concerning the property located in the 3400 Block of North FM 1417 (Heritage Parkway), being 11.74 acres in the Uriah Burns Survey, Abstract No. 121, as follows:

Planning and Zoning Board

Zone change and conceptual site plan approval under Ordinance No. 2280, Section 12, from an R-1 (One Family Residential) District to a C-1 (Retail Business) District.

Background:

The property is located in the 3300-3400 blocks of North FM 1417 (Heritage Parkway); the southwest corner of FM 1417 and U.S. Highway 82. The owner would like to change the zoning on the property to a C-1 (Retail Business) District for commercial development. The site plan is conceptual and will require additional site plan approval before development.

Adjacent Zoning:

R-A (Single Family Agricultural) District

R-1 (One Family Residential) District

C-1 (Retail Business) District

Origination:

Joe Wilson (Owner)

Vilbig and Associates, PLLC (Civil Engineer)

Master Plan Designation:

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

Number of notices mailed:

4

Objections Received:

0

Attachments

Location Map

Zoning Map

Zoning Sign Photo

Conceptual Site Plan

Staff Review Letter



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.6.

Meeting Date: 11/06/2017

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6077

Amending Section 12, Ordinance No. 2280, so as to Include Certain Properties within the C-1 (Retail Business) District in the 3500-3600 blocks of North F.M. 1417 (Heritage Parkway), being 28.86 acres in the Uriah Burns Survey, Abstract No. 121 (Joe Wilson, Owner; and Vilbig and Associates, PLLC, Civil Engineer/Surveyor)

Issue:

To consider the request of Joe Wilson (Owner) and Vilbig and Associates, PLLC (Civil Engineer/Surveyor) concerning the property located in the 3500-3600 blocks of North F.M. 1417 (Heritage Parkway), being 28.86 acres in the Uriah Burns Survey, Abstract No. 121, for a zone change from an R-A (Single Family Agricultural) District and R-1 (One Family Residential) District to a C-1 (Retail Business) District

Background:

The property is located in the 3500-3600 blocks of North F.M. 1417 (Heritage Parkway); the northwest corner of F.M. 1417 and U.S. Highway 82. The owner would like to change the zoning on the property to a C-1 (Retail Business) District for commercial development. The site plan is conceptual and will require additional site plan approval before development.

Origination:

Joe Wilson (Owner)
Vilbig and Associates, PLLC (Civil Engineer/Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the October 17, 2017 regular meeting, the Planning and Zoning Board voted 8/0 to recommend to the City Council that the zone change be approved subject to the Staff Review Letter.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6077

Location Map

Zoning Map

Zoning Sign Photo

Conceptual Site Plan

Staff Review Letter

P&Z Communication

ORDINANCE NO. 6077

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTIES WITHIN THE C-1 (RETAIL BUSINESS) DISTRICT IN THE 3500-3600 BLOCKS OF NORTH F.M. 1417 (HERITAGE PARKWAY), BEING 28.86 ACRES IN THE URIAH BURNS SURVEY, ABSTRACT NO. 121 (JOE WILSON, OWNER; AND VILBIG AND ASSOCIATES, PLLC, CIVIL ENGINEER/SURVEYOR); 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.

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

SECTION 1. That, from and after the passage of this ordinance, the following described property shall be in the C-1 (Retail Business) District in the 3500-3600 blocks of North F.M. 1417 (Heritage Parkway), and that Section 12, Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

SITUATED in the County of Grayson, State of Texas, and being a part of the Uriah Burns Survey, Abstract No. 121, and being a part of the 66.253 ac. tract of land conveyed to Joseph E. Wilson, Jr. by Lucile Schleuse Wilson and husband, Joe E. Wilson by Deed dated February 5, 1974 and recorded in Volume 1273, Page 45, Deed Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a point at the Northwest corner of both said Wilson 66.253 ac. and the herein described tract;

THENCE South 87 deg. 24 min. 13 sec. East, with the North line of said Wilson 66.253 ac., a distance of 853.98 ft. to a point in the West right-of-way line of F. M. Highway No. 1417, at the Northeast corner of the herein described tract;

THENCE Southerly, with the West right-of-way line of said F. M. Hwy. 1417 and with a curve to the right, having a radius of 2,804.79 ft. and a central angle of 0 deg. 49 min. 14 sec. (chord bears South 06 deg. 01 min. 37 sec. East, 40.16 ft.), an arc distance of 40.16 ft. to a point at the end of said curve;

THENCE South 05 deg. 37 min. 00 sec. East, continuing with the West right-of-way line of said F. M. Hwy. 1417, a distance of 587.90 ft. to an angle point;

THENCE South 01 deg. 48 min. 09 sec. East, continuing with the West right-of-way line of said F. M. Hwy. 1417, a distance of 300.67 ft. to an angle point;

THENCE South 05 deg. 37 min. 00 sec. East, continuing with the West right-of-way line of said F. M. Hwy. 1417, a distance of 412.72 ft. to a point at the intersection of the West right-of-way line of said F. M. Hwy. 1417 with the North right-of-way line of U. S. Highway No. 82, at the Southeast corner of the herein described tract;

THENCE South 71 deg. 12 min. 52 sec. West, with the North right-of-way line of said U. S. Hwy. 82, a distance of 155.27 ft. to an angle point;

THENCE West, continuing with the North right-of-way line of said U. S. Hwy. 82, a distance of 330.00 ft. to an angle point;

THENCE South 86 deg. 10 min. 11 sec. West, continuing with the North right-of-way line of said U. S. Hwy. 82, a distance of 449.10 ft. to a point in the West line of said Wilson 66.253 ac., at the Southwest corner of the herein described tract;

THENCE North 01 deg. 33 min. 25 sec. West, with the West line of said Wilson 66.253 ac., a distance of 1,455.50 ft. to the **PLACE OF BEGINNING and containing 28.86 ACRES of land**.....

SECTION 2. That this ordinance shall not become effective until entered upon the official zoning map as provided in Section 12, Ordinance No. 2280.

SECTION 3. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. 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 _____, 2017.

ADOPTED on this the _____ day of _____, 2017.

EFFECTIVE DATE on this the _____ day of _____, 2017.

CITY OF SHERMAN, TEXAS

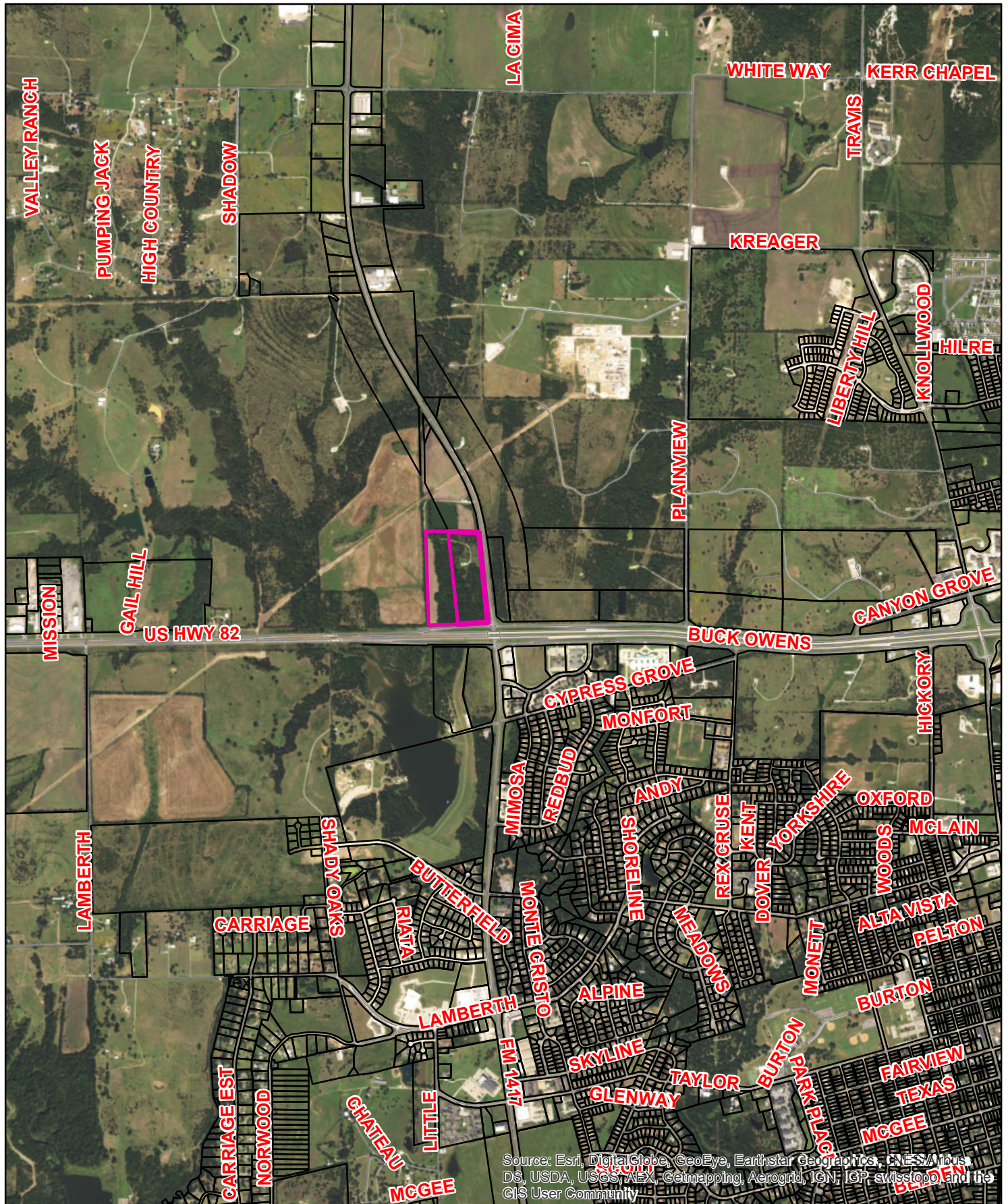
BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY



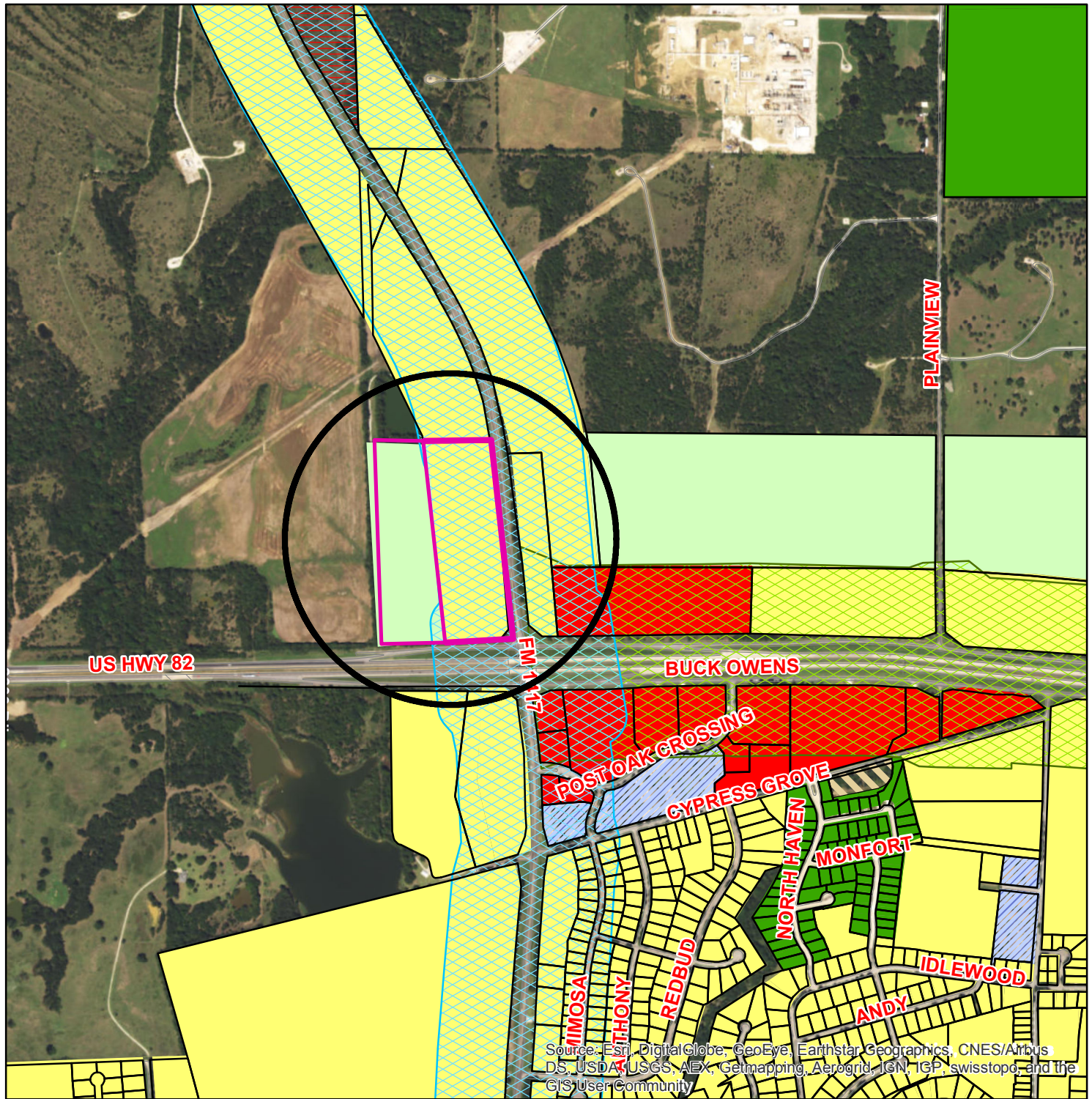
Sherman
CLASSIC TOWN. BROAD HORIZON.

**3500-3600 Blks.N. FM 1417
(Heritage Parkway)**



1 in = 2,000 ft

City of Sherman, Texas
Developmental Services Department



Zoning - 3500-3600 Blks. N. FM 1417 (Heritage Parkway)

Legend

- CountyParcels_Buffer
- ShermGIS.DBO.CountyParcels.selection
- Special Districts Overlay**
 - Arts and Cultural District
 - Bialock Commercial Overlay District
 - Central Business District
 - College Park District
 - Downtown Overlay District
 - Historic Preservation District

Transportation Corridor Zoning Districts

- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691
- Unknown
- BIP Bialock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing District
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District



City of Sherman, Texas
Developmental Services Department

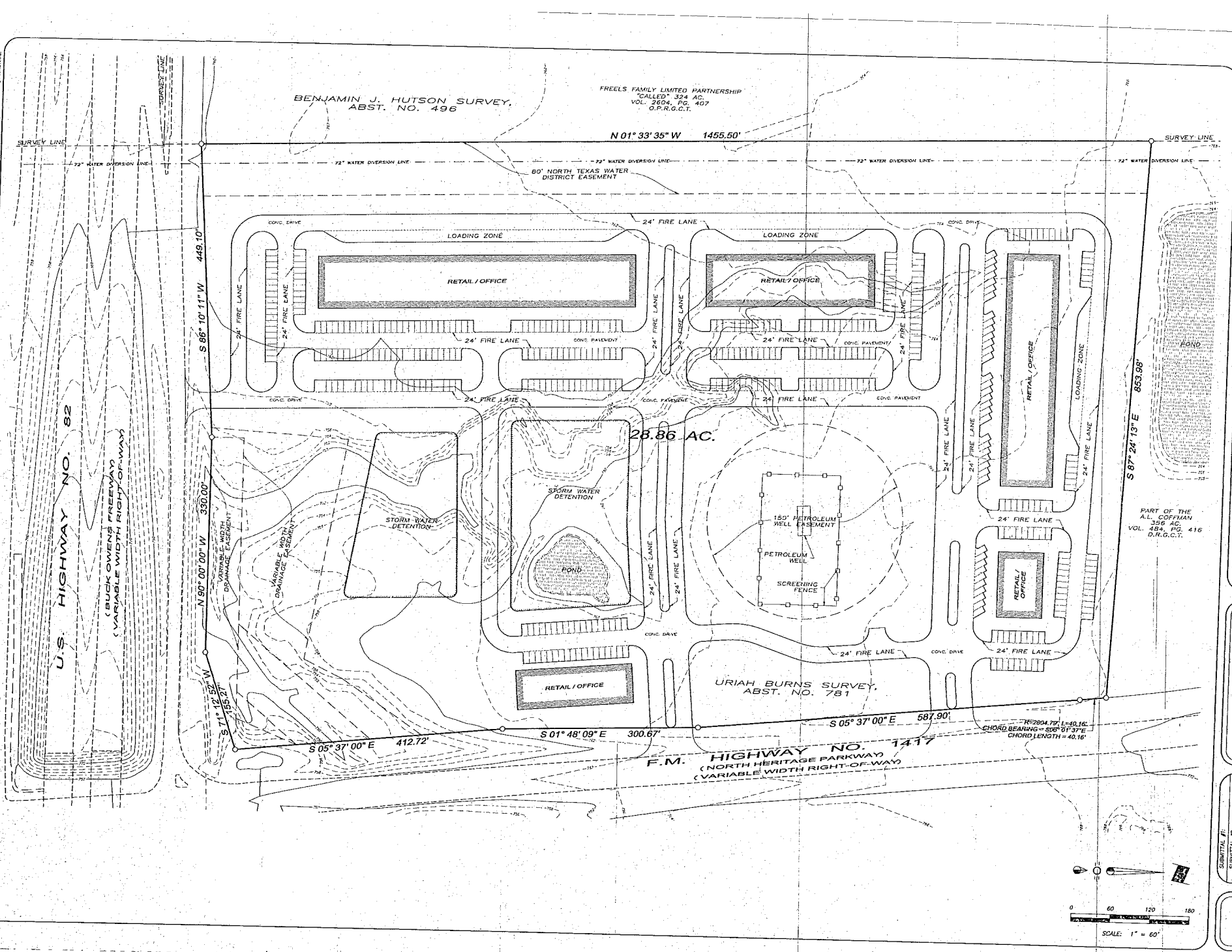


NOT TO SCALE

1 in = 1,000 ft

3500-3600 Blks. N. FM 1417
(Heritage Parkway)





VILBIG & ASSOCIATES, P.L.L.C.
 CONSULTING ENGINEERS & SURVEYORS
 917 W. WOODWARD, DENVER, CO 80202
 (303) 733-7333

THIS DOCUMENT IS RELEASED
 INTO THE PUBLIC DOMAIN FOR THE
 AUTHORITY OF LAND AND
 WATER RESOURCES ON
 JANUARY 13, 2017, FOR USE TO
 BE USED FOR CONSTRUCTION.

WILSON FARMS
 CITY OF SHERMAN, OKLAHOMA

**DEVELOPMENT
 CONCEPT PLAN**

SUBMITTAL #1	DATE
SUBMITTAL #2	DATE
SUBMITTAL #3	DATE
DESIGN: BAW	DATE
CHECKED: BAW	DATE
SCALE	

SHEET
 OF 15

STAFF REVIEW LETTER

October 12, 2017

Joe Wilson
14 Harpers Ferry
Richardson, TX 75080

Vilbig & Associates, PLLC
517 W. Woodard
Denison, TX 75020

Dear Applicants,

The request for a zone change and conceptual site plan approval for the property located in the 3500-3600 blocks of North FM 1417 (Heritage Parkway) has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, October 17, 2017 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

Zoning:

1. All aspects of the C-1 (Retail Business) District, the O-1.1 (FM 1417 Overlay) District, the screening ordinance, the sign ordinance and the Commercial Tree and Landscaping Ordinance must be followed.
2. The site plan is conceptual and will require additional site plan approval before development begins.
3. Review the zoning and development ordinance for additional requirements.
4. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering:

5. Platting of the property is required.
6. Water and Sewer shall be extended to serve development. Sewer capacity shall be verified for proposed use.
7. Off-site sewer will be required.
8. Internal water and sewer lines will be privately owned and maintained.
9. Drive approaches and sidewalks must conform to City of Sherman and TxDOT standards and a permit is required from City of Sherman Engineering Department.
10. The location of the trash receptors must be approved by the Public Works Department.
11. Privately owned and maintained detention in accordance with City criteria will be required as site develops.
12. Verify fire lane requirements with Fire Marshall.
13. Final site plans, utility, drainage, and grading plan shall be approved by the City Engineering Department.
14. Entrances/Exits off of U.S. Hwy. 82 Service Road will be Right-in, Right-out only.
15. Additional Right-of-Way may be required due to F.M. 1417 expansion.

Any other changes made to the site plan prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

You are hereby notified to be present, either in person or by your authorized representative to present your request on the date and time stated above.

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

Respectfully,

A handwritten signature in black ink that reads "Scott Shadden". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott Shadden
Secretary, Planning and Zoning Board and Board of Adjustment

CC: Robby Hefton, City Manager
Mark Gibson, Director of Utilities
Clint Philpott, P.E., Director of Engineering
Amber Doan, Engineering Coordinator

Danny Fuller, Fire Marshal
Brandon Shelby, City Attorney
Steve Ayers, Asst. City Manager



**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 11.

Meeting Date: 10/17/2017

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

Clay Mahone, Chairman

Kyle Patterson, Vice-Chairman

Joe Gilbert, Commissioner

Eric Elliott, Commissioner

Sean Vanderveer, Commissioner

Shawn Davis, Commissioner

Jeff Adams, Commissioner

David Downtain, Commissioner

Trish Bridges, Commissioner

Requested Action/Proposed Use:

3500-3600 BLOCKS N. FM 1417 (HERITAGE PARKWAY)

The request of Joe Wilson (Owner) and Vilbig and Associates, PLLC (Civil Engineer) concerning the property located in the 3500-3600 Blocks North FM 1417 (Heritage Parkway), being 28.86 acres in the Uriah Burns Survey, Abstract No. 121, as follows:

Planning and Zoning Board

Zone change and conceptual site plan approval under Ordinance No. 2280, Section 12, from an R-A (Single Family Agricultural) District and R-1 (One Family Residential) District to a C-1 (Retail Business) District.

Background:

The property is located in the 3500-3600 blocks of North FM 1417 (Heritage Parkway); the northwest corner of FM 1417 and U.S. Highway 82. The owner would like to change the zoning on the property to a C-1 (Retail Business) District for commercial development. The site plan is conceptual and will require site plan approval before development.

Adjacent Zoning:

R-1 (One Family Residential) District

R-A (Single Family Agricultural) District

Origination:

Joe Wilson (Owner)

Vilbig and Associates, PLLC (Civil Engineer)

Master Plan Designation:

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

Number of notices mailed:

1

Objections Received:

0

Attachments

Location Map

Zoning Map

Zoning Sign Photo

Conceptual Site Plan

Staff Review Letter



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.7.

Meeting Date: 11/06/2017

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6078

Amending Section 12, Ordinance No. 2280, so as to Include Certain Properties within the C-1 (Retail Business) District in the 2600 block of North Travis Street and the 100-200 blocks of West McLain Street, being the proposed Lot 3 of the Replat of Lot 2R, McLain Addition (JKL Partners, LLC, Owners; BWG Architecture, Architect; and Underwood Drafting and Surveying, Surveyor)

Issue:

To consider the request of JKL Partners, LLC (Owners), BWG Architecture (Architect), and Underwood Drafting and Surveying, (Surveyor) concerning the property in the 2600 block of North Travis Street and the 100-200 blocks of West McLain Street, being the proposed Lot 3 of the Replat of Lot 2R, McLain Addition, for a zone change from an R-2 (Multi-Family Residential) District to a C-1 (Retail Business) District

Background:

The property is located in the 2600 block of North Travis Street and the 100-200 blocks of West McLain Street; the northwest corner of Travis and McLain Streets. The owners would like to change the zoning on the property to a C-1 (Retail Business) District to construct a 4,842 square foot, single-story brick veneer/stone office building on one of the lots. Nineteen parking spaces will be provided for the office. They are also requesting an exception to allow a six foot (6') wrought iron fence with privet shrubs for screening on the property.

Origination:

JKL Partners, LLC (Owners)
BWG Architecture (Architect)
Underwood Drafting and Surveying, (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the October 17, 2017 regular meeting, the Planning and Zoning Board voted 8/0 to recommend to the City Council that the zone change be approved subject to the Staff Review Letter.

Alternatives:

The City Council could deny the request.

Attachments

Ordinance No. 6078

Location Map

Zoning Map

Zoning Sign Photo

Site Plan

Elevations

Staff Review Letter

P&Z Communication

Letter from James & Susan Carroll

ORDINANCE NO. 6078

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 12, ORDINANCE NO. 2280, SO AS TO INCLUDE CERTAIN PROPERTIES WITHIN THE C-1 (RETAIL BUSINESS) DISTRICT IN THE 2600 BLOCK OF NORTH TRAVIS STREET AND THE 100-200 BLOCKS OF WEST MCLAIN STREET, BEING THE PROPOSED LOT 3 OF THE REPLAT OF LOT 2R, MCLAIN ADDITION (JKL PARTNERS, LLC, OWNERS; BWG ARCHITECTURE, ARCHITECT; AND UNDERWOOD DRAFTING AND SURVEYING, SURVEYOR); 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.

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

SECTION 1. That, from and after the passage of this ordinance, the following described property shall be in the C-1 (Retail Business) District in the 2600 block of North Travis Street and the 100-200 blocks of West McLain Street, and that Section 12, Ordinance No. 2280 is hereby amended so as to hereafter include the following described property:

BEING the proposed Lot 3, of the Replat of Lot 2R, McLain Addition

SECTION 2. That this ordinance shall not become effective until entered upon the official zoning map as provided in Section 12, Ordinance No. 2280.

SECTION 3. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. 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 _____, 2017.

ADOPTED on this the _____ day of _____, 2017.

EFFECTIVE DATE on this the _____ day of _____, 2017.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

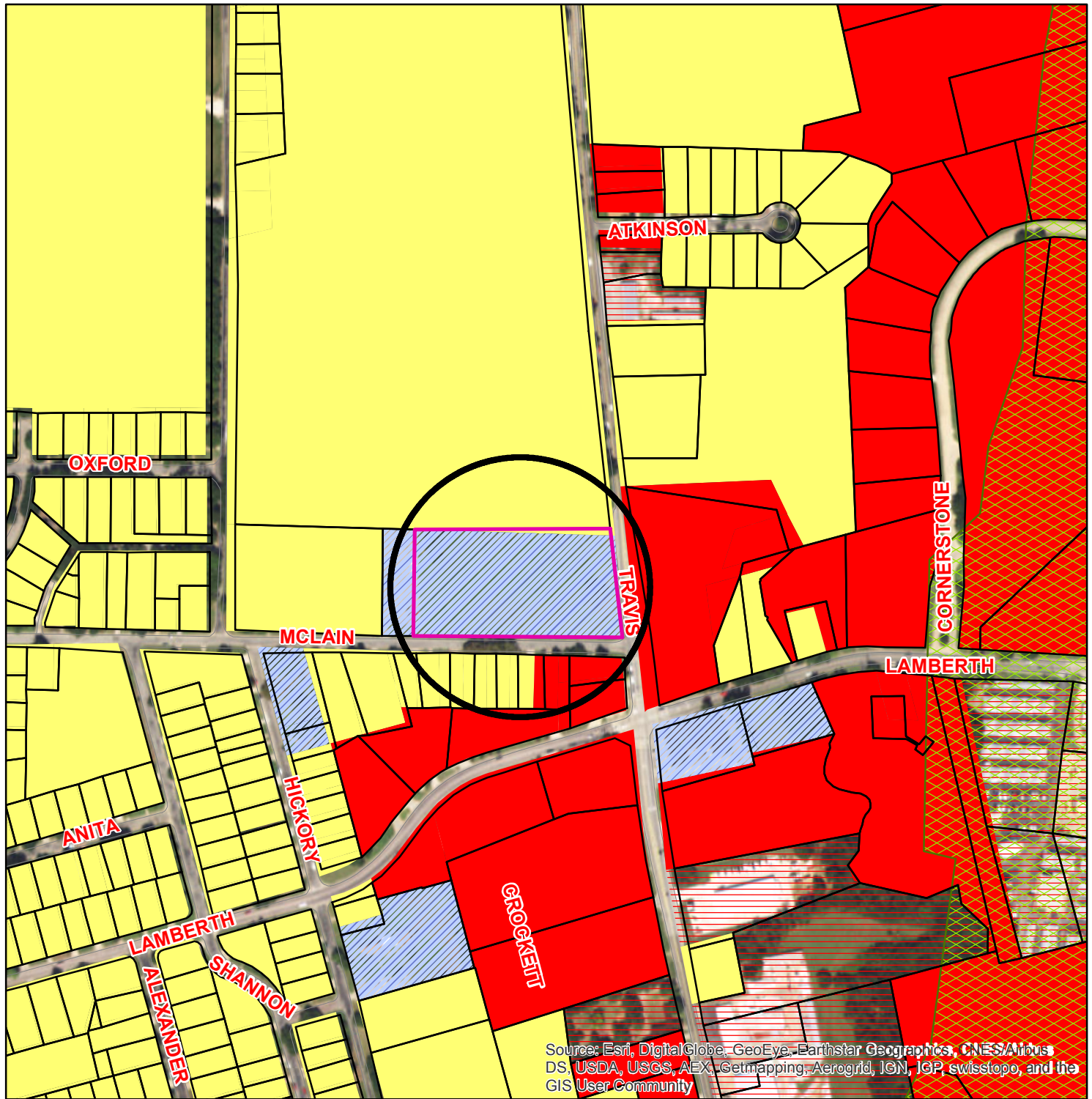


**2600 Blk. N. Travis &
100-200 Blks. W. McLain**



1 in = 649 ft

City of Sherman, Texas
Developmental Services Department



Zoning - 2600 Blk. N. Travis & 100-200 Blks. W. McLain

Legend

- CountyParcels_Buffer
- ShermGIS.DBO.CountyParcels_selection
- Special Districts Overlay**
 - Arts and Cultural District
 - Blalock Commercial Overlay District
 - Central Business District
 - College Park District
 - Downtown Overlay District
 - Historic Preservation District

Transportation Corridor Zoning Districts

- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691
- Unknown**
 - BIP Blalock Industrial Park
 - C-1 Retail Business District
 - C-2 General Commercial District
 - CO Office District
 - Lakes
 - M-1 Light Manufacturing District
 - M-1.5 Medium Manufacturing District
 - M-2 Heavy Manufacturing District
 - MH Manufacturing Housing District
 - R-1 One Family Residential District
 - R-2 Multi-Family Residential District
 - R-A Single Family Agricultural District
 - SF-1 Single Family Residential District



City of Sherman, Texas
Developmental Services Department



NOT TO SCALE

1 in = 360 ft

2600 Blk. N. Travis



100-200 Blks. W. McLain





bwg architecture

P.O. Box 923
Van Alstyne, TX 75495
(903) 815-9273

www.bwgarchitecture.com

© B.W. Green, LLC

Bruce V. Green, Architect
Texas: 18,293
Oklahoma: 01802



project address:

REPLAT
LOT 2R
McLAIN ADDITION

LOTS 2R, 3 & 4

project owner:

JEFF LIGHTFOOT

project description:

A NEW OFFICE
BUILDING

consultants:

CIVIL:

STRUCTURAL:

M.P.:

project team:

approved by: BWG

designed by: BWG

checked by: BWG

drafted by: BWG

project issue date:

00

project status:

DESIGN DEVELOPMENT

project number:

15026

revisions:

Rev.	Description	Date

sheet name:

SITE

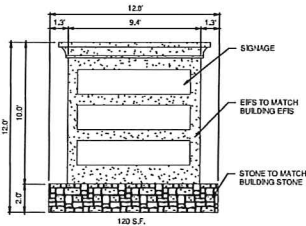
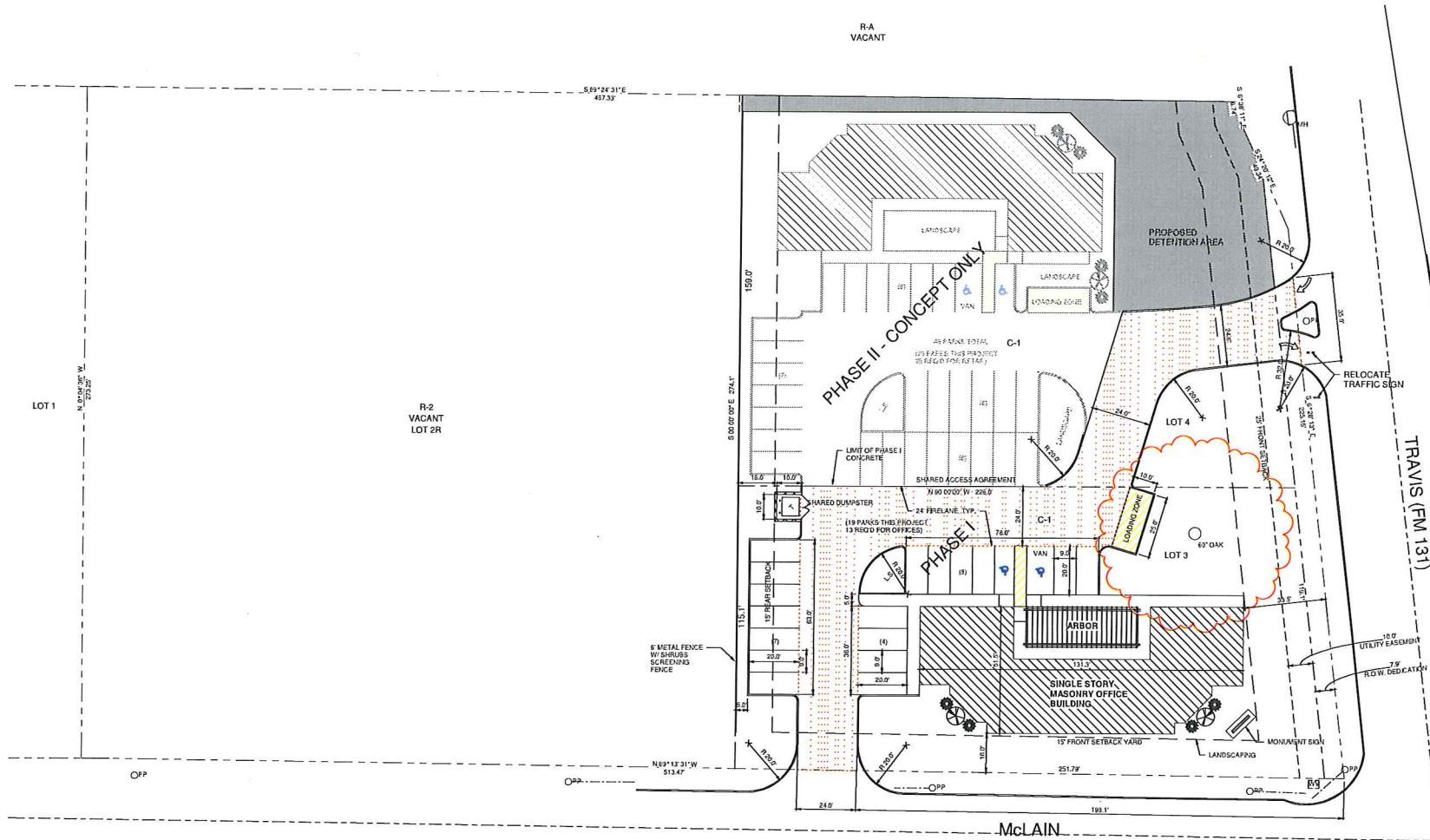
sheet issue date:

9/25/17

A-1.0

D:\BKG\PROJECTS\COMMERCIAL\Lightfoot\Lightfoot Office Bldg 2R.dwg 9/25/2017 5:46:05 PM

R-A
VACANT



② MONUMENT SIGN
1/4" = 1'-0"

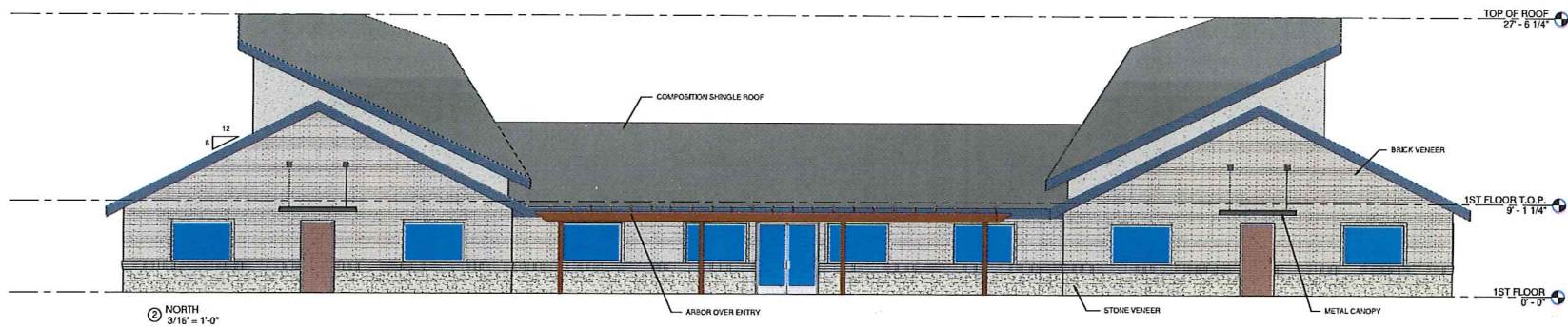
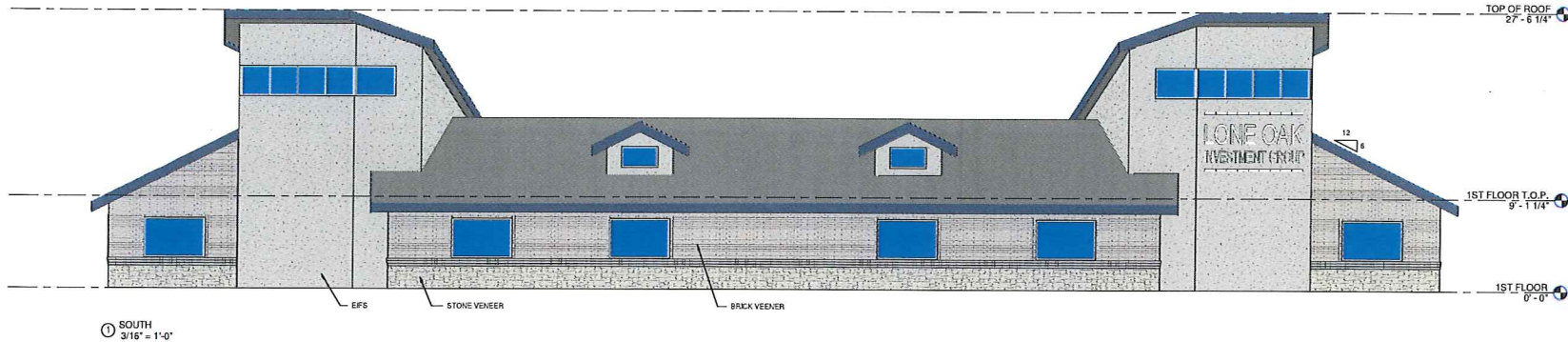


SCREENING FENCE DETAIL

① SITE PLAN
1" = 20'-0"

SITE DATA TABULATION

LOT 3
SITE AREA: 35,973.2 S.F. 0.800 ACRES
BUILDING AREA: 4842 S.F. 11.04%
PARKING AREA: 10,908 S.F. (11,644 S.F. W/ LOT 4 SHARED DRIVE) 42%
LANDSCAPE AREA: 10,223.2 S.F. 39.4%
PARKING REQUIRED: 1,200 - 1,400 DEPENDING ON TENANT USE
4842/200 = 2.5 4842/200 = 1.2
PARKING PROVIDED: 18 PARKS - 1254
EXISTING ZONING FOR LOT 3 & LOT 4 - R2
PROPOSED ZONING FOR LOT 3 & LOT 4 - C1
LOT 3 ZONING REMAINS AS R2



bwg architecture

P.O. Box 923
Van Alstyne, TX 75495
(903) 815-9273

www.bwgarchitecture.com

© B.W. Green, LLC

Erice W. Green, Architect

Texas: 18,293

Oklahoma: 01103



project address:

REPLAT
LOT 2R
McLAIN ADDITION

LOTS 2R, 3 & 4

project owner:

JEFF LIGHTFOOT

project description:

A NEW OFFICE
BUILDING

consultants:

CIVIL:

STRUCTURAL:

MEP:

project team:

approved by: BWG

designed by: BWG

checked by: BWG

drafted by: BWG

project issue date:

00

project status:

DESIGN DEVELOPMENT

project number:

15026

revisions:

Rev.	Description	Date

sheet name:

EXTERIOR
ELEVATIONS

sheet issue date:

8/29/17

A-3.0

D:\3RD ARCH PROJECTS\COMMERCIAL\Lightfoot\Office Bldg 17.dwg 9/1/17 9/20/2017 4:48:28 PM

STAFF REVIEW LETTER

October 12, 2017

Jeff Lightfoot
1710 W. Lamberth Rd.
Sherman, TX 75092

BWG Architecture
PO Box 923
Van Alstyne, TX 75495

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

Dear Applicants,

The request for site plan approval for an office for the property located in the 2600 Block of North Travis Street and the 100-200 Blocks of West McLain Street has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, October 17, 2017 at 5:00 P.M., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

Zoning:

1. All aspects of the C-1 (Retail Business) District, the sign ordinance, the screening ordinance and the Commercial Tree and Landscaping Ordinance must be followed.
2. Fire lanes and codes shall be coordinated with the Fire Marshal (903.892.7267).
3. The exterior finish on all buildings must meet the masonry requirements.
4. Screening shall be provided and maintained abutting any residentially zoned property.
5. All parking shall be on private property and shall not encroach into Travis Street or West McLain Street right-of-way.
6. Parking and service driveways are permitted on paved surfaces only; concrete or asphalt.
7. A parking space is considered to be 9'x20'.
8. The setback for the monument sign shall be 25' from the Travis Street and McLain Street property lines.
9. The trash dumpster will need to be located inside the main building area.
10. The mutual access agreement shall be filed at the Grayson County Courthouse by separate instrument before a building permit will be issued.
11. An exception will need to be granted if the parking ratio cannot be met for the proposed use on the lot before a Certificate of Occupancy Permit will be issued.
12. Review the zoning and development ordinance for additional requirements.
13. Site plan approval is valid for a period of one year, if progress has not been made within that time period; resubmission to the Planning & Zoning Commission is required.

Engineering:

14. Platting of the property is required.
15. Drive approaches and sidewalks must conform to City of Sherman and TxDOT standards and a permit is required from City of Sherman Engineering Department.
16. The location of trash receptors must be approved by the Public Works Department.

17. Privately owned and maintained detention in accordance with City criteria is required. Engineering plans shall be provided to the City of Sherman Engineering Department for review and approval.
18. Verify fire lane requirements with Fire Marshall.
19. Final site plans, utility, drainage and grading plan shall be provided and approved by the City Engineering Department.
20. Water and Sewer Pro-Rata will be due at the time of development.
21. Internal water and sewer lines will privately owned and maintained.

Any other changes made to the site plan prior to the final fulfillment of the conditions of the staff review, must be considered minor by the staff, as to not require resubmission to the Planning & Zoning Commission.

You are hereby notified to be present, either in person or by your authorized representative to present your request on the date and time stated above.

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

Respectfully,

A handwritten signature in black ink that reads "Scott Shadden". The signature is fluid and cursive, with the first name "Scott" and last name "Shadden" clearly legible.

Scott Shadden
Secretary, Planning and Zoning Board and Board of Adjustment

CC: Robby Hefton, City Manager
Mark Gibson, Director of Utilities
Clint Philpott, P.E., Director of Engineering
Amber Doan, Engineering Coordinator

Danny Fuller, Fire Marshal
Brandon Shelby, City Attorney
Steve Ayers, Asst. City Manager



**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 15.

Meeting Date: 10/17/2017

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

Clay Mahone, Chairman

Kyle Patterson, Vice-Chairman

Joe Gilbert, Commissioner

Eric Elliott, Commissioner

Sean Vanderveer, Commissioner

Shawn Davis, Commissioner

Jeff Adams, Commissioner

David Downtain, Commissioner

Trish Bridges, Commissioner

Requested Action/Proposed Use:

2600 BLOCK N. TRAVIS STREET & 100-200 BLOCKS W. MCLAIN STREET

The request of JKL Partners, LLC (Owners), BWG Architecture (Architect) and Underwood Drafting and Surveying, (Surveyor) concerning the property in the 2600 Block of North Travis Street and the 100-200 Blocks of West McLain Street, being the proposed Lot 3 of the Replat of Lot 2R, McLain Addition, as follows:

Board of Adjustments

Exception and site plan approval under Ordinance No. 2280, Section 7, Subsection (13)(b) to allow a natural screening (shrubs) in lieu of the required 6' screening device in a C-1 (Retail Business) District.

Planning and Zoning Board

Zone change and site plan approval for an office under Ordinance No. 2280, Section 12, from an R-2 (Multi-family Residential) District to a C-1 (Retail Business) District.

Background:

The property is located in the 2600 Block of North Travis Street and the 100-200 Blocks of West McLain Street; the northwest corner of Travis and McLain Streets. The owners would like to change the zoning on the property to a C-1 (Retail Business) District to construct a 4,842 square foot, single-story brick veneer/stone office building on one of the lots. Nineteen parking spaces will be provided for the office. They are also requesting an exception to allow a 6 foot wrought iron fence with privet shrubs for screening on the property.

Adjacent Zoning:

R-1 (One Family Residential) District
R-2 (Multi-Family Residential) District
C-1 (Retail Business) District

Origination:

JKL Partners, LLC (Owners)
BWG Architecture (Architect)
Underwood Drafting and Surveying, (Surveyor)

Master Plan Designation:

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

Number of notices mailed:

19

Objections Received:

0

Attachments

Location Map
Zoning Map
Zoning Sign Photo
Site Plan
Elevations
Screening
Staff Review Letter
Letter from James & Susan Carroll

PLANNING AND ZONING BOARD
BUILDING INSPECTION DEPARTMENT

Telephone: (903) 892-7229

FAX: (903) 892-7274

September 28, 2017 James & Susan Carroll
PO Box 1123
Sherman, TX 75091

RECEIVED

OCT 11 2017

The Planning and Zoning Commission of the City of Sherman will hold a public hearing on the day of Tuesday, October 17, 2017 at 5:00 P.M. in the City Council Chambers, at 220 W. Mulberry, to hear the request of:

JKL Partners, LLC (Owners), BWG Architecture (Architect) and Underwood Drafting and Surveying, (Surveyor) concerning the property in the 2600 Block North Travis Street and the 100-200 Blocks of West McLain Street, being Lot 2, McLain Addition

The request is as follows:

Board of Adjustments

Exception and site plan approval under Ordinance No. 2280, Section 7, Subsection (13)(b) to allow a natural screening (shrubs) in lieu of the required 6' screening device in a C-1 (Retail Business) District.

Planning and Zoning Board

Zone change and site plan approval under Ordinance No. 2280, Section 12, from an R-2 (Multi-family Residential) District to a C-1 (Retail Business) District.

As a property owner within two hundred feet (200') of this property, you are invited to attend. You are not required to be present, but all interested parties wishing to speak should appear at the time and place stated above. If you can not attend the public hearing, but wish to have your views presented to the Board, you may do so in the space provided below or by a separate letter and mailed to:

Scott Shadden
Secretary, Planning and Zoning Board
P.O. Box 1106
Sherman, Texas 75091-1106


Secretary, Planning & Zoning Board

Scott, we are NOT OPPOSED to the above requested exception and zone change.

Jim and Susan Carroll (2625 N. TRAVIS/OWNERS)

Unless this notice is delivered in an envelope that has the "City of Sherman" logo and is affixed with postage as required by the U.S. Postal Service, it is NOT an official notice sent to you by the City of Sherman.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.8.

Meeting Date: 11/06/2017

Prepared By: Zachary Flores, Police Chief

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6079

Amending Chapter 8 of the Code of Ordinances, entitled "Offenses and Nuisances", Article 8.03, entitled "Offenses Involving Public Peace and Order", at Section 8.03.004, entitled "Right-of-Way Safety Regulations"; Providing for an Effective Date

Issue:

The City has received complaints about people walking in the roadway impeding traffic at busy intersections. Staff is concerned for the safety of both the people in the roadway and the drivers. Our current ordinances provide a penalty for this behavior, but have proven difficult to enforce.

Background:

Section 8.03.004 of the City of Sherman Code of Ordinances, entitled "Right-of-Way Safety Regulations", was adopted at the January 16, 2012 City Council meeting. The purpose of this article is to protect the health, safety and general welfare of the citizens of the city, and to assure the free, orderly and undisrupted movement of vehicles on public roads within the city. However, activity in and around the roadway continues to be an issue, especially in certain highly-congested areas. The proposed ordinance establishes intersections where the prohibition is expanded from the roadway to all of the right-of-way. In accordance with State law and City Ordinance, it continues to be a violation for a person to solicit within a roadway.

Origination:

City Manager

Financial Consideration:

None

Staff Recommendation:

The staff recommends adoption of the proposed ordinance to regulate solicitation in the public right-of-way.

Alternatives:

Council could elect not to pass the proposed ordinance, leaving Section 8.03.004 unchanged.

Attachments

Ordinance No. 6079

Illustration #1 - Intersection of US 75 & US 82

Illustration #2 - Intersection of US 75 & US 82

ORDINANCE NO. 6079

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 8 OF THE CODE OF ORDINANCES, ENTITLED “OFFENSES AND NUISANCES”, ARTICLE 8.03, ENTITLED “OFFENSES INVOLVING PUBLIC PEACE AND ORDER”, AT SECTION 8.03.004, ENTITLED “RIGHT-OF-WAY SAFETY REGULATIONS”; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER CLAUSE; 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, Section 552.007 of the Texas Transportation Code prohibits solicitation in the public right-of-way unless authorized to do so by the local authority having jurisdiction over the roadway; and

WHEREAS, the City Council of the City of Sherman finds that soliciting a ride, contribution, employment, or business from an occupant of a vehicle in the public right-of-way is hazardous to public safety and impedes the normal, orderly, and safe flow of traffic; and

WHEREAS, the City Council of the City of Sherman seeks to provide for the safety of its citizens by prohibiting transactions involving occupants of vehicles on public roads within the City of Sherman; and

WHEREAS, the City Council of the City of Sherman finds that passage of this ordinance will further the interest of the health, safety, and general welfare of the public;

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

SECTION 1. That Chapter 8, Article 8.03 of the Code of Ordinances of the City of Sherman, Texas, be and is hereby amended at Section 8.03.004 so that such section shall read as follows:

Sec. 8.03.004 Right-of-way safety regulations

The purpose of this article is to protect the health, safety and general welfare of the citizens of the city, to assure the free, orderly, undisrupted movement of vehicles on public roads within the city.

- ~~(1) A person may not stand in a roadway to solicit a ride, contribution, employment, or business from an occupant of a vehicle, unless such person is soliciting a charitable contribution and has been authorized to do so by the city's manager's office.~~

~~(2) The authorization described in subsection (1) shall be in writing and shall specify the organization that may solicit, the specific location of approved solicitation, and the hours such solicitation is authorized.~~

~~(3) An offense under this section is punishable by a fine not to exceed five hundred dollars (\$500.00) for each offense.~~

(1) Solicitation in the public right-of-way

- (a) A person may solicit for a commercial solicitation or for a charitable purpose in or upon the public right-of-way, except those areas prohibited in this article, provided such person has obtained a permit or is a member of an organization that has obtained a permit.
- (b) Solicitation in the public right-of-way shall be conducted only during the hours of daylight, that is one-half hour after sunrise and one-half hour before sunset.
- (c) It shall be unlawful for a person younger than eighteen (18) years of age to solicit in the public right-of-way.
- (d) It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the roadway unless the solicitor has been granted authorization pursuant to V.T.C.A Transportation Code 552.0071.
- (e) It shall be unlawful for a solicitor at any time to enter or remain in the traveled portion of the roadway of residential streets so that their presence impedes traffic flow.
- (f) It shall be unlawful for a person to solicit in the public right-of-way that is within one thousand (1000) feet of any public or private elementary or secondary school between the hours of 7:30 a.m. and 4:30 p.m. on days when such school is in session. The measurement of the distance shall be from the nearest property line of the public or private elementary or secondary school.
- (g) This Ordinance notwithstanding, standing in the roadway to solicit a ride, contribution, employment, or business from an occupant of a vehicle is prohibited under the Texas Transportation Code Section 552.007.

(2) Solicitation in specified public rights-of-way prohibited

- (a) It shall be unlawful for any person to solicit or to distribute commercial handbills, at any time, in the public rights-of-way, with or without a permit, within one thousand (1000) feet of the following intersections:

(i) *Buck Owens Freeway as it intersects with:*

- a. *Sam Rayburn Freeway*
- b. *Loy Lake Road*
- c. *Texoma Parkway*
- d. *Travis Street*

(ii) *Sam Rayburn Freeway as it intersects with:*

- a. *Heritage Parkway*
- b. *Lamar Street*
- c. *Houston Street*
- d. *Buck Owens Freeway*
- e. *Loy Lake Road*
- f. *Travis Street*

(iii) *Texoma Parkway as it intersects with:*

- a. *Taylor Street*
- b. *Buck Owens Freeway*

(iv) *Loy Lake Road as it intersects with:*

- a. *Sam Rayburn Freeway*
- b. *Buck Owens Freeway*
- c. *Taylor Street*

(v) *Travis Street as it intersects with:*

- a. *Sam Rayburn Freeway*
- b. *Taylor Street*
- c. *Buck Owens Freeway*

SECTION 2. That this ordinance shall take effect immediately from and after its passage and publication of the caption as required by law.

SECTION 3. That an offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances of the City of Sherman, as amended, in effect when the offense was committed; and the former law is continued in effect for this purpose.

SECTION 4. 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 5. That the provisions of this ordinance are servable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity of effectiveness of the remainder of the ordinance.

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

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

INTRODUCED on this the _____ day of _____, 2017.

ADOPTED on this the _____ day of _____, 2017.

EFFECTIVE DATE on this the _____ day of _____, 2017.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S SHELBY,
CITY ATTORNEY**







SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.9.

Meeting Date: 11/06/2017

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

ADOPTION OF ORDINANCES

Consider Adoption of Ordinance Numbers: 6072, 6073, 6074, 6075, 6076, 6077, 6078 and 6079

Issue:

- B. 1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6072**
Authorizing the Issuance of "CITY OF SHERMAN, TEXAS, TAX AND MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2017A"; Providing for the Payment of Said Certificates of Obligation by the Levy of an Ad Valorem Tax Upon All Taxable Property within the City and a Pledge of the Net Revenues of the City's Municipal Drainage Utility System; Specifying the Terms and Features of Such Certificates of Obligation; Resolving Other Matters Incident and Relating to the Issuance, Payment, Security, Sale, and Delivery of Said Certificates, Including the Approval and Execution of a Paying Agent/Registrar Agreement and the Approval and Distribution of an Official Statement; and Providing for an Effective Date
- B. 2. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6073**
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Tattoo Studio (Permanent Makeup) in a C-1 (Retail Business) District/Central Business District at 112 North Travis Street, being the North 22' of Lot 5 and the South 50' of Lot 8, Block 2, OTP Sherman (Glenn T. Nix, Jr., Owner; Sarah Groves and Stephanie Graves, Sculpted Brow & Lash Studio, Tenants); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00
- B. 3. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6074**
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow a Liquor Store in a C-2 (General Commercial) District/O-1 (75 & 82 Overlay) District at 2520 Texoma Parkway, being 0.69 acres in the Reuben Hendrix Survey, Abstract No. 504 (C Squared Automotive, Inc., Owner; Harry Dhesi, Texoma Liquor, Proposed Tenant; Mangrum Commercial, LLC, Representative; and Sartin & Associates, Inc., Surveyor); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00

- B. 4. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6075**
Amending Section 8, Subsection (5)(a), Ordinance No. 2280, so as to Grant a Specific Use Permit to Allow Patio Homes in an R-1 (One Family Residential) District in the 1400-1600 blocks of South F.M. 1417 (Heritage Parkway), being 4.08 acres in the Elizabeth Jones Survey, Abstract No. 625 (SSCGC Holdings, LLC, Owner; Joe Gilbert Construction, LLC, Prospective Buyer; and Vilbig and Associates, PLLC, Civil Engineer/Surveyor); Providing that this Specific Use Permit Shall be Granted Subject to Certain Conditions; Providing a Penalty Not to Exceed \$2,000.00
- B. 5. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6076**
Amending Section 12, Ordinance No. 2280, so as to Include Certain Properties within the C-1 (Retail Business) District in the 3300-3400 blocks of North F.M. 1417 (Heritage Parkway), being 11.74 acres in the Uriah Burns Survey, Abstract No. 121 (Joe Wilson, Owner; and Vilbig and Associates, PLLC, Civil Engineer/Surveyor)
- B. 6. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6077**
Amending Section 12, Ordinance No. 2280, so as to Include Certain Properties within the C-1 (Retail Business) District in the 3500-3600 blocks of North F.M. 1417 (Heritage Parkway), being 28.86 acres in the Uriah Burns Survey, Abstract No. 121 (Joe Wilson, Owner; and Vilbig and Associates, PLLC, Civil Engineer/Surveyor)
- B. 7. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6078**
Amending Section 12, Ordinance No. 2280, so as to Include Certain Properties within the C-1 (Retail Business) District in the 2600 block of North Travis Street and the 100-200 blocks of West McLain Street, being the proposed Lot 3 of the Replat of Lot 2R, McLain Addition (JKL Partners, LLC, Owners; BWG Architecture, Architect; and Underwood Drafting and Surveying, Surveyor)
- B. 8. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6079**
Amending Chapter 8 of the Code of Ordinances, entitled "Offenses and Nuisances", Article 8.03, entitled "Offenses Involving Public Peace and Order", at Section 8.03.004, entitled "Right-of-Way Safety Regulations"; Providing for an Effective Date
-



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

B.10.

Meeting Date: 11/06/2017

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

CONSENT AGENDA

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

Issue:

C. 5. * RESOLUTION NO. 6290

Authorizing Execution of a Professional Engineering Services Agreement with Freeman-Millican, Inc. for the Sherman Wastewater Treatment Plant Operations Building Addition and Remodel

C. 7. * RESOLUTION NO. 6292

Awarding a Bid to and Authorizing Execution of a Contract with Shipman Communications, Inc. for Two-Way Radio and Early Warning Siren Maintenance

C. 8. * RESOLUTION NO. 6293

Authorizing the Purchase of a 2017 Kubota S Series Tracked Skid Steer for the Park Maintenance Department from Six & Mango Equipment, LLP through the Texas Local Government Purchasing Cooperative (BuyBoard)

E. 1. * CHANGE ORDER NO. 2

Approving the Greater Texoma Utility Authority's Intent to Execute Change Order No. 2; Sherman Water Treatment Plant Expansion Project; H2O Innovation, Inc.; \$99,770.65 Increase

F. 1. * OTHER BUSINESS

Consider Request of True Options Pregnancy Center to Temporarily Close Certain Streets for the Second Annual "Turkey Trot 5K & Fun Run" on Saturday, November 18, 2017, with a Rain Date of Saturday, November 25, 2017

F. 4. * *OTHER BUSINESS*

Replat Approval of Part of Alcoholic Services Addition, Block 1, Lots 2R-A, 6R-A1 and 6R-A2, being all of Lot 2R in Block 1 of Helen Perkins Addition and all of Lot 6R-A, Block 1, Alcoholic Services Addition, containing 4.054 acres; Alcoholic Services of Texoma, Owners; and Preston Trail Land Surveying, LLC, Surveyor (1500 block of Baker Drive)

F. 5. * *OTHER BUSINESS*

Final Plat Approval of BAC Sherman RE Addition, being 4.643 acres in the J. Hendrix Survey, Abstract No. 503 and the W. Patterson Survey, Abstract No. 969; Buffalo Gap Street Properties, LLC, Owners; and Helvey-Wagner Surveying, Inc., Surveyor (4113 North Frisco Road)

F. 6. * *OTHER BUSINESS*

Replat Approval of Lot 2R, McLain Addition, a Replat of Lot 2 of McLain Addition, being 3.126 acres in the J.B. McAnair Survey, Abstract No. 763, also being Lot 2, McLain Addition; JKL Partners, LLC, Owners; and Underwood Drafting and Surveying, Surveyor (2600 block of North Travis Street and 100-200 blocks of West McLain Street)



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.1.

Meeting Date: 11/06/2017

Prepared By: Steve Ayers, Assistant City Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6286

Awarding a Bid to and Authorizing Execution of an Agreement with Crossland Construction, Inc., as Construction Manager-at-Risk (CMAR), for the Construction of Fire Station No. 4

Issue:

Awarding of services for Construction Manager-at-Risk for the construction of Fire Station No. 4

Background:

Sherman Fire Station No. 4 is located on the southeast corner of Highway 75 and Highway 1417. In order to better serve the south/southwest part of the City, including projected growth, the plan is to relocate Fire Station No. 4 to the east side of Northgate Drive in the Blalock Industrial Park.

At the September 9, 2017 meeting, the City Council approved a request to advertise for a Construction Manager-at-Risk (CMAR), which resulted in five responses. Based upon specific scoring criteria included in the bid solicitation, and one-on-one interviews with each respondent, City staff recommends awarding to Crossland Construction, Inc. of Prosper, Texas. As CMAR, Crossland Construction, Inc. will assume the risk of the construction of the new facility at a guaranteed maximum price.

Origination:

Fire-Rescue Services Department

Financial Consideration:

The Pre-Construction Phase fee for professional CMAR services will be \$5,500.00. The Construction Phase fee for professional CMAR services will be 3.5% of the Construction Phase total cost, which is estimated at approximately \$105,000.00. Both fees are included in funding available in the Capital Improvement Program Fund for this project.

Staff Recommendation:

It is recommended that the contract with Crossland Construction, Inc. for professional CMAR services relating to construction of the new Fire Station No. 4 be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6286

Draft AIA Agreement

Sample - General Conditions for Construction

Evaluation Scoring Summary

Location Map

RESOLUTION NO. 6286

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF AN AGREEMENT WITH CROSSLAND CONSTRUCTION, INC., AS CONSTRUCTION MANAGER-AT-RISK (CMAR), FOR THE CONSTRUCTION OF FIRE STATION NO. 4; 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 Crossland Construction, Inc. of Prosper, Texas, is hereby awarded an agreement to serve as Construction Manager-at-Risk (CMAR) for the construction of Fire Station No. 4, in accordance with all bid documentation attached hereto and incorporated herein for all purposes.

SECTION 2. That the City Manager is hereby authorized and directed, subject to all contract documents being completed and approved as to form and content by the City Attorney, to execute an agreement with Crossland Construction, Inc., as Construction Manager-at-Risk (CMAR), for construction of Fire Station No. 4, in accordance with all contract documents attached hereto and made a part here for all purposes.

SECTION 3. 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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**

DRAFT AIA[®] Document A133[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

« »
« »

and the Construction Manager:
(Name, legal status and address)

« »
« »

for the following Project:
(Name and address or location)

«Sample Project»
«Anywhere, USA»

The Architect:
(Name, legal status and address)

« »
« »

The Owner's Designated Representative:
(Name, address and other information)

« »
« »
« »
« »
« »
« »

The Construction Manager's Designated Representative:
(Name, address and other information)

« »
« »
« »
« »
« »
« »

The Architect's Designated Representative:

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

(Name, address and other information)

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The Owner and Construction Manager agree as follows.



TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior

to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Subject to limitations on the Construction Manager's obligations set forth herein and in the A201-2007, the Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. Subject to limitations on the Construction Manager's obligations set forth herein and in the A201-2007, the Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the

establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5** A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed

Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications of which Construction Manager becomes aware.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, ~~whether or not yet and~~ effective, at the time the Guaranteed Maximum Price Amendment is executed. In the event a sales, consumer, use or similar tax for the Work provided by the Construction Manager is enacted and becomes effective during the course of the Project, the parties shall execute a change order to address the increased cost.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted (subject to 2.3.2.1 above), then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« »

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « » (« ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

« » % « »

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« »

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« »

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed « » percent (« » %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

« »

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner’s prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such

costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and

amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than « » (« ») days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager’s Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of « » percent (« » %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of « » percent (« » %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[☐] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[☒] Litigation in a court of competent jurisdiction

[☐] Other: *(Specify)*

<< >>

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental

agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

« »

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

« »

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining

provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building

information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the

site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's

capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes

remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the

time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under

Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the

Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate

Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The

Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable

by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The

foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers

to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not

constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the

endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The

Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the

Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section

15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly

consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Sample

**CITY OF SHERMAN
RFP EVALUATION SUMMARY**

Date: 10/23/17

Bid Title: CMAR for Fire Station #4 Construction Project

SCORING SUMMARY

	Crossland Construction	Pete Durant and Associates	Piazza Construction	Schmoldt Construction	W.B. Kibler Construction
Chief Danny Jones - Fire/Rescue	96.0	91.0	92.0	89.0	95.0
Div. Chief Dan Wood - Fire/Rescue	96.0	92.0	89.0	83.0	95.0
Mike Grant - Facility Maintenance	96.0	80.0	83.0	88.0	94.0
Clint Philpott - Engineering	92.8	83.3	85.5	91.3	91.0
Craig Long - Finance	90.0	81.0	86.0	89.0	89.0
Michael Tubiolo - Architect	96.0	86.0	87.0	86.0	95.0
Scoring Average	94	86	87	88	93

NOTES:

Fire Station No. 4



1 inch = 1,000 feet





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.2.

Meeting Date: 11/06/2017

Prepared By: Clint Philpott, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6287

Authorizing Execution of an Advance Funding Agreement between the City of Sherman and the State of Texas, Acting By and Through the Texas Department of Transportation, for Project Management Services Rendered by a Local Government [FM 1417 (Heritage Parkway) from US 82 to SH 56]

Issue:

To execute an Advance Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) for project management of the design of FM 1417 (Heritage Parkway) from US 82 to SH 56

Background:

In 2016, the Sherman City Council approved a Contract for Engineering Services with H.W. Lochner, Inc. for the schematic design and environmental studies of FM 1417 (Heritage Parkway) from State Highway 56 to U.S. Highway 82. This AFA defines the roles and responsibilities between TXDOT and the City of Sherman regarding engineering design, land acquisition, utility relocations and construction for the widening of FM 1417. An AFA is required for each project in order to specify the financial requirement for each party.

Origination:

Engineering Department

Financial Consideration:

The maximum amount payable is \$2,000,000.00 for the completion of this Contract. This amount includes only the construction portion of the project. The City will incur additional costs related to right-of-way acquisition and engineering services. Funds for this project will be from the 2016 and future 2018 Certificates of Obligation Bond issuance.

Staff Recommendation:

It is the staff's recommendation that the Council authorize the execution of the Advance Funding Agreement with TxDOT.

Alternatives:

Those as may be directed by the City Council

Attachments

Resolution No. 6287

Advance Funding Agreement with TxDOT

RESOLUTION NO. 6287

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ADVANCE FUNDING AGREEMENT BETWEEN THE CITY OF SHERMAN AND THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION, FOR PROJECT MANAGEMENT SERVICES RENDERED BY A LOCAL GOVERNMENT [FM 1417 (HERITAGE PARKWAY) FROM US 82 TO SH 56]; 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 documents being properly completed and approved as to form and content by the City Attorney, to execute an Advance Funding Agreement between the City of Sherman and the State of Texas, acting by and through the Texas Department of Transportation, for the project management of the design of FM 1417 (Heritage Parkway) from US 82 to SH 56, in accordance with 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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**

CSJ #	2455-01-031 & 2455-01-034
District #	01-PAR
Code Chart 64 #	39200
Project:	FM 1417 from US 82 to SH 56: Widen from 2-Ln to 4-Ln
NBI Structure #	01-092-0-2455-01-002
Federal Highway Administration CFDA Title	Highway Planning and Construction
CFDA #	20.205
Not Research and Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
For A Transportation Improvement Project
To Widen an On-System Roadway
PREVENTIVE MAINTENANCE AND REHABILITATION**

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation called the “State”, and the [City of Sherman](#), acting by and through its duly authorized officials, called the “Local Government.”

WITNESSETH

WHEREAS, federal law establishes federally funded programs for transportation improvements to implement its public purposes; and

WHEREAS, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and

WHEREAS, the Texas Transportation Commission passed Minute Order Number [TPP and 114670](#), authorizing the State to undertake and complete a highway improvement generally described as [Widen from 2-Lane to 4-Lane with a continuous left turn lane, reconstruct interchange at SH 56 and replace bridge at Sand Creek](#) called the “Project”; and,

WHEREAS, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated _____, 20__, which is attached to and made a part of this agreement as Attachment “A” for the improvement covered by this agreement. A map showing the Project location appears in Attachment “B,” which is attached to and made a part of this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth in this agreement, it is agreed as follows:

CSJ #	2455-01-031 & 2455-01-034
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Not Research and Development	

AGREEMENT

1. Period of the Agreement

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

2. Scope of Work

FM 1417 from US 82 to SH 56: Widen from 2-Lane to 4-Lane with a continuous left turn lane, reconstruct interchange at SH 56 and replace bridge at Sand Creek as shown on Attachment "B".

3. Local Project Sources and Uses of Funds

- A. The total estimated cost of the Project is shown in the Project Budget – Attachment “C”, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties are shown in Attachment “C”. The State will pay for only those project costs that have been approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- B. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures and Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- C. The Project cost estimate shows how necessary resources for completing the Project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.

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Not Research and Development	

- D.** The State will be responsible for securing the Federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.
- E.** The Local Government will be responsible for all non-federal or non-state participation costs associated with the Project, otherwise provided for in this agreement or approved otherwise in an amendment to this agreement. Where Special Approval has been granted by the State, the Local Government shall only in that instance be responsible for overruns in excess of the amount to be paid by the Local Government.
- F.** Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- G.** Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation." The check or warrant shall be deposited by the State and managed by the State. The funds may only be applied by the State to the Project.
- H.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal government will be promptly paid by the owing party.
- I.** The State will not pay interest on any funds provided by the Local Government.
- J.** If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local Project, unless this agreement is terminated at the request of the Local Government prior to completion of the Project.
- K.** If the Project has been approved for a specified percentage or a "periodic payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the specified percentage or the periodic payment schedule.
- L.** If the Local government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- M.** When Special Approval has been granted by the State so that the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of those amounts.
- N.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those

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CFDA #	20.205
Not Research and Development	

funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

- O. Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.
- P. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.
- Q. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this agreement.

4. Termination of this Agreement

This agreement shall remain in effect until the project is completed and accepted by all parties, unless:

- A. The agreement is terminated in writing with the mutual consent of the parties;
- B. The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D. The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

5. Amendments

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

6. Remedies

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

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7. Utilities - Not Applicable

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

8. Environmental Assessment and Mitigation

Development of a transportation project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this agreement.
- B. **If there are any environmental problems mitigation and remediation, the State and the Local Government agree to amend the agreement to reflect the Local Government's responsibility to pay 10% of the costs.**
- C. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment. Public hearings will not be held prior to the approval of project schematic.
- D. The Local Government is responsible for the preparation of the NEPA documents required for the environmental clearance of this Project.
- E. Before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

9. Compliance with Texas Accessibility Standards and ADA

All parties to this agreement shall ensure that the plans for and the construction of all projects subject to this agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

The State has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable *State's Standard*

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Specifications for Construction and Maintenance of Highways, Streets and Bridges and the special specifications and special provisions related to it. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable *American Association of State Highway and Transportation Officials* design standards. In procuring professional services, the parties to this agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters.

11. Construction Responsibilities

- A. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. The State will use its approved contract letting and award procedures to let and award the construction contract.
- C. Upon completion of the Project, the party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- D. For federally funded contracts, the parties to this agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

12. Project Maintenance

The Local Government shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

13. Right of Way and Real Property

- A. Right of way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property.

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- B.** If the Local Government is the owner of any part of the Project site under this agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C.** All parties to this agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.
- D.** The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- E.** In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this agreement and the obligation of federal spending authority.
- F.** The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- G.** The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the

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Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.

- H. **Not Applicable** - Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost of the parcel, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- I. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. The separate agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

14. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	State:
City Manager	Director of Contract Services
City of Sherman	Texas Department of Transportation
220 W Mulberry Street	125 E. 11 th Street
Sherman, Texas 75090	Austin, Texas 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

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15. Legal Construction

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

16. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

17. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

18. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

19. Sole Agreement

This agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the agreement's subject matter.

20. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

21. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

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22. Inspection of Books and Records

The parties to this agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

23. Civil Rights Compliance

- A. Compliance with Regulations: The Local Government will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

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- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the Local Government under the contract until the Local Government complies and/or
 - b. cancelling, terminating, or suspending of the contract, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

24. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its

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approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- F.** Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

25. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive federal funds and, when requested by the State, to furnish a copy of the certification.

26. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A.** No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

27. Insurance

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

28. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms:
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

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29. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows:
"We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY _____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

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30. Pertinent Non-Discrimination Authorities

During the performance of this contract, the Local Government, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (49 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).

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- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

31. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Typed or Printed Name

[Sherman - City Manager](#)

Title

Date

THE STATE OF TEXAS

Kenneth Stewart
Director of Contract Services
Texas Department of Transportation

Date

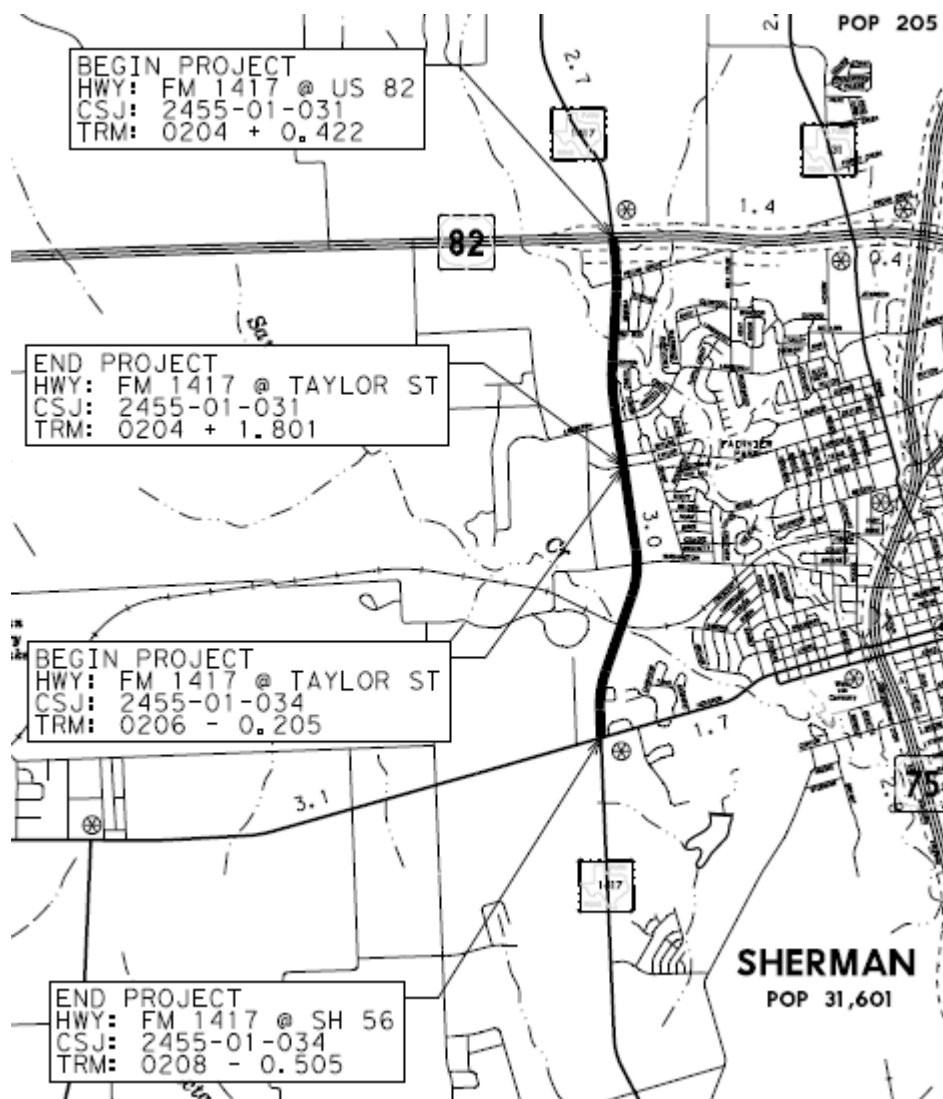
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ATTACHMENT A
RESOLUTION OR ORDINANCE

CSJ #	2455-01-031 & 2455-01-034
District #	01-PAR
Code Chart 64 #	39200
Project:	FM 1417 from US 82 to SH 56: Widen from 2-Ln to 4-Ln
NBI Structure #	01-092-0-2455-01-002
Federal Highway Administration	
CFDA Title	Highway Planning and Construction
CFDA #	20.205
Not Research and Development	

ATTACHMENT B

LOCATION MAP SHOWING PROJECT



CSJ # 2455-01-031 & 2455-01-034
 District # 01-PAR
 Code Chart 64 # 39200
 Project: FM 1417 from US 82 to SH 56:
 Widen from 2-Ln to 4-Ln
 NBI Structure # 01-092-0-2455-01-002
 Federal Highway Administration
 CFDA Title Highway Planning and
 Construction
 CFDA # 20.205
 Not Research and Development

ATTACHMENT C PROJECT BUDGET

Costs will be allocated based on applicable Federal and State funding and a **fixed amount** of Local Government funding until Local Government funding reaches the maximum obligated amount. The State will then be responsible for 100% of the costs.

Description	Total Estimated Cost	Federal Participation Cost	State Participation Cost	Local Participation Cost
Construction (by State)	\$18,700,000.00	\$13,360,000.00	\$3,340,000.00	\$2,000,000.00
Subtotal	\$18,700,000.00	\$13,360,000.00	\$3,340,000.00	\$2,000,000.00
Environmental Direct State Costs	\$0	\$0	\$0	\$0
Right of Way Direct State Costs	\$0	\$0	\$0	\$0
Engineering Direct State Costs	\$0	\$0	\$0	\$0
Utility Direct State Costs	\$0	\$0	\$0	\$0
Construction Direct State Costs	\$0	\$0	\$0	\$0
Indirect State Costs	\$0	\$0	\$0	\$0
TOTAL	\$18,700,000.00	\$13,360,000.00	\$3,340,000.00	\$2,000,000.00

Initial payment by the Local Government to the State: **\$2,000,000.00**

Payment by the Local Government to the State before construction: **\$2,000,000.00**

Total payment by the Local Government to the State: **\$2,000,000.00**

The total amount of Local Government participation shall not exceed the amount appearing above.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.3.

Meeting Date: 11/06/2017

Prepared By: Clint Philpott, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6288

Authorizing the Execution of Supplemental Agreement No. 3 to Resolution No. 6095 Contract for Engineering Services for the Widening of F.M. 1417 (Heritage Parkway) from Houston Street (S.H. 56) to Just South of U.S. Highway 82 Project with H.W. Lochner, Inc.

Issue:

Approval of Supplemental Agreement No. 3 to Resolution No. 6095 Contract for Engineering Services with H.W. Lochner, Inc. for right-of-way acquisition services along F.M. 1417 (Heritage Parkway) from Houston Street (SH 56) to just South of U.S. Highway 82

Background:

At the June 20, 2016 meeting, the Sherman City Council approved Resolution No. 6095, awarding a Contract for Engineering Services to H.W. Lochner, Inc. for the schematic design and environmental studies of F.M.1417 (Heritage Parkway) from Washington Street to just south of U.S. Highway 82. On September 6, 2016, the Sherman City Council approved Supplemental Agreement No. 1 to extend the contract for the project by 1.0 mile south to Houston Street (SH 56). On December 19, 2016, the Sherman City Council approved Supplemental Agreement No. 2 which made changes showing the City opted to provide right-of-way surveying, right-of-way maps, parcel plats, and deeds for the F.M. 1417 widening project. The proposed Supplemental Agreement No. 3 reflects the City opting to assist in the acquisition of right-of-way procedures, change the project schedule, and change the fee schedule.

Origination:

Engineering Department

Financial Consideration:

The maximum amount payable is increased by \$177,500.00, from \$714,861.60 to \$892,361.60, for the completion of this contract.

Staff Recommendation:

It is recommended that Supplemental Agreement No. 3 for the F.M. 1417 Widening Project be approved.

Alternatives:

Those as may be directed by the City Council

Attachments

Resolution No. 6288

Supplemental Agreement No. 3 to Resolution No. 6095

Location Map

RESOLUTION NO. 6288

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF SUPPLEMENTAL AGREEMENT NO. 3 TO RESOLUTION NO. 6095 CONTRACT FOR ENGINEERING SERVICES FOR THE WIDENING OF F.M. 1417 (HERITAGE PARKWAY) FROM HOUSTON STREET (S.H. 56) TO JUST SOUTH OF U.S. HIGHWAY 82 PROJECT WITH H.W. LOCHNER, INC.; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute Supplemental Agreement No. 3 to Resolution No. 6095 Contract for Engineering Services for the widening of F.M. 1417 (Heritage Parkway) from Houston Street (S.H. 56) to just south of U.S. Highway 82 Project with H.W. Lochner, Inc., 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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**

**SUPPLEMENTAL AGREEMENT NO. 3
TO RESOLUTION NO. 6095
CONTRACT FOR ENGINEERING SERVICES**

THIS SUPPLEMENTAL WORK AUTHORIZATION is made pursuant to the terms and conditions of the Contract Resolution No. 6095 passed and approved by the City of Sherman City Council on June 20, 2016 hereafter identified as the "Contract" entered into by and between the City of Sherman (the City), and H. W. Lochner, Inc., (the Engineer).

BACKGROUND

The following terms and conditions of City of Sherman, TX Resolution 6095 are hereby amended as follows:

- I.** Exhibit A Services to the Provided by the Engineer, is amended to also include additional Services to be Provided by the City of Sherman included in Exhibit A-3 (Part 1) and additional Services to the Provided by the Engineer included in Exhibit A-3 (Part 2) attached to this Supplemental Agreement. This work to be provided will include property acquisition, title review, negotiations and closing a services along FM 1417 from SH 56 (W. Houston St.), to just South of US 82 within the City of Sherman, Texas..
- II.** Exhibit B, Schedule of Engineering Services to be provided is modified to also include Exhibit B-3 attached to this Supplemental Agreement. This schedule reflects the new project schedule which includes ROW Acquisition Services as part of this contract and PS&E services prepared as part of a separate contract with the State.
- III.** Exhibit C, Fee Schedule, is supplemented to include additional unit/milestone rates and man-hour/fees as shown in the attached Exhibit C-3 required to provide property acquisition, title review, negotiations and closing services for this TxDOT project.
- IV.** The maximum amount payable is increased by \$177,500 from \$714,861.60 to \$892,361.60 for the completion of this Contract.

This Supplemental Agreement shall become effective on the date of the final execution of the parties hereto. All other terms and conditions as stated in the City of Sherman, TX Resolution 6095 not hereby amended are to remain in full force and effect.

IN WITNESS WHEREOF, this Supplemental Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below:

THE ENGINEER

THE CITY OF SHERMAN

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

Attachments:

Exhibit A-3 (Parts 1 and Part 2)

Exhibit B-3

Exhibit C-3

EXHIBIT A (Part 1)
SERVICES TO BE PROVIDED
BY THE CITY OF SHERMAN

1. Provide timely reviews and approval of submissions.
2. Provide all necessary standard forms and conveyance instruments.
3. Cost, review, and final approval for all appraisals.
4. Cost of preliminary title commitment and title insurance for all parcels acquired.
5. Attend closings and provide closing services in conjunction with Title Company.
6. Deliver warrants to the Title Company
7. Perform miscellaneous tasks on a local level as needed
8. Responsible for any eminent domain processes and costs

EXHIBIT A-3 (Part 2)
SCOPE OF SERVICES
TO BE PROVIDED BY LOCHNER
FM 1417

THE FOLLOWING SERVICES WILL BE UNDERTAKEN ON PARCELS AS DIRECTED BY CITY OF SHERMAN:

1. Title Services

- a. Review preliminary title commitment or preliminary title search from the Title Company that will be providing title insurance.
- b. Secure title commitments updates in accord with insurance rules and requirements for parcel payment submissions.
- c. Secure title insurance for all parcels acquired, insuring acceptable title to CITY OF SHERMAN as directed. Written approval by CITY OF SHERMAN required for any exception.

2 Negotiation Tasks Services

- a. Analyze appraisal and appraisal review reports and confirm approved value prior to making offer for each parcel.
- b. Analyze preliminary title report to determine potential title problems, propose methods to cure title deficiencies.
- c. Prepare the initial offer letter and any other documents required or requested by CITY OF SHERMAN in a form acceptable to CITY OF SHERMAN.
- d. Contact each property owner or owner's designated representative, to present the written offer in person where practical, and deliver appraisal report and required brochures. Maintain follow-up contacts and secure the necessary instruments upon acceptance of the offer for the closing.
- e. Provide a copy of the appraisal report for the subject property exclusively to the property owner or authorized representative at the time of the offer. Maintain original signed Receipt of Appraisal.
- f. Respond to property owner inquiries verbally and in writing within two business days.
- g. Prepare a separate negotiator contact report for each parcel per contact.
- h. Maintain parcel files of original documentation related to the purchase of the real property or property interests.
- i. Present counteroffers in a form as directed by CITY OF SHERMAN. Transmit any written counter offer from property owners including supporting documentation, and LOCHNER's recommendation with regard to the counteroffer.
- j. Prepare final offer letter as necessary.

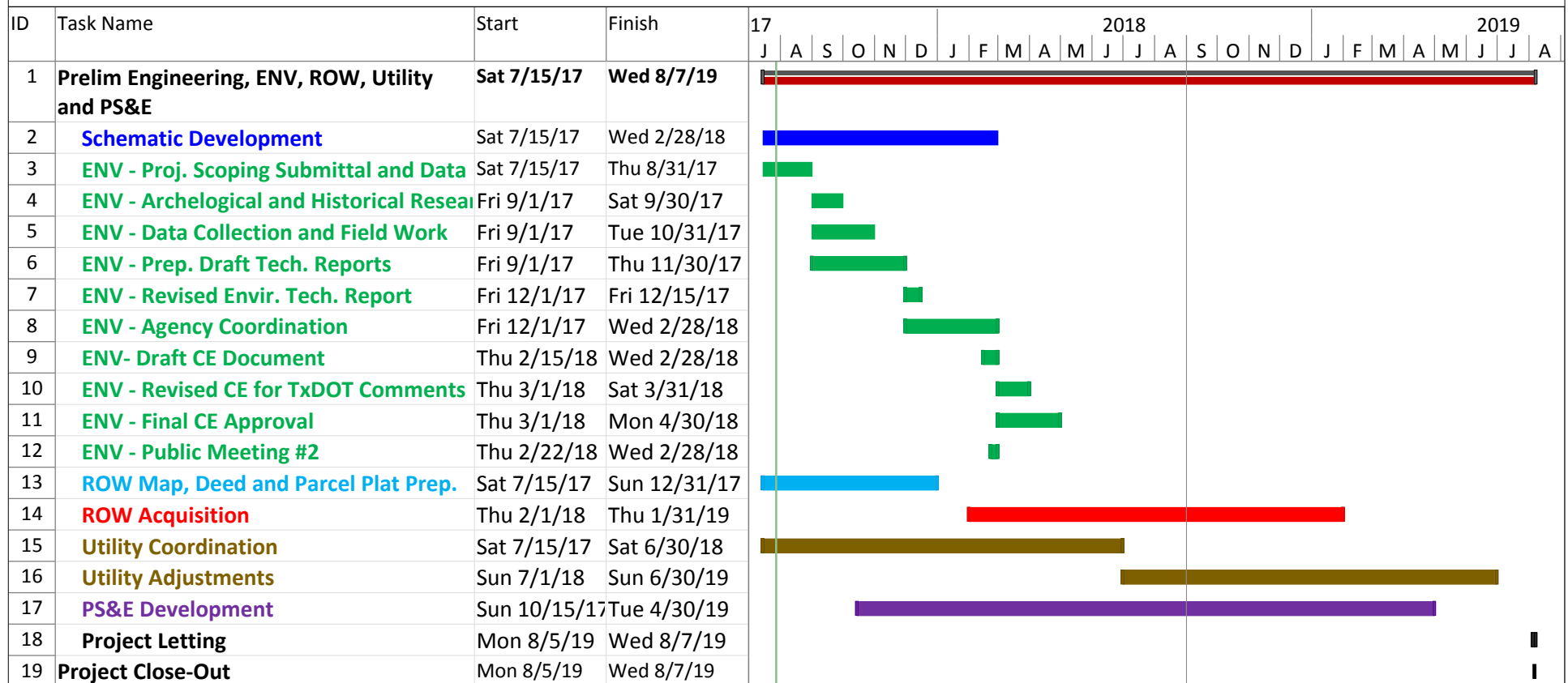
3. Condemnation Support Services

- a. Pre-Hearing Support
 - (1) Upon receipt of a copy of the final offer, request an updated title commitment for Eminent Domain from the Title Company.
 - (2) Prepare condemnation package as directed by CITY OF SHERMAN and transmittal of said package to CITY OF SHERMAN or its designee.

4. Project Administration

- a. Maintain current status reports of all parcel and project activities and provide monthly or as requested to CITY OF SHERMAN.
- b. Provide copies of all incoming and outgoing correspondence as generated if requested.
- c. Maintain copies of all correspondence and contacts with property owners.

Exhibit B-3
Work Schedule



**FM 1417
LOCHNER ACQUISITION FEES**

SERVICE PROVIDED	PARCELS	UNIT PRICE	TOTAL PRICE
Fee Acquisition (Title Review,	25	\$7,100.00	\$177,500.00
TOTAL			\$177,500.00

The billing milestones we propose for the referenced fees are as follows:

Fee Acquisition Milestones:

First Offer	\$3,500.00
Signed Deed/Final Offer	\$3,000.00
Closed Parcel or submit file for Condemnat	\$600.00
Per parcel fee	\$7,100.00

Should additional services be identified at a later date, an hourly fee will be charged shown below:

NAME	TITLE	LOADED RATE
Regina Hallmark	Administrative Support	\$77.00
Jim Henry	Title Support/QA/QC	\$191.00
Kimberly McClung	Legal Support	\$155.00
Steve Evans	Project Manager	\$143.00
Michael Latham	Negotiator	\$124.00
Sheila Mills	Assistant Project Manager/QA/QC	\$225.00

Additional scope of work items outside this contract to be provided by the City of Sherman include:

- 1.) No appraisal services fees are included.
- 2.) The City of Sherman, under separate contract, will provide all Apraisal and Appraisal Review Services.
- 3.) Cost for title services to be provided directly to Title Company and are not included as part of this contract.
- 4.) Eminent domain services, if required are not included as part of this contract.
- 5.) The actual costs associated with the purchase of required ROW are not included in this contract.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.4.

Meeting Date: 11/06/2017

Prepared By: Clint Philpott, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6289

Authorizing Execution of a Development Agreement with Homes by Lakeland for the Construction of Public Facilities in Parkhaven Estates, Phase 1, a 5.446-acre Development with 23 Residential Lots East of South Baker Park Drive and North of West Center Street in the City of Sherman

Issue:

The construction of public facilities in Parkhaven Estates, Phase 1, a 5.446-acre development east of South Baker Park Drive and north of West Center Street in the City of Sherman.

Background:

Homes by Lakeland proposes to construct a 5.446-acre development with 23 residential lots east of South Baker Park Drive and north of West Center Street, which includes the construction of streets, storm water, and water and sanitary sewer mains.

Origination:

Engineering Department

Financial Consideration:

The development fee to be paid by the developer for public inspection will be \$12,296.88.

Staff Recommendation:

Staff recommends approval and execution of the Development Agreement.

Alternatives:

As directed by the City Council

Attachments

Resolution No. 6289

Parkhaven Estates Development Agreement

Parkhaven Estates-Plat

Location Map

RESOLUTION NO. 6289

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT WITH HOMES BY LAKELAND FOR THE CONSTRUCTION OF PUBLIC FACILITIES IN PARKHAVEN ESTATES, PHASE 1, A 5.446-ACRE DEVELOPMENT WITH 23 RESIDENTIAL LOTS EAST OF SOUTH BAKER PARK DRIVE AND NORTH OF WEST CENTER STREET IN 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 and content by the City Attorney, to execute a Development Agreement with Homes by Lakeland for the construction of streets, storm drainage, water main and sanitary sewer main improvements in Parkhaven Estates, Phase 1, a 5.446-acre development with 23 residential lots east of South Baker Park Drive and north of West Center Street in the City of Sherman, 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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON SHELBY,
CITY ATTORNEY**

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

**DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SHERMAN AND HOMES BY LAKELAND**

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 7th day of November, 2017 (the "Effective Date"), by and among the City of Sherman ("City"), a municipal corporation organized under the laws of the State of Texas, Homes by Lakeland, ("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 to the City by the Developer as Parkhaven Estates, Phase I, 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, 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, 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, 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 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 a 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 October 1, 2018, 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 Engineer 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 for 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:**
 - A. Developer understands 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 SIGNATURE ON THIS AGREEMENT, DEVELOPER HEREBY FREELY, KNOWINGLY AND VOLUNTARILY WAIVES ITS RIGHTS UNDER SECTION 212.904 OF THE TEXAS LOCAL GOVERNMENT CODE, OR ANY OTHER RELATED CLAIMS. 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, AND 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 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.

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 of \$12,296.88.
- C. Developer agrees that the development, as set forth in the Contract Documents, will comply with all federal, state and local laws relating to the discharge of storm water upon completion of the development.

- D. Developer and City agree that any and all goods and services relative to infrastructure dedicated to the City are exempt from state and local sales tax in accordance with Texas Tax Code §§151.309 and 151.311.

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 DEVELOPERS 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 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 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 (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:

DESIGNEE: Clint Philpott, P.E.

ADDRESS: 220 W. Mulberry Street
Sherman, TX 75090

PHONE: 903-892-7327

FAX: 903-870-7802

DEVELOPER: HOMES BY LAKELAND

DESIGNEE: Jim Hidalgo

ADDRESS: P.O. Box 3317
Sherman, TX 75091

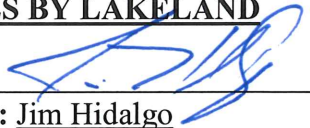
PHONE: (903) 815-1074

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 the parties to be attached to and made a part of this Agreement.
14. **Interpretation of Agreement.** This is 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, parties have caused this Agreement to be executed in duplicate this ____ day of _____ 2017, with an original to each party.

Developer: **HOMES BY LAKELAND**

BY: 
NAME: Jim Hidalgo
TITLE: _____

ATTEST: BY: 
NAME: Amber Doan
TITLE: Engineering Coordinator

CITY: **CITY OF SHERMAN**

BY: _____

NAME: Robby Hefton

TITLE: City Manager

ATTEST: **BY:** _____

NAME: Linda Ashby

TITLE: City Clerk

APPROVAL RECOMMENDED:

Clint Philpott, P.E. / Director Engineering

APPROVED AS TO FORM:

Brandon S. Shelby, City Attorney

LEGAL DESCRIPTION

Situated in the City of Sherman, Grayson County, Texas, being a part of the Elizabeth Jones Survey, Abstract No. 625, and being a part of the same tract of land described as 23.921 acres and referred to as Tract No. 3 as conveyed by Park Development, Inc. to Park Development, Ltd. by deed dated October 1, 1996, recorded in Volume 2497, Page 878, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a 1/2" steel rod found in the East right-of-way line of Baker Park Drive said rod maintaining Southwest corner of Block Two of Parkhaven Addition Section Five to said City of Sherman as shown by plat of record in Volume 10, Page 55, said Plat Records, being the 6.403 acre tract of land also previously severed from said Tract No. 3;

Thence North 51°33'41" East with the South line of both said Parkhaven Addition Section Five and Block Two a distance of 153.44 feet to a 1/2" steel rod found maintaining an angle point;

Thence North 74°55'38" East a distance of 686.14 feet to a 1/2" steel rod found maintaining the Southeast corner of both said Parkhaven Addition Section Five and Block Two in the East line of said Tract No. 3;

Thence South 15°30'49" East with said East line of Tract No. 3 a distance of 289.05 feet to a 1/2" steel rod set;

Thence over and across said Tract No. 3 the following calls and distances:
South 74°29'11" West a distance of 120.00 feet to a 1/2" steel rod set;
South 15°30'49" East a distance of 20.14 feet to a 1/2" steel rod set;
South 74°56'13" West a distance of 571.81 feet to a 1/2" steel rod set;
South 51°31'40" West a distance of 37.43 feet to a 1/2" steel rod set in the east line of said Baker Park Drive;

Thence northwesterly along the east line of said Baker Park Drive with a non-tangent curve to the left having a radius of 975.41 feet, (chord bears North 34°19'30" West, a distance of 140.14 feet) an arc length of 140.26 feet to a 1/2" steel rod found;

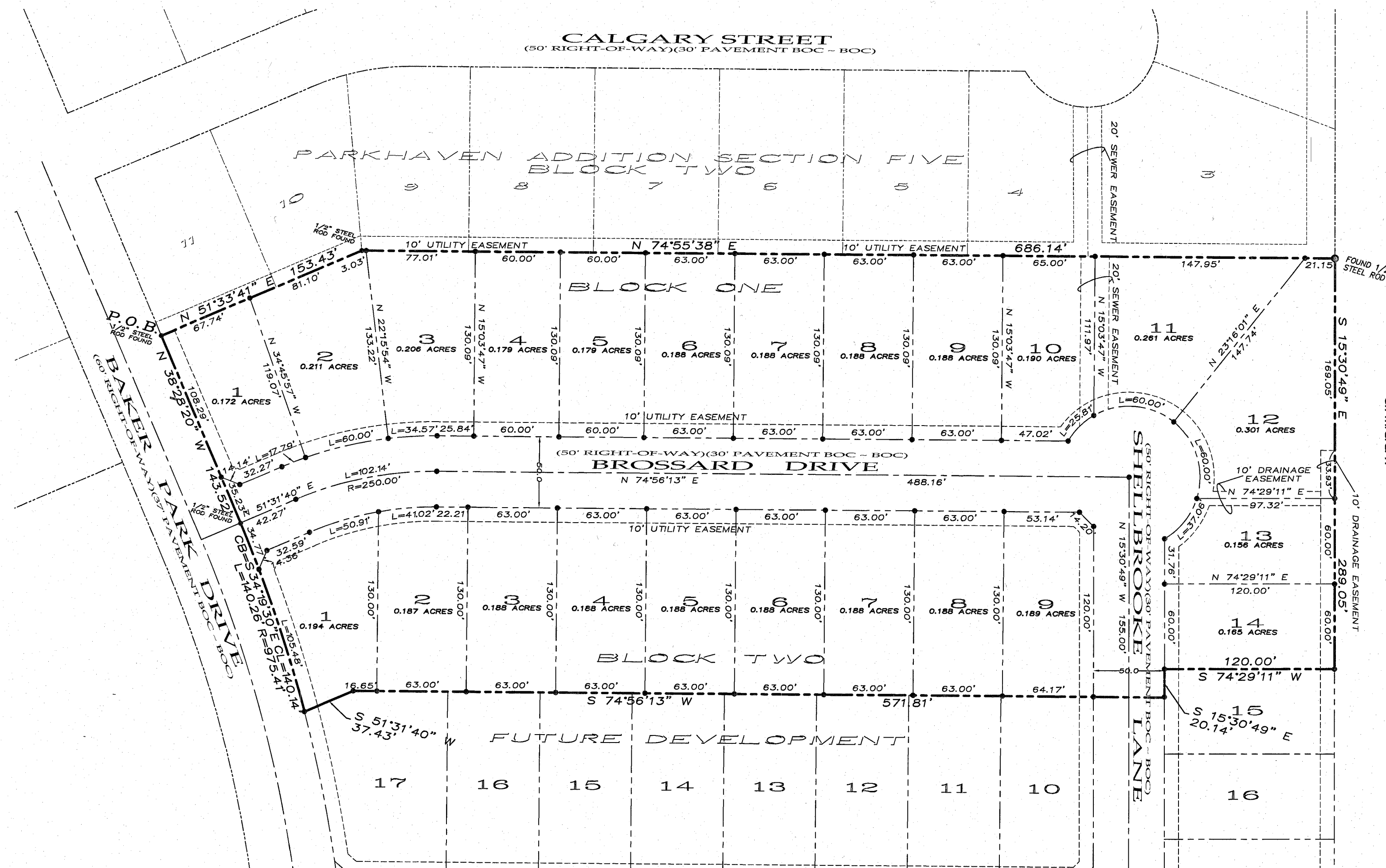
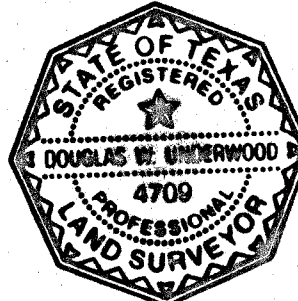
Thence North 38°28'20" West continuing along the east line of said Baker Park Drive, a distance of 143.52 feet to the Point-of-Beginning and containing 5.446 acres of land.

KNOWN ALL MEN BY THESE PRESENTS:

That I, Douglas W. Underwood, Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments thereon where properly placed, under my personal supervision, in accordance with the subdivision regulations of the City of Sherman, Texas.

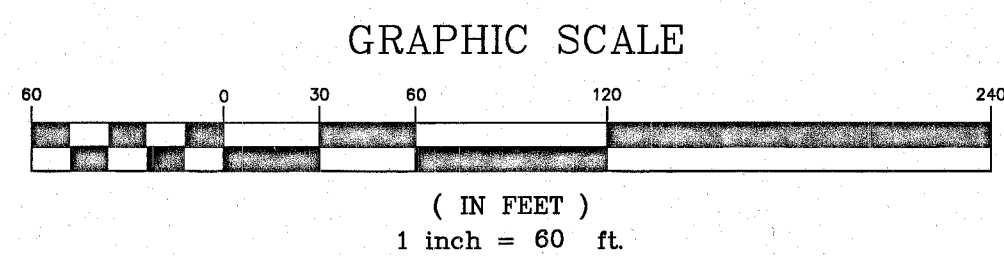
DW Underwood
Douglas W. Underwood
Registered Professional
Land Surveyor, No. 4709

12/5/16
Date



~ GENERAL NOTES ~

1. Water Supply to be provided by the City of Sherman.
2. Sewer Service to be provided by the City of Sherman.
3. Electrical service is provided by Oncor Electrical Delivery.
4. Blocking the flow of water or construction of Improvements in drainage easements, and filling or obstruction of the floodway is prohibited.
5. Any existing creeks or drainage channels traversing along or across the addition will remain as open channels and will be maintained by the individual owners of the lot or lots that are traversed by or adjacent to the drainage courses along or across said lots.
6. The City of Sherman will not be responsible for the maintenance and operation of said drainage ways or drainage easements for the control of erosion.
7. Neither the City of Sherman nor the undersigned surveyor will be responsible for any damage, personal injury, or loss of life or property occasioned by flooding or flooding conditions.
8. The owners and builders must comply with all other local, state and federal regulations regarding developments of this type.
9. Bearings are based on the City of Sherman Control Monument Network.
10. The City of Sherman reserves the right to require submission of Development Plat based on proposed use of each lot.
11. The proposed use is to be Single Family Residential.



UNDERWOOD
DRAFTING & SURVEYING

3404 INTERURBAN ROAD DENISON, TEXAS 75021 (903)465-2151

NOW THEREFORE KNOWN ALL MEN BY THESE PRESENTS:

THAT WE, KRITT CONCRETE, LLC, do hereby adopt this plat designating the hereinabove property as the PARKHAVEN ESTATES, PHASE I, an addition to the City of Sherman, and do hereby dedicate to the public use forever the streets and easements shown on this plat for the mutual use and accommodation of all public and private utilities desiring to use or using same. Any public or private utility shall have the right to remove and keep removed all or part of any buildings, fences, trees, shrubs or other improvements or growths which in anyway endanger or interfere with the construction, maintenance, or efficiency of its respective systems on any of these easements strips and any public or private utility shall, at all times, have a right of ingress and egress to and from and upon the said easement strips for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining and adding to or removing all or part of its respective system without the permission of anyone. This plat approved subject to all ordinances, rules regulations and resolutions of the City of Sherman, Texas.

WITNESS MY HAND this 6th day of December, 2016.

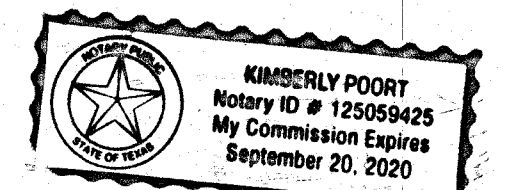
KRITT CONCRETE, LLC

STATE OF TEXAS
COUNTY OF GRAYSON

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of Dec., 2016.

Kimberly Poort
Notary Public in and for
the State of Texas
Commission Expires 9/20/20



Accepted by the City Council of the City Sherman

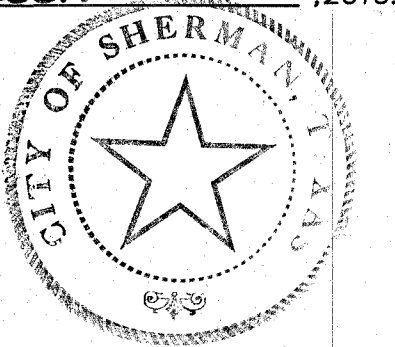
[Signature]
Mayor, City of Sherman, Texas

12/19/2016
Date

The Undersigned, the City Clerk of the City of Sherman, hereby certifies that the foregoing, PARKHAVEN ESTATES, PHASE I, an addition to the City of Sherman, Texas, was submitted to the City Council on the 17th day of December, 2016, and the City Council by formal action then and there accepted the dedication of streets, alleys, easements and public places, as shown and set forth in and upon said map or plat, and said City Council further authorized the Mayor to note the acceptance thereof by signing his name as herein above subscribed.

Witness my hand this 19th day of December, 2016.

Shirley Ashby
Clerk, City of Sherman, Texas



Approved this 22nd day of November, 2016, by the
City Planning Commission to the City of Sherman, Texas.

[Signature]
Chairman

[Signature]
Secretary

ELIZABETH JONES SURVEY
ABST. NO. 625

FINAL PLAT
LOTS 1-14, BLOCK ONE &
LOTS 1-9, BLOCK TWO
PARKHAVEN ESTATES
PHASE I
BEING 5.446 ACRES IN THE
ELIZABETH JONES SURVEY, ABSTRACT NO. 625
CITY OF SHERMAN
GRAYSON COUNTY, TEXAS

10-28-16

21071
FILED FOR RECORD
at 10:04 o'clock PM
Recorded in Vol. 24 Page 34
By WILMA BLACKSHEAR BUSH
County Clerk, Grayson Co., Texas
Deputy





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.5.

Meeting Date: 11/06/2017

Prepared By: Mark Gibson, Director of Utilities

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6290**

Authorizing Execution of a Professional Engineering Services Agreement with Freeman-Millican, Inc. for the Sherman Wastewater Treatment Plant Operations Building Addition and Remodel

Issue:

To consider an agreement with Freeman-Millican, Inc. to provide professional engineering services for the Sherman Wastewater Treatment Plant (WWTP) operations building addition and remodel

Background:

The Capital Improvement Program for fiscal year 2018 contains a project to expand and upgrade the operations building at the WWTP. The project will upgrade and expand staff work areas, add restroom facilities, relocate laboratory, increase storage areas, and bring the facility into ADA compliance.

Origination:

Department of Utilities Administration

Financial Consideration:

The fee for the professional engineering services is a lump sum of \$77,500.00. This project will be funded through the City's Utility Capital Improvement Program.

Staff Recommendation:

It is recommended that the agreement for professional engineering services with Freeman-Millican, Inc. for the Sherman WWTP Operations Building Addition and Remodel be approved.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6290

Engineering Services Agreement

Aerial Location Map

RESOLUTION NO. 6290

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL ENGINEERING SERVICES AGREEMENT WITH FREEMAN-MILLICAN, INC. FOR THE SHERMAN WASTEWATER TREATMENT PLANT OPERATIONS BUILDING ADDITION AND REMODEL; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Engineering Services Agreement with Freeman-Millican, Inc. for the Sherman Wastewater Treatment Plant Operations Building Addition and Remodel, 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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY,
CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
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", and, Freeman-Millican, Inc. 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 prepare construction plans, specifications, details and special provisions and to perform other related engineering and architectural services in connection with the **Sherman Wastewater Treatment Plant Operations Building Addition and Remodel** in the City of Sherman, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City subject to 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 and architectural 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".
5. **Access to the Site.** City agrees to provide access to the Project area necessary for Engineer to complete his work.
6. **Insurance.** Engineer 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 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. 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, Engineer shall furnish City with Certificates of Insurance, or formal endorsements as required by this Contract, issued by Engineer'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. 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, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom engineer is legally responsible. 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.

b. Engineer 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 Engineer in fulfilling its obligation hereunder to defend and indemnify City, unless such a 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 Engineer's obligation to defend the City or as a waiver of Engineer's obligation to indemnify the City pursuant to this Contract. Engineer 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 Engineer fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Engineer shall be liable for all costs incurred by City in defense of Claims for which Engineer 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 not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

8. **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 respondent 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.

9. **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.

10. **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.

11. **Ownership of Documents.** Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefore 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. Upon completion of the work or any earlier termination of this Agreement under Paragraph 10, Engineer will revise drawings, if necessary, and he will promptly furnish the City with one (1) complete set of reproducible record prints. 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 and that Engineer agrees to waive any copyright claims to the information once the information is submitted to the City.

12. **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 that any of the provisions in Exhibit "1" conflicts with this Agreement, the provisions in the Agreement

control over the provisions in the exhibit(s). This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

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

Director of Utilities
City of Sherman
P.O. Box 1106
Sherman, TX. 75090

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

Richard Dormier
Freeman-Millican, Inc.
12160 N. Abrams Rd., Suite 508
Dallas, Texas 75243

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 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:
Freeman-Millican, Inc.

BY _____
Robby Hefton
City Manager

BY  _____
Richard Dormier, P.E.
Vice President

DATE _____

DATE 10-27-17 _____

APPROVED AS TO FORM:

Brandon S. Shelby, City Attorney

EXHIBIT "1"
ENGINEERING SERVICES AGREEMENT

City of Sherman, Texas
Sherman Wastewater Treatment Plant
Operations Building Addition and Remodel
Scope of Professional Services

OWNER and ENGINEER, in consideration of their mutual covenants herein, agree in respect of the performance of professional engineering and architectural services by ENGINEER and the payment for those services by OWNER as set forth below.

ENGINEER shall provide professional engineering and architectural services for OWNER in all phases of the Project to which this Agreement applies, serve as OWNER'S professional engineering and architectural representative for the Project as set forth below, and shall give professional engineering and architectural consultation and advice to OWNER during the performance of services hereunder.

OWNER intends to construct, through Prime Contractor(s) the Sherman Wastewater Treatment Plant Operations Building Addition and Remodel, hereinafter called the "Project".

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1 GENERAL

1.1.1 ENGINEER shall perform professional services as hereinafter stated which include customary architectural services, and customary civil, structural, mechanical, and electrical engineering services. The Engineer provided Schematic Design Phase Services, and an estimate of the Cost of the Work, for this project under a previous, separate contract.

1.2 DESIGN DEVELOPMENT PHASE

1.2.1 Based on the OWNER'S approval of the Schematic Design Documents, and on the OWNER'S authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the ENGINEER shall prepare Design Development Documents for the OWNER'S approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, and typical construction details to fix and describe the size and character of the Project as to architectural, structural, and civil site work systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

1.2.2 Review the building code, and other codes applicable to the Project.

1.2.3 Review the existing geotechnical report used during design of the existing building.

1.2.4 The ENGINEER shall submit the Design Development Documents to the OWNER, advise the OWNER of any adjustments to the Opinion of Probable Construction Cost, and request the OWNER'S approval.

1.3 CONSTRUCTION DOCUMENTS PHASE

- 1.3.1 Based on the OWNER'S approval of the Design Development Documents, and on the OWNER'S authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the ENGINEER shall prepare Construction Documents for the OWNER'S approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The OWNER and ENGINEER acknowledge that, in order to perform the Work, the Contractor will provide additional information, including shop drawings, product data, samples and other similar submittals, which the ENGINEER shall review in accordance with the Construction Phase Services.
- 1.3.2 The ENGINEER shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.
- 1.3.3 During the development of the Construction Documents, the ENGINEER shall assist the OWNER in the development and preparation of (1) bidding information that describes the time, place, and conditions of bidding, including bidding requirements and proposal forms; (2) the form of agreement between the OWNER and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The ENGINEER shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications.
- 1.3.4 The ENGINEER shall furnish to OWNER such documents and design data as may be required for, and assist in the preparation of, the required documents so that OWNER may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.
- 1.3.5 The ENGINEER shall update the Opinion of Probable Construction Cost.
- 1.3.6 The ENGINEER shall submit the Construction Documents to the OWNER, advise the OWNER of any adjustments to the Opinion of Probable Construction Cost, and request the OWNER'S approval.
- 1.3.7 Furnish 3 copies of the above documents and present and review them in person with OWNER. Make any needed final revisions.

1.4 BIDDING PHASE

After the OWNER'S approval of the Construction Documents, and authorization to proceed with the Bidding Phase, ENGINEER shall:

- 1.4.1 Assist OWNER in obtaining bids for each separate prime contract for construction, materials, equipment, and services.
- 1.4.2 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.
- 1.4.3 Prepare a tabulation of bids and assist OWNER in evaluating bids and in assembling and awarding contracts.

1.5 CONSTRUCTION PHASE

During the Construction Phase ENGINEER shall:

- 1.5.1 Consult with and advise OWNER and act as his representative as provided in the General Conditions of the Construction Contract. All of OWNER'S instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said General Conditions except as otherwise provided in writing.
- 1.5.2 Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents. ENGINEER shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. ENGINEER shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). ENGINEER'S efforts will be directed toward providing a greater degree of confidence for OWNER that the completed work of Contractor(s) will conform to the Contract Documents, but ENGINEER shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations ENGINEER shall keep OWNER informed of the progress of the work and shall endeavor to guard OWNER against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents.
- 1.5.3 Review shop drawings, product data, and samples, the results of tests and inspections, and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and general compliance with the information given in the Contract Documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto); determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents. ENGINEER will review Contractors' submittals up to an average of two reviews per submittal. ENGINEER will be compensated for additional reviews under Additional Services.
- 1.5.4 Issue all instructions of OWNER to Contractor(s); issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare change orders as required; have authority, as OWNER'S representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work; but ENGINEER shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.
- 1.5.5 Based on ENGINEER'S on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts: such recommendations of payment

will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, that, to the best of ENGINEER'S knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractor(s); but by recommending any payment ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that ENGINEER has made an examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the Contract Documents.

- 1.5.6 Conduct in company with OWNER, an inspection to determine if the Project is substantially complete and a final inspection for compliance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder so that ENGINEER may recommend, in writing, final payment to each Contractor and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.5.5.
- 1.5.7 ENGINEER shall not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except ENGINEER'S own employees and agents) at the site or otherwise performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.5.1 through 1.5.7, inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties undertaken by him in the Contract Documents.
- 1.5.8 Based on change orders executed during construction, and documentation provided by the OWNER and Contractor(s) of changes made during construction, revise the Construction Documents, and reissue them as Record Documents. Furnish two sets of the Record Documents to OWNER in Portable Document Format (pdf).

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 GENERAL

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services:

- 2.1.1 Preparation of applications and supporting documents for governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

- 2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 2.1.3 Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNER'S schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond ENGINEER'S control.
- 2.1.4 Providing renderings or models for OWNER'S use.
- 2.1.5 Furnishing special consultants for services other than customary architectural services, and other than customary civil, structural, mechanical, and electrical engineering services, such as consultants for interior design, furniture, furnishings, communications, acoustics, commercial kitchens, or landscaping; and providing data or services of the types described in paragraph 3.3 when OWNER authorizes ENGINEER to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.3.
- 2.1.6 Services resulting from the arranging for performance by persons other than the principal prime contractors of services for the OWNER and administering OWNER'S contracts for such services.
- 2.1.7 Providing staking to enable Contractor(s) to proceed with their work and providing other special field surveys.
- 2.1.8 Services during out-of-town travel required of ENGINEER other than visits to the site and OWNER'S office as required by SECTION 1 and authorized by OWNER.
- 2.1.9 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of Contractor(s), (3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the progress schedule involving services beyond normal working hours, and (5) default by Contractor(s).
- 2.1.10 Preparation of operating and maintenance manuals; protracted or extensive assistance in the utilization of any equipment or system (such as initial startup, testing, adjusting and balancing); and training personnel for operation and maintenance.
- 2.1.11 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.
- 2.1.12 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as agreed to under Basic Services).
- 2.1.13 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise provided for in this Agreement.
- 2.1.14 Preparation of property descriptions.
- 2.1.15 Additional copies of reports (over agreed number) and additional sets of Contract Documents (over agreed number).

- 2.1.16 Services of a resident Project representative, and other field personnel as required, for on-the-site observation of construction.
- 2.1.17 Any other special or miscellaneous assignments specifically authorized by OWNER.
- 2.1.18 Reviews of Contractors' submittals exceeding the limit specified in paragraph 1.5.3.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1 Provide all criteria and full information as to OWNER'S requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.2 Assist ENGINEER by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 3.3 Furnish to ENGINEER, as required for performance of ENGINEER'S Basic Services, data prepared by or services of others, including without limitation core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restrictions; and other special data or consultations not covered in SECTION 2; all of which ENGINEER may rely upon in performing his services.
- 3.4 Provide field control surveys and establish reference points and base lines to enable Contractor(s) to proceed with the layout of the work.
- 3.5 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- 3.6 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.7 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 3.8 Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule or regulation applicable to their performance of the work.

- 3.9 Designate in writing a person to act as OWNER'S representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER'S services.
- 3.10 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER'S services, or any defect in the work of Contractor(s).
- 3.11 Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services as required.
- 3.12 Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 - PERIOD OF SERVICE

- 4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER'S services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER'S obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts and construction of the Project including extra work and required extensions thereto.
- 4.2 After acceptance by OWNER of the ENGINEER'S Drawings, Specifications and other Construction Documents Phase documentation including the most recent Opinion of Probable Construction Cost and upon written authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding Phase. The Bidding Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of the negotiations with prospective Contractor(s) (except as may be otherwise required to complete the services called for in paragraph 6.1.1.5).
- 4.3 The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon written approval by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one prime contract.
- 4.4 If OWNER has requested significant modifications or changes in the extent of the Project, the time of performance of ENGINEER'S services and his various rates of compensation shall be adjusted appropriately.
- 4.5 If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 90 calendar days (plus such additional time as may be required to complete the services called for under paragraph 6.1.1.5) after completion of the Construction Documents Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.
- 4.6 If ENGINEER'S services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER'S control, ENGINEER shall on written demand to OWNER (but

without termination of this Agreement) be paid as provided in paragraph 5.3.2. If such delay or suspension extends for more than one year for reasons beyond ENGINEER'S control, or if ENGINEER for any reason is required to render services more than one year after Substantial Completion, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

- 4.7 In the event that the work designed or specified by ENGINEER is to be performed under more than one prime contract, OWNER and ENGINEER shall, prior to commencement of the Construction Documents Phase, develop a schedule for performance of ENGINEER'S services during the Construction Documents, Bidding and Construction Phases in order to sequence and coordinate properly such services as applicable to the work under such separate contracts.

SECTION 5 - PAYMENTS TO ENGINEER

5.1 METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF ENGINEER

5.1.1 For Basic Services

OWNER shall pay ENGINEER for Basic Services rendered under SECTION 1 and as further identified in Exhibit "A" as the Design Development Phase, Construction Documents Phase, Bidding Phase, and Construction Phase a stipulated sum in the amount of \$77,500.00.

5.1.2 For Additional Services

OWNER shall pay ENGINEER for Additional Services rendered under SECTION 2 as follows:

5.1.2.1 General

For Additional Services rendered under paragraphs 2.1.1 through 2.1.17 inclusive (except services covered by paragraph 2.1.5 and services as a consultant or witness under paragraph 2.1.12), payment will be at the hourly rates in Exhibit "B".

5.1.2.2 Special Consultants

For services and reimbursable expenses of special consultants employed by ENGINEER pursuant to paragraph 2.1.5 or 2.1.17, the amount billed to ENGINEER therefor times a factor of 1.10

5.1.2.3 Serving as a Witness

For the services rendered by principals and employees as consultants or witnesses in any litigation, hearing or proceeding in accordance with paragraph 2.1.12, at the rate of \$ 2,500 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, hearing or proceeding will be on the basis provided in paragraph 5.1.2.1).

- 5.1.3 As used in this paragraph 5.1 the term "Reimbursable Expenses" will have the meaning assigned to it in paragraph 5.4.

5.2 TIMES OF PAYMENTS

- 5.2.1 ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon ENGINEER'S estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER'S monthly statements.
- 5.2.2 Upon conclusion of each phase of Basic Services, OWNER shall pay such additional amount, if any, as may be necessary to bring total compensation paid on account of such phase to the following percentages of total compensation payable for all phases of Basic Services:

Phase	Percent of Basic Services
Design Development	13%
Construction Documents	58%
Bidding	8%
Construction	21%
TOTAL	100%

5.3 OTHER PROVISIONS CONCERNING PAYMENTS

5.3.1 Changes in Project Scope

In the event the OWNER changes the scope of the project after the commencement of the Construction Documents Phase and such changes render the work unusable that has been performed to the date of the change in project scope, ENGINEER will be paid for services rendered during that phase to the date of notice of the change in project scope at the hourly rates in Exhibit "B" for services rendered by principals and employees assigned to the Project during that phase to date of notice of the change in project scope. In the event of any such change in scope, ENGINEER will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

In the event the OWNER changes the scope of the project after the commencement of the Construction Documents Phase and such changes require the Engineer to modify, redesign or otherwise change work that has been completed or partially completed at the date of the change in scope, ENGINEER will be paid for services required to modify, redesign or otherwise change completed work to meet the requirements of the revised scope of services at the hourly rates in Exhibit "B" for principals and employees assigned to the Project. In the event of any such change in scope, ENGINEER will be paid for all Additional Services and Reimbursable Expenses required to make the above stated changes. Before making changes to the work under this provision, the ENGINEER shall submit an estimate of the cost of making the changes under this paragraph. The ENGINEER shall not begin making changes to the work until authorized by the OWNER.

- 5.3.2 If OWNER fails to make any payment due ENGINEER for services and expenses within sixty days after receipt of ENGINEER'S bill therefor, the amounts due ENGINEER shall include a charge at the rate of 1% per month from said sixtieth day,

and in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.

- 5.3.3 In the event of termination by OWNER, upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase at the hourly rates in Exhibit "B" for services rendered during that phase to date of termination by principals and employees assigned to the Project. In the event of any such termination, ENGINEER will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses, plus all termination expenses. Termination expenses mean Reimbursable Expenses directly attributable to termination, which shall include an amount computed as a percentage of total compensation for Basic Services earned by ENGINEER to the date of termination, as follows:

20% if termination occurs after commencement of the Design Development Phase but prior to commencement of the Construction Documents Phase; or

10% if termination occurs after commencement of the Construction Documents Phase.

5.4 DEFINITIONS

- 5.4.1 Reimbursable Expenses mean the actual expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); furnishing and maintaining field office facilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, and similar Project related items in addition to those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

SECTION 6 - OPINIONS OF COST

6.1 OPINIONS OF COST

- 6.1.1 Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified design professional, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by him. If prior to the Bidding Phase OWNER wishes greater assurance as to Project or Construction Cost he shall employ an independent cost estimator as provided in paragraph 3.8. If a Construction Cost limit is established by written agreement between OWNER and ENGINEER, the following will apply:
- 6.1.1.1 The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Project or Construction Cost in excess of the then established cost limit will

constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.

- 6.1.1.2 Any Construction Cost limit so established will include a contingency of ten percent unless another amount is agreed upon in writing.
- 6.1.1.3 ENGINEER will be permitted to determine what materials, equipment, component systems and types of construction are to be included in the Drawings and Specifications and to make reasonable adjustments in the extent of the Project to bring it within the cost limit.
- 6.1.1.4 If the Bidding Phase has not commenced within six months after completion of the Construction Documents Phase, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Construction Documents Phase and the date on which proposals or bids are sought.
- 6.1.1.5 If the lowest bona fide proposal or bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's extent or quality. In the case of (3), ENGINEER shall, without additional charge, modify the Contract Documents as necessary to bring the Construction Cost within the cost limit. The providing of such service will be the limit of ENGINEER'S responsibility in this regard and, having done so, ENGINEER shall be entitled to payment for his services in accordance with this Agreement.

SECTION 7 - GENERAL CONSIDERATIONS

7.1 REUSE OF DOCUMENTS

All documents including Drawings and Specifications prepared by ENGINEER pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to ENGINEER; and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

- 8.1 The following Exhibits are attached to and made a part of this Exhibit 1:
 - 8.1.1 Exhibit "A" Scope of Services
 - 8.1.2 Exhibit "B" Freeman-Millican, Inc. Standard Billing Rates

Exhibit "A"
SCOPE OF SERVICES

Scope of Basic Services Provided by Engineer, Freeman-Millican, Inc.

The building program, project budget, and schematic design were developed and completed under a separate, previous contract. This scope of services begins with the Design Development Phase.

The Engineer, Freeman-Millican, Inc., will provide customary architectural, structural engineering, mechanical engineering, electrical engineering, and civil engineering services as follows:

Design Development Phase

1. Conduct code review.
2. Research existing geotechnical report from original design and construction of existing building. Determine implications for foundation and pavement design.
3. Refine and develop the approved schematic design, and provide design development documents (estimate 11 drawing sheets, plus outline technical specifications) for Owner review.

Estimated List of Design Development Documents	
DESCRIPTION	SHEET COUNT
Site Plan	1
Grading Plan	1
Exterior Elevations	2
Floor Plan	1
Building Sections	2
Finish, Door, & Window Schedules	1
Interior Elevations & Casework	3
Outline Architectural Specifications	
Total Estimated Drawing Sheets:	11

4. Provide updated opinion of probable construction cost.
5. Meet with Owner to review design development.
6. Identify agreed adjustments to design development and request Owner approval of design development documents.

Construction Documents Phase

7. Revise design development documents, conduct detailed design, and provide construction documents (estimate 54 drawing sheets, plus technical specifications and project manual bidding and contract documents) for Owner review.

Estimated List of Construction Documents	
DESCRIPTION	SHEET COUNT
Project Cover Sheet	1
Project General Notes & Legend	1
Project Manual Front End Bidding & Contract Documents	

Estimated List of Construction Documents	
DESCRIPTION	SHEET COUNT
Site Plan / Dimensional Control Plan	1
Paving Plan	1
Paving Details	1
Grading Plan	1
Utilities Plan	1
Utility Details	1
Thrust Blocking Details	1
Erosion Control Plan	1
Erosion Control Details	1
Civil Specifications	
Exterior Elevations	2
Floor Plan	1
Enlarged Floor Plans	1
Building Sections	2
Wall Sections	2
Wall Types	1
Wall & Misc. Details	1
Finish, Door, & Window Schedules	1
Door & Window Details	2
Interior Elevations & Casework	3
Reflected Ceiling Plan	1
Roof Plan	1
Roof Details	3
Life Safety (Egress) Plan	1
Architectural Specifications	
Structural General Notes	1
Foundation Plan	1
Foundation Details	1
Roof Framing Plan	1
Framing Details	2
Structural Specifications	
Electrical Site Plan / Site Lighting Plan	1
Lighting Plan	1
Power Plan w Data & Telecom Locations	1
Panelboard Schedules	1
Electrical Diagrams & Details	2
Electrical Specifications	
Mechanical Floor Plan	1
Mechanical Schedules	1
Mechanical Details	3
Mechanical Specifications	
Plumbing Floor Plan	1
Plumbing Schedules	1
Plumbing Diagrams	1
Plumbing Details	1
Plumbing Specifications	
Total Estimated Drawing Sheets:	54

8. Provide final opinion of probable construction cost.
9. Meet with Owner to review construction documents.
10. Identify agreed adjustments to construction documents and request Owner approval of construction documents for bidding.
11. Obtain project registration and plan review for compliance with Texas Accessibility Standards (TAS).
12. Revise construction documents per agreed adjustments and TAS review.

Bidding Phase

13. Provide request for proposals to Owner for advertisement.
14. Provide bid documents to Owner, Civcast, and other plan rooms for distribution to bidders.
15. Respond to bidder's inquiries; prepare and issue addenda.
16. Conduct bid opening.
17. Review and tabulate bids.
18. Check low bidder qualifications and recommend award of construction contract to lowest qualified bidder.
19. Acquire and review Contractor's insurance certificates.
20. Prepare construction contracts, and coordinate execution.

Construction Phase

21. Assemble and distribute construction documents.
22. Conduct preconstruction meeting.
23. Review Contractor's submittals of shop drawings, product data, and samples, up to an average of two reviews per submittal.
24. Provide monthly on-site construction observations and observation reports.
25. Review and certify Contractor's monthly pay applications.
26. Provide responses to Contractor's requests for information.
27. Prepare change orders and construction change directives for Owner approval.
28. Provide on-site construction observation and observation reports at key construction events. Where possible, these observations will coincide with monthly site visits:
 - a. Pre concrete pour: slabs on grade and grade beams.
 - b. Pre concrete pour: paving.
 - c. Framing.
 - d. Sheathing.
 - e. Masonry installed to four feet above finish floor elevation.
 - f. Roofing.
 - g. Mechanical, electrical, plumbing.
29. Upon receiving Contractor's notice of substantial completion and list of remaining work, conduct on-site substantial completion inspection.

30. Review operations and maintenance manuals submitted by Contractor, up to two reviews.
31. Review closeout documents submitted by Contractor.
32. Provide final punch list of items to be completed or corrected by Contractor.
33. Upon receiving Contractor's notice of final completion, conduct on-site final completion inspection.
34. Revise construction documents per change orders, construction change directives, and Contractor's documentation of changes made during construction.
35. Reissue revised construction documents as record documents. Provide paper and PDF record document sets to Owner.

Exhibit "B"
Freeman-Millican, Inc.
Standard Billing Rates

EMPLOYEE CATEGORY	RATE	BILLING UNIT
Architect	\$ 150.00	per hour
Principal Engineer	185.00	per hour
Senior Engineer	165.00	per hour
Associate Engineer	150.00	per hour
Senior Project Engineer	135.00	per hour
Project Engineer	120.00	per hour
Engineer-in-Training (EIT)	100.00	per hour
CAD Technician	75.00	per hour
Mileage (IRS Allowable)	\$ 0.55	per mile



Sherman
 CLASSIC TOWN. BROAD HORIZON.
 ENGINEERING DEPARTMENT

Wastewater Treatment Plant



1 inch = 400 feet



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.6.

Meeting Date: 11/06/2017

Prepared By: Nate Strauch, Community & Support Services Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6291

Authorizing Execution of an Agreement with Nancy Spiller Sims d/b/a Texoma Neon Co. under the City of Sherman's Central Business District Historic Building Restoration and Improvement Grant Program for Improvements to 214 East Houston Street

Issue:

An agreement with Nancy Spiller Sims d/b/a Texoma Neon Co. for a Building Restoration and Improvement Grant for improvements to a historically significant, Central Business District property at 214 East Houston Street

Background:

The City Council has allocated \$50,000.00 of the General Fund revenues for the 2017-2018 fiscal year for a Building Restoration and Improvement Grant Program, designed to stimulate substantial, visible, and permanent improvements to historically significant commercial buildings and to spur interest in vacant and underutilized buildings of historical value in the Central Business District. Grants under the program are awarded at the City Council's sole discretion, in the maximum amount of \$25,000.00 per project.

This application is the first received in fiscal year 2018 and the twelfth received under the program. The project is to restore the historic structure established in approximately 1900 and located at 214 East Houston Street in Downtown Sherman. The project will restore and renovate the interior and exterior of the 3,200 square foot structure and convert it to additional lease space for office professional and/or retail space. The expected qualified costs for the proposed renovation work are approximately \$73,248.00.

Of the \$18,312.00 eligible reimbursement under the grant program, \$8,321 was granted during the 2017 budget year in order to provide for repairs dealing with safety of the structure. The remainder, \$9,991.00, is under consideration by Council for the current budget year.

Origination:

Grant Applicant

Nancy Spiller Sims d/b/a Texoma Neon, Property Owner

Financial Consideration:

A full grant of \$9,991.00 would leave \$40,009.00 in the budget for other applications.

Staff Recommendation:

As the application meets the requirements of the program, it is recommended that the City Council consider an award to Nancy Spiller Sims d/b/a Texoma Neon Co. in the amount of \$9,991.00.

Alternatives:

As directed by Council

Attachments

Resolution No. 6291

Agreement

Grant Program Guidelines and Policies

Grant Application

Estimates

Current Photo and Design Renderings

Gift Deed

Property Tax Receipt

Financial Information

Aerial Location Map

RESOLUTION NO. 6291

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH NANCY SPILLER SIMS D/B/A TEXOMA NEON CO. UNDER THE CITY OF SHERMAN'S CENTRAL BUSINESS DISTRICT HISTORIC BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM FOR IMPROVEMENTS TO 214 EAST HOUSTON 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 and content by the City Attorney, to execute an agreement with Nancy Spiller Sims d/b/a Texoma Neon Co. for improvements to 214 East Houston Street under the City of Sherman's Central Business District Historic Building Restoration and Improvement Grant Program, 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 _____, 2017.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
BRANDON S. SHELBY,
CITY ATTORNEY



**CITY OF SHERMAN
CENTRAL BUSINESS DISTRICT HISTORIC
BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM**

AGREEMENT

THIS AGREEMENT is made and entered into on this the ____ day of _____, 2017, by and between the City of Sherman, a municipal corporation of the State of Texas, hereinafter referred to as “City”, and Nancy Spiller Sims d/b/a Texoma Neon Co., hereinafter referred to as “Applicant(s).”

WITNESSETH THAT, in consideration of the mutual promises and undertaking herein for the purpose of carrying out the restoration of a downtown property, thereby benefiting both the Applicants and the City;

THEREFORE, the Applicants and the City certify and agree to the terms and conditions as set forth below:

**I.
TERMS OF AGREEMENT**

1. **Ownership and Grant Program.** The Applicants represent and presented documentation that they are the owners of or tenants in good standing of a certain property located at 214 East Houston Street in the City of Sherman, Grayson County, Texas, hereinafter referred to as “Property,” lying within an area where the City is conducting a Central Business District Historic Building Restoration and Improvement Grant Program as described in the Program’s “Guidelines and Policies,” a copy of which has been provided to the Applicants and is attached hereto as Exhibit “A” and made a part of this Agreement for all purposes, a copy of which has been provided to the Applicants.
2. **Property Description and Eligibility.** The Property is of commercial, retail, service, professional and/or office use, and Applicants’ proposed improvements to the Property listed in the Central Business District Historic Building Restoration and Improvement Grant Program Application are eligible improvements as described in the Program’s Guidelines and Policies. Applicants state that all of the information contained in the application is truthful and discloses sufficient information so as not to be misleading. The submitted application is attached hereto as Exhibit “B” and incorporated into this Agreement for all purposes.
3. **Compliance with Codes.** All improvements to be undertaken will be consistent with all applicable Zoning and Building Codes.

4. **City Approval for Work.** Only the work that is agreed to by the City and the Applicants, which will be outlined in a formal written notice to proceed to be provided to the Applicants by the City upon Application approval, will be eligible for reimbursement. Any changes to the project that are not approved by the City in writing will not be eligible for reimbursement. Any work that is begun by the Applicants prior to receiving a written notice to proceed from the City will not be eligible for reimbursement.
5. **Rebate/Reimbursement.** The City will rebate a portion of the cost of eligible building improvements as described in the Program Guidelines. Reimbursement claims for all eligible expenses for completed improvements must be accompanied by the following supporting documents: applicable planning and building permits, canceled checks and paid invoices/receipts for eligible work.
6. **Lien.** Upon completion of the work, the City shall record a conditional lien on the property in the full amount of the City's monetary grant to Applicants and the Applicants consent to such lien. The lien shall remain in effect until the terms and conditions in Exhibit "A" have been fully complied with or the lien in favor of the City has been paid in full.
7. **Display of Sign.** After the work has been completed, Applicants shall display a sign or banner (provided by the City) indicating participation in the Central Business District Historic Building Restoration and Improvement Grant Program. The sign shall be displayed either on the exterior or in the front window of the building for a period of thirty (30) days.
8. **City Access to Building.** Applicants agree to allow the City or its agents access to buildings and improvements, when convenient for all parties, for inspection of the Central Business District Historic Building Restoration and Improvement Grant Program work.
9. **Work Payment and Personnel.** In accordance with the terms of this Agreement, the Applicants shall hire all personnel and pay for all labor, materials, tools, transportation, services, City licenses and permits necessary to perform or cause to have performed, and all work as specified in the Application. Applicants are aware of Labor Code Section 3700, which requires worker's compensation insurance or self insurance for employees.
10. **Time Period for Work.** Upon the signing of this Agreement, the Applicants shall have a period of ninety (90) days in which to take out a building permit. Work shall commence within ninety (90) days of the approval date of the building permit and be completed within twelve (12) months thereafter. Extensions, if warranted, may be granted at the discretion of the City. No change to work without the written consent of both the City and Applicants will be permitted.
11. **Notice and Compliance with Laws.** The Applicants shall give all notices required and comply with all applicable laws, ordinances and codes and shall, at their expense, secure and pay all said fees and charges for the performance of the work.

12. **No City Liability.** Applicants understand and agree that the City and their officers, agents, and employees, shall have no responsibility or liability of any failure or inadequacy of performance or defective workmanship or materials in regard to the agreed-upon improvements.
13. **Proper Use of Hotel/Motel Tax Revenues.** Applicants acknowledge that they are aware that the money being provided to them through this agreement comes from the City's Hotel/Motel Tax revenues; and Applicants further acknowledge and agree that they have independently determined that the project contemplated by this agreement and the submitted application complies with the State law regarding the use and application of such money, as set forth in the Texas Tax Code at Chapter 351, Section 351.101 and, in particular, that the project will enhance and promote tourism by attracting visitors from outside the City and the project will enhance the historical restoration, rehabilitation, or preservation of a historic structure. Applicants further acknowledge and agree that, if the project is determined at any time not to comply with Chapter 351 of the Texas Tax Code, any and all money acquired from the City by Applicants for this project shall be immediately and fully reimbursed to the City.

II. GENERAL TERMS

Assignment of Agreement

No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

INDEMNIFICATION

Applicants shall indemnify, release, defend and hold City, their officers, employees and agents, harmless from all claims, losses, liabilities, damages, suits, actions or proceedings by any person including Applicants, their employees and agents from personal injury, death or property damage from any cause whatsoever in whole or in part arising out of this Agreement or the activities completed hereunder by this indemnification shall not include the sole negligence or willful misconduct of City, their officers, employees or agents.

Successors and Assigns

City and Applicants each bind themselves, their partners, successors, assigns, and legal representatives to the other parties hereto, their partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in this Agreement.

Severability and Conflict

Any provision or part of the Agreement held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and the Applicants, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Captions

Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Choice of Law: Venue

This Agreement, the entire relationship of the parties, and any litigation between the parties (whether grounded in contract, tort, statute, law or equity) shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of Texas, without giving effect to its choice of laws principles. This Agreement is wholly performable in Grayson County, Texas. Exclusive venue for any litigation between the parties shall be brought in Grayson County, Texas, and shall be brought in the State District Courts of Grayson County, Texas, or in the United States District Court for the Eastern District of Texas. The parties waive any challenge to personal jurisdiction or venue (including without limitation a challenge based on inconvenience) in Grayson County, Texas, and specifically consent to the jurisdiction of the State District Courts of Grayson County, Texas, or in the United States District Court for the Eastern District of Texas, Sherman Division.

Binding Authority

By their signatures below, the individuals represent that they have reviewed this Agreement with their attorney and that the individuals have the express authority to enter into this Agreement.

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.

IN WITNESS WHEREOF, City and the Applicants have signed this Agreement in duplicate. One counterpart each has been delivered to City and the Applicants. All portions of the Agreement have been signed or identified by City and the Applicants or on their behalf.

EXECUTED on this the _____ day of _____, 2017.

CITY OF SHERMAN, TEXAS:

APPLICANT:
NANCY SIMS
D/B/A TEXOMA NEON CO.

By: _____
Robby Hefton, City Manager

By: _____
Name: Nancy Sims, Property Owner
Address: 214 East Houston Street
Sherman, Texas 75090
Phone: 903.893.2044 or 903.819.5206

ATTEST:

By: _____
Linda Ashby, City Clerk

APPROVED AS TO FORM
AND CONTENT:

By: _____
Brandon S. Shelby, City Attorney



**CITY OF SHERMAN
CENTRAL BUSINESS DISTRICT HISTORIC
BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM**

GUIDELINES AND POLICIES

The Building Restoration and Improvement Grant Program is designed to stimulate improvements to existing historically significant buildings in the Central Business District of the City of Sherman, Texas, to promote tourism, to enhance the physical appearance and economic vitality of downtown Sherman, and to promote joint public/private investment to complement ongoing historical revitalization efforts.

Program Objectives and Available Assistance

- To make positive, high-impact visual improvements to historically significant commercial buildings by providing an overall enhanced image for downtown Sherman, thereby attracting visitors to shop, dine, and do business in the Central Business District
- To provide a maximum of \$25,000.00 per project as a matching monetary incentive, a grant packaged as a forgivable loan with a conditional lien placed on the subject property, to the owners of historically significant commercial properties in the Central Business District for high-quality improvements to their properties
- In all cases, for every \$4.00 the applicant invests in the renovation or improvement of the subject property, the City will reimburse \$1.00 of qualified expenditures, up to the maximum grant authorized by the City Council not to exceed \$25,000.00 per project

Eligibility Requirements

- Assistance under this program will be considered subject to the availability of funding.
- Historic buildings within the downtown improvement area (map attached) that are of a commercial, retail, service, or professional use are eligible to participate in the program.
- For mixed-use historic buildings, only the portion of the building that is commercial, retail, service, or professional is eligible.
- The building to be improved must have historical significance either from an architectural point of view or a historical use or event that would tend to attract tourists to the buildings location.

Minimum Guidelines

- Buildings improved with funds from this program must remain open, operative, and free of graffiti and blight for a period of five (5) years from the date of agreement and until the lien is released.
- Tax payments for the subject property shall be up-to-date at the time of application and kept current throughout the five-year grant period.
- Outstanding work orders for the City's Developmental Services Department and/or the City's Fire Department and requests to comply therewith must be addressed prior to grant approval. Any noncompliance or outstanding violations will disqualify the applicant.

- **Grants will be approved at the sole discretion of the City.**
- To be accepted into the program, projects must make a substantial visible improvement to the appearance of the building, at the discretion of City staff. Repainting a building its same colors is considered maintenance, not an improvement.
- Building improvements should maintain the character of the downtown area; and the design drawings must be approved by the City in order to access funding for improvement.
- Improvements to be undertaken shall conform to the City's Codes and any other policies and regulations applying to the subject property.
- **Retroactive applications will not be accepted.** Applicants must consult with City staff before work begins to define a project scope.
- Program funds shall be made available only to projects that enhance and are sensitive to the historical nature of the structure.
- For properties with multiple storefronts, it is recommended that the façade treatment provide a cohesive theme while also allowing for some distinctive design elements to the various businesses, such as signage, exposing transom windows, lighting, flower boxes, murals, etc., to provide better street visibility and promote economic development downtown.
- For corner buildings fronting more than one street, improvements must be made to each frontage if determined necessary by City staff.

Application Prioritization

Funding is limited, and project applications will be prioritized on a first-come, first-served basis.

Eligible Improvements

Eligible improvements must be permanent in nature as determined exclusively by the City of Sherman. All improvements must be consistent with the City of Sherman Master Plan, Zoning Ordinance, Building Regulations, and other applicable laws. Eligible costs include the cost of materials, equipment, and contracted labor to complete eligible improvements, including, but not limited to, the following:

- New commercial or mixed-use construction
- Commercial code compliance renovations
- Permanent commercial interior remodeling improvements
- Permanent commercial site (exterior) improvements
- Compliance with Americans with Disabilities Act (ADA) for commercial properties
- Work necessary to bring the structure up to life-safety code standards
- Installation, repair, and replacement of exit (exterior) doors and hardware
- Repair, replacement, or addition of exterior shutters and awnings/canopies
- Repair, replacement or purchase of signs (when performed as part of an overall façade improvement)
- Repair and replacement or installation of interior and exterior stairs, porches, railings, and exit facilities
- Repair and rebuilding of interior and exterior walls, including cleaning, sealing, tuck pointing and painting
- Repair or replacement of frames, sills, glazing, replacement of glass and installation of new windows
- Installation of permanently affixed landscaping, such as stone or brick planters

- Installation, repair, or replacement of exterior lighting
- Mechanical, including rewiring, replumbing, insulation, mechanical systems/climate control

The City will prioritize projects. Consideration will be given to (1) threats to the survival of the structure, (2) importance of the structure to the overall goals of the program, (3) structural integrity and condition, and (4) cost effectiveness of the proposed work. In determining the grant amount, the City will also consider the time required to complete the project. Applicants are requested to limit their requests to projects that can be completed in a twelve (12) month period.

Ineligible Improvements

- No structural addition that would enlarge the residential (livable) space of the project is to be financed with these funds – nor an area not originally a livable space made livable.
- Residential structures
- Real estate or building purchases
- Furnishings and equipment purchases
- Working capital
- Inventory financing
- Title reports and legal fees
- Professional fees such as architects, engineers, and solicitors
- Labor provided by the Applicant or tenant of the building
- Extermination of insects, rodents, vermin and other pests
- Improvements that do not comply with City of Sherman Master Plan, Zoning Ordinance, Building Regulations, and other applicable laws
- Expenses incurred prior to grant application approval. Improvements cannot be undertaken before grant application approval.

Property Lien

Once the work is completed, the City will record a conditional lien on the property to ensure that the property improved with funds from this program remains open, operative, and free of graffiti and blight for a period of five (5) years from the date of agreement. If the Applicant fails to maintain the funded improvements for the entire five-year period, the City will recover its costs through the lien. If the Applicant satisfactorily fulfills the program requirements, the lien will be released at the end of five (5) years from the date of agreement.

Application Process

Program Application and Agreement forms are available in the City Manager's Office in the Sherman City Hall, 220 West Mulberry Street, Sherman, Texas 75091-1106, telephone (903) 892-7201. The application process is as follows:

- After reviewing the program guidelines, the Applicant will meet with City staff to discuss the desired work to be undertaken. If the proposed work is within the program guidelines, as determined exclusively by City staff, a completed application is submitted to the City. Written bids, sketches, color samples, and material supplies should be included.

- The Applicant is responsible for submitting plans and specifications to the City and obtaining all required planning and building permits, and any other applicable approvals, with the assistance of City staff.
- The Sherman City Council will consider the recommendations made by the City staff and will make its decision in a public meeting. The Council's decision will be made by adopting a resolution, which will authorize the City Manager to enter into a grant agreement with the Applicant.
- With the Council's authorization, the City Manager will cause the necessary documents to be drawn up and will sign the grant agreement.
- Upon approval, the City will send a "Notice to Proceed" to the Applicant. The Applicant may proceed with the planned building improvements pursuant to the approved design and issued permits. All payments for the work should be made by the Applicant and supported by clearly defined invoices outlining eligible work. Work shall commence within ninety (90) days of the approval date of the building permits. Extensions may be granted solely at the discretion of City staff.
- City staff will monitor the ongoing progress during construction to ensure that the work is performed according to the approved application and plans. No changes to work shall be made without the written consent of both the Applicant and the City. Approved "Change in Work" forms will be attached to the original application, dated and signed by the City Manager.
- Deviations from approved plans and specifications may disqualify the Applicant from this grant program.
- Once the work is completed, the City will record a conditional lien, good for five (5) years, on the subject property to be released upon completion of the program requirements.
- Funds will be disbursed upon completion of the project. City staff will conduct a final inspection before the grant funds will be disbursed to the Applicant. A Certificate of Approval will be issued to the Applicant.
- Reimbursement claims for all eligible expenses must be submitted with the following supporting documents.
 - A completed Rebate Claim form supplied by the City of Sherman
 - Any applicable planning and building permits
 - Cancelled checks and paid invoices/receipts for eligible work

After final approval of the improvements, the rebate reimbursement will be processed. Allow thirty (30) days for receipt of the rebate check.

- After the work is completed, Applicant shall display a sign or banner (provided by the City) indicating participation in the City of Sherman Central Business District Historic Building Restoration and Improvement Grant Program. The sign or banner shall be displayed either on the exterior or in the front window of the building for a period of thirty (30) days.

Loan Applications

The loan application requires:

- Information summarizing the project, including complete construction plans and specifications

- The project cost and the amount of other dollars being brought to the project
- Preliminary commitment of private funds
- Specific uses of all funds
- Current financial and/or profit and loss statements
- Amount of grant requested and proposed term being requested
- Current lien/title report on the subject property

All applications must be made on forms provided by the City of Sherman. For further information, please contact:

Robby Hefton
City Manager
City of Sherman

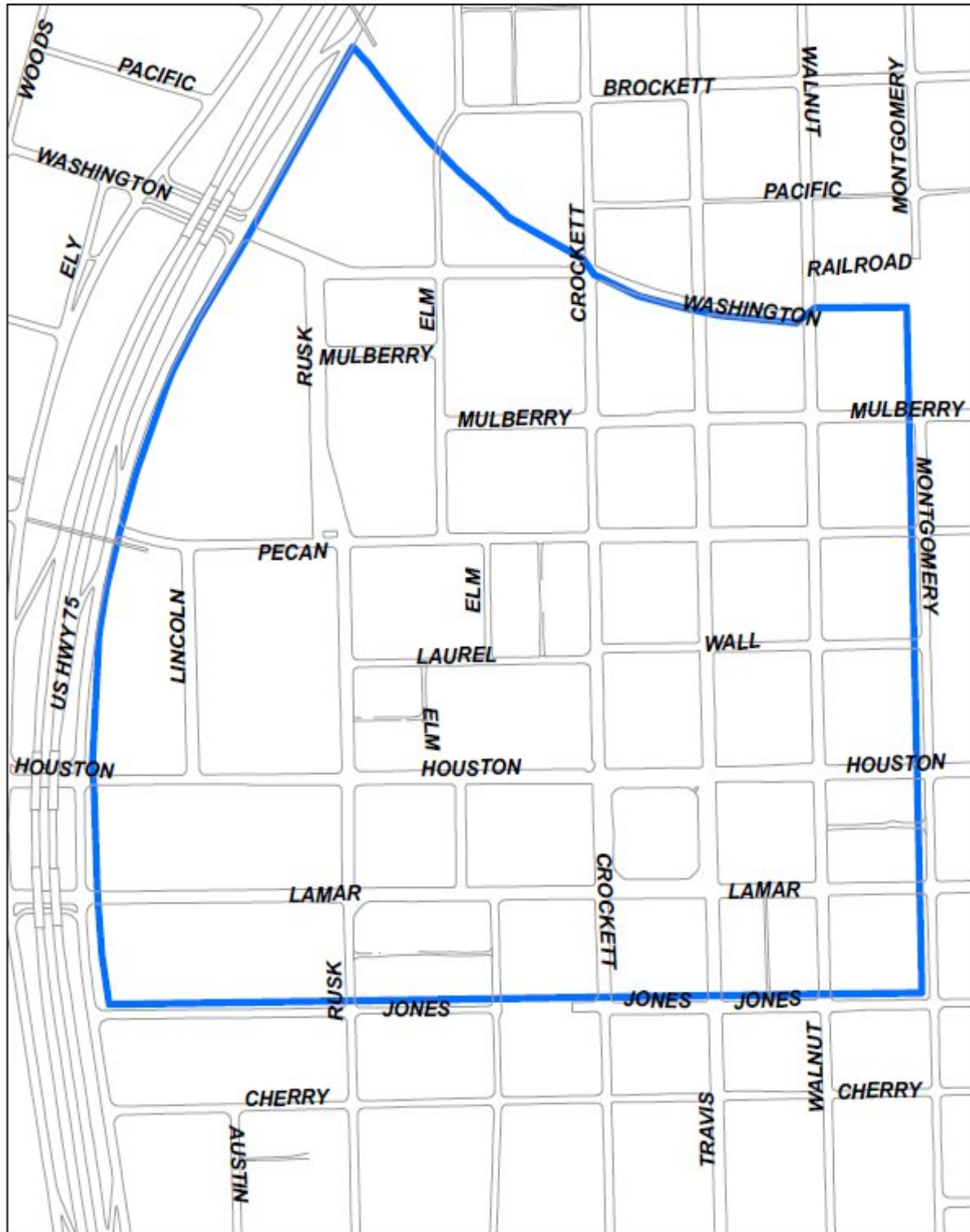
Scott Shadden
Developmental Services Director
City of Sherman

Physical Address:
Sherman City Hall, City Manager's Office
220 West Mulberry Street
Sherman, Texas 75090
or
Mailing Address:
P. O. Box 1106
Sherman, Texas 75091-1106

Physical Address:
Sherman City Hall, Building Inspection
220 West Mulberry Street
Sherman, Texas 75090
or
Mailing Address:
P. O. Box 1106
Sherman, Texas 75091-1106

Telephone: (903) 892-7201
Facsimile: (903) 892-7355
E-Mail: robbyh@ci.sherman.tx.us

Telephone: (903) 892-7333
Facsimile: (903) 892-7274
E-Mail: scotts@ci.sherman.tx.us



Sherman
ENGINEERING DEPT.
220 W. MULBERRY
SHERMAN, TX 75090

Central Business District





**CITY OF SHERMAN
CENTRAL BUSINESS DISTRICT HISTORIC
BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM**

Submission Requirements

It is strongly recommended that all Applicants carefully review the “City of Sherman Central Business District Historic Building Restoration and Improvement Grant Program Guidelines and Policies” prior to completing an application.

It is also recommended that Applicants discuss their proposed improvements and any questions regarding the submission requirements with the Developmental Services Department and the City Manager’s Office prior to completing the application form.

Please ensure that the following items have been included in your submission. Failure to provide the necessary documentation will delay the processing of your application.

Application Checklist:

- ☐ Copy of deed included
- ☐ Copy of mortgage (if applicable) included
- ☐ Description of proposed improvements – designs/drawings attached
- ☐ Pictures attached
- ☐ Estimate of costs/quotes or other details
- ☐ Signature of owner/authorized agent
- ☐ Application complete
- ☐ Are improvements in compliance with the City of Sherman Master Plan, Zoning Ordinance, Building Regulations, and other applicable laws?
- ☐ All material, pictures, drawings, newspaper articles, original deeds, etc. that will help identify the building as a historically significant structure through architectural design, building use or events that have taken place in or around it.
- ☐ Architectural and elevation renderings.



CITY OF SHERMAN
City Manager's Office
220 West Mulberry Street
Sherman, Texas 75090
Tele: (903) 892-7201 Fax: (903) 892-7355

FOR OFFICE USE ONLY	
File # _____	
Assessment Role Number _____	Assessed Property Value _____
Property Address _____	

Date Application Received _____	Date Application Completed _____

**CENTRAL BUSINESS DISTRICT HISTORIC
BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM**

Application

The information requested below will be used to process your application under the terms and conditions of the City of Sherman's Historic Building Restoration and Improvement Grant (Forgivable Loan) Program.

I. Applicant Information

1. Applicant(s) name: _____
Mailing address: _____
City: _____ State: _____ Zip: _____
2. Applicant's daytime telephone number: _____
Cell # (____) _____ Facsimile # (____) _____
E-mail address: _____
3. Status of applicant (please check one)
☐ Property owner with vacant facility
☐ Property owner with tenant business
☐ Property owner/operator of existing business on property
☐ Property tenant with property owner consent
4. Owner of property is a/an (please check one)
☐ Individual
☐ Partnership (attach copy of Partnership Agreement)
☐ Corporation/profit (attach copy of Articles of Incorporation)
☐ Corporation/nonprofit (attach list of officers and directors)
☐ Trust (attach copy of Trust Agreement)
☐ Other
5. Length of ownership: _____
Date purchased: _____

II. Property Information

1. Address of property to be improved:

2. Legal description of subject property:

3. Tax Assessor Parcel Number(s):

4. Year built:_____ Square footage:_____
5. Is this a National Register building? Yes___ No___ (check one)
Is this a building of known historical significance? Yes___ No___ (check one)
6. What are the current types of businesses occupying the building?

7. Name and phone number of tenant(s), if applicable:_____

(Attach additional names/numbers, if needed)
8. Use of building after construction:_____

9. Number of parking spaces provided:_____ Proposed:_____ Total:_____
10. Current zoning:_____
11. Is a zoning amendment required? Yes___ No___ (check one)
12. Attach architectural and elevation renderings.

III. Project Description

1. Description of Proposed Improvements. Please provide a detailed description of your proposed improvements. Attach a copy of your architectural or design plans. Identify the materials to be used, such as the type of paint or stain (i.e., exterior latex, color, etc.). Include details of new signs or awnings, etc. Provide color photos of the subject property and those adjacent prior to and after the improvements are made.

Please note: Applicants should carefully review the “City of Sherman Central Business District Historic Building Restoration and Improvement Grant Program Guidelines and Policies”, and discuss all proposed improvements with the City of Sherman’s Developmental Services Department prior to completing this application. It is also

recommended that Applicants discuss their proposed improvements and any questions regarding the submission requirements with the Developmental Services Department and the City Manager's Office prior to completing the application form.

Description: _____

☐ **Designs Attached**

☐ **Before Picture(s) Attached**

2. How many jobs will be **retained** once the project is completed? _____

_____ Full-time positions

_____ Part-time positions

3. How many **new positions** will result from this project? _____

_____ Full-time positions

_____ Part-time positions

IV. Work Estimates

Please attach two (2) independent contractor estimates for each component of the proposed improvement. Please note that grant/forgivable loan funding shall be based on the lowest bid. Eligible costs shall be the cost of materials, equipment, and contracted labor to complete eligible improvements. Professional fees such as architects, engineers, and solicitors are not eligible costs. Labor provided by the Applicant or tenant of the building is not an eligible cost.

1. Name/Company and Phone Number of Preferred Contractor:

Amount: _____

2. Name/Company and Phone Number of Second Contractor:

Amount: _____

3. Additional Estimates/Comments: (Please attach additional quotes, as required)

4. Total estimated costs of your improvements: _____

5. Estimated completion date for your improvements? _____

V. Historic Significance

The City's Program for improving the historic buildings of downtown Sherman is being funded through the City's Hotel/Motel Tax revenues, which require that this money may be spent only on historic buildings that would tend to attract tourists. Many factors may indicate a building's historic significance such as age, architectural design, building use, events or significant people. Some of this may be proved through deeds, pictures, books, newspaper articles and the like. Attach to this application all matters that would prove your claim that this is a historic building.

VI. Signature of Owner/Authorized Agent – Affidavit or Sworn Declaration

I/We, _____, of the City of Sherman, County of Grayson, State of Texas, make oath and say (or solemnly declare) that the information contained in this application is true and that the information contained in the documents that accompany this application in respect of the application is true.

I/We hereby authorize inspections of my/our property to be improved.

I/We acknowledge that any work carried out prior to written confirmation of grant approval may not be eligible.

I/We acknowledge receiving, understanding, and accepting the terms and conditions of the City of Sherman Central Business District Historic Building Restoration and Improvement Grant Program.

Sworn to (or declared before me), _____, a Notary Public in and for the State of Texas, on this the _____ day of _____, 20____.

Applicant

Co-Applicant

Property Owner (if different from Applicant)

Notary Public, State of Texas
My Commission Expires: _____

VII. Consent of the Owner to the Use and Disclosure of Personal Information

I/We, _____,
am the owner of the land that is the subject of this Application and, for the purposes of the
Freedom of Information and Protection of Privacy Act, I/we authorize and consent to the use by
or the disclosure to any person or public body of any personal information that is collected under
the authority of the _____ for the purposes of processing this application.

Date

Signature of Owner(s)

VIII. Authorization for Agent *(complete only if Applicant is not the registered Owner)*

I/We, _____,
the Owner(s) of the subject property, have reviewed and understand the guidelines and policies
for the City of Sherman Central Business District Historic Building Restoration and Improvement
Grant Program, including the requirement of a conditional property lien, and hereby authorize
_____ (Agent) to act on my/our behalf with respect to the
application.

Date

Signature of Owner(s)

Note: Information provided in this application will become part of a public record.

FOR OFFICE USE ONLY (Entire Page)

	Staff Initials	Comments
Ownership Confirmed		
Property Taxes Paid in Full		
Work Order Search (Building)		
Fire Code Conformity		
Master Plan Conformity		
Zoning Conformity		
Building Regulations Conformity		
Copy of Deed Attached		
Copy of Mortgage Attached		
Proof of Historical Significance		
Architectural Renderings		
Elevation Renderings		



**CITY OF SHERMAN
CENTRAL BUSINESS DISTRICT HISTORIC
BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM**

AGREEMENT

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9. **Work Payment and Personnel.** In accordance with the terms of this Agreement, the Applicants shall hire all personnel and pay for all labor, materials, tools, transportation, services, City licenses and permits necessary to perform or cause to have performed, and all work as specified in the Application. Applicants are aware of Labor Code Section 3700, which requires worker's compensation insurance or self insurance for employees.
10. **Time Period for Work.** Upon the signing of this Agreement, the Applicants shall have a period of ninety (90) days in which to take out a building permit. Work shall commence within sixty (60) days of the approval date of the building permit and be completed within twelve (12) months thereafter. Extensions, if warranted, may be granted at the discretion of the City. No change to work without the written consent of both the City and Applicants will be permitted.
11. **Notice and Compliance with Laws.** The Applicants shall give all notices required and comply with all applicable laws, ordinances and codes and shall, at their expense, secure and pay all said fees and charges for the performance of the work.
12. **No City Liability.** Applicants understand and agree that the City and their officers, agents, and employees, shall have no responsibility or liability of any failure or inadequacy of performance or defective workmanship or materials in regard to the agreed-upon improvements.
13. **Proper Use of Hotel/Motel Tax Revenues.** Applicants acknowledge that they are aware that the money being provided to them through this agreement comes from the City's Hotel/Motel Tax revenues; and Applicants further acknowledge and agree that they have independently determined that the project contemplated by this agreement and the submitted application complies with the State law regarding the use and application of such money, as set forth in the Texas Tax Code at Chapter 351, Section 351.101 and, in particular, that the project will enhance and promote tourism by attracting visitors from outside the City and the project will enhance the

historical restoration, rehabilitation, or preservation of a historic structure. Applicants further acknowledge and agree that, if the project is determined at any time not to comply with Chapter 351 of the Texas Tax Code, any and all money acquired from the City by Applicants for this project shall be immediately and fully reimbursed to the City.

II. GENERAL TERMS

Assignment of Agreement

No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

INDEMNIFICATION

Applicants shall indemnify, release, defend and hold City, their officers, employees and agents, harmless from all claims, losses, liabilities, damages, suits, actions or proceedings by any person including Applicants, their employees and agents from personal injury, death or property damage from any cause whatsoever in whole or in part arising out of this Agreement or the activities completed hereunder by this indemnification shall not include the sole negligence or willful misconduct of City, their officers, employees or agents.

Successors and Assigns

City and Applicants each bind themselves, their partners, successors, assigns, and legal representatives to the other parties hereto, their partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in this Agreement.

Severability and Conflict

Any provision or part of the Agreement held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and the Applicants, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Captions

Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Choice of Law: Venue

This Agreement, the entire relationship of the parties, and any litigation between the parties (whether grounded in contract, tort, statute, law or equity) shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of Texas, without giving effect to its choice of laws principles. This Agreement is wholly performable in Grayson County, Texas.

Exclusive venue for any litigation between the parties shall be brought in Grayson County, Texas, and shall be brought in the State District Courts of Grayson County, Texas, or in the United States District Court for the Eastern District of Texas. The parties waive any challenge to personal jurisdiction or venue (including without limitation a challenge based on inconvenience) in Grayson County, Texas, and specifically consent to the jurisdiction of the State District Courts of Grayson County, Texas, or in the United States District Court for the Eastern District of Texas, Sherman Division.

Binding Authority

By their signatures below, the individuals represent that they have reviewed this Agreement with their attorney and that the individuals have the express authority to enter into this Agreement.

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.

IN WITNESS WHEREOF, City and the Applicants have signed this Agreement in duplicate. One counterpart each has been delivered to City and the Applicants. All portions of the Agreement have been signed or identified by City and the Applicants or on their behalf.

EXECUTED on this the _____ day of _____, 2____.

CITY OF SHERMAN, TEXAS:

APPLICANTS:

By: _____
Robby Hefton, City Manager

By: _____
Name: _____
Address: _____

Phone: _____

By: _____
Name: _____
Address: _____

Phone: _____

**APPROVED AS TO FORM
AND CONTENT:**

By: _____
**Brandon S. Shelby,
City Attorney**



**CITY OF SHERMAN
CENTRAL BUSINESS DISTRICT HISTORIC
BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM**

Rebate Claim Form

Program Participant(s): _____

Project Address: _____

Interior Improvements:

Type:	\$
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
Sub-Total	_____

Exterior Improvements:

Type:	\$
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
Sub-Total	_____

Total Rebate Amount (per Program Guidelines): \$ _____

I/We hereby make a formal claim for reimbursement of the above-indicated expenses incurred in improving the interior and exterior of the subject property under the City of Sherman Central Business District Historic Building Restoration and Improvement Grant Program. I/We certify that the expenses incurred are as listed and have attached invoices marked “paid” and copies of cancelled checks in support of the claim.

Date: _____

Applicant

Applicant



CITY OF SHERMAN
City Manager's Office
220 West Mulberry Street
Sherman, Texas 75090
Tele: (903) 892-7201 Fax: (903) 892-7355

FOR OFFICE USE ONLY

File # _____	
Assessment Role Number _____	Assessed Property Value _____
Property Address _____	
Date Application Received _____	Date Application Completed _____

CENTRAL BUSINESS DISTRICT HISTORIC
BUILDING RESTORATION AND IMPROVEMENT GRANT PROGRAM

Application

The information requested below will be used to process your application under the terms and conditions of the City of Sherman's Historic Building Restoration and Improvement Grant (Forgivable Loan) Program.

I. Applicant Information

- Applicant(s) name: Nancy Sims
Mailing address: 214 E HOUSTON ST
City: SHERMAN State: TX Zip: 75090
- Applicant's daytime telephone number: 903-893-2044
Cell # (903) 819-5206 Facsimile # () _____
E-mail address: texoman@hotmail.com
- Status of applicant (please check one)
☐ Property owner with vacant facility
☐ Property owner with tenant business
☒ Property owner/operator of existing business on property
☐ Property tenant with property owner consent
- Owner of property is a/an (please check one)
☒ Individual
☐ Partnership (attach copy of Partnership Agreement)
☐ Corporation/profit (attach copy of Articles of Incorporation)
☐ Corporation/nonprofit (attach list of officers and directors)
☐ Trust (attach copy of Trust Agreement)
☐ Other
- Length of ownership: 27 years
Date purchased: May 31, 1989

II. Property Information

1. Address of property to be improved:
214 E. HOUSTON ST.
2. Legal description of subject property:
OTP Sherman, Block 13, Lot P+2 Yhr 4
to 50x125 6250 SF
3. Tax Assessor Parcel Number(s):
QUICK ID REF R161915
4. Year built: approx 1900 Square footage: 6,250 (lot) 3,200 bldg
5. Is this a National Register building? Yes ☐ No ☒ (check one)
Is this a building of known historical significance? Yes ☒ No ☐ (check one)
6. What are the current types of businesses occupying the building?
TEXOMA NEON
sign & t-shirt shop, operated at this
same location since the late 50s.
7. Name and phone number of tenant(s), if applicable: n/a
(Attach additional names/numbers, if needed)
8. Use of building after construction: SAME BUSINESS, TEXOMA NEON
9. Number of parking spaces provided: 4 Proposed: 4 Total: 4
10. Current zoning: commercial
11. Is a zoning amendment required? Yes ☐ No ☒ (check one)
12. Attach architectural and elevation renderings.

III. Project Description

1. Description of Proposed Improvements. Please provide a detailed description of your proposed improvements. Attach a copy of your architectural or design plans. Identify the materials to be used, such as the type of paint or stain (i.e., exterior latex, color, etc.). Include details of new signs or awnings, etc. Provide color photos of the subject property and those adjacent prior to and after the improvements are made.

Please note: Applicants should carefully review the "City of Sherman Central Business District Historic Building Restoration and Improvement Grant Program Guidelines and Policies", and discuss all proposed improvements with the City of Sherman's Developmental Services Department prior to completing this application. It is also

recommended that Applicants discuss their proposed improvements and any questions regarding the submission requirements with the Developmental Services Department and the City Manager's Office prior to completing the application form

Description

PLEASE SEE attached.

☒ Designs Attached

☒ Before Picture(s) Attached

2. How many jobs will be **retained** once the project is completed? 2

2 Full-time positions _____ Part-time positions

3. How many **new positions** will result from this project? 0

_____ Full-time positions _____ Part-time positions

IV. Work Estimates

Please attach two (2) independent contractor estimates for each component of the proposed improvement. Please note that grant/forgivable loan funding shall be based on the lowest bid. Eligible costs shall be the cost of materials, equipment, and contracted labor to complete eligible improvements. Professional fees such as architects, engineers, and solicitors are not eligible costs. Labor provided by the Applicant or tenant of the building is not an eligible cost.

1. Name/Company and Phone Number of Preferred Contractor: Bluestone Partners LLC 813-1415
4700 N. FM 1417, Sherman TX 75092 (903) 819-533
Amount: \$73,248.00

2. Name/Company and Phone Number of Second Contractor: Montgomery Construction (870) 828-0673
142 Highland Acres Circle, Pottsboro TX
Amount: \$78,500.00

3. Additional Estimates/Comments: (Please attach additional quotes, as required)

4. Total estimated costs of your improvements: _____

5. Estimated completion date for your improvements? _____

V. Historic Significance

The City's Program for improving the historic buildings of downtown Sherman is being funded through the City's Hotel/Motel Tax revenues, which require that this money may be spent only on historic buildings that would tend to attract tourists. Many factors may indicate a building's historic significance such as age, architectural design, building use, events or significant people. Some of this may be proved through deeds, pictures, books, newspaper articles and the like. Attach to this application all matters that would prove your claim that this is a historic building.

VI. Signature of Owner/Authorized Agent – Affidavit or Sworn Declaration

I/We, Nancy Sims, of the City of Sherman, County of Grayson, State of Texas, make oath and say (or solemnly declare) that the information contained in this application is true and that the information contained in the documents that accompany this application in respect of the application is true.

I/We hereby authorize inspections of my/our property to be improved.

I/We acknowledge that any work carried out prior to written confirmation of grant approval may not be eligible.

I/We acknowledge receiving, understanding, and accepting the terms and conditions of the City of Sherman Central Business District Historic Building Restoration and Improvement Grant Program.

Sworn to (or declared before me), Sheila Ullrich, a Notary Public in and for the State of Texas, on this the 18 day of January, 2017.

Nancy Sims
Applicant

Co-Applicant

Property Owner (if different from Applicant)



Sheila Ullrich
Notary Public, State of Texas
My Commission Expires: 12/18/17

FOR OFFICE USE ONLY (Entire Page)

	Staff Initials	Comments
Ownership Confirmed	_____	_____
Property Taxes Paid in Full	_____	_____
Work Order Search (Building)	_____	_____
Fire Code Conformity	_____	_____
Master Plan Conformity	_____	_____
Zoning Conformity	_____	_____
Building Regulations Conformity	_____	_____
Copy of Deed Attached	_____	_____
Copy of Mortgage Attached	_____	_____
Proof of Historical Significance	_____	_____
Architectural Renderings	_____	_____
Elevation Renderings	_____	_____

My business, Texoma Neon, is located at 214 E. Houston. It is on one of the original entry points into the city from the east. It is still on a state highway and remains as one of the four major streets accessng the Courthouse. Back in the 80's, a historian came to give a slideshow to the first Main Street Board. We saw photos of the downtown area in the early 1900s. I was lucky enough to see properties in my neighborhood. I have tried to maintain the historic look of the original building. Last year we refurbished the large double doors facing the street. These doors were used to allow entry for the new Model A cars to be displayed in the showroom.

My father moved his business, now my business, to this location in the late 1950's. As we know, all buildings require maintenance. Older buildings continually have needed repairs. The request for this grant is to aid in many much needed repairs. We are hoping to: seal and repair existing transom windows, replace one of the exterior doors. replace the old signage, add and improve the interior lighting, paint the exterior trim in historically accurate colors, and repair the roof. If the budget allows I would like to add awnings.

Texoma Neon has been a constant and thriving business for 67 years. I hope the City of Sherman will acknowledge our contribution and approve this grant.

Sincerely,
Nancy Sims

Texoma Neon Specifications:
(See plans for more details)

1. New Roof including drains, parapet wall protection, insulation, gutter
2. New signs on front windows
3. Three new hanging lights viewed through front window over large table
4. Built in planters on front elevation
5. Clean cast stone that is extremely dirty on front elevation
6. Point mortar and clean for a consistent color and to prolong life
7. New entrance door on east side
8. Adjust large custom double doors on west side to secure and prolong life
9. Clean and seal front walk and entrance concrete
10. Paint and seal front elevation to coordinate and resemble historic look
11. Repair and seal existing transom windows
12. Install new awnings over four large windows
13. Securing, cleaning, and painting interior historic ceiling tiles to prolong life

Montgomery Construction

Anthony Montgomery

142 Hiland Acres Circle

Pottsboro, TX 75076

870.828.0673

Anthonymon34@gmail.com

Date: 01/15/2017

Project: Texoma Neon

Submitted to: Nancy Sims

The Riverside Group, Inc. proposes to furnish labor & materials for the above referenced project according to plans submitted by Owner for a total sum of: \$78,500.00

All material is guaranteed to be as specified unless changed or substituted by owner or owner's representative. All work shall be executed in a workmanlike manner in accordance with accepted standard practices. Any alterations or deviations from the contract plans and specifications involving additional or extra costs will be executed only upon written authorization from the Owner or Owner's representative and will become an extra charge to the original contract proposal. We will not be held responsible for materials or labor subject to strikes, accidents, delays, or Acts of God. In any litigation, arbitration or any disputes relating to the proposal, inclusive of all change orders or other modifications to plans and specifications of the above project, or the parties' obligations or performance hereafter, the prevailing party shall recover its attorney fees and any and all related costs, both taxable and non-taxable, from the prevailing party.

Inclusions:

1. New Roof including drains, parapet wall protection, insulation, gutter
2. New signs on front windows
3. Three new hanging lights viewed through front window over large table
4. Built in planters on front elevation
5. Clean cast stone that is extremely dirty on front elevation
6. Point mortar and clean for a consistent color and to prolong life
7. New entrance door on east side
8. Adjust large custom double doors on west side to secure and prolong life
9. Clean and seal front walk and entrance concrete
10. Paint and seal front elevation to coordinate and resemble historic look

11. Repair and seal existing transom windows
12. Install new awnings over four large windows
13. Securing, cleaning, and painting interior historic ceiling tiles to prolong life

Exclusions:

Any permits or bonds

Traffic Control

Unforeseen Conditions

Acceptance of Proposal

THE ABOVE proposed sum, conditions and qualifications are hereby accepted.

Authorized By: _____ Title: _____

Date: _____



BLUESTONE

PARTNERS, LLC

* COST SUMMARY *

PROJECT NAME: Texoma Neon
DATE: January 18th, 2017

PRICE PER SQUARE FOOT: \$22.89
TOTAL LIVING AREA IN SQUARE FEET: 3,200

DESCRIPTION	MATERIALS AMOUNT	SUBCONT AMOUNT	TOTAL AMOUNT	COSTS PER SQ. FOOT
Remodeling Work:				
New Roof including drains, parapet wall protection, insulation, gutter	\$21,100	\$11,700	\$32,800	\$10.25
New signs on front windows	\$800		\$800	\$0.25
Three new hanging lights viewed through front window over large table	\$420	\$1,300	\$1,720	\$0.54
Built in planters on front elevation	\$700	\$1,320	\$2,020	\$0.63
Clean cast stone that is extremely dirty on front elevation		\$1,600	\$1,600	\$0.50
Point mortar and clean for a consistent color and to prolong life		\$1,930	\$1,930	\$0.60
New entrance door on east side	\$1,100	\$720	\$1,820	\$0.57
Adjust large custom double doors on west side to secure and prolong life		\$1,100	\$1,100	\$0.45
Clean and seal front walk and entrance concrete		\$1,450	\$1,450	\$0.49
Paint and seal front elevation to coordinate and resemble historic look		\$1,560	\$1,560	\$0.84
Repair and seal existing transom windows	\$600	\$2,100	\$2,700	\$0.84
Install new awnings over four large windows	\$1,800	\$1,100	\$2,900	\$0.91
Securing, cleaning, and painting interior historic ceiling tiles to prolong life	\$540	\$700	\$1,240	\$0.39
Supervision/Overhead		\$2,700	\$2,700	\$0.84
Rental Equipment		\$1,100	\$1,100	\$0.34
Construction Related Clean Up		\$1,400	\$1,400	\$0.44
COLUMN TOTALS	\$27,060	\$31,780	\$58,840	COL. TOTALS
PROFIT			\$8,826	
TAX			\$5,582	
JOB TOTAL			\$73,248	JOB TOTAL



TEXOMA NEON: CURRENT



TEXOMA NEON: FUTURE



TEXOMA NEON: FUTURE ELEVATION

**TEXOMA NEON
RENOVATION**

214 E. HOUSTON ST.
SHERMAN, TEXAS

DATE
1.20.2017

SHEET
1

SCALE
 $\frac{3}{8}" = 1'$

007081

VOL 2039 PAGE 762

GIFT DEED

THE STATE OF TEXAS
COUNTY OF GRAYSON

KNOW ALL MEN BY THESE PRESENTS:

That we, Wilbur H. Spiller and wife, Essie H. Spiller, for and in consideration of the love and affection which we have and bear unto our daughter, Nancy Sims, whose mailing address is 2509 Cascade, Sherman, Texas, have Given, Granted and Conveyed, and by these presents do Give, Grant and Convey unto the said Nancy Sims the following described property:

All that certain tract or parcel of land situated in the County of Grayson, State of Texas, being a part of Lots Nos. Two (2) and Four (4) in Block No. Thirteen (13) of the Original Town Plat to the City of Sherman, Grayson County, Texas, and described as follows:

BEGINNING at a point in the South line of East Houston Street, said point being 226 feet and two (2) inches North 74 deg. East from the Northwest corner of said Block No. Thirteen (13); and at the Northwest corner of a lot conveyed by Ike Exstein to J. M. Locke by deed recorded in Vol. 292, at Page 150, of the Deed Records of Grayson County, Texas;
THENCE South 74 deg. West 50 feet and two (2) inches, to the center of the East wall of the building located on the property lying immediately West of the herein described property;
THENCE South 16 deg. East 125 feet to the North line of an alley;
THENCE North 74 deg. East 50 feet and two inches, to the Southwest corner of said lot conveyed to J. M. Locke;
THENCE North 16 deg. West 125 feet to the place of beginning, containing 50 feet and two (2) inches by 125 feet of land and being the same property described as "Third Tract" in a deed from Morris Goldstein et al. to Ray Exstein Tillman, dated November 6, 1959, and of record in Vol. 902, at page 502, of the Deed Records of said County;

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Nancy Sims, as her sole and separate property and estate, and unto her heirs and assigns forever.

WITNESS OUR HANDS this 31st day of May, 1989.

Wilbur H. Spiller
Wilbur H. Spiller

Essie H. Spiller
Essie H. Spiller

007081

GIFT DEED

From
Wilbur H. Spiller et ux
To
Nancy Sims

Dated: May , 1989

ROBERT R. SANFORD
ATTORNEY AT LAW
324 N. CROCKETT
SHERMAN, TEXAS 75090
893-6565

FILED FOR RECORD

MAY 31 PM 2:11

CLERK OF COURTS

31

\$ 00

STATE OF TEXAS
COUNTY OF GRAYSON
I hereby certify that this instrument was filed on
the date and time stamped hereon by me and was
duly recorded on the 31 day of May, A.D.,
1989, in Vol. 2039, page 762 of the real
property records of Grayson, Texas
Pat Newman
County Clerk, Grayson County, Texas



TAX RECEIPT

Bruce Stidham Tax Assessor-Collector
100 W. Houston, Suite 11
P.O. Box 2107
Sherman, TX 75091-2107
(903) 892-8297 (TAXS)

Receipt Number: **SH-2017-1068322**

Payor: TEXOMA NEON CO ()
214 E HOUSTON ST
SHERMAN TX 75090

Owner: Multiple Owners

Quick Ref ID: P186155
Owner: SIMS NANCY SPILLER (O0006277) - 100%

Property: 6P26480
Legal Description: BUSINESS PERSONAL
PROPERTY TEXOMA NEON CO 214 E
HOUSTON SHERMAN TX SSH

Owner Address: dba TEXOMA NEON CO
214 E HOUSTON ST
SHERMAN, TX 75090

Situs Address: 214 E HOUSTON SHERMAN 75090

Tax Year/Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Amount Paid
2016					
Grayson County	4,385	0.473719	20.77	20.77	20.77
Grayson College	4,385	0.181300	7.95	7.95	7.95
Sherman City	4,385	0.394300	17.29	17.29	17.29
Sherman School	4,385	1.440000	63.14	63.14	63.14

Total Payment for Property P186155 **109.15**
Remaining Balance Due as of 1/18/2017 **0.00**

Quick Ref ID: R161915
Owner: SIMS NANCY (O0040847) - 100%
Owner Address: 214 E HOUSTON
SHERMAN, TX 75090

Property: S034-2181130
Legal Description: OTP SHERMAN, BLOCK 13, LOT PT 2
THRU 4, 50X125 6250 SF
Situs Address: 214 E HOUSTON SHERMAN

Date Paid: 01/18/2017
Effective Date: 01/18/2017
Station: ginad
Cashier: GinaD

TAX RECEIPT

Receipt Number: **SH-2017-1068322**

Quick Ref ID: R161915 (continued)

Tax Year/Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Amount Paid
2016					
Grayson County	76,461	0.473719	362.21	362.21	362.21
Grayson College	76,461	0.181300	138.63	138.63	138.63
Sherman City	76,461	0.394300	301.49	301.49	301.49
Sherman School	76,461	1.440000	1,101.03	1,101.03	1,101.03

Total Payment for Property R161915	1,903.36
Remaining Balance Due as of 1/18/2017	0.00

Total Payment Amount	2,012.51
CHECK (Ref # 28232) Tendered	2,012.51
Total Tendered	2,012.51



Date Paid: 01/18/2017
Effective Date: 01/18/2017
Station: ginad
Cashier: GinaD

NANCY SPILLER SIMS dba
TEXOMA NEON
PROFIT & LOSS STATEMENT
As of 11/30/2016

INCOME:

Sales	97,567.00	
Less Refunds/Discounts	0.00	
Cost of Goods	44,871.13	
TOTAL INCOME:		<u>52,695.87</u>

EXPENSES:

ADVERTISEMENT	2,618.83	
INSURANCE	2,713.00	
PROFFESIONAL FEES	650.00	
OFFICE EXPENSE	1,454.00	
REPAIRS & MAINTENANCE	3,567.00	
SUPPLIES	4,018.21	
TAXES & LICENSES	8,649.17	
UTILITIES	6,317.14	
POSTAGE/FREIGHT	271.83	
BANK CHGS	319.84	
DONATIONS	465.00	
MISC EXPENSE	311.26	
MEALS & ENT	421.16	
TOTAL EXPENSE:		<u>31,532.44</u>

NET PROFIT OR LOSS:	<u>21,163.43</u>
----------------------------	-------------------------

End of year & December figures can be supplied
if needed as soon as all tax forms are received.





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.7.

Meeting Date: 11/06/2017

Prepared By: Kevin Winkler, Public Works Manager

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6292**

Awarding a Bid to and Authorizing Execution of a Contract with Shipman Communications, Inc. for Two-Way Radio and Early Warning Siren Maintenance

Issue:

To consider awarding a bid for the City's annual maintenance of two-way radios and early warning siren system

Background:

A request to advertise for public bids was approved by the City Council in its meeting of September 5, 2017. The Invitation to Bid was publicly advertised; and two vendors submitted a bid on September 25, 2017. Of the submitted bids, one was rejected as unresponsive; resulting in the lone, responsive bid belonging to Shipman Communications, Inc. of Denison, Texas.

The proposed contract is an annual contract with the option to renew for two (2) additional twelve-month periods.

Origination:

Equipment Maintenance Services Department

Financial Consideration:

The bid submitted by Shipman Communications, Inc. includes annual maintenance costs of \$33,600.00 plus parts. Funds have been budgeted to cover the contract amount.

Staff Recommendation:

Staff recommends that the City Council award the annual contract to Shipman Communications, Inc. of Denison, Texas.

Alternatives:

As may be directed by the City Council

Attachments

Resolution No. 6292

Contract

Bid Proposal

Bid Tabulation

RESOLUTION NO. 6292

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH SHIPMAN COMMUNICATIONS, INC. FOR TWO-WAY RADIO AND EARLY WARNING SIREN MAINTENANCE; 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 Shipman Communications, Inc. of Denison, Texas, is hereby awarded the bid for two-way radio and early warning siren maintenance in the amount of Thirty-Three Thousand Six Hundred Dollars and Zero cents (\$33,600.00), plus parts and repairs; and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a contract with Shipman Communications, Inc. for two-way radio and early warning siren maintenance, in accordance with all contract documents attached hereto and made a part hereof for all purposes. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2017-2018 budget.

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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



**CITY OF SHERMAN
STANDARD CONTRACT**

This Agreement is made by and between the City of Sherman, Texas, a home-rule municipality, hereinafter referred to as "Buyer", and the hereinafter named SELLER, referred to as the "Seller," for the sale of goods, materials and items specified hereinafter, and the Buyer and Seller hereby agree as follows:

Seller:

Shipman Communications Inc
Name

1815 W Morton
Address

Denison, TX. 75020
City, State, Zip

903-465-8297 or 903-815-0064
Telephone

wesleys7971@sbcglobal.net
Email

DESCRIPTION OF GOODS

This Contract is for the purchase by the City of Sherman, Texas, of the goods, materials and items described hereinafter as the "goods" or the subject of this Contract, and such parts, attachments, accessories, devices, and apparatus as may be considered an integral part of the Goods or necessary for the proper use or application of the Goods, whether or not specified herein. The Goods are more specifically described as follows:

Two-Way Radio & Early Warning Siren
maintenance with parts as needed.

[CHECK ONE:]

_____ This contract is a "fixed price – fixed quantity" Contract for the purchase of the specified quantity at the specified price. The full quantity of the Goods shall be delivered to and received at the designated point or points of delivery no later than the date specified herein below. This date is a material term and condition of the Contract and, in connection with the delivery date, time is and shall be of the essence.

Date of Delivery

OR

(X) This Contract is for a specific duration wherein the Seller will supply, furnish and deliver at the designated point or points of delivery the specified Goods in the quantities requested by Buyer at the time of Buyer's order. The delivery date(s) shall be set forth in Buyer's order. This Contract is not intended to be and shall not be construed as an exclusive requirements contract. This Contract is non-exclusive and Buyer may acquire any or all of its requirements for the specified Goods from Seller or any other source deemed appropriate by Buyer. Upon the conclusion of the duration of this Contract, Buyer may renew this agreement for two additional one (1) year periods upon sending written notice of intent thereof within forty-five (45) days prior to the expiration of the last day of the term of this Contract.

DURATION: From October 2, 2017 to October 1, 2018

PAYMENT TERMS

The purchase price of the Goods shall be that contained in the Seller's bid and specifically accepted in writing by Buyer. Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number, and shall be itemized. A copy of the packing slip should be attached to the invoice. Email invoices are preferred; email all invoices to tonim@ci.sherman.tx.us, with a cc for Public Works to kimh@ci.sherman.tx.us, for Fire/Emergency Services to dannyj@ci.sherman.tx.us, and for Police to zacharyf@ci.sherman.tx.us. Invoices may also be mailed to the City of Sherman, Finance Department, PO Box 1106, Sherman, TX 75091-1106. Payment shall not be due until the above instruments are submitted, until the Goods have been received by Buyer, and until Buyer has had sufficient opportunity to inspect and exercise its right to accept or reject. Seller shall keep the Finance Department advised of any changes in their remittance addressees. In no event shall Buyer be responsible for interest of any kind on any funds due to Seller, and no term or provision contained in any Seller's invoice shall in any way modify, vary or alter the provisions hereof.

Buyer's obligation is payable solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void and to the extent funds are not available, any delivered but unpaid for goods will be returned to Seller by Buyer.

CONTRACT TERMS AND CONDITIONS

This Contract is made and entered into between the parties hereto in accordance with and subject to the following additional terms and conditions:

1. **SELLER TO PACKAGE GOODS:** Seller will package Goods in accordance with good commercial practice. Each shipping container shall be clearly marked and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address, and purchase order number; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packing unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirement of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipment not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Seller is not authorized to ship the Goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE AND RISK OF LOSS:** The title and risk of loss of the Goods shall not pass to the Buyer until the Buyer actually receives and takes possession of the Goods at the point or points of delivery.
4. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in the bid; Seller shall pay for the transportation costs.
5. **NO PLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of Goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
6. **PLACE OF DELIVERY:** The place of delivery shall be that set forth on the purchase order or in any other written designation by Buyer. The terms of this agreement are "no arrival, no sale."
7. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect the goods at delivery before accepting them.
8. **REJECTION OF GOODS:** It is agreed that if Buyer rejects any of the goods sold pursuant to this agreement, Buyer's only duty shall be to reasonably notify Seller of the rejection and hold the goods for the disposition of Seller, and it is agreed that under no circumstances shall Buyer be required to resell the rejected goods or incur the cost to deliver same to Seller.
9. **GRATUITIES:** The Buyer may, by written notice to the Seller, cancel this contract without liability to the Seller if it be determined by the Buyer that gratuities, in the form of entertainment, gifts, or otherwise were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of City of Sherman with view toward securing the contract or securing favorable treatment with respect to awarding or amending, or the making of any determination with respect to the performing of such a Contract. In the event this Contract is canceled by Buyer pursuant to this provision,

Buyer shall be entitled in addition to any other rights and remedies, to recover and withhold the amount of the cost incurred by the Seller in providing such gratuities.

10. **SPECIAL TOOLS AND TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or any special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.
11. **WARRANTY – PRICE:** The price to be paid by the Buyer shall be that contained in the Seller's bid which Seller warrants to be no higher than Seller's current prices on orders for products of the kind and specification covered by the agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability for breach or Seller's actual expense.

The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach of violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

12. **WARRANTY-PRODUCTS:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. No such attempts to limit, disclaim or exclude any warranties, whether of fitness, merchantability or otherwise, by Seller shall be binding or effective. Seller warrants that the Goods furnished will conform to the specifications, drawings, and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.
13. **SAFETY WARRANTY:** Seller warrants the product sold to the Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event that the products do not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event that Seller fails to make the appropriate correction within a reasonable time, any correction made by Buyer will be at Seller's expense.
14. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS:** As part of this contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specifications will not give rise to such claim, and in no event shall Buyer be liable to Seller in the event that Seller issued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing or the like, within two weeks after the signing of this agreement. If Buyer does not receive notice and a claim is asserted or

Buyer is subsequently held liable for the infringement or the like, Seller will indemnify, defend and save Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringements.

15. **CANCELLATION:** Buyer shall have the right to cancel for default on all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which Buyer may have at law or equity. The Buyer may for any reason whatsoever terminate performance under this Contract by the Seller for convenience at any time. The Buyer shall give notice of such termination to the Seller specifying when termination becomes effective. Goods received but unopened or unused shall be made available to Seller for delivery. Buyer will, in the event of termination, remit such sums to Seller as may be due only for those Goods retained by Buyer.

16. **FORCE MAJEURE:** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligation under the Agreement, then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as is effected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereafter provided, but for no longer periods and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbance, act of public enemy, orders of any kind of government of the United States or State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any Force majeure shall be remedied with all reasonable dispatch shall not require the settlements of strikes and lockouts by exceeding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

17. **ASSIGNMENT – DELEGATION:** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. An attempted assignment or delegation of Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

18. **MODIFICATIONS:** This contract can be modified or rescinded only in writing signed by both parties and their duly authorized agents.

19. **WAIVER:** No claim or right arising out of a breach in contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

20. **INTERPRETATION-PAROL EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
21. **APPLICABLE LAW:** This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
22. **ADVERTISING:** Seller shall not advertise or publish, without Buyer's prior written consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with prior requests for information from an authorized representative of federal, state or local government.
23. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
24. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer or employee shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies, or services, except on behalf of the City as an officer or employee. Any knowing and willful violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the governing body of the City shall render the contract involved voidable by the City Manager or the City Council.
25. **ENTIRE AGREEMENT:** This Contract, and all Specifications and Addenda attached thereto, constitute the entire and exclusive agreement between the Buyer and Seller with reference to the Goods. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Buyer and Seller not expressly made a part hereof.

INDEMNITY AND DISCLAIMER: BUYER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY SELLER FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR

PERSONS, INCLUDING THE SELLER, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF SELLER UNDER THIS CONTRACT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF BUYER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE BUYER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY SELLER TO INDEMNIFY AND PROTECT BUYER FROM THE CONSEQUENCES OF THE SELLER'S AS WELL AS THE BUYER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE. IN ADDITION, CONTRACTOR SHALL OBTAIN AND FILE WITH OWNER CITY OF SHERMAN A STANDARD CERTIFICATE OF INSURANCE AND APPLICABLE POLICY ENDORSEMENT EVIDENCING THE REQUIRED COVERAGE AND NAMING THE OWNER CITY OF SHERMAN AS AN ADDITIONAL INSURED ON THE REQUIRED COVERAGE.

26. **GOVERNING LAW:** The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Goods to be delivered hereunder shall be in the courts of Grayson County, Texas.
27. **SUCCESSORS AND ASSIGNS:** The Buyer and Seller bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Seller shall not assign this Contract without written consent of the Buyer.
28. **SEVERABILITY:** The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.
29. **NOTICES:** All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party at the address set forth herein or set forth in a written designation of change of address delivered to all parties.

EXECUTED this 25th day of September, 2017.

SELLER:

Wesley Short
(Signature)

Wesley Short - President
(Type/Print Name and Title/Position)

1815 W Monton
(Address)

Devison, TX. 75020
(City, State, Zip)

CITY OF SHERMAN:

By: _____
Robby Hefton,
City Manager
220 W. Mulberry
Sherman, TX 75090

ATTEST:

By: _____
Linda Ashby,
City Clerk

APPROVED:

By: _____
Brandon Shelby
City Attorney



**City of Sherman, Texas
Equipment Maintenance Services Department
PO Box 1106
Sherman, TX 75091-1106**

Invitation to Bid

For

**ANNUAL REQUIREMENTS
FOR
TWO-WAY RADIO & EARLY WARNING SIREN MAINTENANCE**

BID NO. 2017-16

**CITY OF SHERMAN
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**CITY OF SHERMAN, TEXAS
FINANCE DEPARTMENT**

**INVITATION TO BID - BID NO. 2017-16; TWO-WAY RADIO & EARLY WARNING SIREN
MAINTENANCE**

The enclosed **INVITATION TO BID (ITB)** and accompanying **SPECIFICATIONS** are for your convenience in bidding on the enclosed referenced **TWO-WAY RADIO & EARLY WARNING SIREN MAINTENANCE** for purchase by the City of Sherman.

Questions may be addressed to the Finance Department at the address listed below. The bids will be opened at **2:00 p.m. on Monday, September 25, 2017** at the following address:

**City of Sherman – Finance Department
Municipal Building
405 N. Rusk Street
Sherman, TX
903-892-7215
craigl@ci.sherman.tx.us**

Bids may be submitted by mail to the following address:

**City of Sherman
Finance Dept – Bid for TWO-WAY RADIO & EARLY WARNING SIREN MAINTENANCE
P.O. Box 1106
Sherman, TX 75091-1106**

OR

Electronically at <https://www.publicpurchase.com>

OR

By delivery at the Municipal Building address listed above.

The award is intended to be included on the agenda of a regularly scheduled meeting of the City Council at the following address:

**City Council Chambers
City Hall
220 W. Mulberry
Sherman, TX**

Each bid delivered to the City shall be sealed and marked "Bid for TWO-WAY RADIO & EARLY WARNING SIREN MAINTENANCE 2017-16" on the exterior of the bid. Electronic submittals

may only be made through Public Purchase at <https://www.publicpurchase.com>. No email or faxed bids will be accepted. Each bid shall be **manually signed and dated by a person having the authority to bind the firm in a contract. Bids that are not signed and dated will be rejected.**

Please note that all bids **must be received at the designated location or through Public Purchase by the deadline shown.** Bids received after the deadline will not be considered for the award of the contract, and shall be considered void and unacceptable. The Opening is scheduled for **2:00 p.m., Monday, September 25, 2017**, at which time the sealed bids will be opened.

The City of Sherman will receive sealed bids for: **TWO WAY RADIO & EARLY WARNING SIREN MAINTENANCE.**

IT IS UNDERSTOOD that the City Council of the City of Sherman reserves the right to reject any or all bids for any or all products and/or services covered in this invitation for bids and to waive informalities of defects in such bids.

Bidders should carefully examine all terms, conditions, specifications and related documents. Should a bidder find discrepancies in or omissions from the specifications or related documents, or should there be doubt as to their meaning, the City of Sherman Finance Department should be notified immediately for clarification prior to submitting the bid. In the event of any conflict between the terms and conditions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City of Sherman's interpretation shall govern.

CITY OF SHERMAN GENERAL CONDITIONS

FUNDING: Funds for payment have been provided through the City of Sherman budget approved by the City Council for this fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current fiscal year shall be subject to budget approval.

LATE BIDS: Bids received in the City of Sherman Finance Department after submission deadline will be considered void and unacceptable. The City of Sherman is not responsible for lateness or non-delivery of mail, carrier, etc., and the date/time stamp in the Finance Department shall be the official time of receipt.

ALTERING BIDS: Bids cannot be altered or amended after submission deadline. Any interlineations, alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.

WITHDRAWAL OF BID: A bid may not be withdrawn or canceled by the Contractor without the permission of the City for a period of ninety (90) days following the date designated for the receipt of bids, and Contractor so agrees upon submittal of their bid.

SALES TAX: The City of Sherman is exempt by law from payment of Texas State Sales Tax and Federal Excise Tax. Contractor shall include any sales taxes from concession sales of taxable items on City property in the total price of the sale, and shall be responsible to report and pay such taxes in a timely manner.

BID AWARD: The City reserves the right to award in the best interest of the City. The City also reserves the right to not award.

CONTRACT: This bid, when properly accepted by the City of Sherman, shall constitute a Contract equally binding between the successful Contractor and the City. No different or additional terms will become a part of this Contract with the exception of Change Orders.

CHANGE ORDERS: No oral statement of any individual shall modify or otherwise change, or affect the terms, conditions or Specifications stated in the resulting Contract. All Change Orders to the Contract will be made in writing by the City's Finance Department.

DELIVERY: All delivery and freight charges (F.O.B. City of Sherman) are to be included in the bid price.

DELIVERY TIME: Bids shall show number of days required to place goods ordered at the City's designated location. Failure to state delivery time may cause bid to be rejected. Successful Contractor shall notify the Service Department immediately if delivery schedule cannot be met. If delay is foreseen, successful Contractor shall give written notice to the Equipment Services Supervisor. The City has the right to extend delivery time if reason appears valid. Successful Contractor must keep the Equipment Services Supervisor advised at all times of the status of the order.

CONFLICT OF INTEREST: No public official shall have interest in this Contract, in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5. Subtitle C, Chapter 171.

DISCLOSURE OF CERTAIN RELATIONSHIPS Effective January 1, 2008 Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Sherman not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. The forms required to comply with Chapter 176 are available at <http://www.ethics.state.tx.us/forms.CIS.pdf>.

ETHICS: The Contractor shall not offer or accept gifts of anything of value nor enter into any business arrangement with any employee, official or agent of the City of Sherman.

EXCEPTIONS/SUBSTITUTIONS: All bids meeting the intent of this Invitation for Bid will be considered for award. Contractors taking exception to the Specifications, or offering substitutions, shall state these exceptions in the section provided or by attachment as part of the bid. In the absence of such, a list shall indicate that the Contractor has not taken exceptions and shall hold the Contractor responsible to perform in strict accordance with the Specifications of the ITB. The City of Sherman reserves the right to accept any and all, or none, of the exception(s)/substitution(s) deemed to be in the best interest of the City.

ADDENDA: Any interpretations, corrections or changes to this Invitation for Bid and Specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the City of Sherman Finance Department. Addenda will be available on the city's website and on the Public Purchase website. Contractors who received an email notification of the RFP availability on the City's website or who are registered with Public Purchase will receive notification when addenda are posted.

BID MUST COMPLY with all federal, state, county, and local laws concerning these types of service(s).

DESIGN, STRENGTH, QUALITY of materials must conform to the highest standards of manufacturing and engineering practice.

All items supplied against credit must be new and unused, unless otherwise specified, in first-class condition and of current manufacturer.

MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE CONTRACTORS: A prospective Contractor must affirmatively demonstrate Contractor's responsibility. A prospective Contractor must meet the following requirements:

1. Have adequate financial resources, or the ability to obtain such resources as required;
2. Be able to comply with the required or bid delivery schedule;
3. Have a satisfactory record of performance;

4. Have a satisfactory record of integrity and ethics;
5. Be otherwise qualified and eligible to receive an award.

The City may request representation and other information sufficient to determine Contractor's ability to meet these minimum standards listed above.

CONTRACTOR SHALL PROVIDE with this bid response, all documentation required by this Invitation for Bid. Failure to provide this information may result in rejection of bid.

BID MAY BE AWARDED to one or more vendors, by item or group of items, including those available through cooperative purchasing agreements as the City deems necessary to be the best interest of the City.

SUCCESSFUL CONTRACTOR SHALL defend, indemnify and save harmless the City of Sherman and all its officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful Contractor, or of any agent, employee, subcontractor or Contractor in the execution of, or performance under, any Contract which may result from bid award. Successful Contractor indemnifies and will indemnify and save harmless the City from liability, claim or demand on their part, agents, servants, customers, and/or employees whether such liability, claim or demand arise from event or casualty happening or within the occupied premises themselves or happening upon or in any of the halls, elevators, entrances, stairways or approaches of or to the facilities within which the occupied premises are located. Successful Contractor shall pay any judgment with costs which may be obtained against the City growing out of such injury or damages. In addition, **Contractor shall obtain and file with Owner City of Sherman a Standard Certificate of Insurance and applicable policy endorsement evidencing the required coverage and naming the owner City of Sherman as an additional insured on the required coverage.**

WAGES: Successful Contractor shall pay or cause to be paid, without cost or expense to the City of Sherman, all Social Security, Unemployment and Federal Income Withholding Taxes of all such employees and all such employees shall be paid wages and benefits as required by Federal and/or State Law.

TERMINATION OF CONTRACT: This Contract shall remain in effect until Contract expires including renewals, delivery and acceptance of products and/or performance of services ordered or terminated by either party with a thirty (30) day written notice prior to any cancellation. The successful Contractor must state therein the reasons for such cancellation. The City of Sherman reserves the right to award canceled Contract to next lowest and best Contractor as it deems to be in the best interest of the City of Sherman.

TERMINATION FOR DEFAULT: The City of Sherman reserves the right to enforce the performance of this Contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this Contract. The City of Sherman reserves the right to terminate the Contract immediately in the event the successful Contractor fails to:

1. Meet schedules;
2. Defaults in the payment of any fees; or
3. Otherwise perform in accordance with these Specifications.

Breach of Contract or default authorizes the City of Sherman to exercise any or all of the following rights:

1. The City may take possession of the assigned premises and any fees accrued or becoming due to date;
2. The City may take possession of all goods, fixtures and materials of successful Contractor therein and may foreclose its lien against such personal property, applying the proceeds toward fees due or thereafter becoming due.

In the event the successful Contractor shall fail to perform, keep or observe any of the terms and conditions to be performed, kept or observed, the City shall give the successful Contractor written notice of such default; and in the event said default is not remedied to the satisfaction and approval of the city within two (2) working days of receipt of such notice by the successful Contractor, default will be declared and all the successful Contractor's rights shall terminate.

Contractor, in submitting this bid, agrees that the City of Sherman shall not be liable to prosecution for damages in the event that the City declares the Contractor in default.

NOTICE: Any notice provided by this bid (or required by law) to be given to the successful Contractor by the City of Sherman shall conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in the City of Sherman, Texas by Registered or Certified Mail with sufficient postage affixed thereto, addressed to the successful Contractor at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

PATENTS/COPYRIGHTS: The successful Contractor agrees to protect the City of Sherman from claims involving infringement of patents and/or copyrights.

CONTRACT ADMINISTRATOR: Under this Contract, the City of Sherman may appoint a Contract Administrator with designated responsibility to ensure compliance with Contract requirements, such as but not limited to, acceptance, inspection and delivery. The Contract Administrator will serve as liaison between the City of Sherman Finance Department and the successful Contractor.

PACKING SLIPS or other suitable shipping documents shall accompany each special order shipment and shall show: (a) name and address of successful Contractor, (b) name and address of receiving department and/or delivery location, (c) Purchase Order number, and (d) descriptive information as to the item(s) delivered, including product code, item number, quantity, number or containers, etc.

INVOICES shall show all information as stated above, and mailed directly to the City of Sherman Finance Department, PO Box 1106, Sherman, Texas, 75091-1106. All invoices must specifically list vehicle description and unit number to which all parts and labor will be applied. In addition, invoices shall list make and model numbers of all parts used for each item of work listed. Furthermore, all invoices must list labor hours per item of work, including no-charge items covered under maintenance contract specifications.

PAYMENT will be made upon receipt and acceptance by the City of Sherman for any item(s) ordered and receipt of a valid invoice, in accordance with the State of Texas Prompt Payment

Act, Article 601f V.T.C.S. Successful Contractor(s) required to pay subcontractors within 30 days.

ITEMS supplied under this Contract shall be subject to the City's approval. Items found defective or not meeting Specifications shall be picked up and replaced by the successful Contractor at the next service date at no expense to the City of Sherman. If item is not picked up within one (1) week after notification, the item will become a donation to the City for disposition.

SAMPLES: When requested, samples shall be furnished free of expense to the City of Sherman.

WARRANTY: Successful Contractor shall warrant that all items/services shall conform to the bid Specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title. A copy of the warranty for each item being bid must be enclosed. Failure to comply with the above requirements for literature and warranty information could cause bid to be rejected.

REMEDIES: The successful Contractor and the City of Sherman agree that both parties have all rights, duties and remedies available as stated in the Uniform Commercial Code.

VENUE: This Agreement will be governed and construed according to the laws of the State of Texas. This Agreement is performable in the City of Sherman.

ASSIGNMENT: The successful Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without prior written consent of the City of Sherman.

SPECIFICATIONS and model numbers are for description only unless noted otherwise in detailed specification in this bid packet. Contractor may bid on description only. Contractor may bid on alternate model but must clearly indicate alternate model being bid. Contractor must enclose full descriptive literature on alternate item(s).

SILENCE OF SPECIFICATION: The apparent silence of these Specifications as to any detail or to the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these Specifications shall be made on the basis of this statement.

Each insurance policy to be furnished by successful Contractor shall include, by endorsement to the policy, a statement that a notice shall be given to the City of Sherman by Certified Mail thirty (30) days prior to cancellation or upon any material change in coverage.

ANY QUESTIONS concerning this Invitation for Bid and Specifications should be directed to the Finance Department at 903-892-7215.

SPECIFICATIONS FOR TWO-WAY RADIO MAINTENANCE

Note: For any item that a bidder chooses not to submit a price, bidder shall notate as "No Bid". Refer to "BID MAY BE AWARDED" section on page 7 for further details.

1. The successful vendor must be able to provide all maintenance repairs to the City's radio system, as required by The City of Sherman. Such maintenance repairs shall include all communication equipment consisting of repeater, dispatch console base units, mobile units, mobile data docking & peripheral (excluding laptops) supporting installations and maintenance, walkie-talkies, antennas, and coax, inclusive of police, fire, and public works. Contract period shall be October 2, 2017 through October 1, 2018.

2. All maintenance work is to be done, when possible, during normal working hours of 8 a.m. to 5 p.m., Monday through Friday. Maintenance work in the breakdown of a repeater for Police or Fire Department base units, or the base units themselves shall be available 24 hours per day, 7 days per week. The maximum response time on such work, as well as Public Works base problems, will be 30 minutes on-site response.

3. Should the need arise for a vehicle to leave the city limits of Sherman for maintenance or repair, it shall be the responsibility of the vendor to pick such vehicle up from the Equipment Service Center and to return vehicle to same upon completion of work. Successful vendor shall show proof to the City of sufficient liability insurance to cover any damage to the vehicle while it is in the vendor's possession for maintenance or repairs. Please state the address of your firm, if located outside the city limits of Sherman:

1815 West Monton St, Dewison, TX, 75020

In addition, the Equipment Service Center shall have first knowledge of all Public Works repair requests for authorization and approval of such repairs as needed. Public Works vehicle pick-up, return and release shall be approved by and through the Equipment Service Center, and at the discretion of the Equipment Service Center; Public Works vehicles may be delivered and picked up from the successful vendor.

4. The successful vendor shall inspect each transceiver unit, adjust, and repair, when necessary, at least one time each year, and each time the radio is bench tested, bringing said units up to operating standards of FCC current standards. Documentation that the unit has been checked and is in compliance shall be provided to the respective City department.

5. All parts will be paid for by the City. Vendor shall bill the parts at the lowest possible cost. Specify markup above vendor cost for said parts:

Percent Mark Up: 25% (will remain constant for the contract period)

6. It shall be an option to the City to request copies of vendor parts cost invoices used in the repairs of City equipment to verify said markup.

7. The Contractor will install and/or remove all mobile radio units and the City will correct any vehicle defects that interfere with the operation of the radio units. The City retains the right to install any public works vehicles as deemed necessary. The successful vendor will, in addition, be responsible for the installation of all mobile radios in all police, fire and public works vehicles at a flat rate per vehicle, as required by the City of Sherman. The flat rate will be constant for

the duration of the contract.

Please specify the per vehicle flat rate:

	INSTALLATION (\$)	REMOVAL (\$)
Under-dash	95.00	25.00
Two-piece trunk/under-dash	145.00	45.00
Police Vehicle – Complete Change Out (NEW)	985.00	NA
Police Vehicle – Complete Change Out (TRANSFER)	985.00	195.00
Fire Vehicle – Complete Change Out (NEW)	750.00	NA
Fire Vehicle – Complete Change Out (TRANSFER)	750.00	125.00
Public Works Vehicle – Complete Change Out (NEW)	395.00	NA
Public Works Vehicle – Complete Change Out (TRANSFER)	395.00	95.00

8. The City of Sherman is exempt from all Federal and State taxes.

9. The contact persons for repairs are as follows:

Equipment Services Supervisor for:

Vehicle Radio repair and Public Works Base Units. For Public Works vehicles, only Service Center personnel are authorized to sign tickets.

Police Operations Bureau Chief or designee for:

Police Department base units, repeaters, radio equipment related to mobile data accessories, and walkie-talkies (hand-held).

Fire Chief or designee for:

Fire Department walkie-talkies (hand-held/head gear) and Fire Department mobile data accessories.

10. Payment shall be made to the successful vendor once monthly upon receipt of monthly invoice/statement.

11. The monthly set charge for the maintenance and repairs to The City of Sherman two-way radio equipment, emergency lighting equipment & relate ancillary equipment shall be:

Monthly Rate: \$ 2400.00 (charge will remain constant for contract period)

12. The set hourly rate for the maintenance and repair to The City of Sherman equipment for

repairs not covered under said contract shall be:

Hourly Rate: \$ 65.00 (rate will remain constant for contract period)

13. The successful vendor shall make recommendations to the City in reference to the need for replacement of equipment, new equipment that may come into existence that can be utilized in the communication system, equipment that is not performing to FCC standards, or is not performing in a satisfactory manner for the City's communication operations.

14. The successful vendor **SHALL PROVIDE WRITTEN DOCUMENTATION** to the City, including model & serial numbers, when radios and like equipment are moved from vehicle to vehicle, whether replaced or repaired.

17. The successful vendor shall show proof of:

- (1.) Appropriate qualifying FCC license for all qualified personnel.
- (2.) Factory Authorization to work on various brands and models as owned/operated by the City of Sherman.

SPECIFICATIONS FOR ANCILLARY EQUIPMENT NECESSARY IN SUPPORTING CITY TWO-WAY RADIOS AND EMERGENCY LIGHTING

Note: For any item that a bidder chooses not to submit a price, bidder shall notate as "No Bid". Refer to "BID MAY BE AWARDED" section on page 7 for further details.

1. The successful vendor must be able to provide all maintenance repairs to the ancillary equipment for two-way radio systems and emergency lighting, as required by The City of Sherman, in all Fire, Police and Public Works vehicles. Contract period shall be October 2nd, 2017 through October 1st, 2018.

2. All maintenance work is to be done, when possible, during normal working hours of 8 a.m. to 5 p.m., Monday through Friday. Maintenance work in the breakdown of repeater-related ancillary equipment for Police or Fire Department base units, shall be available 24 hours per day, 7 days per week. The maximum response time on such work, as well as Public Works ancillary equipment problems, will be 30 minutes on-site response.

3. Should the need arise for a vehicle to leave the city limits of Sherman for maintenance or repair, it shall be the responsibility of the vendor to pick such vehicle up from the Equipment Service Center and to return vehicle to same upon completion of work. Successful vendor shall show proof to the City of sufficient liability insurance to cover any damage to the vehicle while it is in the vendor's possession for maintenance or repairs. Please state the address of your firm, if located outside the city limits of Sherman:

1815 W Morton St, Devision, TX, 75020

In addition, the Equipment Service Center shall have first knowledge of all Public Works repair requests for authorization and approval of such repairs as needed. Public Works vehicle pick-up, return and release shall be approved by and through the Equipment Service Center, and at the discretion of the Equipment Service Center; Public Works vehicles may be delivered and

picked up from the successful vendor.

4. The successful vendor shall inspect each transceiver unit, adjust, and repair, when necessary, at least one time each year, and each time the radio is bench tested, bringing said units up to operating standards of FCC current standards. Documentation that the unit has been checked and is in compliance shall be provided to the respective City department.

5. All parts will be paid for by the City. Vendor shall bill the parts at the lowest possible cost. Specify markup above vendor cost for said parts:

Percent Mark Up: 25% (will remain constant for the contract period)

6. It shall be an option to the City to request copies of vendor parts cost invoices used in the repairs of City equipment to verify said markup.

7. The Contractor will install and/or remove all ancillary equipment and the City will correct any vehicle defects that interfere with the operation of the ancillary equipment. The City retains the right to install any public works vehicles as deemed necessary. The successful vendor will, in addition, be responsible for the installation of all emergency lighting in all police, fire and public works vehicles at a flat rate per vehicle, as required by the City of Sherman. The flat rate will be constant for the duration of the contract.

Hourly Rate: \$ 65.00 (rate will remain constant for contract period)

8. The City of Sherman is exempt from all Federal and State taxes.

9. The contact persons for repairs are as follows:

Equipment Services Supervisor for:

Ancillary equipment installation, removal and maintenance for Public Works vehicles. Additionally, only Service Center personnel are authorized to sign tickets for Public Works.

Police Operations Bureau Chief or designee for:

Police Department ancillary equipment for two-way radio and emergency lighting systems.

Fire Chief or designee for:

Fire Department ancillary equipment for two-way radio and emergency lighting systems.

10. Payment shall be made to the successful vendor once monthly upon receipt of monthly invoice/statement.

13. The successful vendor shall make recommendations to the City in reference to the need for replacement of equipment, new equipment that may come into existence that can be utilized in the communication system, equipment that is not performing to FCC standards, or is not performing in a satisfactory manner for the City's communication operations.

14. The successful vendor **SHALL PROVIDE WRITTEN DOCUMENTATION** to the City,

including model & serial numbers, when ancillary equipment is moved from vehicle to vehicle, whether replaced or repaired.

17. The successful vendor shall show proof of:

- (1.) Appropriate qualifying FCC license for all qualified personnel.
- (2.) Factory Authorization to work on various brands and models as owned/operated by the City of Sherman.

SPECIFICATIONS FOR EARLY WARNING SIREN MAINTENANCE

Note: For any item that a bidder chooses not to submit a price, bidder shall notate as "No Bid". Refer to "BID MAY BE AWARDED" section on page 7 for further details.

1. The Successful vendor must be able to provide all maintenance repairs to the City's Early Warning System as required by the City of Sherman. Such maintenance repairs shall include all equipment related to the operation of the warning sirens.

2. All maintenance work is to be done, when possible, during normal working hours of 8 a.m. to 5 p.m., Monday through Friday. Maintenance work in the breakdown of the warning siren system shall be available 24 hours a day, 7 days a week. The maximum response time on such work will be 30 minutes on-site response.

3. The successful vendor shall inspect each unit, adjust and repair, when necessary, at least one time each year, bringing said units up to manufacturers operating standards and FCC current standards if applicable. Documentation shall be provided to the City, that the unit has been checked and does comply. Inspection reports shall be returned to the contact persons listed below.

The contact persons for repairs and inspection reports are as follows:

Emergency Management Coordinator or designee
Assistant Emergency Management Coordinator or designee

4. The City will pay for all parts. Vendors shall bid the parts cost at the lowest possible cost. The percent markup will be:

Percent Mark Up: 25% (rate will remain constant for contract period)

5. The City may request copies of vendor parts cost invoices used in repairs of City equipment to verify said markup.

6. The City of Sherman is exempt from all Federal and State taxes.

7. Payment shall be made to the successful vendor once monthly upon receipt of monthly invoice/statement.

8. The monthly set charge for the maintenance and repairs to the City of Sherman equipment shall be:

Monthly Rate \$ 400.00 (charge will be constant for contract duration)

9. The set hourly rate for the maintenance and repair to the City of Sherman equipment for repairs not covered under said contract shall be:

Hourly Rate: \$ 65.00 (charge will be constant for contract duration)

10. The successful vendor shall make recommendations to the City in reference to the need for replacement of equipment, new equipment that may come into existence that can be utilized in the warning system, equipment that is not performing to manufactures standards, or is not performing in a satisfactory manner in the City's operations.

11. The successful vendor shall show proof of appropriate factory authorization to work on Federal warning sirens of various models as owned and operated by the City of Sherman.

Bidder DOES (☒) DOES NOT (☐) meet all bid specifications.

Exceptions:

Additions:

BIDDERS CERTIFICATION:

I, the undersigned, by signing the following statement agree that I have read and understand all of the terms and conditions, specifications, and requirements contained on each page of this Invitation to Bid. I also understand that if this proposal is accepted by The City of Sherman that all of the terms and conditions, specifications, and requirements submitted in my proposal and any additions, changes, or deletions made during negotiations will be made a part of this proposal under a binding contract between my company and the City of Sherman, Texas. I also certify that this proposal is made without previous understanding, agreement, or connection with any person, firm, or corporation making a proposal for the same materials, and is in all fair and without collusion

or fraud:

OUR company is a (Check One):

Corporation ☒ (The bid MUST be signed by an Officer of the company)
Partnership ☐ (The bid MUST be signed by a General Partner)
Joint Venture ☐ (The bid MUST be signed by an Officer of the company)
Sole Proprietor ☐ (The bid MUST be signed by the Owner)

COMPANY NAME:

COMPANY NAME (TYPED/PRINTED):

Shisman Communications Inc

COMPANY ADDRESS (TYPED/PRINTED):

1815 W Morton St

CITY/STATE/ZIP (TYPED/PRINTED):

Devison, TX, 75020

AUTHORIZED COMPANY REPRESENTATIVE PLEASE SIGN BELOW:

NAME (TYPED/PRINTED):

Wesley Short

SIGNATURE:

Wesley Short

DATE:

9-25-17

Your signature attests to your offer to provide the goods and/or services in this proposal according to the published provisions of this Invitation to Bid. When an award letter is issued, it becomes a part of this contract. Contract is not valid until a Purchase Order is issued.



**CITY OF SHERMAN
STANDARD CONTRACT**

This Agreement is made by and between the City of Sherman, Texas, a home-rule municipality, hereinafter referred to as "Buyer", and the hereinafter named SELLER, referred to as the "Seller," for the sale of goods, materials and items specified hereinafter, and the Buyer and Seller hereby agree as follows:

Seller:

Shipman Communications Inc
Name

1815 W Morton
Address

Denison, TX. 75020
City, State, Zip

903-465-8297 or 903-815-0064
Telephone

wesleys7971@sbcglobal.net
Email

DESCRIPTION OF GOODS

This Contract is for the purchase by the City of Sherman, Texas, of the goods, materials and items described hereinafter as the "goods" or the subject of this Contract, and such parts, attachments, accessories, devices, and apparatus as may be considered an integral part of the Goods or necessary for the proper use or application of the Goods, whether or not specified herein. The Goods are more specifically described as follows:

Two-Way Radio & Early Warning Sign
maintenance with parts as needed.

[CHECK ONE:]

_____ This contract is a "fixed price – fixed quantity" Contract for the purchase of the specified quantity at the specified price. The full quantity of the Goods shall be delivered to and received at the designated point or points of delivery no later than the date specified herein below. This date is a material term and condition of the Contract and, in connection with the delivery date, time is and shall be of the essence.

Date of Delivery

OR

☒ This Contract is for a specific duration wherein the Seller will supply, furnish and deliver at the designated point or points of delivery the specified Goods in the quantities requested by Buyer at the time of Buyer's order. The delivery date(s) shall be set forth in Buyer's order. This Contract is not intended to be and shall not be construed as an exclusive requirements contract. This Contract is non-exclusive and Buyer may acquire any or all of its requirements for the specified Goods from Seller or any other source deemed appropriate by Buyer. Upon the conclusion of the duration of this Contract, Buyer may renew this agreement for two additional one (1) year periods upon sending written notice of intent thereof within forty-five (45) days prior to the expiration of the last day of the term of this Contract.

DURATION: From October 2, 2017 to October 1, 2018

PAYMENT TERMS

The purchase price of the Goods shall be that contained in the Seller's bid and specifically accepted in writing by Buyer. Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number, and shall be itemized. A copy of the packing slip should be attached to the invoice. Email invoices are preferred; email all invoices to tonim@ci.sherman.tx.us, with a cc for Public Works to kimh@ci.sherman.tx.us, for Fire/Emergency Services to dannyj@ci.sherman.tx.us, and for Police to zacharyf@ci.sherman.tx.us. Invoices may also be mailed to the City of Sherman, Finance Department, PO Box 1106, Sherman, TX 75091-1106. Payment shall not be due until the above instruments are submitted, until the Goods have been received by Buyer, and until Buyer has had sufficient opportunity to inspect and exercise its right to accept or reject. Seller shall keep the Finance Department advised of any changes in their remittance addressees. In no event shall Buyer be responsible for interest of any kind on any funds due to Seller, and no term or provision contained in any Seller's invoice shall in any way modify, vary or alter the provisions hereof.

Buyer's obligation is payable solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void and to the extent funds are not available, any delivered but unpaid for goods will be returned to Seller by Buyer.

CONTRACT TERMS AND CONDITIONS

This Contract is made and entered into between the parties hereto in accordance with and subject to the following additional terms and conditions:

1. **SELLER TO PACKAGE GOODS:** Seller will package Goods in accordance with good commercial practice. Each shipping container shall be clearly marked and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address, and purchase order number; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packing unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirement of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipment not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Seller is not authorized to ship the Goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE AND RISK OF LOSS:** The title and risk of loss of the Goods shall not pass to the Buyer until the Buyer actually receives and takes possession of the Goods at the point or points of delivery.
4. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in the bid; Seller shall pay for the transportation costs.
5. **NO PLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of Goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
6. **PLACE OF DELIVERY:** The place of delivery shall be that set forth on the purchase order or in any other written designation by Buyer. The terms of this agreement are "no arrival, no sale."
7. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect the goods at delivery before accepting them.
8. **REJECTION OF GOODS:** It is agreed that if Buyer rejects any of the goods sold pursuant to this agreement, Buyer's only duty shall be to reasonably notify Seller of the rejection and hold the goods for the disposition of Seller, and it is agreed that under no circumstances shall Buyer be required to resell the rejected goods or incur the cost to deliver same to Seller.
9. **GRATUITIES:** The Buyer may, by written notice to the Seller, cancel this contract without liability to the Seller if it be determined by the Buyer that gratuities, in the form of entertainment, gifts, or otherwise were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of City of Sherman with view toward securing the contract or securing favorable treatment with respect to awarding or amending, or the making of any determination with respect to the performing of such a Contract. In the event this Contract is canceled by Buyer pursuant to this provision,

Buyer shall be entitled in addition to any other rights and remedies, to recover and withhold the amount of the cost incurred by the Seller in providing such gratuities.

10. **SPECIAL TOOLS AND TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or any special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.

11. **WARRANTY – PRICE:** The price to be paid by the Buyer shall be that contained in the Seller's bid which Seller warrants to be no higher than Seller's current prices on orders for products of the kind and specification covered by the agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability for breach or Seller's actual expense.

The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach of violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

12. **WARRANTY-PRODUCTS:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. No such attempts to limit, disclaim or exclude any warranties, whether of fitness, merchantability or otherwise, by Seller shall be binding or effective. Seller warrants that the Goods furnished will conform to the specifications, drawings, and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.

13. **SAFETY WARRANTY:** Seller warrants the product sold to the Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event that the products do not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event that Seller fails to make the appropriate correction within a reasonable time, any correction made by Buyer will be at Seller's expense.

14. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS:** As part of this contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specifications will not give rise to such claim, and in no event shall Buyer be liable to Seller in the event that Seller issued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing or the like, within two weeks after the signing of this agreement. If Buyer does not receive notice and a claim is asserted or

Buyer is subsequently held liable for the infringement or the like, Seller will indemnify, defend and save Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringements.

15. **CANCELLATION:** Buyer shall have the right to cancel for default on all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which Buyer may have at law or equity. The Buyer may for any reason whatsoever terminate performance under this Contract by the Seller for convenience at any time. The Buyer shall give notice of such termination to the Seller specifying when termination becomes effective. Goods received but unopened or unused shall be made available to Seller for delivery. Buyer will, in the event of termination, remit such sums to Seller as may be due only for those Goods retained by Buyer.

16. **FORCE MAJEURE:** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligation under the Agreement, then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as is effected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereafter provided, but for no longer periods and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbance, act of public enemy, orders of any kind of government of the United States or State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any Force majeure shall be remedied with all reasonable dispatch shall not require the settlements of strikes and lockouts by exceeding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

17. **ASSIGNMENT – DELEGATION:** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. An attempted assignment or delegation of Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

18. **MODIFICATIONS:** This contract can be modified or rescinded only in writing signed by both parties and their duly authorized agents.

19. **WAIVER:** No claim or right arising out of a breach in contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

20. **INTERPRETATION-PAROL EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
21. **APPLICABLE LAW:** This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
22. **ADVERTISING:** Seller shall not advertise or publish, without Buyer's prior written consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with prior requests for information from an authorized representative of federal, state or local government.
23. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
24. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer or employee shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies, or services, except on behalf of the City as an officer or employee. Any knowing and willful violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the person or corporation contracting with the governing body of the City shall render the contract involved voidable by the City Manager or the City Council.
25. **ENTIRE AGREEMENT:** This Contract, and all Specifications and Addenda attached thereto, constitute the entire and exclusive agreement between the Buyer and Seller with reference to the Goods. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Buyer and Seller not expressly made a part hereof.

INDEMNITY AND DISCLAIMER: BUYER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY SELLER FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR

PERSONS, INCLUDING THE SELLER, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF SELLER UNDER THIS CONTRACT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF BUYER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE BUYER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY SELLER TO INDEMNIFY AND PROTECT BUYER FROM THE CONSEQUENCES OF THE SELLER'S AS WELL AS THE BUYER'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE. IN ADDITION, CONTRACTOR SHALL OBTAIN AND FILE WITH OWNER CITY OF SHERMAN A STANDARD CERTIFICATE OF INSURANCE AND APPLICABLE POLICY ENDORSEMENT EVIDENCING THE REQUIRED COVERAGE AND NAMING THE OWNER CITY OF SHERMAN AS AN ADDITIONAL INSURED ON THE REQUIRED COVERAGE.

26. **GOVERNING LAW:** The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Goods to be delivered hereunder shall be in the courts of Grayson County, Texas.
27. **SUCCESSORS AND ASSIGNS:** The Buyer and Seller bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Seller shall not assign this Contract without written consent of the Buyer.
28. **SEVERABILITY:** The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.
29. **NOTICES:** All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party at the address set forth herein or set forth in a written designation of change of address delivered to all parties.

EXECUTED this 25th day of September, 2017.

SELLER:

Wesley Short
(Signature)

Wesley Short - President
(Type/Print Name and Title/Position)

1815 W Monton
(Address)

Devision, TX. 75020
(City, State, Zip)

CITY OF SHERMAN:

By: _____
Robby Hefton,
City Manager
220 W. Mulberry
Sherman, TX 75090

ATTEST:

By: _____
Linda Ashby,
City Clerk

APPROVED:

By: _____
Brandon Shelby
City Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/25/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Priority Insurance Group 3201 W PARK ROW BLVD CORSICANA TX 75110-4844	CONTACT NAME: Cindy Pryor PHONE (A/C, No, Ext): (903) 874-1048 FAX (A/C, No): (903) 875-1963 E-MAIL ADDRESS: cindyp@priorityinsurancegroupplc.com																					
INSURED SHIPMAN COMMUNICATIONS, INC 1815 W MORTON ST DENISON TX 75020	<table border="1"><thead><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A:</td><td>SCOTTSDALE INSURANCE COMPANY</td><td></td></tr><tr><td>INSURER B:</td><td></td><td></td></tr><tr><td>INSURER C:</td><td>SCOTTSDALE INSURANCE COMPANY</td><td></td></tr><tr><td>INSURER D:</td><td>TEXAS MUTUAL INSURANCE COMPANY</td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	SCOTTSDALE INSURANCE COMPANY		INSURER B:			INSURER C:	SCOTTSDALE INSURANCE COMPANY		INSURER D:	TEXAS MUTUAL INSURANCE COMPANY		INSURER E:			INSURER F:		
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INSURER E:																						
INSURER F:																						

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR		CPS2553286	1/01/2017	1/01/2018	EACH OCCURRENCE \$ 2,000,000
		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000				
		MED EXP (Any one person) \$ 5,000				
		PERSONAL & ADV INJURY \$ 1,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC				GENERAL AGGREGATE \$ 2,000,000	
					PRODUCTS - COMP/OP AGG \$ 1,000,000	
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$
						BODILY INJURY (Per person) \$
						BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
C	UMBRELLA LIAB ☐ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE		XBS0074960	1/01/2017	1/01/2018	EACH OCCURRENCE \$ 2,000,000
	☐ DED ☐ RETENTION \$					AGGREGATE \$ 2,000,000
						\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	☐ Y ☒ N	TSF-0001129845	3/31/2017	3/31/2018	☐ WC STATUTORY LIMITS ☒ OTHER
						E.L. EACH ACCIDENT \$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Additional Insured is shown in favor of the Certificate Holder.

CERTIFICATE HOLDER**CANCELLATION**

City of Sherman 405 N Rusk Sherman, TX 75090	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

ACORD 25 (2010/05)

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Motorola Solutions, Inc.
1301 E. Algonquin Rd.
Schaumburg, IL 60196
USA

September 25, 2017

RE: Letter of Authorization as Motorola Channel Partner,
MR & Service Center

To Whom It May Concern:

This letter is being sent pursuant to a customer request regarding the relationship between Motorola Solutions, Inc. and Shipman Communications. Please be advised that Shipman Communications headquartered at 1815 W. Morton, Denison, TX. 75020 are an authorized Channel Partner, MR and Service Center for reselling Motorola PCR products.

Should you have any questions, please feel free to contact Ed Center at 972-841-9542 or email at e.center@motorolasolutions.com

Sincerely,

Contracts Department
Motorola Solutions, Inc.
1303 E. Algonquin Road
IL01 – 4th Floor
Schaumburg, IL 60196

1/5/2017

TO: Federal Signal / Mass Notification Systems Customers

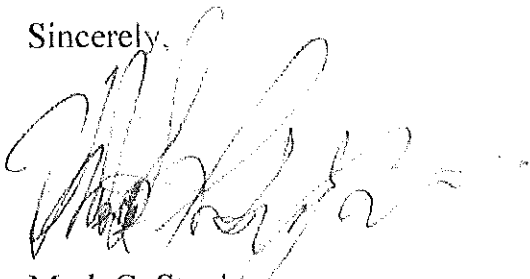
RE: Shipman Communications

Shipman Communications has successfully completed our Business Alliance Program requirements, including factory training, turnkey installations and maintenance for Federal Signal Outdoor Warning Siren equipment. As an authorized Federal Signal Service Center, Shipman Communications can provide sales, installation and support Federal Signal products.

Shipman Communications has successfully deployed many turnkey installations on behalf of Federal Signal, and have the experience to both install and service all Federal Signal Outdoor Warning / Mass Notification Systems products.

Please feel free to contact Wesley Short at Shipman Communications for all of your Federal Signal needs. If you should have any questions regarding our Business Alliance Program, or the qualifications of Shipman Communications, please do not hesitate to contact me directly.

Sincerely,



Mark C. Stephens
Regional Manager / Systems Sales Engineer
Federal Signal Integrated Systems
PH: (281) 208-8323
CELL: (708) 217-0204
mstephens@fedsig.com

BID TABULATION
CITY OF SHERMAN - Two Way Radio & Early Warning Siren Maintenance ITB
BID OPENING Monday, September 25, 2017; 2:00 PM

Section A: Two Way Radio

Vendor	Description	Installation (\$)	Removal (\$)
Shipman Communications	Under-dash	95.00	25.00
Priority Public Safety	Under-dash	105.00	35.00
Shipman Communications	Two-piece trunk/under-dash	145.00	45.00
Priority Public Safety	Two-piece trunk/under-dash	131.25	50.00
Shipman Communications	Police Vehicle – Complete Change Out (NEW)	985.00	N/A
Priority Public Safety	Police Vehicle – Complete Change Out (NEW)	105.00	35.00
Shipman Communications	Police Vehicle – Complete Change Out (TRANSFER)	985.00	195.00
Priority Public Safety	Police Vehicle – Complete Change Out (TRANSFER)	105.00	35.00
Shipman Communications	Fire Vehicle – Complete Change Out (NEW)	750.00	N/A
Priority Public Safety	Fire Vehicle – Complete Change Out (NEW)	131.25	50.00
Shipman Communications	Fire Vehicle – Complete Change Out (TRANSFER)	750.00	125.00
Priority Public Safety	Fire Vehicle – Complete Change Out (TRANSFER)	131.25	50.00
Shipman Communications	Public Works Vehicle – Complete Change Out (NEW)	395.00	N/A
Priority Public Safety	Public Works Vehicle – Complete Change Out (NEW)	105.00	35.00
Shipman Communications	Public Works Vehicle – Complete Change Out (TRANSFER)	395.00	95.00
Priority Public Safety	Public Works Vehicle – Complete Change Out (TRANSFER)	105.00	35.00

Vendor	Monthly Maintenance/Repairs Set Charge (\$)	Hourly Set Rate (\$) for Maintenance/Repairs not covered by Contract	Mark Up for Parts (%)
Shipman Communications	2,400.00	65.00	25%
Priority Public Safety	N/A	52.50	see attached

Section B: Ancillary Equipment

Vendor		Hourly Set Rate (\$) for Emergency Lighting Installation/Removal	Mark Up for Parts (%)
Shipman Communications		65.00	25%
Priority Public Safety		52.50	see attached

Section C: Early Warning Siren

Vendor	Monthly Maintenance/Repairs Set Charge (\$)	Hourly Set Rate (\$) for Maintenance/Repairs not covered by Contract	Mark Up for Parts (%)
Shipman Communications	400.00	65.00	25%
Priority Public Safety	N/A	N/A	N/A



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.8.

Meeting Date: 11/06/2017

Prepared By: Theresa Hutchinson, Parks & Recreation Manager

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 6293**

Authorizing the Purchase of a 2017 Kubota S Series Tracked Skid Steer for the Park Maintenance Department from Six & Mango Equipment, LLP through the Texas Local Government Purchasing Cooperative (BuyBoard)

Issue:

To consider the purchase of a 2017 Kubota S Series Tracked Skid Steer from Six & Mango Equipment, LLP of Sherman, Texas, through the BuyBoard, for use within the Park Maintenance Department

Background:

This Skid Steer will allow for greater maneuverability around limited work areas than the current tractor, including being used for back-filling, digging post holes, unloading deliveries, and loading equipment onto the trailer.

The Texas Local Government Purchase Cooperative was created to increase the purchasing power of government entities and to simplify their purchasing power by using a customized electronic purchasing system, called the BuyBoard. Purchasing through the BuyBoard fully satisfies the provisions of Texas Local Government Code Section 271.

Origination:

Park Maintenance Department

Financial Consideration:

The 2017 Kubota S Series Tracked Skid Steer and attachments will be purchased from Six & Mango Equipment, LLP of Sherman, Texas, through the BuyBoard at a cost of \$65,611.18. Funding for this purchase was appropriated for fiscal year 2018 in the Capital Improvement Project budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase the new skid steer and attachments.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 6293

Kubota Skid Steer Quote

BuyBoard Interlocal Participation Agreement

RESOLUTION NO. 6293

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A 2017 KUBOTA S SERIES TRACKED SKID STEER FOR THE PARK MAINTENANCE DEPARTMENT FROM SIX & MANGO EQUIPMENT, LLP THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD); 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 Six & Mango Equipment, LLP of Sherman, Texas, through the Texas Local Government Purchasing Cooperative (BuyBoard), a 2017 Kubota S Series Tracked Skid Steer and attachments for use within the Park Maintenance Department, at a total price of Sixty-Five Thousand Six Hundred Eleven Dollars and Eighteen Cents (\$65,611.18), in accordance with the provisions of the BuyBoard proposal and the terms and conditions of the Interlocal Participation Agreement, both attached hereto and made a part hereof for all purposes. Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2017-2018 budget.

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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



CE - #515-16, GM - #529-17

SVL95-2SHFC WEB QUOTE #864878

Date: 10/10/2017 9:26:37 AM

- Customer Information -

MROZINSKI, JIMMY

CITY OF SHERMAN PARKS

jimmym@ci.sherman.tx.us

903-892-7350

Quote Provided By
SIX & MANGO EQUIPMENT, LLP

Brent Yates

910 SOUTH SAM RAYBURN FWY

SHERMAN, TX 75090-7857

email: brent.yates@sixandmango.com

phone: 2147049830

- Standard Features -

- Custom Options -



Kubota

S Series

SVL95-2SHFC

*** EQUIPMENT IN STANDARD MACHINE ***

FEATURES

Final Tier 4 Certified Kubota
Diesel Engine
Electronic Travel Torque
Management System
Vertical Lift Path Loader Frame
Standard Front Quick Coupler,
Float Standard
Hydraulic Quick Coupler
Option
Loader Arm Self-Leveling
Loader Boom Lock
Open ROPS/FOPS
Optional enclosed and
pressurized cab with A/C
High Back, Adjustable, Vinyl,
Suspension Seat
2" Retractable Seat Belt And
2-Piece Seat Bar
23.1 gpm Auxiliary Hydraulics
Standard, 40.0 gpm Option
Direct To Tank Return Line
Rigid Mounted Undercarriage,
5 Lower Track Rollers
High Grip Rubber Tracks, 17.7"
Standard
Two Speed Travel System
Automatic Wet Disk Parking
Brake
Kubota 4 Hydraulic Pump Load
Sensing System
3 Variable Displacement
Pumps,
1 additional piston pump for
High Flow Option
Hydraulic Joystick Controls
ISO Operating Pattern
Dial Knob And Foot Throttle
Controls
Stall Guard Engine Control
Automatic Glow Plugs
Key Switch Stop System
Self Bleed Fuel System
2 Front And 2 Rear Working
Lights
Hour Meter, Engine
Temperature, DEF, And Fuel
Gauges And Warning Lights
Horn And Backup Alarm
Lockable DEF Tank Cap
Lockable Fuel Cap
Radio Ready on Enclosed
Cabs

BASIC UNITS

SVL95-2SHFC, 17.7" Rubber
Tracks,
A/C ROPS/FOPS Cab
Hydraulic Quick Coupler,
High Flow Auxiliary Hydraulics

OPERATIONAL DIMENSIONS
Operating Weight*, SVL95-2s,
17.7" Rubber Tracks,
Open ROPS/FOPS Cab,
Mechanical Quick Coupler 11,299
lbs.
Rated Operating Capacity (ROC)
@ 35%
of Tipping Load complies with ISO
14397-1
and SAE J 818) 3,200 lbs.
Rated Operating Capacity (ROC)
@ 50%
of Tipping Load 4,572 lbs.
Tipping Load 9,143 lbs.
Auxiliary Hydraulics Flow 23.1 /
40.0 gpm
Travel Speed (Low / High) 5.0 / 7.3
mph
Reach @ Maximum Height 40.7"
Height to Hinge Pin 128.6"
Ground Pressure 4.4 psi.
Traction Force 12,178 lbf.

* Includes operator's weight, 175
lbs.

ENGINE

V3800-Tier 4 Kubota Final Tier 4
Diesel Engine
4 Cylinder, 4 Cycle, Turbo
Charged
96.0 Gross HP @ 2400 rpm

DIMENSIONS

Cab Height 83.4"
Width (without attachment) 77.2"
Length (without attachment)
123.5"
Length of Track on Ground 65.6"

SVL95-2SHFC Base Price: \$79,811.00

(1) 80" HEAVY DUTY LOW PROFILE STANDARD \$1,782.00

FLOOR BUCKET (16.8 CU-FT) W/TEETH

AP-HD80LT-80" HEAVY DUTY LOW PROFILE STANDARD

FLOOR BUCKET (16.8 CU-FT) W/TEETH

Configured Price: **\$81,593.00**

BUY BOARD Discount: **(\$19,582.32)**

SUBTOTAL: **\$62,010.68**

Dealer Assembly: **\$0.00**

Freight Cost: **\$550.00**

PDI: **\$250.00**

auger **\$1,877.00**

forks **\$923.50**

Total Unit Price: **\$65,611.18**

Quantity Ordered: **1**

Final Sales Price: **\$65,611.18**

**Purchase Order Must Reflect
the Final Sales Price**

To order equipment - purchase orders must be made out and
returned to:

Kubota Tractor Corporation
1000 Kubota Drive
Grapevine, TX 76051
or email NA.Support@kubota.com
or call 817-756-1171 or fax 844-582-1581

V# 23551

P.R. 18-00608
10-12-17

* Deliver to S.C.

*All equipment specifications are as complete as possible as of the date on the quote. Additional attachments, options, or accessories may be added (or deleted) at the discounted price. All specifications and prices are subject to change. Taxes are not included. The PDI fees and freight for attachments and accessories quoted may have additional charges added by the delivering dealer. These charges will be billed separately. Prices for product quoted are good for 60 days from the date shown on the quote. All equipment as quoted is subject to availability.

© 2017 Kubota Tractor Corporation. All rights reserved.

Equipment weight
11,574 lbs.

Do NOT use
P.R. # 18-00600 Had to delete
V# 23169

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.

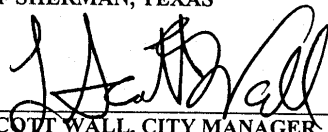
TO BE COMPLETED BY THE COOPERATIVE:

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



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.9.

Meeting Date: 11/06/2017

Prepared By: Kevin Winkler, Public Works Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6294

Authorizing the Purchase of Two (2) New 2018 Peterbilt 348 Dump Trucks for the Street Maintenance Department from Rush Truck Center through the Texas Local Government Purchasing Cooperative (BuyBoard)

Issue:

To consider approval of a resolution to purchase two (2) new 2018 Peterbilt 348 Dump Trucks from the BuyBoard for use within the Street Maintenance Department

Background:

The requested purchases are to replace Units 450 and 452. Unit 450 is a 2002 year model dump truck; and Unit 452 is a 1988 year model dump truck.

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

Origination:

Department of Public Works

Financial Consideration:

The two (2) new Peterbilt 348 dump trucks will be purchased from the Rush Truck Center for \$228,138.00 through the BuyBoard. This amount includes a five-year/150,000 mile warranty. Funding for this purchase was appropriated in the fiscal year 2017-2018 Street Maintenance budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase the new Peterbilt 348 dump trucks through the BuyBoard.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 6294

Rush Truck Center Quotation

BuyBoard Interlocal Agreement

RESOLUTION NO. 6294

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF TWO (2) NEW 2018 PETERBILT 348 DUMP TRUCKS FOR THE STREET MAINTENANCE DEPARTMENT FROM RUSH TRUCK CENTER THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD); 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 Rush Truck Center through the Texas Local Government Purchasing Cooperative (BuyBoard) two (2) new 2018 Peterbilt 348 Dump Trucks for use within the Street Maintenance Department, at a total price of Two Hundred Twenty-Eight Thousand One Hundred Thirty-Eight Dollars and No Cents (\$228,138.00), in accordance with the provisions of the BuyBoard proposal and the terms and conditions of the Interlocal Participation Agreement, both attached hereto and made a part hereof for all purposes. Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2017-2018 budget.

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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**

Vendor:	RUSH TRUCK CENTER	Date Prepared:	<i>10/12/2017</i>
Contact for Vendor:	COLTON KRUSE	Phone:	(830) 302-5219
End User:	<i>City of Sherman</i>		
End User Contact:	Fleet Manager	Phone/Fax:	<i>(903) 892-7366</i>
Product Description:	2018 Peterbilt 348 Dumps		

C: Subtotal of A + B					\$107,413.00
D: Non Published Options					
Davis Dump Body with Options	\$3,056.00				
Subtotal Column 1:	\$3,056.00		Subtotal Column 2:	\$ -	

E: Contract Price Adjustment (If any, explain here)			

G: Quantity ordered	Units:	2.00	x F	\$ 220,938.00
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I: Non-Equipment Charges & Credits (I.e.: Ext. Warranty, Trade-In, Delivery, etc.)					
					\$ -

J: TOTAL PURCHASE PRICE INCLUDING (G+H+I)	\$221,338.00
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TRUCK SALES BULLETIN



SUBJECT: PACCAR 2017 PX ENGINE EXTENDED COVERAGE PLANS

DATE: 12/01/2016

TSB: # 16-87

Peterbilt announces the availability of extended protection plans for PACCAR PX-9 and PX-7 EPA 2017 engines. Several extended coverage plans are available to help your customers protect their EPA 2017 engine investment:

Protection Plan 1

Includes registered parts and labor, with no deductible, on internally lubricated components, major engine systems and major components.

Components covered by the plan, including mounting hardware and gaskets:

- Cylinder head assembly
- Oil pan
- Rocker lever assembly
- Connecting rod assembly
- ECM
- Front gear cover
- Lube pump assembly
- Pistons, rings and liners
- Camshaft and bushings
- Lube oil cooler assembly
- Cam follower assemblies
- Crankshaft assembly
- Cylinder block assembly
- EGR cooler, valve and mixer
- Turbocharger
- Water pump
- Fuel pump
- Air compressor
- Select engine sensors
- Fuel Injectors

Protection Plan 2

Includes registered parts and labor, with no deductible, on internally lubricated components and major engine systems.

Components covered by the plan, including mounting hardware and gaskets:

- Cylinder head assembly
- Oil pan
- Rocker lever assembly
- Connecting rod assembly
- ECM
- Front gear cover
- Lube pump assembly
- Pistons, rings and liners
- Camshaft and bushings
- Lube oil cooler assembly
- Cam follower assemblies
- Cylinder block assembly
- EGR cooler, valve and mixer

Aftertreatment Plan

Covers failures under normal use and service which results from a defect in Cummins material or factory workmanship.

Components covered by the plan include:

- Aftertreatment Components:
 - Diesel Exhaust Fluid Dosing Unit
 - Diesel Exhaust Fluid Dosing Valve
 - Differential Pressure Sensor Body
 - Differential Pressure Sensor Body Mounting Hardware
 - Differential Pressure Sensor Bracket
 - Fuel Pressure Sensor Body
 - Fuel Pressure Sensor O-Ring
- Ammonia Sensor
- Catalytic Converter Particulate Filter
- Decomposition Tube
- DPF Temperature Sensor (Module & Probe)
- NOx & NH3 Sensor Module
- NOx & NH3 Sensor Probe
- SCR Temperature Sensor (Module & Probe)
- SCR/DPF Temperature Sensor Interface Module Mounting Hardware

TRUCK SALES BULLETIN



	4 years/ 200,000 mi/ 321,869 km	9404753 ^{1,2}	\$800	9404725 ^{1,2}	\$550
	5 years/ 100,000 mi/ 160,935 km	9404754 ^{1,2}	\$600	9404726 ^{1,2}	\$475
	5 years/ 150,000 mi/ 241,402 km	9404755 ^{1,2}	\$700	9404727 ^{1,2}	\$550
	5 years/ 200,000 mi/ 321,869 km	9404756 ^{1,2}	\$900	9404728 ^{1,2}	\$650
	5 years/ 250,000 mi/ 402,336 km	9404757 ^{1,2}	\$1,150	9404729 ^{1,2}	\$750
	5 years/ 300,000 mi/ 482,804 km	9404758 ^{1,2}	\$1,400	9404730 ^{1,2}	\$800

NOTES:

1. Price is NET and not subject to any discounts.
2. Cummins will pay for all parts and labor needed to repair the damage to the aftertreatment assembly resulting from a covered failure according to progressive damage limits. These plans do not duplicate other coverages applicable to the engine.

Orders in the Backlog:

Orders in the backlog scheduled beginning January 9, 2017, specifying a 2013 coverage plan will be updated to the respective 2017 replacement. If there is no equivalent replacement (as indicated in the notes section below), the coverage plan will be removed with no replacement. Price protection does not apply. Standard change order policy applies to dealer initiated changes to orders in the backlog.

DISCONTINUED OPTIONS:

EPA 2013 PACCAR PX Engine Extended Coverage Plans					
Coverage Plan	Duration	PX-9 Option	PX-9 Price	PX-7 Option	PX-7 Price
Protection Plan 1	3 years/ 100,000 mi/ 160,935 km	9402529	\$1,400	9402500 ¹	\$700
	3 years/ 150,000 mi/ 241,402 km	9402530	\$1,900	9402501 ¹	\$950
	4 years/ 150,000 mi/ 241,402 km	9402531	\$2,225	9402502	\$1,100
	4 years/ 200,000 mi/ 321,869 km	9402532	\$3,050	9402503	\$1,400
	5 years/ 100,000 mi/ 160,935 km	9402533	\$2,150	9402504	\$1,050
	5 years/ 150,000 mi/ 241,402 km	9402534	\$2,700	9402505	\$1,250
	5 years/ 200,000 mi/ 321,869 km	9402535	\$3,600	9402506	\$1,700
	5 years/ 250,000 mi/ 402,336 km	9402536	\$4,650	9402507	\$2,150
	5 years/ 300,000 mi/ 482,804 km	9402537	\$5,800	9402508	\$2,450
Protection Plan 2	3 years/ 100,000 mi/ 160,935 km	9402547	\$1,100	9402518 ¹	\$450
	3 years/ 150,000 mi/ 241,402 km	9402548	\$1,250	9402519 ¹	\$600
	4 years/ 150,000 mi/ 241,402 km	9402549	\$1,500	9402520	\$700
	4 years/ 200,000 mi/ 321,869 km	9402550	\$1,750	9402521	\$850
	5 years/ 100,000 mi/ 160,935 km	9402551	\$1,400	9402522	\$650
	5 years/ 150,000 mi/ 241,402 km	9402552	\$1,650	9402523	\$800
	5 years/ 200,000 mi/ 321,869 km	9402553	\$1,900	9402524	\$950
	5 years/ 250,000 mi/ 402,336 km	9402554	\$2,150	9402525	\$1,100
	5 years/ 300,000 mi/ 482,804 km	9402555	\$2,400	9402526	\$1,250
	6 years/ 250,000 mi/ 402,336 km	9402556	\$2,300	9402527	\$1,150
	7 years/ 250,000 mi/ 402,336 km	9402557	\$2,550	9402528	\$1,350
	3 years/ 100,000 mi/ 160,935 km	9402538	\$400	9402509 ¹	\$350
	3 years/ 150,000 mi/ 241,402 km	9402539	\$550	9402510 ¹	\$450
Aftertreatment * Requires Protection Plan 1	4 years/ 150,000 mi/ 241,402 km	9402540	\$600	9402511	\$500
	4 years/ 200,000 mi/ 321,869 km	9402541	\$800	9402512	\$650
	5 years/ 100,000 mi/ 160,935 km	9402542	\$600	9402513	\$500
	5 years/ 150,000 mi/ 241,402 km	9402543	\$700	9402514	\$575
	5 years/ 200,000 mi/ 321,869 km	9402544	\$900	9402515	\$725
	5 years/ 250,000 mi/ 402,336 km	9402545	\$1,150	9402516	\$900

TRUCK SALES BULLETIN



4 years/ 200,000 mi/ 321,869 km	9404753 ^{1,2}	\$800	9404725 ^{1,2}	\$550
5 years/ 100,000 mi/ 160,935 km	9404754 ^{1,2}	\$600	9404726 ^{1,2}	\$475
5 years/ 150,000 mi/ 241,402 km	9404755 ^{1,2}	\$700	9404727 ^{1,2}	\$550
5 years/ 200,000 mi/ 321,869 km	9404756 ^{1,2}	\$900	9404728 ^{1,2}	\$650
5 years/ 250,000 mi/ 402,336 km	9404757 ^{1,2}	\$1,150	9404729 ^{1,2}	\$750
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Orders in the Backlog:

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	7 years/ 250,000 mi/ 402,336 km	9402557	\$2,550	9402528	\$1,350
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	5 years/ 100,000 mi/ 160,935 km	9402542	\$600	9402513	\$500
	5 years/ 150,000 mi/ 241,402 km	9402543	\$700	9402514	\$575
	5 years/ 200,000 mi/ 321,869 km	9402544	\$900	9402515	\$725
	5 years/ 250,000 mi/ 402,336 km	9402545	\$1,150	9402516	\$900

TRUCK SALES BULLETIN



	5 years/ 300,000 mi/ 482,804 km	9402546	\$1,400	9402517	\$1,075
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NOTES:

1. No replacement option available. 2013 coverage will be removed without 2017 replacement coverage.

PROSPECTOR® Notes:

These updates will be reflected in PROSPECTOR version 34.01 to be released the week of December 5, 2016. Orders that have been updated to 2017 options, but require customer changes will need to be submitted in the new version of PROSPECTOR once released.

Contact your Regional Sales Office with any questions.

RECEIVED JUN 15 2002

YOUR COPY

INTERLOCAL PARTICIPATION AGREEMENT RECEIVED JUN 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

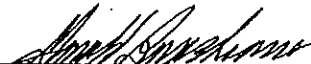
1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.
2. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable 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.
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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.

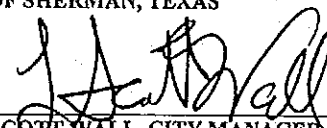
TO BE COMPLETED BY THE COOPERATIVE:

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



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.10.

Meeting Date: 11/06/2017

Prepared By: Kevin Winkler, Public Works Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6295

Authorizing the Purchase of a New Wirtgen Micro Planer for the Street Maintenance Department from Kirby-Smith through the Texas Local Government Purchasing Cooperative (BuyBoard)

Issue:

To consider approval of a resolution to purchase a new Wirtgen Micro Planer from the BuyBoard for use within the Street Maintenance Department

Background:

The requested purchase is to replace Unit 442 (a 2007 year model asphalt zipper) and Unit 443 (a 2007 zipper trailer). This Micro Planer is used in milling asphalt in the repairing and repaving of city streets.

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:

Department of Public Works

Financial Consideration:

The new Wirtgen Micro Planer will be purchased from Kirby-Smith for \$433,156.00 through the BuyBoard. Funding for this purchase was appropriated in the fiscal year 2017-2018 Street Maintenance Department budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase the new Wirtgen Micro Planer through the BuyBoard.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 6295

Kirby-Smith Quotation

BuyBoard Interlocal Agreement

RESOLUTION NO. 6295

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW WIRTGEN MICRO PLANER FOR THE STREET MAINTENANCE DEPARTMENT FROM KIRBY-SMITH THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD); 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 Kirby-Smith through the Texas Local Government Purchasing Cooperative (BuyBoard) a Wirtgen Micro Planer for use within the Street Maintenance Department, at a total price of Four Hundred Thirty-Three Thousand One Hundred Fifty-Six Dollars and No Cents (\$433,156.00), in accordance with the provisions of the BuyBoard proposal and the terms and conditions of the Interlocal Participation Agreement, both attached hereto and made a part hereof for all purposes. Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2017-2018 budget.

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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



*The Authority in Construction,
Paving and Crane Equipment*

www.kirby-smith.com

10/18/2017

Quote #: cbrown-1253

Kevin Winkler
CITY OF SHERMAN
Po Box 1106
Sherman, TX 75091

Dear Kevin Winkler:

We are pleased to quote the following for your consideration:

WIRTGEN W 120 CFI 2017 model w/ 0 hours, Unit # N.I.S., S/N Factory Order.

The following Factory and Dealer Options are included in the package:

- Wirtgen Milling Machine – Model: W 120 CFI (See attached spec sheet)
- Base 12 Month / 1000 Hours Full Warranty
- Extended 48 Month / 3000 Hours Premier Warranty
- Tech Assisted Start-up and Training

To be purchased through BuyBoard. Contract #515-16

Contract price is \$596,286.00; less contract discount of 15% (-\$89,442.90);

Less CB discount (-\$73,687.10);

New net selling price is \$433,156.00.

Price Complete:

\$433,156.00

We believe the equipment as quoted will exceed your expectations. On behalf of Kirby-Smith Machinery, Inc., thank you for the opportunity to quote Wirtgen machinery.

Sincerely,

Colin Brown
Governmental Territory Manager
214-371-7777
214-918-6847
cbrown@kirby-smith.com

Subject to all applicable taxes. This proposal is good for 30 days & subject to availability.

www.kirby-smith.com | 888-861-0219

Oklahoma City * Tulsa * Dallas * Fort Worth * Abilene * Amarillo * Lubbock * Odessa * St. Louis * Kansas City



DATE: October 17, 2017
QUOTE #:183119-01

CITY OF SHERMAN
TIM ROYSTER

Christopher Simon
972.313.5537

PO BOX 1106
SHERMAN, TEXAS 75091-1106

One (1) New Caterpillar Inc Model: M318F Excavator with all standard equipment in addition to the additional specifications listed below:

MACHINE SPECIFICATIONS

DESCRIPTION	REF.#
M318F WHEEL EXCAVATOR – DCA3	372-3436
BOOM, VA, A-LUBE	477-2405
STICK, 2.6M (8'6"), A-LUBE	434-6448
OUTRIGGERS FRONT AND REAR – NO BLADE	423-0708
SEAT COMFORT W/51MM (2") SEAT BELT	373-6030
TIRES, MITAS 10.00-20 DUAL	474-7221
PEDAL, HPF/HAMMER	383-3964
CAB, 70/30	357-5248
LIGHTS, LED	383-3499
CONTROLLER, ELECTRONIC XL	422-9718
CAMERA, SIDE & REAR VIEW	422-9738
ALARM, BACK-UP	422-9758
BEACON, ROTATING, REMOVABLE	422-9762
COUNTERWEIGHT, 3900KG (8600 LBS)	423-0582
OSC. AXLE LOCK, AUTO	423-0695
SPEED 35KPH (21.7 MPH)	425-0170
CONTROL, JOYSTICK STEERING	431-9304
MIRROR, VA/MH	432-6332
COOLING SYSTEM, STANDARD	432-6342
JOYSTICK PATTERN, CHANGEABLE	450-5381
CONTROL, 1PC & VA	486-8218
PRODUCT LINK PL522	422-9822
POWERTILT COUPLER AND POWERGRIP BUCKET	INCLUDED

Warranty: 36 months / 3,000 hour total machine warranty

Quote thru BuyBoard Contract #515-16

Quote Grand Total	\$256,878
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STANDARD EQUIPMENT

POWERTRAIN

Engine:
Cat C7.1, EPA/ARB Tier 4 Final and EU
Stage IV certified engine with
Aftertreatment
Altitude capability: 3000m/9842 ft

Automatic Engine Speed Control
incl. One Touch Low Idle
and Engine Idle Shutdown functionality
Automatic starting aid
Power mode selector

UNDERCARRIAGE

Four wheel drive
Heavy-duty axles with advanced disc
brake system and travel motor with
adjustable braking force
Hydrostatic transmission, two speed
Full hydraulic steering with emergency

capability
Oscillating front axle, lockable, with
remote greasing point
Steps including tool boxes, left & right
Creeper speed

HYDRAULICS

Cat XT-6 ES hoses
Heavy lift mode
Separate swing pump

Load sensing hydraulic system
Adjustable Hydraulic Sensitivity

ELECTRICAL

Alternator, 115 Ampere
Roading lights (two front, two rear)
Main shut-off switch
Signal/warning horn

Two Caterpillar maintenance
free batteries
Refueling pump

OPERATOR ENVIRONMENT

Reinforced cab structure compliant with
2006/42/EC and tested according
ISO 12117-2:2008
Adjustable armrests
24 Volt lighter
Beverage cup/can holder
Bolt-on FOGS capability
Bottle holder
Bottom mounted, intermittent, parallel
wiper and washer
Coat hook
Floor mat, washable, with storage
compartment
Full graphic and full color display
Interior lighting with door switch
Joysticks, pilot operated
Laminated front windshield
Left side console, tiltable, with

Literature compartment behind seat
Literature holder in right hand cab
panel
Mobile phone holder
FM radio incl. CD-player and speakers
Parking brake
Sealed cab with positive filtered
ventilation
Power supply, 12V-10A
Rear window, emergency exit
Skylight
Sliding door windows
Steering column, adjustable angle &
height
Storage compartment suitable for a lunch
box
Sunshade for windshield and skylight
Cruise control system

lock-out for all controls

Pin code type engine start prevention

OTHER STANDARD EQUIPMENT

BLCV including overload warning device

SLCV

Automatic swing brake

Capability to add auxiliary hydraulic
circuits

Caterpillar Datalink and Electronic

Technician capability

Door locks and cab locks with

Caterpillar one-key security system

SOS quick sampling valves for engine
oil, hydraulic oil and coolant

RECEIVED JUN 15 2002

YOUR COPY

INTERLOCAL PARTICIPATION AGREEMENT RECEIVED JUN 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

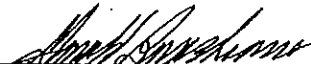
1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.
2. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable 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.

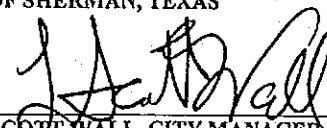
TO BE COMPLETED BY THE COOPERATIVE:

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



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.11.

Meeting Date: 11/06/2017

Prepared By: Kevin Winkler, Public Works Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6296

Authorizing the Purchase of a New Komatsu Front End Loader for the Street Maintenance Department from Kirby-Smith through the Texas Local Government Purchasing Cooperative (BuyBoard)

Issue:

To consider approval of a resolution to purchase a new Komatsu Front End Loader from the BuyBoard for use within the Street Maintenance Department

Background:

The requested purchase is to replace Unit 438, a 1986 year model front end loader. This front end loader is used in the repair and repaving of city streets.

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:

Department of Public Works

Financial Consideration:

The new Komatsu front end loader will be purchased from Kirby-Smith for \$218,057.00, through the BuyBoard. Funding for this purchase was appropriated in the fiscal year 2017-2018 Street Maintenance Department budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase the new front end loader through the BuyBoard.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 6296

Kirby-Smith Front End Loader Quotation

BuyBoard Interlocal Agreement

RESOLUTION NO. 6296

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW KOMATSU FRONT END LOADER FOR THE STREET MAINTENANCE DEPARTMENT FROM KIRBY-SMITH THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD); 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 Kirby-Smith through the Texas Local Government Purchasing Cooperative (BuyBoard) a new Komatsu Front End Loader for use within the Street Maintenance Department, at a total price of Two Hundred Eighteen Thousand Fifty-Seven Dollars and No Cents (\$218,057.00), in accordance with the provisions of the BuyBoard proposal and the terms and conditions of the Interlocal Participation Agreement, both attached hereto and made a part hereof for all purposes. Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2017-2018 budget.

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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



The Authority in Construction,
Paving and Crane Equipment

www.kirby-smith.com

10/18/2017

Quote #: cbrown-1265

Tim Royster
CITY OF SHERMAN
Po Box 1106
Sherman, TX 75091

Dear Tim Royster:

We are pleased to quote the following for your consideration:

KOMATSU WA380-8; S/N Factory Order

The following Factory and Dealer Options are included in the package:

- Komatsu WA380-8 w/ Coupler, Bucket, and Forks
- Komatsu CARE Service Agreement; (First 2,000 Hrs of service covered by dealer)
- Base 12 Month Unlimited Warranty
- Extended 36 Month/ 3,000 Hrs Powertrain Plus Warranty
- Komtrax Telemetry Monitoring

To be purchased through BuyBoard. Contract # 515-16

Contract price is \$358,425.00; less contract discount of 28% (-\$100,359.00);

Less CB discount of (-\$40,009);

New net selling price is \$218,057.00.

Price Complete:

\$218,057.00

We believe the equipment as quoted will exceed your expectations. On behalf of Kirby-Smith Machinery, Inc., thank you for the opportunity to quote Komatsu machinery.

Sincerely,

Colin Brown
Governmental Territory Manager
214-371-7777
214-918-6847
cbrown@kirby-smith.com

Subject to all applicable taxes. 'This proposal is good for 30 days & subject to availability.'

www.kirby-smith.com | 888-861-0219

Oklahoma City * Tulsa * Dallas * Fort Worth * Abilene * Amarillo * Lubbock * Odessa * St. Louis * Kansas City

WA380-8 WHEEL LOADER

F.O.B. U.S STOCKING AREA

(CE) CONSTRUCTION EQUIPMENT

Standard Equipment for Base Machine**Engine and related items:**

Air cleaner, dry-type, two stage, radial sealed
 Engine shut-off system, electric with key
 Engine, Komatsu SAA6D107E-3, 6 cylinder, turbocharged, air to
 air after cooled, direct injection Tier 4 Final emissions certified, diesel
 Gross HP: 192 HP (143 kW) / 2100 RPM
 Net HP: 191 HP (142 kW) / 2100 RPM (ISO 9249 / SAEJ 1349)
 Exhaust pipe, curved
 Fan, auto-reversing, hydraulic-driven
 KDPF - After-Treatment Assembly Consisting of KDOC and KCSF
 SCR - Selective Catalytic Reduction aftertreatment with
 DEF/AdBlue tank and heated lines
 Komatsu Auto Idle Shutdown
 Starting aid, intake manifold preheater
 Two mode engine power select system

Electrical system:

Alternator, 60 ampere, 24 volt
 Back-up alarm
 Batteries, 2 x 12 volt (150 Ah) (1000 CCA)
 Battery disconnect switch
 Horn, electric
 Lights
 • Back-up light, rear, LED
 • Stop and tail, LED
 • Turn signal, (2 front, 2 rear) with hazard switch
 • Working lights, halogen (2 front, high low
 beam with indicator, fender mount, 2 rear grill mount
 • Working lights, halogen (2 front)
 outside of cab mount
 Sealed DT electrical connectors
 Starting motor, 7.5kW direct electric, 24V

Power Train and Controls:

Differentials, conventional, inboard planetary
 Lock-up torque converter
 Parking brake, wet multiple disc
 Service brakes, hydraulic, wet multiple disc,
 axle by axle (inboard)
 Transmission control, electric with kick-down switch
 Transmission, full power shift automatic, F4-R4
 softshift, countershaft with four mode select system

Operator environment:

Cab, (ROPS/FOPS) (installed), includes; adjustable arm
 rests, adjustable work equipment levers, cigarette lighter/
 ashtray, dome light, electrically heated rear window, air
 conditioner / heater / defroster / pressurizer, floor mat,
 front (intermittent) and rear wiper/washer, rearview mirrors
 (2 outside, 2 inside), right hand and left hand door access
 with steps and sunvisor
 Hydraulic control, 2 spool (boom/bucket), 2 lever
 EPC fingertip control
 Monitor, 7 inch, LCD, color
 Radio, AM/FM with speakers and auxiliary jack
 Rear view monitor
 Seat, heated air suspension type, reclining with armrests (fabric)
 Seat belt, 3" width, retractable
 Steering wheel, tilttable, telescopic

Equipment Management Monitoring System (EMMS)

Monitor: Multi-fuction, 7 inch, LCD, color high-resolution
 Warning Message System with Descriptions

Gauges

- Engine water temperature
- ECO
- Fuel level
- Hydraulic oil temperature
- Speedometer / Tachometer
- Torque Converter Temperature

Pilot Lights

- Auxiliary steering (opt.)
- Auto Shift
- Boom Positioner
- Brake oil pressure
- Central warning
- Cooling fan reverse
- Directional indicator
- ECSS
- Engine oil pressure
- Engine power mode
- Engine pre heater
- Head lamp high beam
- KDPF restriction indicator
- Komtrax message
- Parking brake warning
- Seat belt caution
- Shift hold
- Steering oil pressure
- Torque converter lock-up
- Transmission speed range
- Turn signal
- Work equipment lock warning

Special arrangements:

Ambient Temperature Range, -20°C (-4°F)
 through +45°C (+113°F) at maximum standard elevation
 of 2,300 meters (7,546 ft.)

Other Standard Equipment:

Boom kick-out, automatic, in-cab adjustable
 Boom lift cylinders
 Boom, Standard
 Bucket tilt cylinder
 Bucket positioner, automatic, in-cab adjustable
 Centralized grease banks
 Counterweight, standard and additional
 Electronically Controlled Suspension System (ECSS)
 Fenders, full front & full rear
 Hand rails, front, LH & RH
 KOMTRAX, Level 4
 Lifting eyes
 Provision for Quick Coupler
 Rims for 23.5-25 tires (4 each)
 Vandalism Protection:
 • Caplock & cover for fuel tank
 • Padlocks
 • Battery boxes
 • Engine hood side panels & rear grill, lockable
 • Hydraulic oil tank
 • Radiator cap cover (bolted)
 • Transmission oil filler cover

Voltage converters 2 - 12 V and 12 amp (total)

RECEIVED JUN 15 2002

YOUR COPY

INTERLOCAL PARTICIPATION AGREEMENT RECEIVED JUN 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.
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 - 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

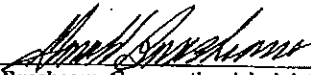
1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.
2. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable 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:

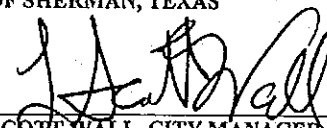
TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE, as acting on behalf of all other Cooperative Members

By: 
Gerald Brashears, Cooperative Administrator

Date: 7-15-02

TO BE COMPLETED BY COOPERATIVE MEMBER:

CITY OF SHERMAN, TEXAS

By: 
L. SCOTT WALL, CITY MANAGER

Date: 5/28/2002

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



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.12.

Meeting Date: 11/06/2017

Prepared By: Kevin Winkler, Public Works Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6297

Authorizing the Purchase of a New Caterpillar CB34B Steel Wheel Roller for the Street Maintenance Department from HOLT through the Texas Local Government Purchasing Cooperative (BuyBoard)

Issue:

To consider approval of a resolution to purchase a new Caterpillar Steel Wheel Roller from the BuyBoard for use within the Street Maintenance Department

Background:

The requested purchase is to replace Unit 415, a 2009 year model steel roller. This steel roller is used to repair and pave the city streets.

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:

Department of Public Works

Financial Consideration:

The new Caterpillar Steel Wheel Roller will be purchased from HOLT for \$58,150.00 through the BuyBoard. This includes a three-year/3,000 hour warranty. Funding for this purchase was appropriated in the fiscal year 2017-2018 Street Maintenance Department budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase the new Caterpillar Steel Wheel Roller through the BuyBoard.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 6297

Caterpillar Steel Wheel Roller Quotation

BuyBoard Interlocal Agreement

RESOLUTION NO. 6297

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW CATERPILLAR CB34B STEEL WHEEL ROLLER FOR THE STREET MAINTENANCE DEPARTMENT FROM HOLT THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD); 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 Holt through the Texas Local Government Purchasing Cooperative (BuyBoard), a Caterpillar CB34B Steel Wheel Roller, at a total price of Fifty-Eight Thousand and One Hundred Fifty Dollars and No Cents (\$58,150.00). Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2017-2018 budget.

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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



DATE: October 3, 2017
QUOTE #:201077-01

CITY OF SHERMAN
TIM ROYSTER

Christopher Simon
972.313.5537

One (1) New Caterpillar Model: CB34B Paving and Compaction with all standard equipment in addition to the additional specifications listed below:

SELL PRICE	\$57,200
Quote thru BuyBoard Contract #515-16	

WARRANTY

Standard Warranty: 12 Month/Unlimited Hours Total Machine

MACHINE SPECIFICATIONS

DESCRIPTION	REF.#
CB34B UTILITY COMPACTOR	367-6625
ENGINE, TIER 4F, STAGE 4	367-6580
CONTROL, TRACTION	456-2579
OIL, HYDR, FACTORY FILLED	367-6636
LIGHTING PACKAGE, STANDARD	432-6053
SEAT, WITH SAFETY SWITCH	364-2277
BELT, SEAT, 2" SUSPENSION	376-7962
SUPPORT, SLIDING FOR SEAT	364-2279
ROPS, FOLDABLE	367-6629
TRAVEL CONTROL,DUAL LEVER	367-6538
CANOPY, FOLDABLE	364-2288
PRODUCT LINK, CELLULAR PL641	454-5454
MATS, COCOA	457-9154
PUMP, PROPEL, STANDARD	367-6593
SWITCH, BATTERY DISCONNECT	364-2297
BALLAST-STEEL	361-5797

STANDARD EQUIPMENT

POWERTRAIN

Hydrostatic transmission

Service and parking brakes

ELECTRICAL

Engine start switch with auto preheat
Backup alarm and warning horn
65-ampere alternator

12-volt electric starting
Maintenance free 70 AH battery, 880 amp
Light roading and working

OPERATOR ENVIRONMENT

Gauges : LCD display with fuel level,
hour meter, and engine coolant
temperature.
Operator warning system indicators :
Parking brake engaged
Hydraulic oil temperature high
Engine coolant temperature high
Electrical system voltage low
Engine oil pressure low
Vibration activated
Engine preheat

Lockable, vandalism guard for instrument
panel.
Travel control, single lever
Seat with :
Fore and aft adjustment
Draining capability
Retractable seat belt 50.8mm/2inch
Central and Side handrail for easy and
safe access to the machine
Steering wheel spinner
12-volt power points

DRUMS

Two smooth drums : 1300mm / 51.2 inch
wide x 800mm / 31.5 inch diameter
(CB34 ONLY).
Two smooth drums : 1400mm / 55.1 inch
wide x 800mm / 31.5 inch diameter
(CB34 XW ONLY).
Selection of front drum, rear drum or

both drum vibration.
Pressurized drum watering system with :
continuous or intermittent modes
water tank with low level sensor
2 x retractable, spring-loaded, self
adjusting scrapers per drum

OTHER STANDARD EQUIPMENT

Locking engine enclosure
Sight gauge for hyd. tank level
Air restriction indicator
Fuel tank
4 transport tie-down and 4 lift points

6 Quick connect hyd. pressure test ports
+ 1 SOS port
Caterpillar O-ring face-seals couplings
Product link ready

RECEIVED JUN 15 2002

YOUR COPY

INTERLOCAL PARTICIPATION AGREEMENT RECEIVED JUN 15 2002

for the
Texas Local Government Purchasing Cooperative

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WITNESSETH:

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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.

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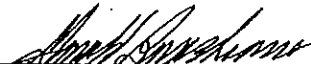
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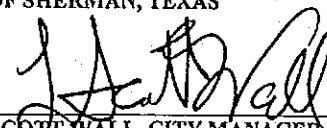
TO BE COMPLETED BY THE COOPERATIVE:

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



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.13.

Meeting Date: 11/06/2017

Prepared By: Kevin Winkler, Public Works Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6298

Authorizing the Purchase of a New Caterpillar Wheel Excavator for the Street Maintenance Department from HOLT through the Texas Local Government Purchasing Cooperative (BuyBoard)

Issue:

To consider approval of a resolution to purchase a new Caterpillar Wheel Excavator from the BuyBoard for use within the Street Maintenance Department

Background:

The requested purchase is to replace Unit 420, a 1995 year model backhoe/loader. This wheel excavator is used in repairing and paving of streets.

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:

Department of Public Works

Financial Consideration:

The new Caterpillar Wheel Excavator will be purchased from HOLT for \$256,878.00 through the BuyBoard. Funding for this purchase was appropriated in the fiscal year 2017-2018 Street Maintenance budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase the new wheel excavator through the BuyBoard.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 6298

Caterpillar Wheel Excavator Quotation

BuyBoard Interlocal Agreement

RESOLUTION NO. 6298

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW CATERPILLAR WHEEL EXCAVATOR FOR THE STREET MAINTENANCE DEPARTMENT FROM HOLT THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD); 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 HOLT through the Texas Local Government Purchasing Cooperative (BuyBoard) a new Caterpillar Wheel Excavator for use within the Street Maintenance Department, at a total price of Two Hundred Fifty-Six Thousand Eight Hundred Seventy-Eight Dollars and No Cents (\$256,878.00), in accordance with the provisions of the BuyBoard proposal and the terms and conditions of the Interlocal Participation Agreement, both attached hereto and made a part hereof for all purposes. Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2017-2018 budget.

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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**



DATE: October 17, 2017
QUOTE #:183119-01

CITY OF SHERMAN
TIM ROYSTER

Christopher Simon
972.313.5537

PO BOX 1106
SHERMAN, TEXAS 75091-1106

One (1) New Caterpillar Inc Model: M318F Excavator with all standard equipment in addition to the additional specifications listed below:

MACHINE SPECIFICATIONS

DESCRIPTION	REF.#
M318F WHEEL EXCAVATOR – DCA3	372-3436
BOOM, VA, A-LUBE	477-2405
STICK, 2.6M (8'6"), A-LUBE	434-6448
OUTRIGGERS FRONT AND REAR – NO BLADE	423-0708
SEAT COMFORT W/51MM (2") SEAT BELT	373-6030
TIRES, MITAS 10.00-20 DUAL	474-7221
PEDAL, HPF/HAMMER	383-3964
CAB, 70/30	357-5248
LIGHTS, LED	383-3499
CONTROLLER, ELECTRONIC XL	422-9718
CAMERA, SIDE & REAR VIEW	422-9738
ALARM, BACK-UP	422-9758
BEACON, ROTATING, REMOVABLE	422-9762
COUNTERWEIGHT, 3900KG (8600 LBS)	423-0582
OSC. AXLE LOCK, AUTO	423-0695
SPEED 35KPH (21.7 MPH)	425-0170
CONTROL, JOYSTICK STEERING	431-9304
MIRROR, VAMH	432-6332
COOLING SYSTEM, STANDARD	432-6342
JOYSTICK PATTERN, CHANGEABLE	450-5381
CONTROL, 1PC & VA	486-8218
PRODUCT LINK PL522	422-9822
POWERTILT COUPLER AND POWERGRIP BUCKET	INCLUDED

Warranty: 36 months / 3,000 hour total machine warranty

Quote thru BuyBoard Contract #515-16

Quote Grand Total	\$256,878
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STANDARD EQUIPMENT

POWERTRAIN

Engine:
Cat C7.1, EPA/ARB Tier 4 Final and EU
Stage IV certified engine with
Aftertreatment
Altitude capability: 3000m/9842 ft

Automatic Engine Speed Control
incl. One Touch Low Idle
and Engine Idle Shutdown functionality
Automatic starting aid
Power mode selector

UNDERCARRIAGE

Four wheel drive
Heavy-duty axles with advanced disc
brake system and travel motor with
adjustable braking force
Hydrostatic transmission, two speed
Full hydraulic steering with emergency

capability
Oscillating front axle, lockable, with
remote greasing point
Steps including tool boxes, left & right
Creeper speed

HYDRAULICS

Cat XT-6 ES hoses
Heavy lift mode
Separate swing pump

Load sensing hydraulic system
Adjustable Hydraulic Sensitivity

ELECTRICAL

Alternator, 115 Ampere
Roading lights (two front, two rear)
Main shut-off switch
Signal/warning horn

Two Caterpillar maintenance
free batteries
Refueling pump

OPERATOR ENVIRONMENT

Reinforced cab structure compliant with
2006/42/EC and tested according
ISO 12117-2:2008
Adjustable armrests
24 Volt lighter
Beverage cup/can holder
Bolt-on FOGS capability
Bottle holder
Bottom mounted, intermittent, parallel
wiper and washer
Coat hook
Floor mat, washable, with storage
compartment
Full graphic and full color display
Interior lighting with door switch
Joysticks, pilot operated
Laminated front windshield
Left side console, tiltable, with

Literature compartment behind seat
Literature holder in right hand cab
panel
Mobile phone holder
FM radio incl. CD-player and speakers
Parking brake
Sealed cab with positive filtered
ventilation
Power supply, 12V-10A
Rear window, emergency exit
Skylight
Sliding door windows
Steering column, adjustable angle &
height
Storage compartment suitable for a lunch
box
Sunshade for windshield and skylight
Cruise control system

lock-out for all controls

Pin code type engine start prevention

OTHER STANDARD EQUIPMENT

BLCV including overload warning device

SLCV

Automatic swing brake

Capability to add auxiliary hydraulic
circuits

Caterpillar Datalink and Electronic

Technician capability

Door locks and cab locks with

Caterpillar one-key security system

SOS quick sampling valves for engine
oil, hydraulic oil and coolant

RECEIVED JUN 15 2002

YOUR COPY

INTERLOCAL PARTICIPATION AGREEMENT RECEIVED JUN 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

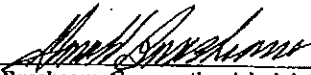
1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.
2. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable 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:

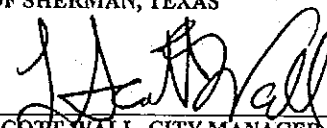
TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE, as acting on behalf of all other Cooperative Members

By: 
Gerald Brashears, Cooperative Administrator

Date: 7-15-02

TO BE COMPLETED BY COOPERATIVE MEMBER:

CITY OF SHERMAN, TEXAS

By: 
L. SCOTT WALL, CITY MANAGER

Date: 5/28/2002

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



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

C.14.

Meeting Date: 11/06/2017

Prepared By: Kevin Winkler, Public Works Manager

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 6299

Authorizing the Purchase of a New Trantex Model 300A Palletized Paint System for the Street Maintenance Department from Centerline Supply, LTD through the Texas Local Government Purchasing Cooperative (BuyBoard)

Issue:

To consider approval of a resolution to purchase a new Trantex Model 300A Palletized Paint System from the BuyBoard for use within the Street Maintenance Department

Background:

The requested purchase is to replace Unit 445A, a 1996 year model paint striper. This striper is used to paint our city streets and city parking lots.

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:

Department of Public Works

Financial Consideration:

The new Trantex Model 300A palletized paint system will be purchased from Centerline Supply, LTD for \$60,999.98, through the BuyBoard. Funding for this purchase was appropriated in the fiscal year 2017-2018 Street Maintenance Department budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase the new Trantex model 300A palletized paint system through the BuyBoard.

Alternatives:

As may be recommended by the City Council

Attachments

Resolution No. 6299

Centerline Supply LTD Quotation

BuyBoard Interlocal Agreement

RESOLUTION NO. 6299

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW TRANTEX MODEL 300A PALLETIZED PAINT SYSTEM FOR THE STREET MAINTENANCE DEPARTMENT FROM CENTERLINE SUPPLY, LTD THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD); 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 Centerline Supply, LTD through the Texas Local Government Purchasing Cooperative (BuyBoard) a new Trantex Model 300A Palletized Paint System for use within the Street Maintenance Department, at a total price of Sixty Thousand Nine Hundred Ninety-Nine Dollars and Ninety-Eight Cents (\$60,999.98), in accordance with the provisions of the BuyBoard proposal and the terms and conditions of the Interlocal Participation Agreement, both attached hereto and made a part hereof for all purposes. Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2017-2018 budget.

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 _____, 2017.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: _____
**BRANDON S. SHELBY,
CITY ATTORNEY**

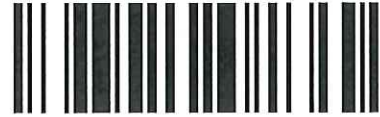
Estimate

10/13/2017

Centerline Supply, LTD

Centerline Supply, Ltd.
530 JESSE STREET
GRAND PRAIRIE, TX 75051-1141
Phone: (972) 647-8300
Fax: (972) 641-1221
Email: sales@centerlinesupply.com

163287



Bill To:

SHERMAN, CITY OF
P.O. BOX 1106
SHERMAN, TX 75090

Customer: SHERMAN, CITY OF

Ship To:

SHERMAN, CITY OF
P.O. BOX 1106
SHERMAN, TX 75090

Contact: SHERMAN, CITY OF
PO Number: LUIGI

Seller	Payment Terms	FOB Point	Carrier	Ship Service	Requested Ship Date
srichmond	Net 30	Origin	BEST WAY		10/13/2017

Item #	Type	Number / Description	Unit Price	Qty Ordered	Total Price
1	Sale	90900-QUOTE - Trantex model 300A palletized system • 3 paint and 3 bead guns • 2 drum mounts to accept 2 - 55 gallon drums • 2 - 55 gallon drum lids with quick disconnect pneumatic agitation • 900 pounds of onboard bead capacity (7 pounds per gallon X 110 total gallons of paint = 770 required for 110 gallons) • 18HP Kohler • 13CFM compressor with expansion tank and gauge • Two 5GPM @ 2900PSI atomization energy • High pressure filtration • Pole gun • Hydraulic steerable carriage with 4 gallon hydraulic reservoir • Graco Skip Line controller • Davis Clark intercom system hard wired	\$ 66,666.65	1 ea	\$ 66,666.65
2	Discount	10% DISCOUNT - 10% DISCOUNT BUY BOARD CONTRACT 534-17			-\$ 6,666.66
3	Shipping	90900-FRT - 90A Shipping and Handling	\$ 1,000.00	1 ea	\$ 1,000.00

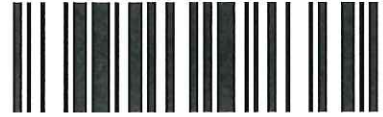
Estimate

10/13/2017

Centerline Supply, LTD

Centerline Supply, Ltd.
530 JESSE STREET
GRAND PRAIRIE, TX 75051-1141
Phone: (972) 647-8300
Fax: (972) 641-1221
Email: sales@centerlinesupply.com

163287



Signature: _____ Date: _____

Print Name: _____

Claims against this invoice for price or quantity must be filed in writing within 30 days of invoice date.

1-1/2% interest charged per month on past due balance. Collection charges apply

Subtotal:	\$ 60,999.98
Sales Tax:	\$ 0.00
Total:	\$ 60,999.98

HANDLINER	\$27,159.00	CENTERLINE		\$27,159.00
PAINT STRIPER	\$61,000.00	CENTERLINE	TRANTEX 300A	\$61,000.00

RECEIVED JUN 15 2002

YOUR COPY

INTERLOCAL PARTICIPATION AGREEMENT RECEIVED JUN 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

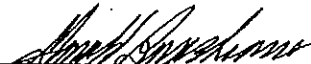
1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.
2. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable 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.

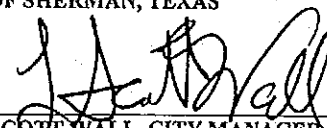
TO BE COMPLETED BY THE COOPERATIVE:

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



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

D.1.

Meeting Date: 11/06/2017

Prepared By: Clint Philpott, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

REQUEST TO ADVERTISE

Setting Suns Drainage Project Phase I

Issue:

Requesting permission to advertise for bids for the Setting Suns Drainage Project Phase I

Background:

The Setting Suns Estates neighborhood was annexed into the City of Sherman in 1986. Over time, the residents in the neighborhood have experienced flooding to their property. This drainage project will help alleviate the flooding possibility to that area with proper design and construction. This project will be completed in phases; and this will be the first phase of construction. Staff is seeking permission to advertise for bids on construction of the Setting Suns Drainage Project Phase I.

Origination:

Engineering Department

Financial Consideration:

Funding is available through the 2017A Certificates of Obligation; and the cost of advertising is expected to be less than \$500.00.

Staff Recommendation:

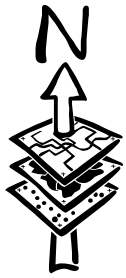
It is recommended that the City Council authorize the staff to advertise the project for bid.

Alternatives:

As may be directed by the City Council

Attachments

Location Map



Feet
500

1,000

0

Proposed Project Area

S FRIENDSHIP RD

PLEASANT HOME RD

W PARK AVE

W MOHICAN DR

S CIMARRON TRL

W SEMINOLE DR

TEXAS DR

QUAIL RUN RD

W BLUE JAY LN

FALCON DR

HAWK LN

PINTAIL DR

TEAL LN

S RAEN DR

CORMORANT DR S

SWAN RIDGE DR

CARDINAL DR

Sherman
CLASSIC TOWN. BROAD HORIZON.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

E.1.

Meeting Date: 11/06/2017

Prepared By: Mark Gibson, Director of Utilities

Approved By: Robby Hefton, City Manager

Caption:

*** CHANGE ORDER NO. 2**

Approving the Greater Texoma Utility Authority's Intent to Execute Change Order No. 2; Sherman Water Treatment Plant Expansion Project; H2O Innovation, Inc.; \$99,770.65 Increase

Issue:

To consider approval of Change Order No. 2 for the Sherman Water Treatment Plant Expansion Project

Background:

Change Order No. 2 will provide American Iron and Steel valves for the project. This is an EPA requirement that is enforced on the Texas Water Development Board's ("TWDB") Drinking Water State Revolving Fund Program ("DWSRF") projects. The language requiring American Iron and Steel was not in the original contract because, during the time the proposals were being developed by the membrane suppliers H2O included, we were unsure if we were going to use the State Water Implementation Fund for Texas ("SWIFT") or the DWSRF. The SWIFT program does not currently require the use of American Iron and Steel products. Originally, the Authority applied for both the SWIFT and DWSRF programs in order to keep the City of Sherman's financing options open as long as possible. The TWDB gave us a date approximately three months prior to loan closing that the City had to make a decision on which fund to pursue. Ultimately, the DWSRF was chosen as it was projected to save the City of Sherman over \$1 million versus the SWIFT program through the life of the loan.

Origination:

Utility Administration

Financial Consideration:

The Change Order results in a \$99,770.65 increase in the contract amount, yielding a revised contract price of \$3,522,566.53.

Staff Recommendation:

It is recommended that the Greater Texoma Utility Authority's intent to approve Change Order No. 2 be approved.

Alternatives:

As may be directed by the City Council

Attachments

Change Order No. 2

GTUA Agenda Communication dated October 16, 2017

Aerial Location Map

**CITY OF SHERMAN
LAKE TEXOMA WTP EXPANSION**

CHANGE ORDER NO. 2

A. INTENT OF THIS CHANGE ORDER NO. 2

The intent of this Change Order No. 2 is that the contract entered into by the Greater Texoma Utility Authority on behalf of the City of Sherman and H2O Innovation, Inc. dated September 10, 2015 be modified, clarified and recorded as a matter of permanent record.

B. DESCRIPTION OF CHANGE ORDER NO. 2

The required changes to the original contract, along with the associated costs and/or time are described as follows:

CHANGE ORDER NO. 1

Item No.	Description	Unit	Time	Cost /Unit	Total Amount
2-1	AIS Compliant Valves		0	99,770.65	99,770.65
	TOTAL		0 Calendar Days	\$99,770.65	\$99,770.65

C. EFFECT OF ADJUSTMENT TO CONTRACT QUANTITIES

The revised Contract amount is determined as follows:

ORIGINAL CONTRACT AMOUNT..... \$3,359,425.00
CHANGE ORDER NO.1..... \$63,370.88
CHANGE ORDER NO. 2..... \$99,770.65

REVISED CONTRACT AMOUNT\$3,522,566.53

D. EFFECT OF ADJUSTMENT TO CONTRACT TIME

The revised Contract time is determined as follows:

ORIGINAL EQUIPMENT DELIVERY DATE..... 1/14/2018
CHANGE ORDER NO. 1 0-Calendar days
CHANGE ORDER NO. 2 0-Calendar days

REVISED EQUIPMENT DELIVERY DATE..... 1/14/2018

E. AGREEMENT

By the signature of their respective duly authorized agents, the Greater Texoma Utility Authority and H2O Innovation, Inc. do hereby agree and append this Change Order No. 2 to the original contract between themselves dated September 10, 2015.

RECOMMENDED BY:
CH2MHILL

ACCEPTED BY:
H2O Innovation, Inc.

BY: _____

BY: Denis Guibert



TITLE: _____

TITLE: V.P - Engineering and Projects

DATE: _____

DATE: Oct 11th 2017

APPROVED BY:
GREATER TEXOMA UTILITY AUTHORITY

BY: _____

TITLE: _____

DATE: _____



GREATER TEXOMA UTILITY AUTHORITY AGENDA COMMUNICATION

DATE: October 16, 2017

SUBJECT: AGENDA ITEM NO. XIII

CONSIDER AND ACT UPON CHANGE ORDER NO. 2 TO THE CONTRACT WITH H2O INNOVATION FOR THE CITY OF SHERMAN WATER TREATMENT PLANT EXPANSION PROJECT

ISSUE

Consider and act upon Change Order No. 2 to the contract with H2O Innovation for the City of Sherman Water Treatment Plant ("WTP") Expansion Project.

BACKGROUND

The Authority is in the process of assisting the City of Sherman with the expansion of their existing surface water treatment plant ("WTP"). This project will enable the City of Sherman to continue to meet the water demand needs of future residential and industrial growth. The project will include a 10 million gallon per day ("mgd") capacity increase that will utilize reverse osmosis to demineralize the Lake Texoma water supply. The City staff requested the Authority's assistance in obtaining funding through the Texas Water Development Board ("TWDB") Drinking Water State Revolving Fund Program ("DWSRF") to fund these improvements to their WTP.

After the issuance of debt by the Authority, the City began design and concurrently completed pilot testing of four (4) different membrane systems. Due to the long lead times of the membrane filtration equipment as well as each manufacturer having unique features which needed to be accounted for in design, it was necessary to award a procurement contract for the equipment well in advance of the design being complete and the general contract being awarded.

At the August 2015 meeting, the Board authorized award of contract to H2O Innovations in the amount of \$3,359,425.00. After award of contract, H2O began working with CH2MHill, design engineer, to develop shop drawings and work through the fine details of incorporating the equipment into the new plant design. During this process, CH2MHill worked to refine the design and as a result, submitted seven (7) Request for Quotations to H2O Innovations. The seven (7) Request for Quotations were incorporated into Change Order No. 1 for an increase of \$63,370.88, resulting in a revised contract amount of \$3,422,795.88.

Change Order No. 2 will provide American Iron and Steel valves for the project. This is an EPA requirement that is enforced on the TWDB's DWSRF projects. The language requiring American Iron and Steel was not in the original contract because during the time the proposals were being developed by the membrane suppliers, H2O included, we were unsure if we were going to use the State Water Implementation Fund for Texas ("SWIFT") or the DWSRF. The SWIFT program does not currently require the use of American Iron and Steel products. Originally, the Authority applied for both the SWIFT and DWSRF programs in order to keep the City of Sherman's financing options open as long as possible. The TWDB gave us a date approximately 3 months prior to loan closing that we, and Sherman, had to make a decision on which fund to pursue. Ultimately, the DWSRF was chosen as it was projected to save the City of Sherman over \$1 million dollars versus the SWIFT program through the life of the loan. The SWIFT fund offered very attractive interest rates compared to what we could have received on the open market, but the DWSRF rates were more attractive at that time.



GREATER TEXOMA UTILITY AUTHORITY AGENDA COMMUNICATION

PAGE 2

CONSIDERATIONS

The proposed Change Order No. 2 would increase the contract by \$99,770.65 resulting in a revised contract amount of \$3,522,566.53. The Engineer, CH2MHill, and H2O have looked at multiple valve alternatives and determined this to be the most cost effective substitute. This Change Order includes 22 ball valves, 52 butterfly valves and 7 check valves.

The City of Sherman will be considering Change Order No. 2 at an upcoming Council Meeting.

STAFF RECOMMENDATIONS

The staff recommends authorizing Change Order No. 2 to the Contract with H2O Innovation for an increase of \$99,770.65 resulting in a revised contract amount of \$3,522,566.53. The recommendation is contingent upon the City of Sherman Council taking similar action.

ATTACHMENTS

Change Order No. 2

PREPARED AND SUBMITTED BY:

Drew Satterwhite, P.E., General Manager



1 inch = 400 feet



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

F.1.

Meeting Date: 11/06/2017

Prepared By: Nate Strauch, Community & Support Services Manager

Approved By: Robby Hefton, City Manager

Caption:

*** OTHER BUSINESS**

Consider Request of True Options Pregnancy Center to Temporarily Close Certain Streets for the Second Annual "Turkey Trot 5K & Fun Run" on Saturday, November 18, 2017, with a Rain Date of Saturday, November 25, 2017

Issue:

True Options Pregnancy Center will host the second annual "Turkey Trot 5K & Fun Run" on Saturday, November 18th, with a rain date of Saturday, November 25th, and is requesting the City of Sherman's assistance with traffic control and street closures.

Background:

True Options Pregnancy Center will hold the second annual "Turkey Trot 5K & Fun Run" on Saturday, November 18th with a rain date of Saturday, November 25th. The race will begin at 8:30 a.m. and will follow the route displayed on the attached map. The run will require traffic control assistance and cones from City of Sherman.

True Options is also requesting the closure of Rusk Street in front of the Municipal Building from 7:00 a.m. to 11:30 a.m. Barricades will be provided by the City of Sherman Street Department.

Origination:

Bailey Teague, Marketing Director, True Options Pregnancy Center

Financial Consideration:

Labor and equipment to provide traffic control assistance and place/remove barricades and cones

Staff Recommendation:

It is recommended that the City Council approve this request and authorize the necessary traffic control and assistance to accommodate the event.

Alternatives:

As directed by Council

Attachments

True Options Request Letter
True Options Run Route Map

105 W. Pecan, Post Office Box 3237
Sherman, TX 75091
Tel 903.893.9099 Fax 903.813.1855
www.shermanpregnancy.com



September 19, 2017

City of Sherman
220 W. Mulberry St.
Sherman, TX 75090-5832

To whom it may concern,

This year will be the first time that True Options Pregnancy Center will be throwing our 2nd Annual True Options Turkey Trot 5K and Fun Run. True Options Pregnancy Center is excited and ready to put this event on for the City of Sherman! All proceeds from this event will be given to True Options so that they can continue providing free medical care, counseling, and resources for women and men living in Texoma. Join us as we gobble, gallop, and give thanks during this family friendly event! Come join the fun by participating in our 5k race or try to beat the dressed up turkey in our fun run/walk and win a special prize!

We are requesting from the city, traffic support and cones to be placed along the course. We are estimating two hundred runners to participate. Please find below the details and attached the proposed course map.

What: True Options Turkey Trot 5K & Fun Run
Who: True Options Pregnancy Center
When: Saturday, November 18th, 2017
Time: Race start 8:30AM finish at 11:00AM
Where: Sherman Municipal Grounds

We want to thank you in advance for your consideration of this event. If we can be of any assistance please give me a call at 903.893.9099. We look forward to working with the city on this endeavor.

Sincerely,

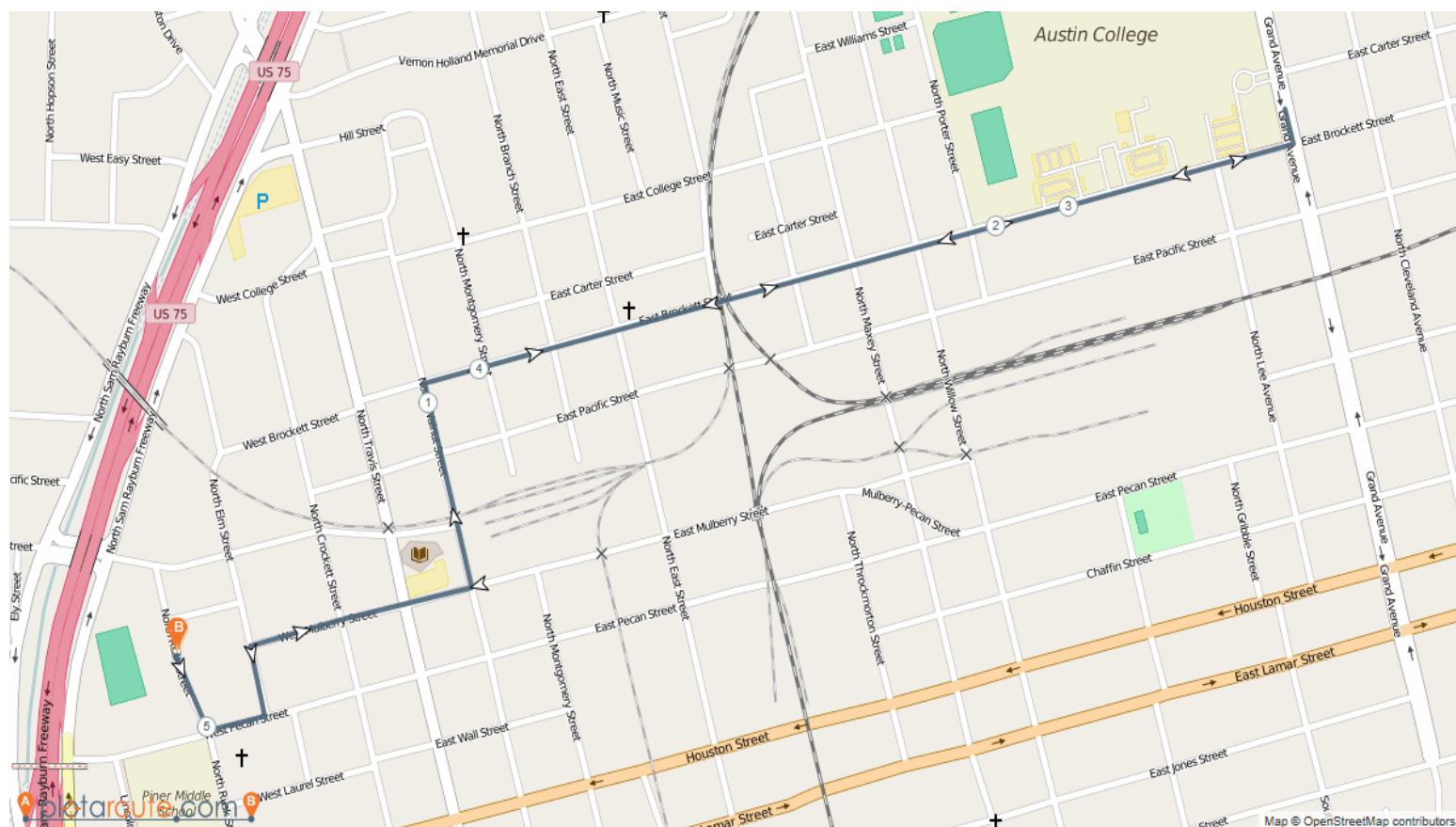
Bailey Teague
Marketing Director
True Options Pregnancy Center



TRUE
OPTIONS
pregnancy center

True Options Turkey Trot

November 18, 2017 from 7AM-12PM



5K Start:

N. Rusk St.

Turn left on W. Pecan

Turn left on N. Elm

Turn right on W. Mulberry

Turn left on N. Walnut

Turn right on E. Brockett

Turn left on N. Grand

*Turn around 5K Marker



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

F.2.

Meeting Date: 11/06/2017

Prepared By: Nate Strauch, Community & Support Services Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider Request of the Sherman Tourism/Main Street Manager to Temporarily Close Certain Streets for the Annual Sherman Christmas Parade and Snowflake Festival on Saturday, December 2, 2017, with a Rain/Make-Up Date of Friday, December 8, 2017

Issue:

To close certain streets in the downtown area for the annual Sherman Christmas Parade and Snowflake Festival on Saturday, December 2nd and provide for a rain/make-up date of Friday, December 8th

Background:

Sherman Tourism/Main Street Manager Sarah McRae has requested that participants be allowed to line up for the parade, per the attached map, beginning at 4:00 p.m. The parade is scheduled to begin at 6:00 p.m. The parade route is detailed in the attached map.

The Snowflake Festival will begin at 2:00 p.m. on the day of the Christmas Parade. To accommodate the event, its vendors, and Master of Ceremonies and stage, Mrs. McRae is requesting that the parking spaces on the north side of Lamar from Crockett to Travis, on the south side of Houston from Crockett to Travis, and on the west and east sides of Travis from Houston to Lamar be blocked off beginning at 12 p.m. Mrs. McRae will contact the County about blocking the parking spaces.

The event will require traffic control assistance, barricades, and traffic cones from the City of Sherman.

The City's antique fire truck will be provided for the Council to ride in the Christmas Parade. Council members are encouraged to arrive at least 20 minutes early at the Parade vehicle line-up site to participate. Spouses, children and grandchildren are also welcome to ride with the Council.

Origination:

Sarah McRae, Sherman Tourism/Main Street Manager

Financial Consideration:

Labor and equipment to provide traffic control assistance and implement barricade placement and removal

Staff Recommendation:

It is recommended that the City Council approve this request and authorize the necessary traffic control support to accommodate the event.

Alternatives:

As directed by the Council

Attachments

Christmas Parade Request Letter 2017

Christmas Parade Map 2017



October 30, 2017

Sherman City Council:

The Sherman Christmas Parade is scheduled for Saturday, December 2nd, with a rain/make-up date for Friday, December 8th.

The Snowflake Festival is a one day festival taking place on the same day. Snowflake Festival vendors are scheduled to set up as early as 12:30 p.m. and will begin selling at 2:00 p.m.

The parade will begin at 6:00 p.m. The parade line up will take place on Mulberry, Pecan, and Wall Streets, between Walnut and Montgomery, as well as on Walnut and Montgomery, between Mulberry and Houston Streets. The Parade will begin by going west on Mulberry and turning south onto Travis. The Parade will continue south until turning west on Lamar and north on Crockett. The parade will conclude on the corner of Washington and Crockett where floats can exit either west or follow Washington east back to the parade start.

The barricades we need for this route would be as follows:

- Lamar, Laurel, Pecan and Mulberry west of Crockett
- Houston and Wall east of Travis
- Pecan and Mulberry east of Travis
- Pecan and Mulberry east of Montgomery
- Crockett, Travis, and Walnut north of Washington
- Washington east of Elm
- Crockett and Travis south of Lamar
- Walnut on Houston, Lamar, and Travis

The Snowflake Festival vendors and activities will be set up around the County Courthouse Square and the Master of Ceremonies' stage will be set up across from Kelly Square on the East side of Travis. To ensure safety for this event and accommodate the large audience that gathers along Travis, we would like to request the following parking be blocked off beginning at noon until all is empty:

- North side of Lamar from Crockett to Travis
- South side of Houston from Crockett to Travis
- West and east sides of Travis from Houston to Lamar

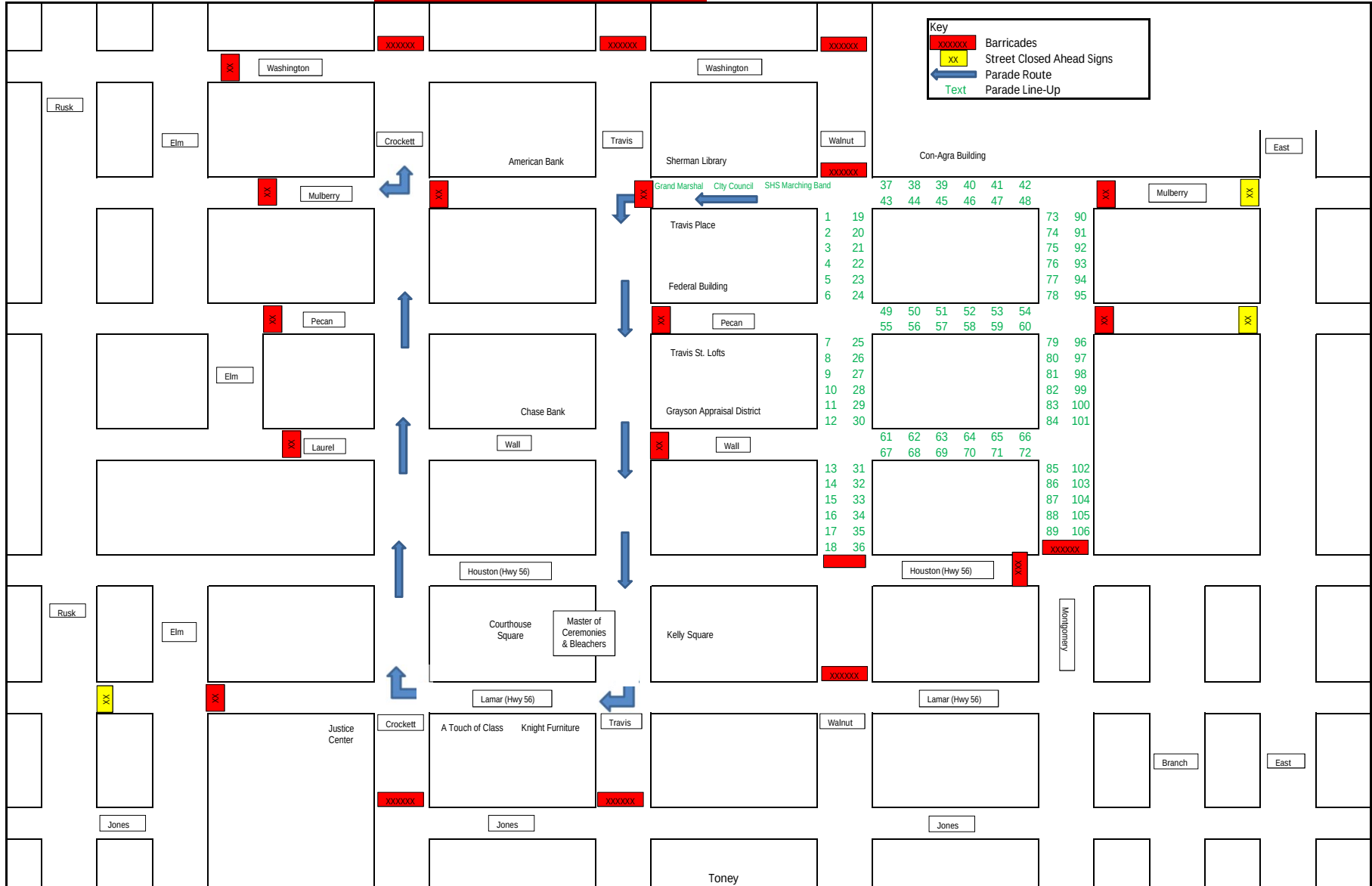
Sincerely,

Sarah McRae

Tourism & Main Street Manager

Sherman Downtown Parade Map

Barricades Brockett and Pacific @ Crockett, Travis & Walnut



Travis & Washington
Travis & Mulberry
Travis & Wall
Travis & Pecan

Travis & Houston
Travis & Lamar
Crockett & Lamar
Crockett & Houston

Crockett & Wall
Crockett & Pecan
Crockett & Mulberry
Crockett & Washington

Tac 5



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

F.3.

Meeting Date: 11/06/2017

Prepared By: Nate Strauch, Community & Support Services Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider Request of Grayson Honors College and the Grayson County Law Enforcement Association to Temporarily Close Certain Streets for the "Beat the Heat 5K Run/Walk" on Saturday, April 28, 2018 with an alternate rain date of Saturday, May 5, 2018

Issue:

The Grayson Honors College and the Grayson County Law Enforcement Association (GCLEA) will host their 5th Annual "Beat the Heat 5K Run/Walk" benefiting the GCLEA bereavement fund, the GCLEA scholarship fund, and the Grayson College Deputy Chad Key Memorial Scholarship on Saturday, April 28, 2018, and are requesting assistance with street closures and traffic control. The closure of Rusk Street in front of Piner Middle School is also requested.

Background:

This will be the 5th annual "Beat the Heat 5K Run/Walk", and the second year the event will be hosted in Sherman. This year's event will begin at 8:30 a.m. and will follow the route displayed on the attached map. The event will require traffic control assistance, barricades, and cones from the City of Sherman.

The closure of Rusk Street in front of Piner Middle School from 7:00 a.m. to 10:00 a.m. is also requested. Delivery and pick up of barricades for the closure is requested. Organizers have been reminded that, although Rusk Street will be closed with barricades, accessibility through Rusk Street by emergency and fire vehicles must be maintained at all times throughout the event.

Origination:

Brandy Fair Ed.D, Coordinator, Grayson Honors College

Financial Consideration:

City labor and equipment to provide traffic control assistance and implement barricade placement and removal will be required.

Staff Recommendation:

It is recommended that the City Council authorize the street closures and necessary traffic control and support to accommodate the event.

Alternatives:

As directed by the Council

Attachments

Beat the Heat Request Letter

Beat the Heat Run Route Map



To Whom it May Concern,

My name is Dr. Brandy Fair and I am the coordinator for the Grayson Honors College on campus. The goal of the Grayson Honors College is to better serve the educational needs of academically talented and highly motivated students at the College. The program encourages the participation of the broadest possible range of gifted students.

This Spring semester, the students and I will host our 4th annual 5k walk/run in collaboration with the Grayson County Law Enforcement Association (GCLEA). The event (Beat the Heat 5k Run/Walk) will be Saturday April 29th at 8:30 a.m. Proceeds earned will remain local, going to the GCLEA bereavement fund, the GCLEA scholarship fund, and the Grayson College Dep. Chad Key Memorial Scholarship.

We are planning to begin the run in front of Piner School. The race will begin on Rusk, left on King St, south on Travis down to Lake St., come back north on Crockett, to King and back to Rusk. I have included a map as well. We would like to have Rusk Street, behind Piner, closed from 7-10 a.m. and have requested police assistance at the intersections of Houston and Lamar, as well as down Travis St. Registration and Packet Pick-Up begins at 7 a.m., the race begins at 8:30, and awards/closing at 9:30 a.m. We will provide water and snacks for the runners, but will not be selling concessions.

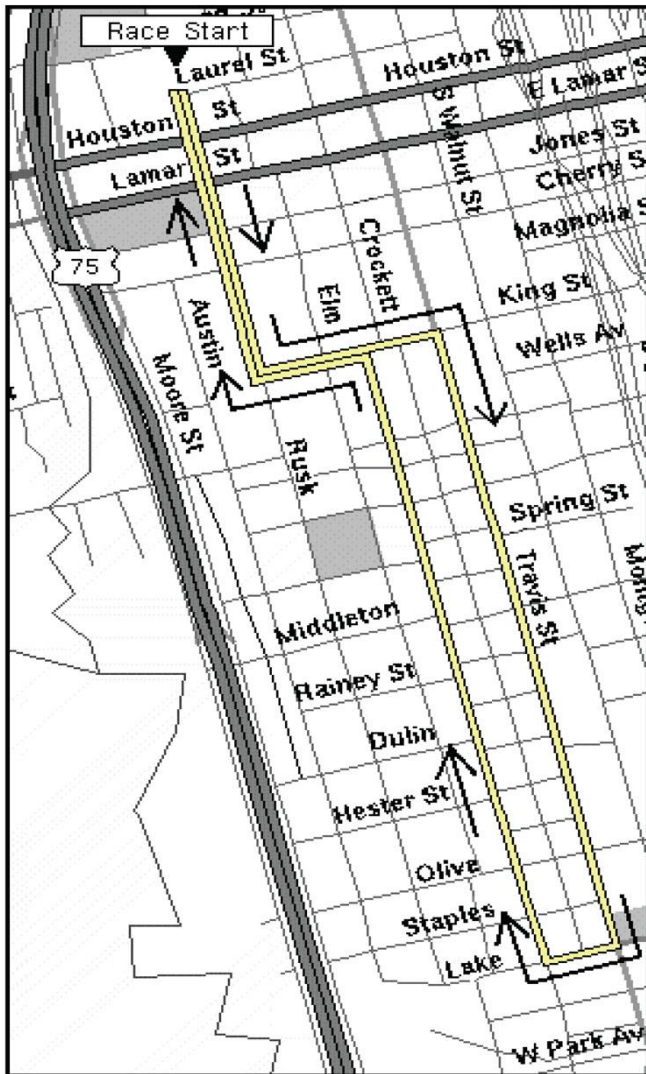
Please contact me with any questions.

Sincerely,

Brandy Fair Ed.D.

Grayson College
Department Chair, Fine Arts
Honors College Coordinator

5K Run Route





SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

F.4.

Meeting Date: 11/06/2017

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

*** OTHER BUSINESS**

Replat Approval of Part of Alcoholic Services Addition, Block 1, Lots 2R-A, 6R-A1 and 6R-A2, being all of Lot 2R in Block 1 of Helen Perkins Addition and all of Lot 6R-A, Block 1, Alcoholic Services Addition, containing 4.054 acres; Alcoholic Services of Texoma, Owners; and Preston Trail Land Surveying, LLC, Surveyor (1500 block of Baker Drive)

Issue:

To consider Replat approval of Alcoholic Services of Texoma (Owners) and Preston Trail Land Surveying, LLC (Surveyor) concerning the property located in the 1500 block of Baker Drive, being all of Lot 2R in Block 1 of Helen Perkins Addition and all of Lot 6R-A, Block 1, Alcoholic Services Addition, containing 4.054 acres, located in the 1500 block of Baker Drive

Background:

The property is located in the 1500 block of Baker Drive, between Texoma Parkway and Frisco Road, and is zoned a C-2 (General Commercial) District. The owners would like to replat the property into three lots for commercial development.

Origination:

Alcoholic Services of Texoma (Owners)
Preston Trail Land Surveying, LLC (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the October 17, 2017 regular meeting, the Planning & Zoning Board voted unanimously to recommend to the City Council that the Replat be approved subject to the Staff Review Letter.

Alternatives:

None

Attachments

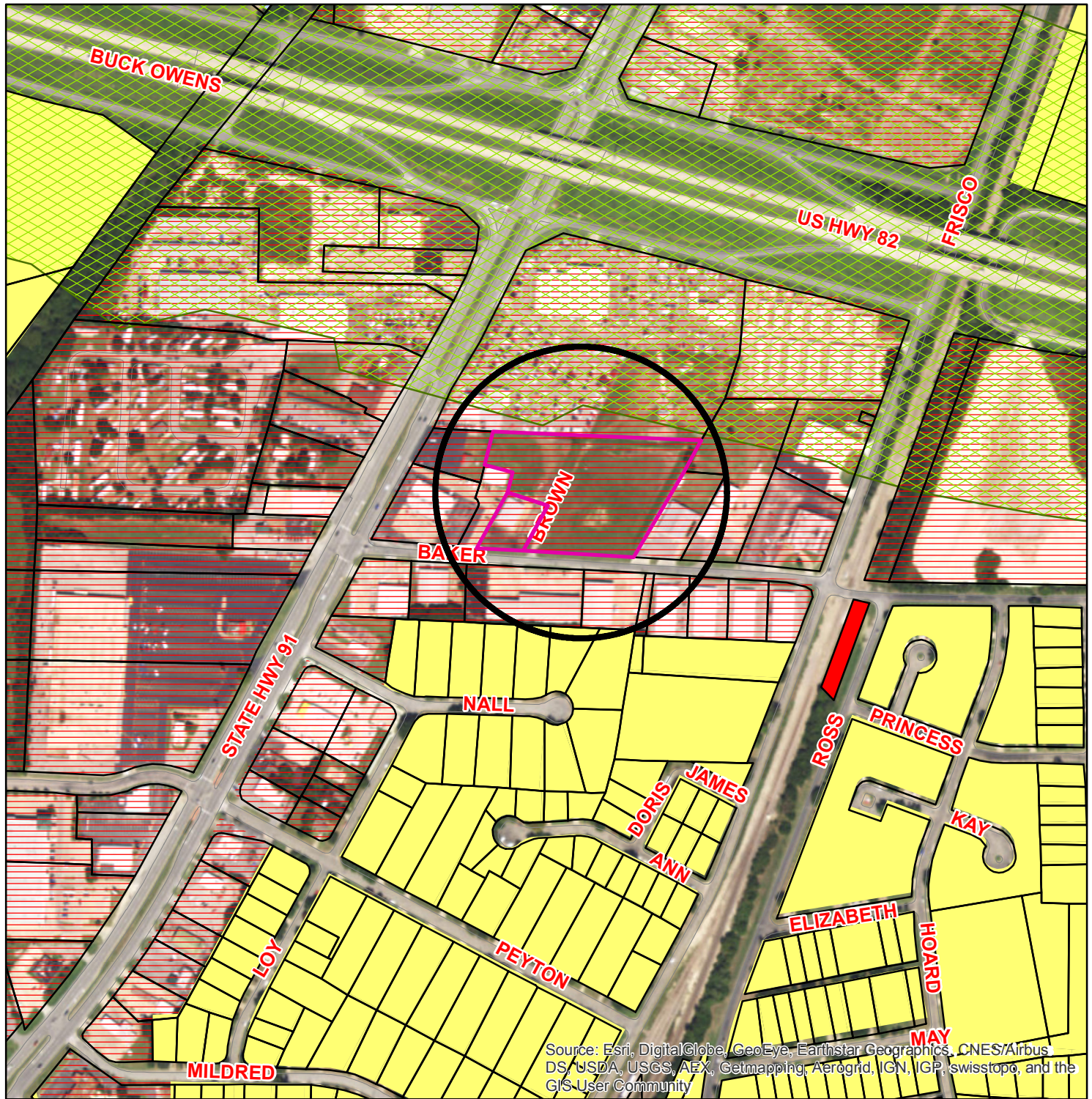
Location Map
Zoning Map
Replat
Staff Review Letter
P&Z Communication



1500 Block Baker Drive Replat Alcoholic Services Addition



1 in = 721 ft



Zoning - 1500 Block Baker Drive Replat Alcoholic Services Addition

Legend

- CountyParcels_Buffer
- ShermGIS.DBO.CountyParcels.selection

Special Districts Overlay

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

Transportation Corridor Zoning Districts

- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691

Unknown

- BIP- Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH- Manufacturing Housing District
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District

Sherman
CLASSIC TOWN. BROAD HORIZON.

City of Sherman, Texas
Developmental Services Department



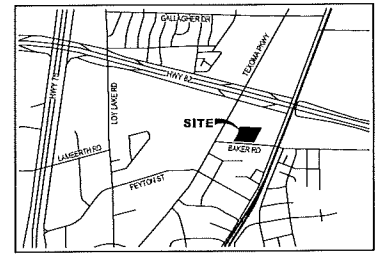
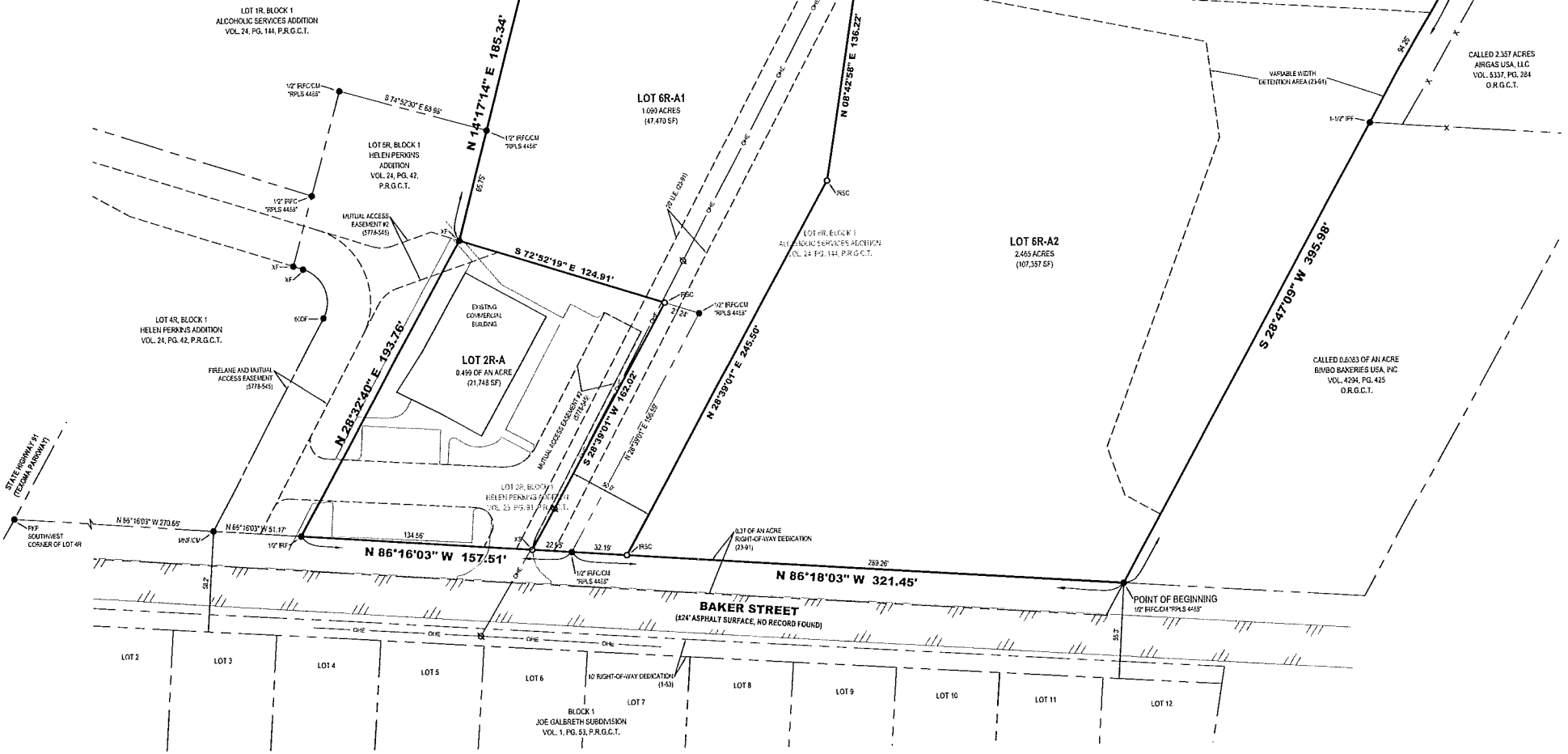
NOT TO SCALE

1 in = 433 ft



GRAPHIC SCALE IN FEET

All bearings shown are based on grid north of the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.



VICINITY MAP
(NOT TO SCALE)

LEGEND	
● FOUND MONUMENT	P.R.G.C.T. PLAT RECORDS, GRAYSON COUNTY, TEXAS
○ SET MONUMENT	O.R.G.C.T. OFFICIAL RECORDS, GRAYSON COUNTY, TEXAS
RSC 1/2" IRON ROD W/ PRESTON TRAIL LAND SURVEYING, RPLS 6565" CAP SET	U.E. UTILITY EASEMENT
IRF IRON ROD FOUND	D.E. DRAINAGE EASEMENT
RFC IRON ROD FOUND W/ PLASTIC CAP	S.S.E. SANITARY SEWER EASEMENT
PKF PK NAIL FOUND	BOUNDARY LINE
CM CONTROLLING MONUMENT	ADJACENT LINE
X' X' SCRIBED IN CONCRETE FOUND	EASEMENT
XS X' SCRIBED IN CONCRETE SET	ASPHALT
IRF IRON PIPE FOUND	
R.O.W. RIGHT-OF-WAY	

FLOOD STATEMENT:
I have examined the F.E.M.A. Flood Insurance Rate Map for the City of Sherman, Grayson County, Texas, Community Number 485509, effective date 09/29/2010 and that map indicates that this property is within "Non-shaded Zone X" defined as "Areas determined to be outside the 0.2% annual chance flood" as shown on Panel 0250 F of said map. This flood statement does not imply that the property and/or structures thereon will be free from flooding or flood damage, on rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. This flood statement shall not create liability on the part of the surveyor.

OWNER:
Alcoholic Services of Texoma
P.O. Box 69
Sherman, TX 75091
Ph: 903-870-6444
Contact: Bob Stodflre

SURVEYOR:
Chris Noah, RPLS 6565
Preston Trail Land Surveying
83493 N State Highway 289, Suite No. 5
Pottsboro, TX 75076
Ph: 903-786-6029

PRELIMINARY
THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT

REPLAT
ALCOHOLIC SERVICES ADDITION
BLOCK ONE, LOTS 2R-A, 6R-A1 AND 6R-A2
4.054 Acres
Being all of Lot 2R-A, Block One
Helen Perkins Addition,
and all of Lot 6R-A, Block One,
Alcoholic Services Addition
City of Sherman, Grayson County, Texas

Preston Trail LAND SURVEYING		83493 N. State Hwy 289, Suite 5 Pottsboro, TX 75076 www.prestontrailandsurveying.com 903-786-6029
TRPLS Form No. 103HUS	Drawn by: BSH Checked by: DBI	Scale: T=40 Date: 09/09/2017
		Project No. 17-0439 Sheet No. 1 of 2

STAFF REVIEW LETTER

October 6, 2017

Alcoholic Services of Texoma
Attn: Bob Stoolfire
P.O. Box 69
Sherman, TX 75091

Preston Trail Land Surveying
83493 N. S.H. 289, Suite 5
Pottsboro, TX 75076

Dear Applicants,

The request for approval of the Replat of Alcoholic Services Addition, Block One, Lots 2R-A, 6R-A1 & 6R-A2 has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, October 17, 2017 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

1. Letters from various utility providers are required verifying availability of service and when service will be available.
2. Original tax certificates shall be furnished for the purpose of recording the plat.
3. Drive approaches and sidewalks must conform to City of Sherman standards and a permit is required from City of Sherman Engineering Department.
4. The width of the right-of-way and pavement for streets shall be shown on the plat.
5. Privately owned and maintained detention in accordance with City criteria is required.
6. Water and sewer Pro-Rata will be due at the time of development.
7. Any other changes made to the plat prior to the final fulfillment of the conditions of the staff review, must be considered minor by staff, as to not require resubmission to the Planning & Zoning Commission.
8. 2 Mylars must be submitted in 24"x36" size for recording. 1 mylar must be split to be 2-24"x18" pages per Grayson County requirements. 1 page must have the legal description and the other page must have the image. Both mylars must look the same with the exception of the split line down the middle. Both split pages must include the Subdivision Name block. Submit digital image to the Engineering department for approval prior to printing mylars.

The Board will not consider a request unless it has representation. You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Clint Philpott, at 903-892-7327 prior to the meeting.

Respectfully,



Clint A. Philpott, P.E.,
Director of Engineering

cc: Robby Hefton, City Manager
Brandon Shelby, City Attorney
Danny Fuller, Fire Marshal

Scott Shadden, Director of Development Services
Mark Gibson, Director of Utilities
Steve Ayers, Assistant City Manager



**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 6.

Meeting Date: 10/17/2017

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

Clay Mahone, Chairman

Kyle Patterson, Vice-Chairman

Joe Gilbert, Commissioner

Eric Elliott, Commissioner

Sean Vanderveer, Commissioner

Shawn Davis, Commissioner

Jeff Adams, Commissioner

David Downtain, Commissioner

Trish Bridges, Commissioner

Requested Action/Proposed Use:

*** 1500 BLOCK BAKER DRIVE**

The request of Alcoholic Services of Texoma (Owner) and Preston Trail Land Surveying, LLC (Surveyor) concerning the property located in the 1500 Block of Baker Drive, being all of Lot 2R in Block 1 of Helen Perkins Addition and all of Lot 6R-A, Block 1, Alcoholic Services Addition, containing 4.054, as follows:

Planning and Zoning Commission

Replat approval of Alcoholic Services Addition, Block 1, Lots 2R-A, 6R-A1 and 6R-A2.

Background:

The property is located in the 1500 block of Baker Drive between Texoma Parkway and Frisco Road and is zoned a C-2 (General Commercial) District. The owner would like to replat the property into three lots for commercial development.

Adjacent Zoning:

C-2 (General Commercial) District

Origination:

Alcoholic Services of Texoma (Owner)

Preston Trail Land Surveying, LLC (Surveyor)

Master Plan Designation:

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

Number of notices mailed:

Not required.

Objections Received:

0

Attachments

Location Map

Zoning Map

Replat

Staff Review Letter



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

F.5.

Meeting Date: 11/06/2017

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

*** OTHER BUSINESS**

Final Plat Approval of BAC Sherman RE Addition, being 4.643 acres in the J. Hendrix Survey, Abstract No. 503 and the W. Patterson Survey, Abstract No. 969; Buffalo Gap Street Properties, LLC, Owners; and Helvey-Wagner Surveying, Inc., Surveyor (4113 North Frisco Road)

Issue:

To consider Final Plat approval of BAC Sherman RE Addition, being 4.643 acres in the J. Hendrix Survey, Abstract No. 503 and the W. Patterson Survey, Abstract No. 969, located at 4113 North Frisco Road

Background:

The property is located at 4113 North Frisco Road, the northeast corner of Frisco Road and Dripping Springs Road. The owners would like to plat the property into one lot for commercial development of D-Bat, a baseball/softball training facility.

Origination:

Buffalo Gap Street Properties, LLC (Owners)
Helvey-Wagner Surveying, Inc. (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the October 17, 2017 regular meeting, the Planning & Zoning Board voted unanimously to recommend to the City Council that the Final Plat be approved subject to the Staff Review Letter.

Alternatives:

None

Attachments

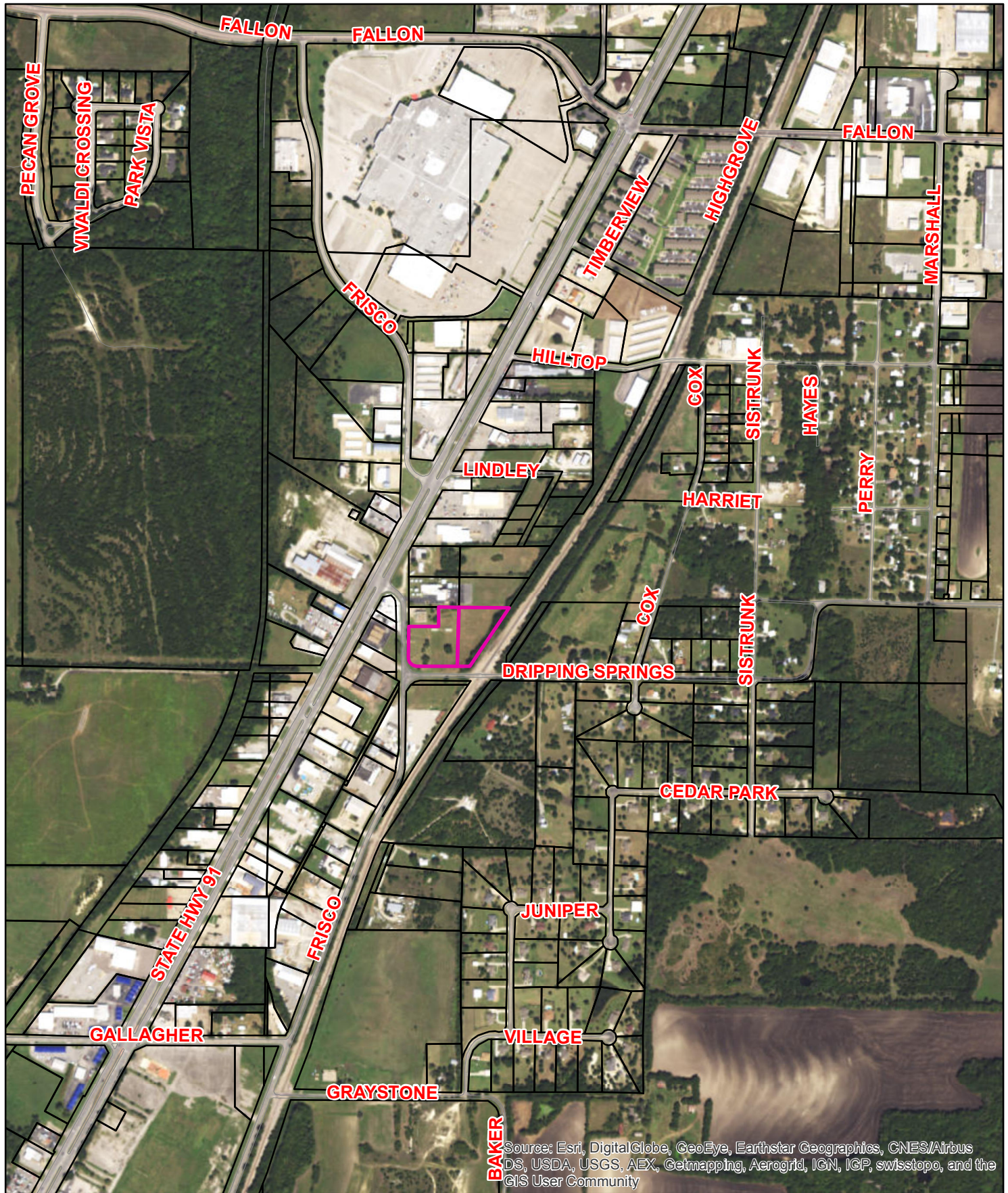
Location Map

Zoning Map

Final Plat

Staff Review Letter

P&Z Communication

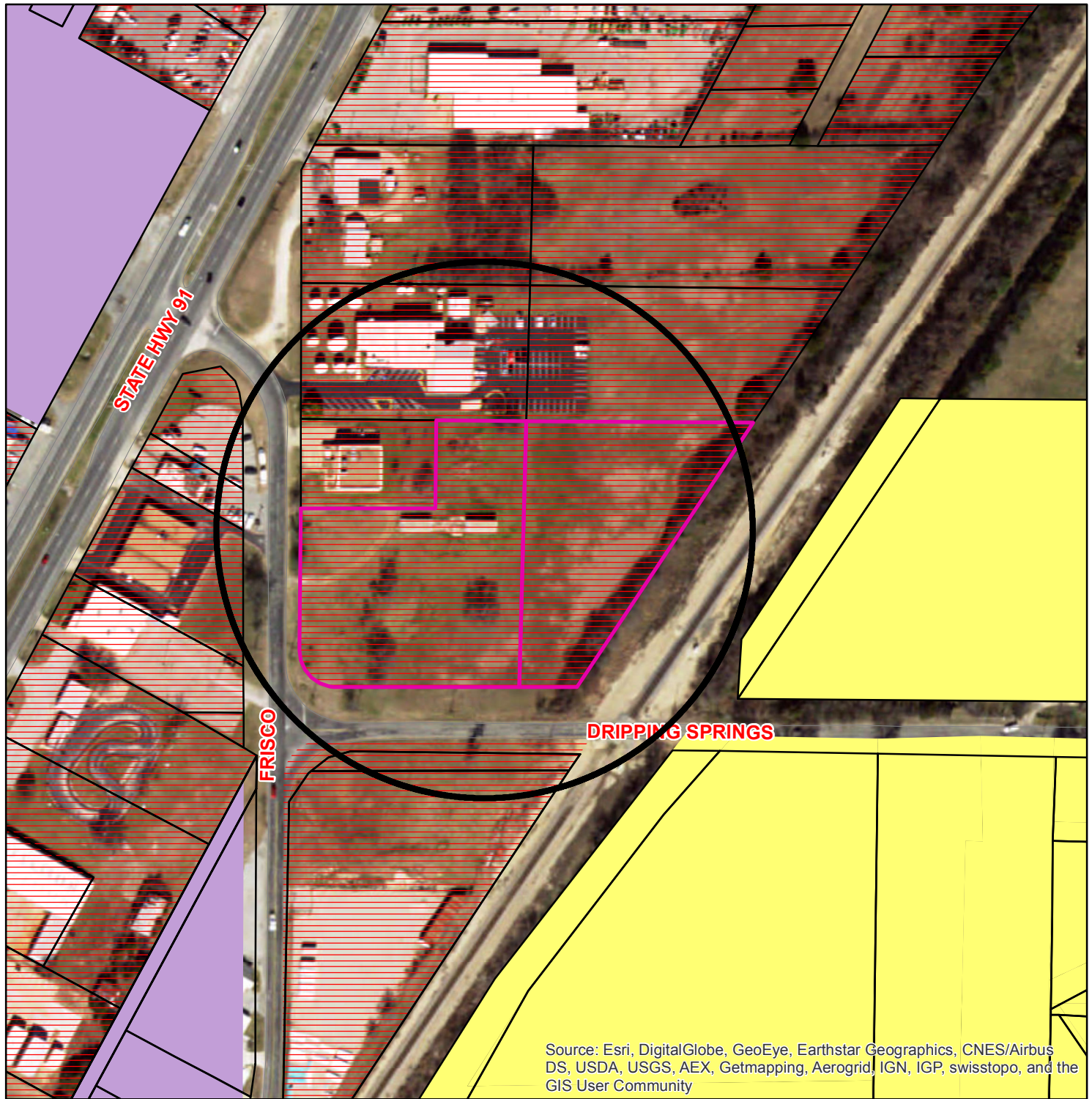


4113 N. Frisco Road



1 in = 807 ft

City of Sherman, Texas
Developmental Services Department



Zoning - 4113 N. Frisco Road

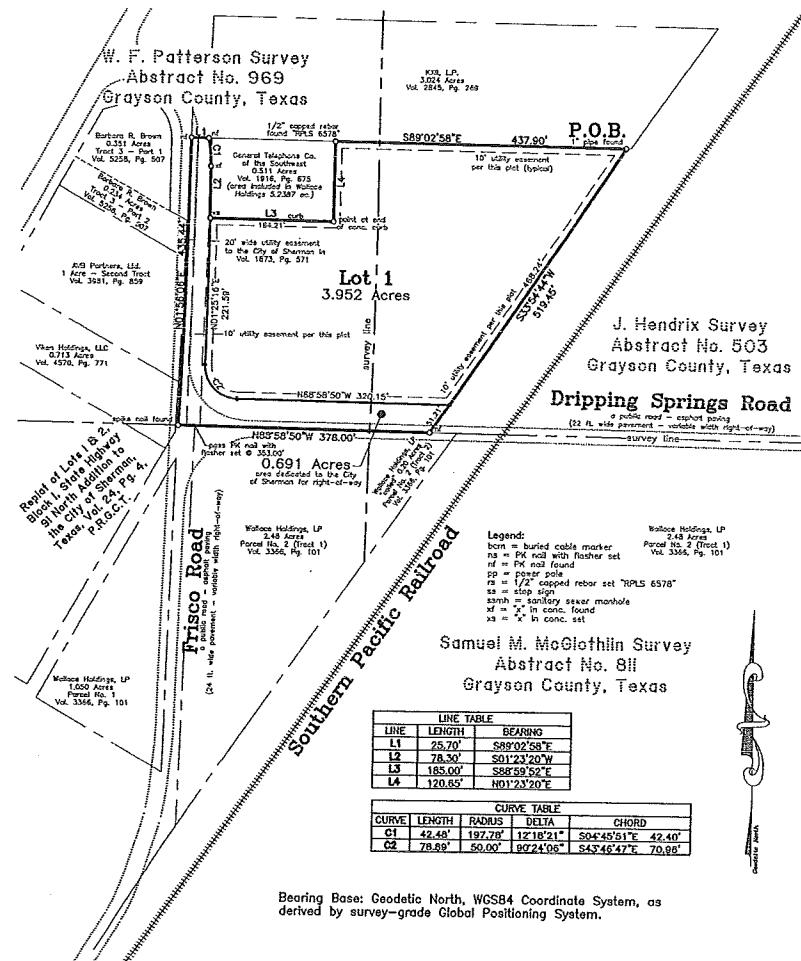
Legend		
Special Districts Overlay	Transportation Corridor	Zoning Districts
Arts and Cultural District	FM 1417	Unknown
Blalock Commercial Overlay District	Sam Rayburn Freeway	BIP Blalock Industrial Park
Central Business District	US Hwy 82 and 75	C-1 Retail Business District
College Park District	SH 289	C-2 General Commercial District
Downtown Overlay District	FM 691	CO Office District
Historic Preservation District		Lakes
		M-1 Light Manufacturing District
		M-1.5 Medium Manufacturing District
		M-2 Heavy Manufacturing District
		MH Manufacturing Housing District
		R-1 One Family Residential District
		R-2 Multi-Family Residential District
		R-A Single Family Agricultural District
		SF-1 Single Family Residential District



City of Sherman, Texas
Developmental Services Department



1 in = 194 ft



Final Plat of BAC Sherman RE to the City of Sherman, Texas 4.643 Acres in the J. Hendrix Survey & W. F. Patterson Survey Abstract No. 503 & Abstract No. 969

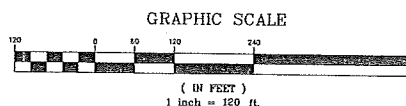
General Notes:

1. Water Supply to be provided by the City of Sherman.
2. Sewer service to be provided by the City of Sherman.
3. Electrical service is provided by Oncor Electric Delivery Co.
4. The property shown on the plat hereon lies within a Zone "X" (areas determined to be outside 500-year floodplain) Designation, as shown on the Flood Insurance Rate Map for Grayson County, Texas and Incorporated Areas, Map No. 48181C0290 F, Revised Date: September 29, 2010.
5. Neither the City of Sherman nor the undersigned surveyor will be responsible for any damage, personal injury, or loss of life or property occasioned by flooding or flooding conditions.
6. Utility lines shown hereon as per visible and apparent markings located during the course of this survey. Undersigned surveyor assumes no liability for actual location of underground utility lines.

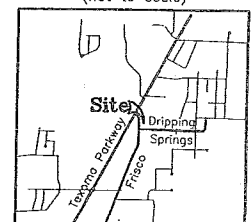
Helvey-Wagner Surveying, Inc.
222 W. Main St., Denison, Texas 75020
Ph (903) 463-6191 Fax (903) 463-4088
Email: helveysurvey@comcast.net
Texas Board of Professional Land Surveying
Firm Registration No. 10088100

Owner
Buffalo Gap Street Properties, LLC

Job No. CGS25717-F



Location Map (not to scale)



STAFF REVIEW LETTER

October 6, 2017

Buffalo Gap Street Properties, LLC
4601 Buffalo Gap Road, Ste. B-5
Abilene, Texas 79606

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

Dear Applicants,

The request for approval of the Final Plat of BAC Sherman RE Addition has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, October 17, 2017 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

1. Letters from various utility providers are required verifying availability of service and when service will be available.
2. Original tax certificates shall be furnished for the purpose of recording the plat.
3. Drive approaches and sidewalks must conform to City of Sherman standards and a permit is required from City of Sherman Engineering Department.
4. The width of the right-of-way and pavement for streets shall be shown on the final plat.
5. Detention in accordance with City criteria is required. Engineering plans shall be provided to the City of Sherman Engineering Department for review and approval.
6. Water and Sewer Pro-Rata will be due at the time of development.
7. Any other changes made to the plat prior to final fulfillment of the conditions of the staff review, must be considered minor by staff, as to not require resubmission to the Planning & Zoning Commission.
8. 2 Mylars must be submitted in 24"x36" size for recording. 1 mylar must be split to be 2-12"x18" pages per Grayson County requirements. 1 page must have the legal description and the other page must have the image. Both mylars must look the same with the exception of the split line down the middle. Both split pages must include the Subdivision Name block. Submit digital image to the Engineering department for approval prior to printing mylars.

The Board will not consider a request unless it has representation. You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Clint Philpott, at 903-892-7327 prior to the meeting.

Respectfully,


Clint A. Philpott, P.E.,
Director of Engineering

cc: Robby Hefton, City Manager
Brandon Shelby, City Attorney
Danny Fuller, Fire Marshal

Scott Shadden, Director of Development Services
Mark Gibson, Director of Utilities
Steve Ayers, Assistant City Manager



**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 8.

Meeting Date: 10/17/2017

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

Clay Mahone, Chairman

Kyle Patterson, Vice-Chairman

Joe Gilbert, Commissioner

Eric Elliott, Commissioner

Sean Vanderveer, Commissioner

Shawn Davis, Commissioner

Jeff Adams, Commissioner

David Downtain, Commissioner

Trish Bridges, Commissioner

Requested Action/Proposed Use:

*** 4113 N FRISCO ROAD**

The request of Buffalo Gap Street Properties, LLC (Owners) and Helvey-Wagner Surveying, Inc. (Surveyor) concerning the property at 4113 North Frisco Road, being 4.643 acres in the J. Hendrix Survey, Abstract No. 503 and the W. Patterson Survey, Abstract No. 969, as follows:

Planning and Zoning Board

Final Plat approval of BAC Sherman RE Addition.

Background:

The property is located at 4113 North Frisco Road, the northeast corner of Frisco Road and Dripping Springs Road. The owners would like to plat the property into one lot for commercial development of D-Bat, a baseball/softball training facility.

Adjacent Zoning:

C-2 (General Commercial) District

Origination:

Buffalo Gap Street Properties, LLC (Owners)

Helvey-Wagner Surveying, Inc. (Surveyor)

Master Plan Designation:

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

Number of notices mailed:

Not required.

Objections Received:

0

Attachments

Location Map

Zoning Map

Final Plat

Staff Review Letter



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

F.6.

Meeting Date: 11/06/2017

Prepared By: Scott Shadden, Director of Developmental Services

Approved By: Robby Hefton, City Manager

Caption:

*** OTHER BUSINESS**

Replat Approval of Lot 2R, McLain Addition, a Replat of Lot 2 of McLain Addition, being 3.126 acres in the J.B. McAnair Survey, Abstract No. 763, also being Lot 2, McLain Addition; JKL Partners, LLC, Owners; and Underwood Drafting and Surveying, Surveyor (2600 block of North Travis Street and 100-200 blocks of West McLain Street)

Issue:

To consider Replat approval of Lot 2R, McLain Addition, a replat of Lot 2 of McLain Addition, being 3.126 acres in the J.B. McAnair Survey, Abstract No. 763, also being Lot 2, McLain Addition, located in the 2600 block of North Travis Street and the 100-200 blocks of West McLain Street

Background:

The property is located in the 2600 block of North Travis Street and the 100-200 blocks of West McLain Street; the northwest corner of Travis and McLain Streets. The owners would like to replat the property into three lots for commercial and residential development.

Origination:

JKL Partners, LLC (Owners)

Underwood Drafting and Surveying (Surveyor)

Financial Consideration:

None

Staff Recommendation:

At the October 17, 2017 regular meeting, the Planning & Zoning Board voted unanimously to recommend to the City Council that the Replat be approved subject to the Staff Review Letter.

Alternatives:

None

Attachments

Location Map

Zoning Map

Zoning Sign Photo

Replat

Staff Review Letter

P&Z Communication

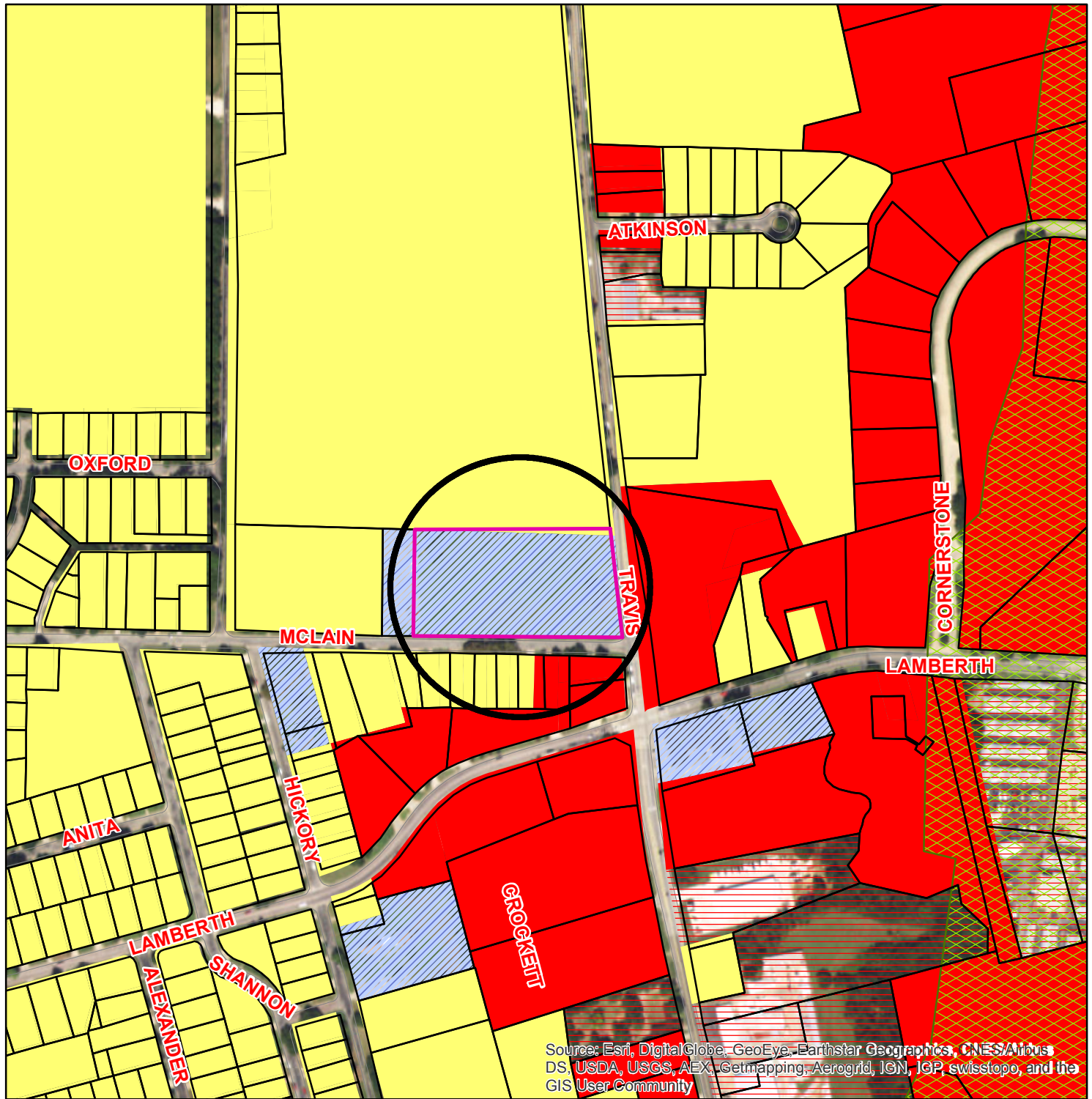


**2600 Blk. N. Travis &
100-200 Blks. W. McLain**



1 in = 649 ft

City of Sherman, Texas
Developmental Services Department



Zoning - 2600 Blk. N. Travis & 100-200 Blks. W. McLain

Legend

- CountyParcels_Buffer
- ShermGIS.DBO.CountyParcels_selection
- Special Districts Overlay**
 - Arts and Cultural District
 - Blalock Commercial Overlay District
 - Central Business District
 - College Park District
 - Downtown Overlay District
 - Historic Preservation District

Transportation Corridor Zoning Districts

- FM 1417
- Sam Rayburn Freeway
- US Hwy 82 and 75
- SH 289
- FM 691
- Unknown
- BIP Blalock Industrial Park
- C-1 Retail Business District
- C-2 General Commercial District
- CO Office District
- Lakes
- M-1 Light Manufacturing District
- M-1.5 Medium Manufacturing District
- M-2 Heavy Manufacturing District
- MH Manufacturing Housing District
- R-1 One Family Residential District
- R-2 Multi-Family Residential District
- R-A Single Family Agricultural District
- SF-1 Single Family Residential District



City of Sherman, Texas
Developmental Services Department



NOT TO SCALE

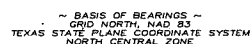
1 in = 360 ft

2600 Blk. N. Travis



100-200 Blks. W. McLain





(IN FEET)
1 inch = 100 ft.

UNDERWOOD
DRAFTING & SURVEYING

Date _____

Secretary

Date

Clerk, City of Sherman, Texas

UNDERWOOD
DRAFTING & SURVEYING

STAFF REVIEW LETTER

October 6, 2017

JKL Partners, LLC
1710 W. Lamberth Road
Sherman, TX 75092

Underwood Drafting and Surveying
3404 Interurban Road
Denison, TX 75021

Dear Applicants,

The request for approval of the Replat of Lot 2R McLain Addition has been scheduled to be heard by the Planning and Zoning Board on the day of Tuesday, October 17, 2017 at 5:00 p.m., in the City Council Chambers, City Hall at 220 W. Mulberry.

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

1. Letters from various utility providers are required verifying availability of service and when service will be available.
2. Original tax certificates shall be furnished for the purpose of recording the plat.
3. Drive approaches and sidewalks must conform to City of Sherman standards and a permit is required from City of Sherman Engineering Department.
4. The width of the right-of-way and pavement for streets shall be shown on the final plat.
5. Detention in accordance with City criteria is required. Engineering plans shall be provided to the City of Sherman Engineering Department for review and approval.
6. Water and Sewer Pro-Rata will be due at the time of development.
7. Dedicate a 10' Utility Easement along McLain Drive.
8. Show Deed of Dedication to City of Sherman in Vol. 4015, Pg. 385, OPRGCT on drawing.
9. Dedicate 0.044 acres of Right-of-Way to City of Sherman by separate instrument and show Vol. & Pg. on drawing.
10. Any other changes made to the plat prior to final fulfillment of the conditions of the staff review, must be considered minor by staff, as to not require resubmission to the Planning & Zoning Commission.
11. 2 Mylars must be submitted in 24"x36" size for recording. 1 mylar must be split to be 2-24"x18" pages per Grayson County requirements. 1 page must have the legal description and the other page must have the image. Both mylars must look the same with the exception of the split line down the middle. Both split pages must include the Subdivision Name block. Submit digital image to the Engineering department for approval prior to printing mylars.

The Board will not consider a request unless it has representation. You are hereby notified to be present, either in person or by a legally authorized representative to present your case on the date and time stated above.

If additional information or clarification is needed, do not hesitate to contact Clint Philpott, at 903-892-7327 prior to the meeting.

Respectfully,



Clint A. Philpott, P.E.,
Director of Engineering

cc: Robby Hefton, City Manager
Brandon Shelby, City Attorney
Danny Fuller, Fire Marshal

Scott Shadden, Director of Development Services
Mark Gibson, Director of Utilities
Steve Ayers, Assistant City Manager



**Planning & Zoning Commission and Board of
Adjustments**

Agenda Item No. 14.

Meeting Date: 10/17/2017

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

Clay Mahone, Chairman

Kyle Patterson, Vice-Chairman

Joe Gilbert, Commissioner

Eric Elliott, Commissioner

Sean Vanderveer, Commissioner

Shawn Davis, Commissioner

Jeff Adams, Commissioner

David Downtain, Commissioner

Trish Bridges, Commissioner

Requested Action/Proposed Use:

*** 2600 BLOCK N. TRAVIS STREET & 100-200 BLOCKS W. MCLAIN STREET**

The request of JKL Partners, LLC (Owners) and Underwood Drafting and Surveying, (Surveyor) concerning the property in the 2600 Block of North Travis Street and the 100-200 Blocks of West McLain Street, being 3.126 acres in the J.B. McAnair Survey, Abstract No. 763, also being Lot 2, McLain Addition, as follows:

Planning and Zoning Board

Replat approval of Lot 2R, McLain Addition, a replat of Lot 2 of McLain Addition

Background:

The property is located in the 2600 Block of North Travis Street and the 100-200 Blocks of West McLain Street; the northwest corner of Travis and McLain Streets. The owners would like to replat the property into three lots for commercial and residential development.

Adjacent Zoning:

R-1 (One Family Residential) District

R-2 (Multi-Family Residential) District

C-1 (Retail Business) District

Origination:

JKL Partners, LLC (Owners)

Underwood Drafting and Surveying, (Surveyor)

Master Plan Designation:

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

Number of notices mailed:

19

Objections Received:

0

Attachments

Location Map

Zoning Map

Zoning Sign Photo

Replat

Staff Review Letter



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

I.1.

Meeting Date: 11/06/2017

Prepared By: Linda Ashby, City Clerk

Approved By: Robby Hefton, City Manager

Caption:

APPOINT/REMOVE OR CONSIDER QUALIFICATIONS TO BOARDS AND COMMISSIONS

(a) Library Board (1)

Issue:

Ms. Darlene Schweizer's term on the Library Board expired on April 8, 2017. She has served three terms and is not eligible for reappointment. Mr. Ronald Cassady has submitted an application for service on the board. The current by-laws state "all members of the board shall be residents of the City, having a knowledge of library affairs, a strong interest in library operations and a genuine appreciation of books." Mr. Cassady does not live in Sherman. There are no other applications for service on the Library Board.

Background:

The Library Board serves in an advisory capacity to the City Librarian, the City Manager, and the City Council.

Origination:

The appointment originated with the Public Library.

Financial Consideration:

There is no financial consideration.

Staff Recommendation:

It is recommended that the City Council consider an appointment to the Library Board.

Alternatives:

The alternative is to delay an appointment to the Board.

Attachments

Roster

Fact Sheet

Ordinance No. 4367 - By-Laws

Applicant List

Ronald Cassady Application

MEMBERSHIP ROSTER

LIBRARY BOARD

LENGTH OF TERMS: THREE YEARS
Term Limit: Three Consecutive Terms

MEMBER	DISTRICT	TERM BEGINS	TERM EXPIRES	TERMS	MEMBERSHIP REQUIREMENTS
Lisa Hébert	4	A 3/20/2016	3/20/2019	1	Members are required to be residents of Sherman; have knowledge of Library Affairs and operations; and appreciate books.
Randy Hudson	4	A 4/7/2015	4/7/2018	1	
Laurie Mealy	1	A 1/19/2016	1/19/2019	1	
Nick Keating	4	A 1/8/2013 R 1/8/2016	1/8/2016 1/8/2019	1 2	
John West	1	A 1/8/2013 R 1/8/2016	1/8/2016 1/8/2019	1 2	
Darlene Schweizer	4	A 4/8/2008 R 4/8/2011 R 4/8/2014	4/8/2011 4/8/2014 4/8/2017	1 2 3	
Judith Sloan	4	A 1/8/2013 R 1/8/2016	1/8/2016 1/8/2019	1 2	

NOTE:

CITY STAFF: Melissa Eason, Library Services Manager
Revised 10/20/2017

FACT SHEET

LIBRARY BOARD

Established by ORDINANCE 1736 – APRIL 14, 1948; REVISED ORDINANCE 4223 – OCTOBER 21, 1991; REVISED ORDINANCE 4367 – OCTOBER 3, 1994

1. Number of Members: SEVEN
2. Term of Appointment: THREE YEARS
3. Consecutive Term Rule: THREE TERMS – ORDINANCE 4223 (10/21/91)
4. Qualifications for Membership: RESIDENTS OF SHERMAN; KNOWLEDGE OF LIBRARY AFFAIRS AND OPERATION; APPRECIATION OF BOOKS
5. Appointed by: MAYOR AND CITY COUNCIL
6. Board Organization

CHAIRPERSON E VICE CHAIRPERSON SECRETARY E

ELECTED E APPOINTED
7. Departmental Responsibility: DIRECTOR OF LIBRARY SERVICES
8. Meeting Date: NO RULE – AS SET BY BOARD BY-LAWS
9. Attendance Requirements: NO RULE – AS SET BY BOARD BY-LAWS

=====

PURPOSE:

Shall serve in an advisory capacity with the City Librarian, the City Manager and the City Council.

RESPONSIBILITIES:

Said Board shall have no authority to bind the City of Sherman to any contract or interfere in any manner with City operations of Library Services.

ORDINANCE NO. 4367

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 27, ARTICLE II OF THE CODE OF ORDINANCES, AT SECTION 27-31, SO AS TO ELIMINATE THE GENDER DESIGNATION OF LIBRARY BOARD MEMBERS; PROVIDING FOR A REPEALER CLAUSE; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That Section 27-31 of the Sherman City Code is amended to read as follows:

There is hereby established a board of seven (7) members, to be known as the "Library Board of the City of Sherman." ~~Such board shall at all times have not less than two (2) men among its members and all.~~ All members of the board shall be residents of the city, having a knowledge of library affairs, a strong interest in library operations and a genuine appreciation of books.

SECTION 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

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 relettered to accomplish such intention.

SECTION 4. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required.

1ST READING this the 12TH day of SEPTEMBER, 1994.

2ND READING this the 26TH day of SEPTEMBER, 1994.

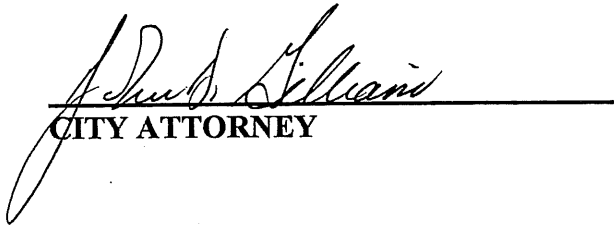
EFFECTIVE DATE: 3RD day of OCTOBER, 1994.


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

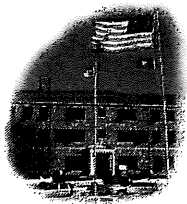
APPLICANT LIST

Library Board

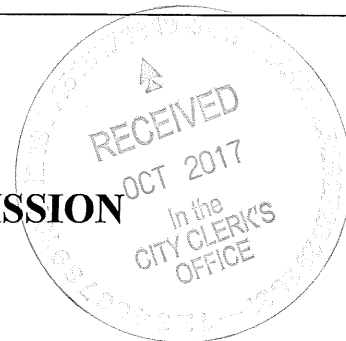
Positions Vacant 1

Applicant	Address	District	Qualifications
Ronald Cassady	3280 Bethany Rd	n/a	Retired – Sherman Community Players

COMMENTS:



CITY OF SHERMAN APPLICATION FOR BOARD OR COMMISSION MEMBERSHIP



Return completed application to:

City Clerk's Office
220 W. Mulberry
P.O. Box 1106
Sherman, TX 75091
Fax: (903) 892-7394

Please type or use black ink

Please complete one application for each board or commission membership

Please limit attachments to two pages

For questions or additional information, call the City Clerk's Office, (903) 892-7206

Name:

RONALD CASSADY

(Please print legal name and your name as you wish it to appear, if different.)

Name of Board

or Commission:

SHERMAN PUBLIC LIBRARY

☐ Yes, I would be interested in serving on subcommittees that may be formed.

Personal Information

Home Address: 3280 Bethany Rd.

Mailing Address: same

Telephone: 903-818-2138 Fax: _____

E-Mail: roncassady@yahoo.com

Sherman Resident for 44 years County: Grayson

Drivers License No.: 04522446

Voter Registration No.: 1025564601 ☒

Occupational Information

Business Name: Sherman Community Players

Occupation: Retired

Address: 500 N. Elm

Telephone: _____ Fax: _____

E-Mail: _____

Which Council District do you live in? (see attached map) n/a ☒

Prior work experience: (please include dates)

High School Teacher

Graduate asst. at Texas A+M Univ. Commerce

Educational Achievement:

High School Graduate? ☐ Yes ☐ No Year Graduated/Left School? _____

Business College, Correspondence School, Adult Education, Other? _____

Name of College/University: Texas A+M-Commerce ☐ Bachelor's ☒ Master's ☐ PhD

Volunteer Work: (please include dates)

my church - run the food pantry

Have you ever been convicted of a crime (except for minor traffic offenses that resulted only in a fine)? ☐ Yes ☒ No

If yes, please explain in complete detail. State the nature and approximate date of the conviction, the sentence imposed, whether the sentence has been completed, and any other information you consider to be relevant.

Taxes - Current

Application held for 12 months from date received

Are you presently serving on a City board or commission? ☐ Yes ☒ No

If so, which one? _____

Why do you want to become a member of this particular board or commission (how would you use this experience to benefit the City)?

I have always been proud of the City and have enjoyed the services

Briefly explain what you believe are the three most important issues facing this board or commission and how you believe this board or commission should address each issue?

1) _____

2) _____

3) _____

List any abilities, skills, licenses, certificates, specialized training, or interests you have which are applicable to this board or commission:

Please specify any business or personal relationships with the City or other activities, which might create a serious conflict of interest or affect your ability to serve if you should be appointed to this board or commission:

Have you attended a meeting of the board/commission you are applying to or talked to anyone currently on the board? ☐ Yes ☒ No
Comments: _____

Statement of Intent

I am aware of the requirements of the City regarding conflicts of interest of appointees to the City of Sherman Boards and Commissions, as noted in the overview. I am aware of meeting dates and times of the Board/Commission for which I have applied, and that Board/Commission members are expected to attend a minimum of 75 percent of regularly scheduled meetings annually of their Board/Commission. If appointed, I agree to serve on the Board/Commission for which I have applied. Applications, including those received after the posted deadline, will remain on file for one year from the date of receipt.

Signature: _____

Date: _____

In compliance with Chapter 552, Vernon's Texas Codes Annotated (Open Records Law), information provided on this application may be available to the public, upon request.

Sherman
CLASSIC TOWN. BROAD HORIZON.



SHERMAN CITY COUNCIL

Agenda Communication Form

City Council Regular Meeting

Meeting Date: 11/06/2017

Prepared By: Pamela Cloer, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

COUNCIL CALENDAR

Attachments

2017 Council Calendar

2017

JANUARY						
S	M	T	W	T	F	S
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						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

MARCH						
S	M	T	W	T	F	S
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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						
S	M	T	W	T	F	S
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23	24	25	26	27	28	29
30						

MAY						
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

JUNE						
S	M	T	W	T	F	S
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18	19	20	21	22	23	24
25	26	27	28	29	30	

JULY						
S	M	T	W	T	F	S
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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

AUGUST						
S	M	T	W	T	F	S
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13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

SEPTEMBER						
S	M	T	W	T	F	S
					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						
S	M	T	W	T	F	S
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						
S	M	T	W	T	F	S
			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						
S	M	T	W	T	F	S
					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						

1/2/2017	New Years Day/Called Council Meeting on 1/3/2017 - Cancelled
3/21/2017	Called Joint Meeting with SISD Board of Trustees
4/21/2017	Called Budget Planning Mtg in Council Chambers
5/22/2017	Called Council Meeting for Introduction, PH and Adoption of Annexation Ordinance (459.6 acre tract on Preston Club Drive in ETJ)
6/15-16/2017	Called Budget Workshop in Council Chambers
7/3/2017	July 3rd Council Meeting Cancelled
7/31/2017	Called Council Meeting for 2nd PH of Annexation Ordinance (Kings Ridge on Norwood Street in ETJ)
9/4/2017	Labor Day/Called Council Meeting on 9/5/2017

[illegible]