

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, JULY 1, 2024
5:00 PM**

- A.1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A.2. PLEDGE OF ALLEGIANCE AND INVOCATION LED BY COUNCIL MEMBER SHAWN TEAMANN**
- A.3. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JUNE 17, 2024 AND THE TAX INCREMENT FINANCING BOARD #3 MEETING OF JUNE 17, 2024.**

Citizen Comments

B.1. CITIZEN COMMENTS

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

Consent Agenda

C.1. CONSENT AGENDA

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

Proclamations

D.1. PROCLAMATION

"Americans with Disabilities Act Awareness Day" -- July 26, 2024

D.2. PROCLAMATION

"Parks and Recreation Month" -- July 2024

Resolutions

E.1. RESOLUTION NO. 7327

Authorizing Execution of an Economic Development Program Agreement with Chick-fil-A, Inc. for the Grant of Incentives Pursuant to Chapter 380 of the Texas Local Government Code

E.2. RESOLUTION NO. 7328

Authorizing Execution of a Development Agreement Between the City of Sherman and Sherman MF 276, LTD. for Certain Street Improvements within an Approximate 13.640 Acres Generally Located at the Northwest Corner of O.B. Groner Road and F.M. Highway 1417

- E.3. RESOLUTION NO. 7329**
Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Huitt-Zollars, Inc. for the Development Plan Reviews
- E.4. RESOLUTION NO. 7330**
Accepting the Contract with Red River Construction Company, Inc. for the Construction of the Post Oak Wastewater Treatment Plant Aeration and Other Secondary Treatment Improvements as Complete
- E.5. * RESOLUTION NO. 7331**
Authorizing Execution of a Professional Services Agreement with Freese and Nichols, Inc. for the Lead and Copper Rule Revision Compliance Program - Phase 3 Services
- E.6. * RESOLUTION NO. 7332**
Approving the Greater Texoma Utility Authority's Intention to Award the Sherman WTP Flocculation and Sedimentation Improvements Project to Red River Construction Company
- E.7. * RESOLUTION NO. 7333**
Authorizing the Purchase of a Specialty UTV Ambulance from Farrwest Specialty Vehicles for the Sherman Fire Department through BuyBoard

Other Business

- F.1. OTHER BUSINESS**
Consider Scheduling a Joint Meeting of the City Council and the Sherman Economic Development Corporation Board of Directors for 12:00p.m. on Tuesday, September 10, 2024, to Review and Approve SEDCO's Annual Budget and Work Plan
- F.2. OTHER BUSINESS**
Consider and act on Petition from Jon L. Brown and Lovanda L. Brown related to approximately 1.3 acres of land located in the Dripping Springs Addition, Lot 2, as recorded in Volume 3268, Page 285 of the Real Property Records, Grayson County, Texas, located within the City of Sherman's Extraterritorial Jurisdiction
- F.3. OTHER BUSINESS**
Consider and act on a Petition from Benjamin M. Crouse and Sarah M. Crouse related to approximately 8 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 517, Page 619, of the Grayson County Official Public Records and being that same tract conveyed as record in Document Number 2024-2259 of the Official Public Records, Grayson County, Texas located within the City of Sherman's Extraterritorial Jurisdiction
- F.4. OTHER BUSINESS**
Consider and act on a Petition from Benjamin M. Crouse and Sarah M. Crouse related to approximately 129.7 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 2664, Page 266 and as recorded in Instrument No. 20217-28819 of the Official Public Records, Grayson County, Texas, located within the City of Sherman's Extraterritorial Jurisdiction
- F.5. OTHER BUSINESS**
Consider and act on a Petition from Benjamin M. Crouse and Sarah M. Crouse related to approximately 11 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 3291, Page 193, of the Official Public Records, Grayson County, Texas, and being that same tract conveyed as record in Document Number 2018-16035 of the Official Public Records, Grayson County, Texas located within the City of Sherman's Extraterritorial Jurisdiction

COUNCIL COMMENTS

EXECUTIVE SESSION

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

H.1. TEX. GOV'T CODE § 551.071

Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.

H.2. TEX. GOV'T CODE § 551.072

Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

H.3. TEX. GOV'T CODE § 551.073

Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

H.4. TEX. GOV'T CODE § 551.074

Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing

H.5. TEX. GOV'T CODE § 551.076

Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit.

H.6. TEX. GOV'T CODE § 551.087

Discussing or deliberating commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay or expand in or near the City and with which the City is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect.

H.7. TEX. GOV'T CODE § 551.089

Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices.

The Council reconvenes into General Session

COUNCIL CALENDAR

J.1. COUNCIL CALENDAR

2024 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 Friday, June 28, 2024 at 4:59 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 28th day of June 2024. 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

Shawn C. Teamann

Council Members

Henry Marroquin, Council-At-Large, PL #1
Juston Dobbs, Council-At-Large, PL #2
Shawn C. Teamann, Council – District #1

Josh Stevenson, Council – District #2
Pamela L. Howeth, Council – District #3
Daron Holland, Council – District #4

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

STATE OF TEXAS §
 June 17, 2024
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 June 17, 2024.

MEMBERS PRESENT: MAYOR DAVID PLYLER; DEPUTY MAYOR SHAWN TEAMANN.
 COUNCIL MEMBERS DOBBS, HOLLAND, HOWETH, MARROQUIN,
 STEVENSON.

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 led by Council Member Josh Stevenson.

CALL TO ORDER

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of May 20, 2024, the Tax Increment Financing Board #7 Meeting of May 20, 2024; and the Regular City Council Meeting of June 3, 2024. Deputy Mayor Teamann moved to approve the Minutes, as presented; Second by Council Member Holland; All present voted AYE.
MOTION CARRIED.

APPROVE MINUTES

CITIZEN'S COMMENTS

There were no citizen's comments.

CITIZEN'S COMMENTS

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.

CONSENT AGENDA

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

Mayor Plyler asked that the captions of Ordinance Nos. 6731 and 6732 be read together.

ORD 6731
ZONE CHANGE
(401 S. SAM
RAYBURN FRWY)

Mayor Plyler introduced Ordinance No. 6731 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 2.11 ACRES BEING A PART OF THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56 AND BEING LOT 2 IN BLOCK 1 OF TRAVELERS INN ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 401 SOUTH

SAM RAYBURN FREEWAY, HERETOFORE ZONED C-1 (RETAIL BUSINESS) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-2 (GENERAL COMMERCIAL) DISTRICT ZONING CLASSIFICATION, HARESH SURTI (OWNER) AND SARTIN & ASSOCIATES, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mayor Plyler introduced Ordinance No. 6732 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW A HOTEL OR MOTEL IN A C-1 (RETAIL BUSINESS) DISTRICT/SAM RAYBURN OVERLAY DISTRICT, LOCATED AT 401 SOUTH SAM RAYBURN FREEWAY, CONSISTING OF 2.11 ACRES BEING A PART OF THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56 AND BEING LOT 2 IN BLOCK 1 OF TRAVELERS INN ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS HARESH SURTI (OWNER) AND SARTIN & ASSOCIATES, INC. (SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6732
SUP FOR HOTEL
OR MOTEL
(401 S. SAM
RAYBURN FRWY)

Rob Rae, Director of Development Services, said this was currently the Traveler's Inn. They are under new ownership and would like to get into compliance for a Certificate of Occupancy. This would require a zone change and Specific Use Permit.

The Planning and Zoning Commission approved the zone change, and recommended approval of the SUP, but being tied to the applicant and for a period of one year. This will allow the City to monitor the progress that the applicant agreed too. The staff also recommends approval.

Dr. Haresh Surti, 5700 Baxter Well Road, McKinney, Texas

Dr. Surti said they purchased the property four or five months ago, and are trying to develop it.

No other citizens appeared before the City Council to discuss Ordinance Nos. 6731 and 6732.

Mayor Plyler introduced Ordinance No. 6733 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 6.68 ACRES BEING A PART OF THE PRESTON KITCHENS SURVEY, ABSTRACT NO. 667, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 2400-2500 BLOCKS SOUTH EAST STREET, HERETOFORE ZONED R-5 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-4 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, THREE OAKS

ORD 6733
ZONE CHANGE
(2400-2500 BLOCKS
S. EAST ST)

DEVELOPMENT CONSTRUCTION COMPANY (OWNER) AND UNDERWOOD DRAFTING & SURVEYING (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr. Rae said the developer had trouble fitting in four 50' lots on one section of the development. He's asking for the zone change for smaller lots for that area. The new lots will be 48' wide for those lots.

The Planning and Zoning Commission and the staff recommend approval.

Kirk Allen, Developer

Mr. Allen said this was only for a small section of the development. He was available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6733.

Mayor Plyler asked that the captions of Ordinance Nos. 6734 and 6735 be read together.

ORD 6734
ZONE CHANGE
(7000 BLOCK OF
FM 691 & 4000
BLOCK OF N. HWY 75)

Mayor Plyler introduced Ordinance No. 6734 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 13.627 ACRES IN THE W.S. THURMAN SURVEY, ABSTRACT NO. 1265 AND IN A.C. SMITH SURVEY, ABSTRACT NO. 1561, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 7000 BLOCK FM 691 AND THE 4000 BLOCK NORTH HIGHWAY 75, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE MF-30 (MULTI FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, CHRISTOPHER LEUNES (OWNER), NATHAN McCARTNEY, WAYPOINT LAND AND CAPITAL, LLC (REPRESENTATIVE) AND UNDERWOOD DRAFTING & SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mayor Plyler introduced Ordinance No. 6735 and called for a public hearing:

ORD 6735
ZONE CHANGE
(7000 BLOCK OF
FM 691 & & 4000
BLOCK OF N. HWY 75)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 27.101 ACRES IN THE W.S. THURMAN SURVEY, ABSTRACT NO. 1265 AND IN A.C. SMITH SURVEY, ABSTRACT NO. 1561, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 7000 BLOCK FM 691 AND THE 4000 BLOCK NORTH HIGHWAY 75, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-1 (RETAIL BUSINESS) DISTRICT

ZONING CLASSIFICATION, CHRISTOPHER LEUNES (OWNER), NATHAN McCARTNEY, WAYPOINT LAND AND CAPITAL, LLC (REPRESENTATIVE) AND UNDERWOOD DRAFTING & SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr. Rae said this is on the southwest corner of FM 691 and Hwy 75. The majority would be zoned for retail/commercial, with a smaller portion, 13 acres, being zoned for MF-30.

The Planning and Zoning Commission and the staff recommend approval.

Nathan McCartney, Waypoint Land and Capital, LLC

Mr. McCartney appeared representing the request, and was available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance Nos. 6734 and 6735.

Mayor Plyler introduced Ordinance No. 6736 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 0.172 ACRES BEING LOTS 1, 2, 3, 4, 5 AND 6, BLOCK 9 OF G.W. BOND'S SECOND ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 516 BLOCK EAST PACIFIC STREET, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-5 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, ALLEN SHEEHAN (OWNER), SARAH SHEEHAN (REPRESENTATIVE) AND BARRY RHODES, RPLS (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6736
ZONE CHANGE
(516 BLOCK OF
E. PACIFIC ST)

Mr. Rae said this is an infill lot where they want to build a single-family home. The zone change is requested to meet the lot size requirement.

The Planning and Zoning Commission and the staff recommend approval.

No citizens appeared before the City Council to discuss Ordinance No. 6736.

Mayor Plyler introduced Ordinance No. 6737 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW A TATTOO STUDIO IN A C-2 (GENERAL COMMERCIAL) DISTRICT/CENTRAL BUSINESS DISTRICT OVERLAY, LOCATED AT 125 EAST WALL

ORD 6737
SUP FOR TATTOO
STUDIO
(125 E. WALL ST)

STREET, CONSISTING OF 0.031 ACRES BEING IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 AND BEING PART OF LOT 7 IN BLOCK D OF THE T.J. SHANNON SUPPLEMENT, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS MADELYN GREENWOOD AND OLGA KLADOVA, BOLD & BEAUTY, LLC (OWNERS), TOMMY JUAREZ (APPLICANT) AND PRESTON TRAIL LAND SURVEYING (SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr. Rae said this is for a tattoo parlor. The Planning and Zoning Commission recommended approval, subject to the staff review letter, and tied it to the applicant. The staff review letter covered signage and lighting.

Tommy Juarez, 3415 Henry Street, Greenville, Texas

Mr. Juarez appeared representing the request and was available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6737.

Mayor Plyler introduced Ordinance No. 6738 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 0.214 ACRES BEING A PART OF THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56 AND BEING THE EAST ½ OF LOT 8, BLOCK 7 OF THE B.H. MOORE HEIRS ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 303 WEST STEADMAN STREET, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-4 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, NRG INVESTMENTS, LLC (OWNER), VERONICA GARCIA (REPRESENTATIVE) AND UNDERWOOD DRAFTING & SURVEYING (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6738
ZONE CHANGE
(303 W. STEADMAN ST)

Mr. Rae said this is an infill lot and is 48' wide. The Planning and Zoning Commission recommended approval.

No citizens appeared before the City Council to discuss Ordinance No. 6738.

Mayor Plyler introduced Ordinance No. 6739 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW AN AUTOMOBILE, MOTORCYCLE, BOAT, OR TRAILER SALES, NEW OR USED IN A C-1 (RETAIL BUSINESS) DISTRICT, LOCATED AT

ORD 6739
SUP FOR AUTO,
MOTORCYCLE, BOAT,
OR TRAILER SALES
(1309 W. HOUSTON ST)

1309 WEST HOUSTON STREET, BEING LOT TWO (2) OF THE REPLAT OF THE SOUTH TEN FEET OF LOT THREE, AND ALL OF LOTS FIVE, SEVEN, NINE AND ELEVEN, BLOCK TWO, GREEN MOUNT ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS BLAKE ANDREWS (OWNER), S & G AUTO SALES (APPLICANT) AND SARTIN & ASSOCIATE, INC. (SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr. Rae said this property has been vacant, but was previously used for automobile sales and for RV sales. They will be required to remove the metal fencing.

The Planning and Zoning Commission recommended approval, required the metal fence panels to be removed, and tied it to the applicant.

Blake Andrews, 2408 San Miguel, Sherman, Texas

Mr. Andrews is the property owner and appeared representing the request. He was available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6739.

Mayor Plyler introduced Ordinance No. 6740 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 4.38 ACRES BEING LOT 2, BLOCK 1 OF THE PALABRA DE FE DE SHERMAN ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 601 NORTH HARRISON AVENUE, HERETOFORE ZONED MF-30 (MULTI FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, PALABRA DE FE (OWNER), VALENTIN SALINAS (REPRESENTATIVE) AND UNDERWOOD DRAFTING & SURVEYING (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6740
ZONE CHANGE
(601 N. HARRISON ST)

Mr. Rae said the church is wanting to subdivide their land to build a single-family home for their minister. They need to rezone to R-6 in order to construct the house.

The Planning and Zoning Commission and the staff recommend approval.

Valentin Salinas, 511 S. Main, Ector, Texas

Mr. Salinas appeared representing the request and was available to answer any questions the Council might have.

No other citizens appeared before the City Council to discuss Ordinance No. 6740.

Mayor Plyler introduced Ordinance No. 6741 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW AN AUTOMOBILE, MOTORCYCLE, BOAT, OR TRAILER SALES, NEW OR USED IN A C-2 (GENERAL COMMERCIAL) DISTRICT/BLALOCK COMMERCIAL OVERLAY DISTRICT, LOCATED AT 3111 SOUTH TRAVIS STREET, CONSISTING OF 0.47 ACRES BEING LOT 1, BLOCK 1 OF THE BRYAN LUCKETT ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS BRYAN LUCKETT (OWNER), GREGORY CARSON (APPLICANT) AND ANDREWS & SARTIN SURVEYING COMPANY (SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6741
SUP FOR AUTO,
MOTORCYCLE, BOAT,
TRAILER SALES
(3111 S. TRAVIS ST)

Mr. Rae said the Planning and Zoning Commission recommended approval, and tied it to the applicant for one year. There were some staff conditions for approval, including removal of the pole sign, and chain link fence. Both conditions have already been accomplished by the applicant. The staff also recommended approval.

Greg Carson, 147 Dru Street, Pottsboro, Texas

Mr. Carson appeared representing the request and was available to answer any questions the Council might have.

Dixie Edwards, 925 Western Hills Drive, Sherman, Texas

Ms. Edwards is a Real Estate Broker that represents the property owner. She expressed concern about the stripping for the fire lane. She was directed to follow up with the Fire Marshal.

No other citizens appeared before the City Council to discuss Ordinance No. 6741.

Mayor Plyler introduced Ordinance No. 6742 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 0.172 ACRES BEING A PART OF THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56 AND BEING ALL OF THE 50 FEET BY 150 FEET TRACT OF LAND, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 514 SOUTH BRANCH STREET, HERETOFORE ZONED MF-30 (MULTI FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-5 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, SALVADOR RUBEL LOPEZ (OWNER), MARIO TOBAR (REPRESENTATIVE) AND HELVEY-WAGNER SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED

ORD 6742
ZONE CHANGE
(514 S. BRANCH ST)

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

Mr. Rae said this was an infill lot for a single-family residence. The property is located in the floodplain, which will need to be mitigated.

The Planning and Zoning Commission and the staff recommend approval.

No citizens appeared before the City Council to discuss Ordinance No. 6742.

Mayor Plyler introduced Ordinance No. 6743 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND BEING LOT 3-R CONSISTING OF 0.785 ACRES BEING A PART OF THE J.B. McANAI SURVEY, ABSTRACT NO. 763 BEING ALL OF LOTS 3, 4 AND 5 AND A PART OF BLOCK 2 OF BIRGE'S ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 710 WEST BIRGE STREET, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-12 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, RAFAEL RODRIGUEZ AZEVEDO (OWNER) AND HELVEY-WAGNER SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6743
ZONE CHANGE
(710 W. BIRGE ST)

Mr. Rae said this is a larger lot and the owner is sub-dividing into multiple lots. To retain the larger lot with the main homestead, they are requesting it be rezoned to R-12, which is a minimum of 12,000 square feet in lot area. This zone has different requirements and setbacks, and allows for separate dwelling units.

No citizens appeared before the City Council to discuss Ordinance No. 6743.

Mayor Plyler introduced Ordinance No. 6744 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF SHERMAN, TEXAS, CHAPTER 14 (ZONING ORDINANCE), ARTICLE 14.07 (SIGNS), SECTION 14.08.001 (DEFINITIONS), ARTICLE 14.10 (USE CHART); MODIFYING CERTAIN EXISTING REGULATIONS AND PRESCRIBING NEW REGULATIONS RELATING TO SIGNS; PROHIBITING NEW BILLBOARD SIGNS; PROVIDING A PENALTY CLAUSE WITH A MAXIMUM FINE OF \$2,000, SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

ORD 6744
ZONING ORDINANCE
SIGN REGULATION

Mr. Rae said this modifies the City's sign ordinance to prohibit billboards. He displayed a map of all billboards in Sherman. There

are currently 71 billboards in the City and only two conform to the current standards, which require a 2,000 foot buffer from other billboards, and need to be located on certain portions of Hwy 75 or Hwy 82.

If the ordinance is approved, companies that currently have billboards can continue their use, however, if the land use changes, or the sign falls down, it would need to be removed. The staff will also review illegal billboards and determine which are legally nonconforming and which are not.

The Planning and Zoning Commission and the staff recommend approval.

No citizens appeared before the City Council to discuss Ordinance No. 6744.

Mayor Plyler introduced Ordinance No. 6745 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING A 0.188 ACRE PORTION OF A 45' WIDE WATERLINE EASEMENT IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, SAID EASEMENT BEING ESTABLISHED IN INSTRUMENT NUMBER 2023-20602 OF THE REAL PROPERTY RECORDS OF GRAYSON COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER TO EXECUTE A RELEASE AND ABANDONMENT OF EASEMENT.

ORD 6745
ABANDONING
WATERLINE
EASEMENT
(O.B. GRONER RD
& FRIENDSHIP RD)

Wayne Lee, Director of Engineering, said this is an abandonment of a portion of a 45' water line easement that the City has. There is a 6' overlap with a gas line on the new easement. Atmos is asking the City to abandon that overlap. This does not affect any of the construction or design of the City's waterline.

No citizens appeared before the City Council to discuss Ordinance No. 6745.

The Public Hearing was closed.

Ordinance 6731

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 2.11 ACRES BEING A PART OF THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56 AND BEING LOT 2 IN BLOCK 1 OF TRAVELERS INN ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 401 SOUTH SAM RAYBURN FREEWAY, HERETOFORE ZONED C-1 (RETAIL BUSINESS) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-2 (GENERAL COMMERCIAL) DISTRICT ZONING CLASSIFICATION, HARESH SURTI (OWNER) AND SARTIN & ASSOCIATES, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6731
ZONE CHANGE
(401 S. SAM
RAYBURN FRWY)

Council Member Howeth asked if there was a timeframe on bringing this hotel up to standards. Mr. Rae said that could be added to the motion. The recommendation was to approve it for one year, so if that is done, they will definitely come back in a year.

Council Member Marroquin confirmed with Dr. Surti that changes to the facility would include stonework, roofing, plumbing, paint, flooring, the lobby, and the outside will be totally different.

Ordinance 6732

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW A HOTEL OR MOTEL IN A C-1 (RETAIL BUSINESS) DISTRICT/SAM RAYBURN OVERLAY DISTRICT, LOCATED AT 401 SOUTH SAM RAYBURN FREEWAY, CONSISTING OF 2.11 ACRES BEING A PART OF THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56 AND BEING LOT 2 IN BLOCK 1 OF TRAVELERS INN ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS HARESH SURTI (OWNER) AND SARTIN & ASSOCIATES, INC. (SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6732
SUP FOR HOTEL
OR MOTEL
(401 S. SAM
RAYBURN FRWY)

Ordinance 6733

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 6.68 ACRES BEING A PART OF THE PRESTON KITCHENS SURVEY, ABSTRACT NO. 667, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 2400-2500 BLOCKS SOUTH EAST STREET, HERETOFORE ZONED R-5 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-4 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, THREE OAKS DEVELOPMENT CONSTRUCTION COMPANY (OWNER) AND UNDERWOOD DRAFTING & SURVEYING (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6733
ZONE CHANGE
(2400-2500 BLOCKS
S. EAST ST)

Ordinance 6734

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 13.627 ACRES IN THE W.S. THURMAN SURVEY, ABSTRACT NO. 1265 AND IN A.C. SMITH SURVEY, ABSTRACT NO. 1561, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 7000 BLOCK FM 691 AND THE 4000 BLOCK NORTH HIGHWAY 75, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE MF-30 (MULTI FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, CHRISTOPHER LEUNES (OWNER), NATHAN MCCARTNEY,

ORD 6734
ZONE CHANGE
(7000 BLOCK OF
FM 691 & 4000
BLOCK OF N. HWY 75)

WAYPOINT LAND AND CAPITAL, LLC (REPRESENTATIVE) AND UNDERWOOD DRAFTING & SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Ordinance 6735

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 27.101 ACRES IN THE W.S. THURMAN SURVEY, ABSTRACT NO. 1265 AND IN A.C. SMITH SURVEY, ABSTRACT NO. 1561, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 7000 BLOCK FM 691 AND THE 4000 BLOCK NORTH HIGHWAY 75, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-1 (RETAIL BUSINESS) DISTRICT ZONING CLASSIFICATION, CHRISTOPHER LEUNES (OWNER), NATHAN McCARTNEY, WAYPOINT LAND AND CAPITAL, LLC (REPRESENTATIVE) AND UNDERWOOD DRAFTING & SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6735
ZONE CHANGE
(7000 BLOCK OF
FM 691 & & 4000
BLOCK OF N. HWY 75)

Ordinance 6736

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 0.172 ACRES BEING LOTS 1, 2, 3, 4, 5 AND 6, BLOCK 9 OF G.W. BOND'S SECOND ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 516 BLOCK EAST PACIFIC STREET, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-5 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, ALLEN SHEEHAN (OWNER), SARAH SHEEHAN (REPRESENTATIVE) AND BARRY RHODES, RPLS (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6736
ZONE CHANGE
(516 BLOCK OF
E. PACIFIC ST)

Ordinance 6737

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW A TATTOO STUDIO IN A C-2 (GENERAL COMMERCIAL) DISTRICT/CENTRAL BUSINESS DISTRICT OVERLAY, LOCATED AT 125 EAST WALL STREET, CONSISTING OF 0.031 ACRES BEING IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 AND BEING PART OF LOT 7 IN BLOCK D OF THE T.J. SHANNON SUPPLEMENT, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS MADELYN GREENWOOD AND OLGA KLADOVA, BOLD & BEAUTY, LLC (OWNERS), TOMMY JUAREZ (APPLICANT) AND PRESTON TRAIL LAND SURVEYING (SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00;

ORD 6737
SUP FOR TATTOO
STUDIO
(125 E. WALL ST)

PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Ordinance 6738

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 0.214 ACRES BEING A PART OF THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56 AND BEING THE EAST ½ OF LOT 8, BLOCK 7 OF THE B.H. MOORE HEIRS ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 303 WEST STEADMAN STREET, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-4 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, NRG INVESTMENTS, LLC (OWNER), VERONICA GARCIA (REPRESENTATIVE) AND UNDERWOOD DRAFTING & SURVEYING (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6738
ZONE CHANGE
(303 W. STEADMAN ST)

Ordinance 6739

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW AN AUTOMOBILE, MOTORCYCLE, BOAT, OR TRAILER SALES, NEW OR USED IN A C-1 (RETAIL BUSINESS) DISTRICT, LOCATED AT 1309 WEST HOUSTON STREET, BEING LOT TWO (2) OF THE REPLAT OF THE SOUTH TEN FEET OF LOT THREE, AND ALL OF LOTS FIVE, SEVEN, NINE AND ELEVEN, BLOCK TWO, GREEN MOUNT ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS BLAKE ANDREWS (OWNER), S & G AUTO SALES (APPLICANT) AND SARTIN & ASSOCIATE, INC. (SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6739
SUP FOR AUTO,
MOTORCYCLE, BOAT,
OR TRAILER SALES
(1309 W. HOUSTON ST)

Ordinance 6740

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 4.38 ACRES BEING LOT 2, BLOCK 1 OF THE PALABRA DE FE DE SHERMAN ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 601 NORTH HARRISON AVENUE, HERETOFORE ZONED MF-30 (MULTI FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, PALABRA DE FE (OWNER), VALENTIN SALINAS (REPRESENTATIVE) AND UNDERWOOD DRAFTING & SURVEYING (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6740
ZONE CHANGE
(601 N. HARRISON ST)

Ordinance 6741

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW AN AUTOMOBILE, MOTORCYCLE, BOAT, OR TRAILER SALES, NEW OR USED IN A C-2 (GENERAL COMMERCIAL) DISTRICT/BLALOCK COMMERCIAL OVERLAY DISTRICT, LOCATED AT 3111 SOUTH TRAVIS STREET, CONSISTING OF 0.47 ACRES BEING LOT 1, BLOCK 1 OF THE BRYAN LUCKETT ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS BRYAN LUCKETT (OWNER), GREGORY CARSON (APPLICANT) AND ANDREWS & SARTIN SURVEYING COMPANY (SURVEYOR); PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6741

SUP FOR AUTO,
MOTORCYCLE, BOAT,
TRAILER SALES
(3111 S. TRAVIS ST)

Ordinance 6742

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 0.172 ACRES BEING A PART OF THE SAMUEL BLAGG SURVEY, ABSTRACT NO. 56 AND BEING ALL OF THE 50 FEET BY 150 FEET TRACT OF LAND, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 514 SOUTH BRANCH STREET, HERETOFORE ZONED MF-30 (MULTI FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-5 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, SALVADOR RUBEL LOPEZ (OWNER), MARIO TOBAR (REPRESENTATIVE) AND HELVEY-WAGNER SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6742

ZONE CHANGE
(514 S. BRANCH ST)

Ordinance 6743

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND BEING LOT 3-R CONSISTING OF 0.785 ACRES BEING A PART OF THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 BEING ALL OF LOTS 3, 4 AND 5 AND A PART OF BLOCK 2 OF BIRGE'S ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 710 WEST BIRGE STREET, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-12 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, RAFAEL RODRIGUEZ AZEVEDO (OWNER) AND HELVEY-WAGNER SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6743

ZONE CHANGE
(710 W. BIRGE ST)

Ordinance 6744

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF SHERMAN, TEXAS, CHAPTER 14 (ZONING

ORD 6744

ZONING ORDINANCE
SIGN REGULATION

ORDINANCE), ARTICLE 14.07 (SIGNS), SECTION 14.08.001 (DEFINITIONS), ARTICLE 14.10 (USE CHART); MODIFYING CERTAIN EXISTING REGULATIONS AND PRESCRIBING NEW REGULATIONS RELATING TO SIGNS; PROHIBITING NEW BILLBOARD SIGNS; PROVIDING A PENALTY CLAUSE WITH A MAXIMUM FINE OF \$2,000, SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

Ordinance 6745

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ABANDONING A 0.188 ACRE PORTION OF A 45' WIDE WATERLINE EASEMENT IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, SAID EASEMENT BEING ESTABLISHED IN INSTRUMENT NUMBER 2023-20602 OF THE REAL PROPERTY RECORDS OF GRAYSON COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER TO EXECUTE A RELEASE AND ABANDONMENT OF EASEMENT.

ORD 6745
ABANDONING
WATERLINE
EASEMENT
(O.B. GRONER RD
& FRIENDSHIP RD)

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance Nos. 6731 6732, 6733, 6734, 6735, 6736, 6737, 6738, 6739, 6740, 6741, 6742, 6743, 6744, and 6745, as presented. Second by Council Member Dobbs.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

Mayor Plyler said Resolution 7319 will be discussed after the TIRZ #3 Board Meeting.

RES 7319
TIRZ #3
REIMBURSEMENT
AGREEMENT

RESOLUTION NO. 7319 -- AUTHORIZING EXECUTION OF THE FIRST AMENDED AND RESTATED SECOND TIRZ #3 REIMBURSEMENT AND DEVELOPMENT AGREEMENT WITH ASPIRE TWO, LLC FOR REIMBURSEMENT OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AND PRIVATE IMPROVEMENTS WITHIN SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER THREE (#3) IN THE CITY OF SHERMAN

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF THE FIRST AMENDED AND RESTATED SECOND TIRZ #3 REIMBURSEMENT AND DEVELOPMENT AGREEMENT WITH ASPIRE TWO, LLC FOR THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AND PRIVATE IMPROVEMENTS WITHIN SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER THREE (#3) IN THE CITY OF SHERMAN.

Council Members will consider this Resolution after the TIRZ #3 Meeting held after 6:00 p.m.

RESOLUTION NO. 7320 -- AUTHORIZING THE EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH TEKMAK SHERMAN HOTEL, LP FOR THE GRANT OF INCENTIVES PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL

RES 7320
INCENTIVES FOR
HOTEL &
CONFERENCE CENTER

**GOVERNMENT CODE FOR THE CONSTRUCTION OF A HOTEL
AND CONFERENCE CENTER LOCATED AT 2708 NORTH
CORNERSTONE DRIVE**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH TEKMAK SHERMAN HOTEL, LP FOR THE GRANT OF INCENTIVES PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE FOR THE CONSTRUCTION OF A HOTEL LOCATED AT 2708 NORTH CORNERSTONE DRIVE.

Robby Hefton, City Manager, said he has been working with TEKMAK Sherman Hotel, on two properties, Springhill Suites and TownePlace Suites, to be located at Crossroads. He felt it would be a good project for the City.

The incentive that is being proposed is an eight-year rebate through a Chapter 380 Agreement, to help offset the cost. The rebate would be 50% of the City's portion of the Hotel/Motel Tax. The project would invest \$20 million, with an expected 30 new jobs, for a minimum of 230 hotel rooms.

Thomas Kirkland, CEO, TEKMAK Sherman Hotel, LP.

Mr. Kirkland said they previously appeared before the Council with a site plan for a Springhill Suites with 125 rooms and 5,000 square feet of event space. They have acquired the adjoining property with the plan to eventually add a Marriott Hotel on that tract. They decided to build both facilities together at the same time as a "dual brand," with a total of 235 rooms.

The original project was a \$15 million to \$20 million project, but the dual project will cost between \$30 million and \$40 million, and be the first of its kind in Texas.

Mr. Kirkland said they don't have any problems with the terms of the proposed Chapter 380 agreement. However, they do have some concerns about the percentages. He addressed the current lending market, especially on hospitality loans. He said the average daily rates of the top two hotels in Sherman were \$105 and \$75. The average daily rate of their hotel will be approximately \$160. The question is the early sustainability of their hotels, while they ramp up their project.

He added that the Hotel/Motel Occupancy Tax proceeds can only be used for the support of tourism, or the arts that help support tourism. Currently Sherman's Hotel/Motel Occupancy Tax is at 13%, with 7% of that going to the City, and the remaining 6% going to the State of Texas.

Mr. Kirkland said they will have between 7,500 and 8,000 square feet of special event meeting space, and will hire a director of sales specifically to attract meetings to that space. They will also hire a sales coordinator and a sales manager to work in-house with those renting the meeting space.

He said, currently the proposed agreement is a 50/50 split for years one through eight. He proposed cutting the term of the agreement from eight years to six years, with the percentages being 95% for year one; 90% for years two and three; 85% for years four and five; and 80% for year six. The City would go back to 100% for years seven and eight, and thereafter. He also discussed the property tax on the dual project that would be due to the City.

Deputy Mayor Teamann suggested that Council Members discuss the incentive package in Executive Session. Ryan Pittman, City Attorney, said it could be discussed in Executive Session under TEX. GOV'T CODE § 551.087 – DISCUSSING OR DELIBERATING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE CITY SEEKS TO HAVE LOCATE, STAY OR EXPAND IN OR NEAR THE CITY AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS; OR DELIBERATING THE OFFER OF A FINANCIAL OR OTHER INCENTIVE TO A BUSINESS PROSPECT.

RESOLUTION NO. 7321 -- AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THE DESIGN OF THE SHERMAN CROSSROADS ASTON DRIVE PAVING, DRAINAGE AND UTILITY IMPROVEMENTS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THE DESIGN OF THE SHERMAN CROSSROADS ASTON DRIVE PAVING, DRAINAGE AND UTILITY IMPROVEMENTS.

CONSENT AGENDA.

RES 7321
DESIGN FOR
CROSSROADS
ASTON DR. PAVING,
DRAINAGE &
UTILITY
IMPROVEMENTS

RESOLUTION NO. 7322 -- AUTHORIZING THE PURCHASE OF TWO AMBULANCE BOXES FROM FRAZER, LTD THROUGH BUYBOARD
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF TWO AMBULANCE BOXES FROM FRAZER, LTD THROUGH BUYBOARD.

CONSENT AGENDA.

RES 7322
AMBULANCE BOX
PURCHASE

RESOLUTION NO. 7323 -- 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.

CONSENT AGENDA.

RES 7323
SHERMAN MUSEUM
FUNDING

RESOLUTION NO. 7324 -- APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S INTENTION TO CONTRACT WITH WWATERTECH, INC., FOR THE POLYCHEM CHAIN AND FLIGHT

RES 7324
WATER TREATMENT
PLANT FLOCCULATION

SLUDGE COLLECTION SYSTEM REPLACEMENT MATERIALS,
INSTALLATION AND SERVICES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S INTENTION TO CONTRACT WITH WWATERTECH, INC., FOR THE POLYCHEM CHAIN AND FLIGHT SLUDGE COLLECTION SYSTEM REPLACEMENT MATERIALS.

CONSENT AGENDA.

SEDIMENTATION
BASIN

RESOLUTION NO. 7325 -- AUTHORIZING EXECUTION OF AN
AGREEMENT WITH HOUSE OF ELI, INC. UNDER THE CITY OF
SHERMAN'S DOWNTOWN BUILDING IMPROVEMENT GRANT
PROGRAM FOR RENOVATIONS AT 125 N. TRAVIS STREET

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH HOUSE OF ELI, INC. UNDER THE CITY OF SHERMAN'S DOWNTOWN BUILDING IMPROVEMENT GRANT PROGRAM FOR RENOVATIONS AT 125 N. TRAVIS STREET.

CONSENT AGENDA.

RES 7325
DOWNTOWN BLDG
IMPROVEMENT GRANT
(125 N. TRAVIS ST)

RESOLUTION NO. 7326 -- AWARDING A BID TO AND
AUTHORIZING EXECUTION OF A CONTRACT WITH KNAPHEIDE
TRUCK EQUIPMENT FOR THE PURCHASE AND INSTALLATION
OF A UTILITY BED FOR A 2024 DODGE RAM 3500

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH KNAPHEIDE TRUCK EQUIPMENT FOR THE PURCHASE AND INSTALLATION OF A UTILITY BED FOR A 2024 DODGE RAM 3500.

CONSENT AGENDA.

RES 7326
VEHICLE PURCHASE

OTHER BUSINESS

DETERMINATION OF JOINER RANCH PLANNED DEVELOPMENT
FOR FEWER THAN 200 ACRES

Mr. Rae said the Planned Development District has a minimum requirement of 200 acres. However, the ordinance says that any proposed Planned Development between 100 and 200 acres can be appealed to City Council for consideration.

JOINER RANCH
PLANNED
DEVELOPMENT

The Joiner Ranch Planned Development consists of 173 acres, with 44 acres being in the Commercial and Multi-Family District; 76 acres would be Single-Family District, which is a mix of R-4, R-5, and R-6 lot sizes; and 52 acres would be open space. The development would be at the southeast corner of FM 691 and Hwy 75.

David Davis, Representative, D2 Investments, Inc.

Mr. Davis explained that they have two tracts under contract, the Joiner Family Ranch to the north and a 67 acre ranch to the south. They plan to combine the two areas for development. He was available to answer any questions the Council might have.

Mr. Rae said this item is not to approve the Planned Development, but to allow them to apply for the Planned Development.

ACTION TAKEN.

Motion by Council Member Stevenson to allow the applicant to apply for a Planned Development for fewer than 200 acres, for Joiner Ranch, as presented. Second by Council Member Howeth.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

ACCEPT ANNUAL AUDIT REPORT FOR YEAR ENDED SEPTEMBER 30, 2023, FROM PATTILLO, BROWN AND HILL, LLP

The Council approved the Annual Audit Report for the year ended September 30, 2023, from Pattillo, Brown, and Hill, LLP. The auditors gave an unmodified audit opinion, meaning that, in their opinion, the financial statements are fairly presented in accordance with established accounting standards.

CONSENT AGENDA.

ANNUAL AUDIT

COUNCIL COMMENTS

- Recognized the recent event at Martin Luther King Park. (Daron Holland)
- Invited everyone to attend Hot Summer Nights. (Pam Howeth)

COUNCIL COMMENTS

ANNOUNCEMENTS

Mayor Plyler announced the following:

- The next Hot Summer Nights will feature Al Stewart, and up-and-comer Kolby Cooper, on June 20, 2024.
- Parks and Recreation will sponsor Movies in the Park on June 22, 2024, at 9 pm, at Pecan Grove Park. The movie will be the Disney film “Elemental”.
- Lights on the Lake will be held on July 3, 2024, at Pecan Grove Park, and will feature The Beach Boys and an awesome fireworks display.

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

TEX. GOV'T CODE § 551.071 --

SEEKING THE ADVICE OF ITS ATTORNEY ABOUT PENDING OR CONTEMPLATED LITIGATION, SETTLEMENT OFFERS OR ANY MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT

- A) Receive legal advice regarding substandard structures and other code enforcement matters

TEX. GOV'T CODE § 551.072 --

DELIBERATING THE PURCHASE, EXCHANGE, LEASE OR VALUE OF REAL PROPERTY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.073 --

DELIBERATING A NEGOTIATED CONTRACT FOR A PROSPECTIVE GIFT OR DONATION TO THE CITY IF DELIBERATION IN AN OPEN MEETING WOULD HAVE A DETRIMENTAL EFFECT ON THE POSITION OF THE CITY IN NEGOTIATIONS WITH A THIRD PERSON

TEX. GOV'T CODE § 551.074 --

DELIBERATING THE APPOINTMENT, EMPLOYMENT, EVALUATION, REASSIGNMENT, DUTIES, DISCIPLINE OR DISMISSAL OF A PUBLIC OFFICER OR EMPLOYEE; OR TO HEAR A COMPLAINT OR CHARGE AGAINST AN OFFICER OR EMPLOYEE UNLESS THE OFFICER OR EMPLOYEE WHO IS THE SUBJECT OF THE DELIBERATION OR HEARING REQUESTS A PUBLIC HEARING

TEX. GOV'T CODE § 551.076 –

DELIBERATING THE DEPLOYMENT, OR SPECIFIC OCCASIONS FOR IMPLEMENTATION, OF SECURITY PERSONNEL OR DEVICES OR A SECURITY AUDIT

TEX. GOV'T CODE § 551.087 –

DISCUSSING OR DELIBERATING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE CITY SEEKS TO HAVE LOCATE, STAY OR EXPAND IN OR NEAR THE CITY AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS; OR DELIBERATING THE OFFER OF A FINANCIAL OR OTHER INCENTIVE TO A BUSINESS PROSPECT

A) Project Safari

B) Mayor Plyler added Item F-2, Resolution 7320, to the Executive Session, for discussion

TEXAS GOV'T CODE § 551.089 --

DELIBERATING SECURITY ASSESSMENTS OR DEPLOYMENTS RELATING TO INFORMATION RESOURCES TECHNOLOGY, NETWORK SECURITY INFORMATION, OR THE DEPLOYMENT OR SPECIFIC OCCASIONS FOR IMPLEMENTATION OF SECURITY PERSONNEL, CRITICAL INFRASTRUCTURE OR SECURITY DEVICES

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:50 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:57 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

RESOLUTION NO. 7320 -- AUTHORIZING THE EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH TEKMAK SHERMAN HOTEL, LP FOR THE GRANT OF INCENTIVES PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE FOR THE CONSTRUCTION OF A HOTEL AND CONFERENCE CENTER LOCATED AT 2708 NORTH CORNERSTONE DRIVE

**RES 7320
INCENTIVES FOR
HOTEL &
CONFERENCE CENTER
(TABLED)**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH TEKMAK SHERMAN HOTEL, LP FOR THE GRANT OF INCENTIVES PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE FOR THE CONSTRUCTION OF A HOTEL LOCATED AT 2708 NORTH CORNERSTONE DRIVE.

ACTION TAKEN.

Motion by Council Member Stevenson to Table Resolution No. 7320, until the City Manager can negotiate terms of an agreement, with TekMak Sherman Hotel, LP. Second by Deputy Mayor Teamann.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED TO TABLE.

RECESS CITY COUNCIL MEETING FOR TIRZ #3 MEETING

RECESS MEETING

ACTION TAKEN.

Motion by Council Member Stevenson to Recess the City Council Meeting for the Tax Increment Reinvestment Zone #3 Meeting. Second by Deputy Mayor Teamann.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED TO RECESS MEETING AT 6:59 PM.

RECONVENE CITY COUNCIL MEETING

RECONVENE MEETING

ACTION TAKEN.

Motion by Council Member Stevenson to Reconvene the City Council Meeting. Second by Deputy Mayor Teamann.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED TO RECONVENE MEETING AT 7:01 PM.

RESOLUTION NO. 7319 -- AUTHORIZING EXECUTION OF THE FIRST AMENDED AND RESTATED SECOND TIRZ #3 REIMBURSEMENT AND DEVELOPMENT AGREEMENT WITH ASPIRE TWO, LLC FOR REIMBURSEMENT OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AND PRIVATE IMPROVEMENTS WITHIN SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER THREE (#3) IN THE CITY OF SHERMAN

**RES 7319
TIRZ #3
REIMBURSEMENT
AGREEMENT**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF THE FIRST AMENDED AND RESTATED SECOND TIRZ #3 REIMBURSEMENT AND DEVELOPMENT AGREEMENT WITH ASPIRE TWO, LLC FOR THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AND PRIVATE IMPROVEMENTS WITHIN SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER THREE (#3) IN THE CITY OF SHERMAN.

ACTION TAKEN.

Motion by Council Member Stevenson to approve Resolution No. 7319, as presented. Second by Council Member Howeth.

VOTING AYE: Dobbs, Holland, Howeth, Marroquin, Stevenson, Teamann.

VOTING NAY: None.

MOTION CARRIED.

ADJOURNMENT

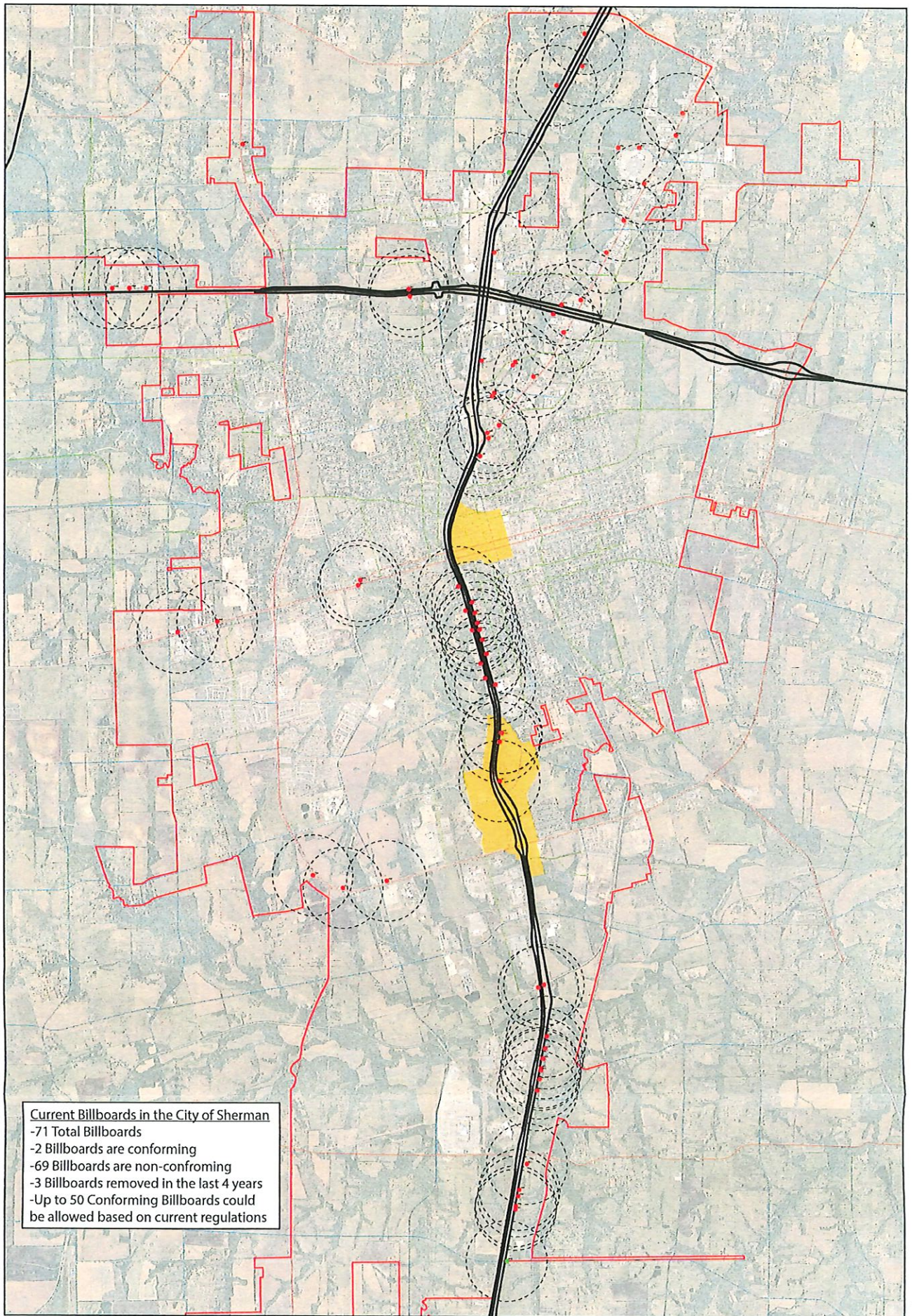
On Motion duly made and carried, the meeting adjourned at 7:02 p.m.

ADJOURNMENT

MAYOR

CITY CLERK

City	Date adopted	Ordinance #	Ordinance
Mckinney	9/19/2023	2023-09-062	Billboard Signs 1.New billboards are prohibited. 2.Existing billboards shall be considered nonconforming signs and shall comply with §506, Nonconforming Signs, with the exception of billboard signs fronting U.S. Highway 75 (Central Expressway/Sam Johnson Highway), which may be structurally altered and/or replaced, but shall not exceed a height of 40 feet or an area of 300 square feet per side. Height shall be measured from the ground level of the street or road upon which the sign faces (including frontage roads), or from the ground level of the billboard sign location, if such which the sign faces (including frontage roads), or from the ground level of the billboard sign location, if such ground level is above the street or road level. 3.An existing billboard sign may be converted to a digital billboard sign if: a.A second billboard sign is removed; and b.The digital billboard: i.Does not exceed 300 square feet in size per side; ii. Does not exceed 40 feet in height; and iii.The pole is encased in brick, stone, or synthetic stone material
Frisco	5/17/2022	§ 70-18Prohibited signs. 2022-05-21	§ 70-18Prohibited signs. The construction, placement, existence or use of signs of the following nature are prohibited: Billboard Signs
Plano	(ZC2011-38; Ordinance No. 2012-1-3; ZC05-53;Ordinance No. 2006-2-30)		22.400 General .3 Prohibited Signs Except as otherwise expressly allowed by this ordinance or as otherwise expressly allowed by Article XII, Chapter 6, of the City of Plano Code of Ordinances, the following signs and conditions are prohibited: Billboards
Prosper	(Ord. No. 2021-50 , § 2, 9-14-21)		Sec. 3.14.010. Prohibited signs. Billboard Signs
Melissa	(Ord. No. 07-35, adopted 8-28-07, Sec. 2; Ord. No. 08-30, adopted 5-27-08, Sec. 3)		3.1011 - Prohibited Signs - Commercial Billboard Signs - A large sign, generally supported by a metal frame and consisting of a single sign or two (2) parallel or nearly parallel sign faces oriented in opposite directions, used for the display of posters, printed or painted advertisements that generally direct attention to goods, merchandise, entertainment, or services conducted, sold, or offered at a location other than the premises on which the sign is located.
Celina	8/11/2020	2020-52	Prohibited Signs - No billboards shall be permitted;
Anna	9/26/2023	1077-2023-09	A freestanding sign or sign structure upon which an electronic copy is placed on a poster or panel and mounted on a pole or metal structure typically with a monopole structure constructed with tubular steel support, tubular steel framing, and a single display panel with a concrete foundation. Regardless of the applicable sign district: a. Digital billboards are only allowed along U.S. 75, SH 121, or Collin County Outer Loop. b. No digital billboard shall be constructed, erected, placed, or replaced closer than 1,500 feet to another billboard or digital billboard facing in the same direction and on the same side of the street or roadway from which the digital billboard is intended to be read. c. Digital billboards are only allowed to be constructed, erected, or placed within 300 feet of the centerline of the following rights-of-way: 1. U.S. 75; 2. SH 121; or 3. Collin County Outer Loop. (iii) Design and installation. a. No digital billboard shall be constructed, erected, or placed in any way on the roof or walls of a building. b. A digital billboard is not classified as a pole sign.



Current Billboards in the City of Sherman
-71 Total Billboards
-2 Billboards are conforming
-69 Billboards are non-conforming
-3 Billboards removed in the last 4 years
-Up to 50 Conforming Billboards could be allowed based on current regulations



CITY OF SHERMAN Billboards Map

Legend

- City Limits
- Special Districts
- Conforming Billboards
- Non-Conforming Billboards
- 2,000' Billboard Buffer

STATE OF TEXAS §

June 17, 2024

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Called Meeting of the Tax Increment Financing Board #3 was begun and held in the City Council Chambers on June 17, 2024.

COUNCIL MEMBERS PRESENT: Mayor David Plyler
Council Members Howeth, Stevenson

COUNCIL MEMBERS ABSENT: None.

CITY STAFF PRESENT: Robby Hefton, City Manager; Terrence Steele, Assistant City Manager; Clint Philpott, Assistant City Manager; Zach Flores, Assistant City Manager; Ryan Pittman, Attorney, Abernathy, Roeder, Boyd, Hullett; Mary Lawrence, Chief Financial Officer; Rob Rae, Director of Development Services. Teri Fine, Assistant to the City Manager; Linda Ashby, City Clerk.

PURPOSE: Call to Order, Quorum Determined, Meeting Declared Open

Citizen Comments

Other Business

Authorizing Execution of the First Amended and Restated Second TIRZ #3 Reimbursement and Development Agreement with Aspire Two, LLC for Reimbursement of the Construction of Public Infrastructure and Private Improvements within Sherman Tax Increment Reinvestment Zone, Number Three (#3) in the City of Sherman.

Executive Session

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

TEX. GOV'T CODE § 551.071 --

Seeking the advice of its attorney about pending or contemplated litigation, settlement offers or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act.

TEX. GOV'T CODE § 551.072 --

Deliberating the purchase, exchange, lease or value of real property if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

TAX INCREMENT FINANCING BOARD #3 – JUNE 17, 2024

TEX. GOV'T CODE § 551.073 –

Deliberating a negotiated contract for a prospective gift or donation to the City if deliberation in an Open Meeting would have a detrimental effect on the position of the City in negotiations with a third person.

TEX. GOV'T CODE § 551.074 –

Deliberating the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing

TEX. GOV'T CODE § 551.076 –

Deliberating the deployment, or specific occasions for implementation, of security personnel or devices or a security audit

TEX. GOV'T CODE § 551.087 –

Discussing or deliberating commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay or expand in or near the City and with which the City is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect

TEX. GOV'T CODE § 551.089 –

Deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementation of security personnel, critical infrastructure or security devices

Open Meeting

Adjournment

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

Mayor Plyler called the meeting to order at 6:59 p.m., declared a quorum present, and opened the Tax Increment Financing Board #3 Meeting.

CITIZEN COMMENTS

There were no citizen's comments.

OTHER BUSINESS

AUTHORIZING EXECUTION OF THE FIRST AMENDED AND RESTATED SECOND TIRZ #3 REIMBURSEMENT AND DEVELOPMENT AGREEMENT WITH ASPIRE TWO, LLC FOR REIMBURSEMENT OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AND PRIVATE IMPROVEMENTS WITHIN SHERMAN TAX INCREMENT REINVESTMENT ZONE, NUMBER THREE (#3) IN THE CITY OF SHERMAN

Mary Lawrence, Chief Financial Officer, said TIRZ #3 is the area located by Sherman Commons and the old Medical Plaza Hospital, where Aspire Two is currently constructing apartments. The agreement with them stated that they would receive the reimbursement for public infrastructure on receipt of a Certificate of Occupancy.

TAX INCREMENT FINANCING BOARD #3 – JUNE 17, 2024

Since that time, they have completed one building, however four buildings are not complete. She said it was a “matter of time” before they will be completed and receive their CO. This would allow the reimbursement to move forward on the occupancy of one building. The plan is to close that TIRZ at the end of the year.

ACTION TAKEN.

Motion by Council Member Stevenson to approve the First Amendment and Restated Second TIRZ #3 Reimbursement and Development Agreement with Aspire Two, LLC, for reimbursement of the construction of public infrastructure and private improvements within Sherman Tax Increment Reinvestment Zone Number Three, as presented. Second by Council Member Howeth.

VOTING AYE: Plyler, Howeth, Stevenson.

VOTING NAY: None.

MOTION CARRIED.

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.

TEX. GOV'T CODE § 551.071 --

SEEKING THE ADVICE OF ITS ATTORNEY ABOUT PENDING OR CONTEMPLATED LITIGATION, SETTLEMENT OFFERS OR ANY MATTER IN WHICH THE DUTY OF THE ATTORNEY TO THE CITY COUNCIL UNDER THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF TEXAS CLEARLY CONFLICTS WITH THE TEXAS OPEN MEETINGS ACT

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TAX INCREMENT FINANCING BOARD #3 – JUNE 17, 2024

TEX. GOV'T CODE § 551.087 –

DISCUSSING OR DELIBERATING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM A BUSINESS PROSPECT THAT THE CITY SEEKS TO HAVE LOCATE, STAY OR EXPAND IN OR NEAR THE CITY AND WITH WHICH THE CITY IS CONDUCTING ECONOMIC DEVELOPMENT NEGOTIATIONS; OR DELIBERATING THE OFFER OF A FINANCIAL OR OTHER INCENTIVE TO A BUSINESS PROSPECT

TEX. GOV'T CODE § 551.089 --

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The Executive Session was not needed.

ADJOURNMENT

There being no further business to come before the Tax Increment Financing Board #3, motion was duly made and approved to adjourn the Called Meeting at 7:01 p.m.

MAYOR

ATTEST

CITY CLERK



City Council Regular Meeting

Agenda Item No. C.1.

Meeting Date: 7/1/2024

Prepared By:

Approved By:

Caption:

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

Issue:

E. 5. * RESOLUTION NO. 7331

Authorizing Execution of a Professional Services Agreement with Freese and Nichols, Inc. for the Lead and Copper Rule Revision Compliance Program - Phase 3 Services

E. 6. * RESOLUTION NO. 7332

Approving the Greater Texoma Utility Authority's Intention to Award the Sherman WTP Flocculation and Sedimentation Improvements Project to Red River Construction Company

E. 7. * RESOLUTION NO. 7333

Authorizing the Purchase of a Specialty UTV Ambulance from Farrwest Specialty Vehicles for the Sherman Fire Department through BuyBoard

Background:

Origination:

Financial Consideration:

Staff Recommendation:

Alternatives:

Attachments:

None



City Council Regular Meeting

Agenda Item No. D.1.

Meeting Date: 7/1/2024

Prepared By: Linda Ashby, City Clerk

Approved By: Robby Hefton, City Manager

Caption:

PROCLAMATION

"Americans with Disabilities Act Awareness Day" -- July 26, 2024

Issue:

To present a proclamation designating July 26, 2024 as "Americans with Disabilities Act Awareness Day" in Sherman.

Background:

On July 26, 1990, President George H.W. Bush signed into law the Americans with Disabilities Act to ensure the civil rights of people with disabilities. This legislation established a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.

The ADA has expanded opportunities for Americans with disabilities by reducing barriers and changing perceptions and increasing full participation in community life.

Origination:

The request originated with Workforce Texoma.

Financial Consideration:

There is no financial consideration.

Staff Recommendation:

It is recommended that the City Council present a proclamation designating July 26, 2024, as "Americans with Disabilities Act Awareness Day" in Sherman.

Alternatives:

The Council could choose not to present the proclamation.

Attachments:

1. Americans with Disabilities Act Awareness Day Proclamation

Proclamation

WHEREAS, the Americans with Disabilities Act (ADA) was passed on July 26, 1990, to ensure the civil rights of citizens with disabilities, and

WHEREAS, Sherman, Texas, affirms the principals of equality and inclusion for persons with disabilities as set forth for the State of Texas and as embodied in the ADA, the laws of the State of Texas, and ordinances of the City of Sherman, and

WHEREAS, numerous organizations in Sherman and Texas, work with constituents and communities to bring forth the promise of hope and freedom that is envisioned by the passage of the ADA, and

WHEREAS, July 26, 2024, celebrates the 34th Anniversary of the Americans with Disabilities Act.

NOW THEREFORE, I, David Plyler, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim July 26, 2024

AMERICANS WITH DISABILITIES ACT AWARENESS DAY

in the City of Sherman and urge all citizens to recognize the progress that has been made by reaffirming the principles of equality and inclusion, and recommitting efforts to reach full ADA compliance.

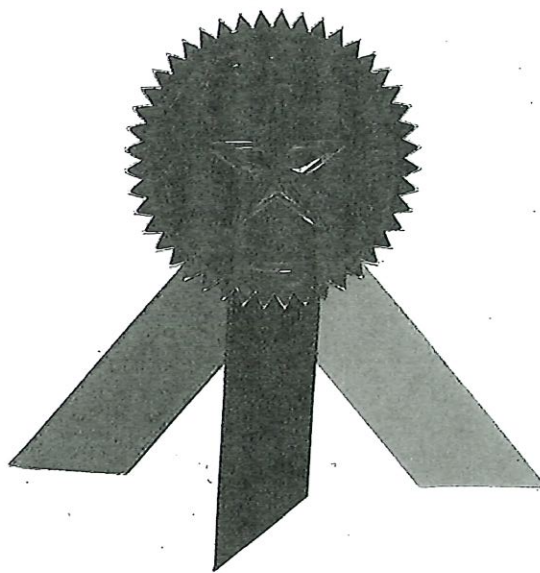
IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed, this the 1st day of July, 2024.

Mayor

ATTEST:

Linda Ashby

City Clerk





City Council Regular Meeting

Agenda Item No. D.2.

Meeting Date: 7/1/2024

Prepared By: Theresa Hutchinson, Park & Recreation Manager

Approved By: Robby Hefton, City Manager

Caption:

Proclamation

"Parks and Recreation Month" -- July 2024

Issue:

To present a proclamation designating July 2024 as "Parks and Recreation Month" in Sherman.

Background:

Because parks and recreation is an integral part of communities, the U.S. House of Representatives has designated July as Parks and Recreation Month. Sherman's parks and recreation programs and activities provide our citizens with many activities and advantages, and are a major part of the quality of life in our community.

Origination:

Parks and Recreation Department

Financial Consideration:

There is no financial consideration.

Staff Recommendation:

It is recommended that the City Council present a proclamation designating July 2024 as "Parks and Recreation Month" in Sherman.

Alternatives:

The City Council could choose not to present the proclamation.

Attachments:

1. Parks and Recreation Month Proclamation

Proclamation

WHEREAS, parks and recreation programs are an integral part of communities throughout this country, including Sherman, Texas, and

WHEREAS, parks and recreation promotes health and wellness, improving the physical and mental health of people who live near parks, and

WHEREAS, parks and recreation promotes time spent in nature, which positively impacts mental health by increasing cognitive performance and well-being, and alleviating illnesses such as depression, attention deficit disorders, and Alzheimer's, and

WHEREAS, parks and recreation encourages physical activities by providing space for popular sports, hiking trails, swimming pools and many other activities designed to promote active lifestyles, and

WHEREAS, parks and recreation is a leading provider of healthy meals, nutrition services and education, and

WHEREAS, parks and recreation programming and education activities, such as out-of-school time programming, youth sports and environmental education, are critical to childhood development, and

WHEREAS, parks and recreation increases a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses and crime reduction, and

WHEREAS, parks and recreation is fundamental to the environmental well-being of our community, and

WHEREAS, parks and recreation is essential and adaptable infrastructure that makes our communities resilient in the face of natural disasters and climate change, and

WHEREAS, our parks and natural recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors, and

WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month.

NOW THEREFORE, I, David Plyler, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim July 2024

PARKS AND RECREATION MONTH

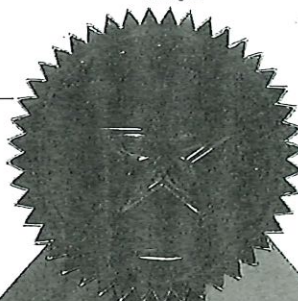
in the City of Sherman and urge all citizens to participate in activities provided by Sherman's Parks and Recreation Department, and to take advantage of the wonderful infrastructure, including parks, hiking trails, athletic courts, The Splash, special events, children's activities, and senior activities, that are offered by the Sherman Parks and Recreation Department.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed, this the 1st day of July, 2024.

Mayor

ATTEST:

Sinda Ashby
City Clerk





City Council Regular Meeting

Agenda Item No. E.1.

Meeting Date: 7/1/2024

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Teri Fine, Assistant to the City Manager

Caption:

Resolution No. 7327

Authorizing Execution of an Economic Development Program Agreement with Chick-fil-A, Inc. for the Grant of Incentives Pursuant to Chapter 380 of the Texas Local Government Code

Issue:

Approving an Economic Development Program Agreement with Chick-fil-A, Inc. for incentives authorized under Chapter 380 of the Texas Local Government Code

Background:

Chapter 380 of the Texas Local Government Code, "Miscellaneous Provisions Relating to Municipal Planning and Development", permits the City to establish and administer one or more programs to promote state or local economic development and to stimulate business and commercial activity within its city limits. At the March 4, 2019 meeting, the City Council adopted Resolution No. 6460 and approved a new Retail Recruitment Program Procedures Manual and Application, which is intended to promote broad-based, high-quality development to enhance the quality of life for our citizens and other stakeholders. The program provides for a cash grant in the form of local sales tax rebates to qualifying businesses. Applicants must bring a new business to Sherman.

City staff has been working with a local operator of Chick-fil-A (CFA) to bring a new site to the Sherman Crossroads development. CFA has had a presence in Sherman for many years and is a significant source of sales tax generation in Sherman. This additional location in Sherman is expected to create additional traffic within this development in a way that enhances the entire development.

This agreement lays out the incentives offered to these developers via a Chapter 380 Agreement, which involves a cash grant equivalent to fifty percent (50%) of the City's portion of sales taxes collected from the business over a two-year period. The Sherman Economic Development Corporation is not a party to this agreement, so their portion of local sales taxes (3/8 of one cent) is excluded from this grant incentive.

Origination:

Hillyer Bently, Chick-Fil-A, Inc.
Terrence Steele, Assistant City Manager

Financial Consideration:

This agreement will provide a cash grant equal to 50% of the sales taxes generated within the development. This agreement expires after two (2) years.

Staff Recommendation:

It is recommended that the City Council approval the proposed incentive agreement

Alternatives:

The City Council could deny the agreement

Attachments:

1. Resolution No. - Chapter 380 Agreement w Chick-fil-A
2. Application
3. agreement

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH CHICK-FIL-A, INC. FOR THE GRANT OF INCENTIVES PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, Chapter 380 of the Texas Local Government Code, “Miscellaneous Provisions Relating to Municipal Planning and Development,” permits the City to establish and administer one or more programs to promote state or local economic development and to stimulate business and commercial activity within its city limits; and

WHEREAS, at the March 4, 2019 meeting, the City Council of the City of Sherman, Texas approved Resolution No. 6460, declaring its eligibility and intent to participate in a Retail Recruitment Program to promote development/redevelopment in certain areas of the City; and

WHEREAS, the application received from Chick-fil-A, Inc. meets the guidelines and criteria adopted for the City’s Retail Recruitment Program.

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

SECTION 1. That the Mayor is hereby authorized and directed, subject to receipt of a fully-executed agreement from Chick-fil-A, Inc. and subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an Economic Development Program and Agreement with Chick-fil-A for the grant of incentives pursuant to Chapter 380 of the Texas Local Government Code, for the development and operation of a restaurant, along with other possible improvements, at the north west corner of F.M. 1417 and U.S. Highway 75 in the City of Sherman, Texas, in the same or substantially same form as the contract documents to be attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 1st day of July, 2024.

CITY OF SHERMAN, TEXAS

**BY: _____
DAVID PLYLER, MAYOR**

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

**RETAIL RECRUITMENT PROGRAM
PROCEDURES MANUAL
AND
APPLICATION**



SHERMAN, TEXAS

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GENERAL PURPOSE AND PROGRAM DESCRIPTION

The City of Sherman desires to promote broad-based, high quality development that will enhance the quality of life for citizens and other stakeholders. These goals are accomplished through the City's ability to promote a healthy economy in the area of private capital investment and generation of local sales tax revenues. As such, the City of Sherman will, on a case-by-case basis, consider providing a cash grant in the form of local sales tax rebates to qualifying businesses under Chapter 380 of the Texas Local Government Code. In order to qualify, the applicant must propose to locate a new business to Sherman. Relocation of an existing business to a new location would not qualify under this program. The City is under no obligation to provide this benefit to any applicant; and this program may be terminated at the City's sole discretion.

EVALUATION AND APPROVAL PROCESS

Applicant shall submit an application (provided herein) in conformance with the guidelines established by this program. All applications for incentives will be reviewed by the City Manager or his designee. Applicant may be requested to meet with City staff to discuss the details of the proposed project. The application will be evaluated on the basis of the projects' overall economic benefit to the City, project timing and duration, project conformance with desired location and enhancement of surrounding development, and job creation. Staff will make a recommendation to the City Council, who shall consider the matter in a public meeting. Any action taken by Council will be considered final and shall only be modified by further action of the Council, unless otherwise specified. Upon approval by City Council, applicant will be required to execute a performance agreement.

The City will be responsible for drafting the performance agreement, the agreement of which will contain the terms and conditions under which the applicant must abide. The agreement shall only be modified upon approval of the City Council in accordance with applicable local and State guidelines.

CRITERIA

Employment Impact

How many jobs will be brought to Sherman?

What types of jobs will be created (e.g., part-time, full-time, hourly, salaried, etc.)?

List the number of jobs by class that will be created and the wage range of each class of job.

What will the estimated total annual payroll be? Include current and increase factors.

Expectation for jobs filled by transfers from other company locations vs. locally-filled jobs.

Fiscal Impact

How much real and personal property will be added to the tax rolls, in square footage and in estimated value?

What is the estimated annual local sales tax generated (at 2%)?

If applicant is leasing or proposing to lease the facilities and/or the ground, what are the terms of the lease(s)?

What is the total annual operating budget of this facility projected to be? (For expansion, state current and projected increase.)

RETAIL RECRUITMENT PROGRAM APPLICATION

SECTION I

1. Property Owner: Chick-fil-A, Inc. (Lessee)
Mailing Address: 5200 Buffington Road, Atlanta, GA
Telephone Numbers: 404.305.4566
2. Property Owner's Representative: Chick-fil-A, Inc. ATTN: Hillyer Bentley
Mailing Address: 5200 Buffington Road, Atlanta, GA
Telephone Numbers: 404.305.4566
3. Physical Property Address: NWQ of FM 1417 & Hwy 75, Sherman, TX 75092
4. Property Legal Description (include as an attachment with metes and bounds) TBD
5. Description of Project: Construction of an estimated 5,112 Sq Ft building
that will cause to be created 30 FTE jobs and generate approximately \$5.5M in
sales annually. The estimated investment for the building is \$3M (including FF&E).
6. Date of projected occupation of project/initiation of operations: Q4 2025
7. Narrative response to criteria questions in Section II of application? Yes
(Yes or No, and include attachment)

SECTION II

Employment Impact

How many jobs will be brought to Sherman?

30 new jobs.

What types of jobs will be created (e.g., part-time, full-time, hourly, salaried, etc.)?

30 full time equivalent positions (Based on part-time and hourly hire combination).
List the number of jobs by class that will be created and the wage range of each class of job.

30 full time equivalent positions (wage range: TBD based on market average).
What will the estimated total annual payroll be? Include current and increase factors.

TBD

Expectation for jobs filled by transfers from other company locations vs. locally-filled jobs.

Zero transfers; local hires TBD.

Fiscal Impact

How much real and personal property will be added to the tax rolls, in square footage and in estimated value?

5,112 sq ft - \$2.1M in real property & \$900K of personal property (estimate).

What is the estimated annual local sales tax generated (at 2%)?

\$110K (\$5.5M multiplied by 2%).

If applicant is leasing or proposing to lease the facilities and/or the ground, what are the terms of the lease(s)?

Lease negotiations are ongoing.

What is the total annual operating budget of this facility projected to be? (For expansion, state current and projected increase.)

Total capital expenditure: \$3M.

CHAPTER 380 GRANT AGREEMENT FOR CHICK-FIL-A, INC.

This CHAPTER 380 GRANT AGREEMENT (“Agreement”) is entered into by and between Chick-fil-A, Inc. (“Company”), and the CITY OF SHERMAN, TEXAS (“City”), a home-rule municipality. City and Company are each referred to herein as a “party” or collectively as the “parties.”

WHEREAS, the City Council of the City of Sherman, Texas (“City Council”) approved Resolution No. 6460, declaring its intent to participate in a Retail Recruitment Program to promote development/redevelopment in certain areas in of the City;

WHEREAS, the Retail Recruitment Program is a program for making loans and grants of public money to promote local economic development and stimulate business and commercial activity in the City pursuant to Chapter 380 of the Texas Local Government Code, as amended (“Chapter 380”);

WHEREAS, the Company proposes to: (a) lease that certain parcel of land containing 5.344± acres and generally located at the northwest corner of F.M. 1417 and U.S. Highway 75, in the City of Sherman, Grayson County, Texas, as more particularly described in Exhibit A, attached hereto and incorporated herein for all purposes (the “Property”); and (b) open and operate on the Property a Chick-fil-A restaurant facility containing at least 5,112± gross square feet of space and related facilities (collectively, the “Facilities”), according to plans and specifications complying with this Agreement and applicable ordinances of the City and as approved by the City;

WHEREAS, the City Council has investigated and determined that the Company meets the criteria for providing the Grant (hereinafter defined), pursuant to Chapter 380, based on, among other things, the Company: (a) operating and improving the Facilities on the Property in the City; (b) adding or improving taxable improvements to real property in the City; and (c) creating employment opportunities for the citizens of Sherman;

WHEREAS, the Company agrees that the City’s obligation to perform or take any action under this Agreement is strictly contingent on the Company’s compliance with this Agreement, including completion of the Performance Requirements as defined in this Agreement;

WHEREAS, the City is willing to provide the Company with economic assistance on the terms and subject to the conditions as stated herein, and the Company is willing to accept the same subject to all terms and conditions contained in this Agreement;

WHEREAS, the City Council finds that this Agreement substantially advances a legitimate interest of the City by promoting economic development, attracting new consumers to the City, expanding the sales tax base of the City, increasing employment and generating new tax revenue for jurisdictions in Grayson County, which will help stimulate the overall local economy.

Commented [RP1]: Why is this highlighted in this draft?
Is it subject to change?

Commented [ST2R1]:

Commented [ST3R1]:

Commented [RP4]: Is this accurate?

Commented [ST5R4]: I corrected it

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the City and the Company agree as follows:

1. Findings Incorporated. The findings set forth above are made a part of this Agreement as if set forth herein verbatim.
2. Chapter 380 Grant; Grant Term. Subject to the terms of this Agreement and provided that the Company has complied and continues to comply with all of the Performance Requirements set forth in Section 3 below, the City will, pursuant to Chapter 380, provide to the Company an economic development grant as follows:
 - a. City Sales Tax Grant. Reimbursement payable to the Company each quarter of an amount equal to five-tenths (0.5%) of the one percent of sales tax actually collected and received by the City on sales generated in or by the Facilities located on the Property that are taxable by the City for a two (2) year period commencing on the date a Certificate of Occupancy is obtained for the Facilities or October 31, 2025, whichever occurs first (the “Grant”).
 - b. The term of this Agreement shall commence on the Effective Date of this Agreement (hereinafter defined) and expire on the earlier of: (a) the Company’s satisfaction of the Performance Requirements and the City’s payment of the Grant; (b) the earlier termination of this Agreement as provided in Section 6(c); or (c) October 31, 2027 (the “Grant Term”). In the event the Company does not receive the maximum amount of the Grant provided herein during the Grant Term, the City shall have no obligation to pay to the Company any portion of the Grant after the Grant Term has expired.
 - c. If, after all of the Performance Requirements set forth below have been initially satisfied, any of the Performance Requirements set forth below are thereafter not satisfied during any period of time for which a Grant is calculated, then if such failure of a condition is not cured within thirty (30) days after written notice from the City to the Company of such failure, the City, in addition to any other remedies, will be relieved of its obligation to pay the portion of the Grant related to such calendar quarter and the City shall also have the right to give the Company a notice that this Agreement shall immediately terminate without further action by either party.
 - d. The Company acknowledges and agrees that the City is not certifying or otherwise encumbering any funds for the payment of the Grant due under this Agreement and does not have any monies budgeted for the same. The Company agrees not to make any claims against the City for any monies other than those from the sales tax revenues from the Property, and nothing in this Agreement shall require City to make payment from revenue sources other than the same. The basis for any Grant due to the Company under this Agreement shall never include any monies the Company pays or owes to the State of Texas or the City

for any penalties for late payments, failures to report in a timely manner, and the like, related to the sales taxes due on the Property.

3. Performance Requirements. The following conditions must be satisfied by the Company during the Grant Term in order for the Company to qualify for the Grant (collectively, the “Performance Requirements”):
- a. The Company shall obtain or cause to be obtained a permanent Certificate of Occupancy from the City for the Facilities on or before October 31, 2025, and shall thereafter make continuous efforts to maintain full occupancy of the Facilities throughout the period of the Grant Term; and
 - b. The Company shall utilize, or cause its contractors to utilize, Separated Building Materials and Labor Contracts for all taxable building material contracts related to the Facility in the amount of One Hundred Thousand Dollars (\$100,000.00) or more, to site payment of the sales tax on building materials for the Facilities to the Property; and
 - c. No later than thirty (30) days after the close of each quarter during the term of this Agreement, the Company shall provide the City with a copy of the Texas Sales and Use Tax Return that the Company submits to the Comptroller of the State of Texas relating to the Company’s remission of City Sales and Use Tax Collected on the Property as a result of the operation of the Facilities (“Sales Tax Report”). In the event the City is unable to obtain the necessary sales tax information from the Sales Tax Report or in the event the City is unable to obtain the Sales Tax Report for any period of time during the Grant Term, the Company, in order to obtain payment of the Grant, shall have the obligation to provide, or cause to be provided, to the City a current list of each person doing business within the Property together with a waiver of confidentiality and permission to obtain tax information from the State Comptroller relating to such person (collectively, the “Personal Information”) in such form as is required by the Texas Comptroller in order to release the tax information, an example of which is attached hereto as Exhibit B (the “Waiver of Sales Tax Confidentiality”) relating to such person to the City. The Company’s failure to provide the City with the Personal Information shall not constitute a default under this Agreement but shall relieve the City permanently of the obligation to pay that portion of the Grant that relates to such person prior to the date that the Personal Information is provided to the City. Subject to the terms and conditions of this Agreement, the City will pay the Grant to the Company on a quarterly basis beginning on the earlier of the months of February, May, August and November following the date the Company first meets the qualifications set forth in Section 2 above and, if applicable, within sixty (60) days after the Company provides the City the Personal Information set forth in this Section 3, and continuing each quarter thereafter on the months set forth above, provided that the Company each quarter meets the qualifications set forth in Section 2 above, until the earlier of (i) the end of the Grant Term; (ii) the Grant is paid in full; or (iii) this Agreement is terminated. The City and the

Company designate this Agreement as a revenue sharing agreement, thereby entitling the City to request Sales and Use Tax Revenue information from the State Comptroller pursuant to Section 321.3022 of the Texas Tax Code, as amended; and

- d. The Company shall continuously comply with this Agreement during the Grant Term.

The Company shall provide to the City documentation satisfactory to the City that the Company has satisfied all of the Performance Requirements set forth above.

- 4. Confidentiality. The City acknowledges that the Company contends that the information regarding sales taxes generated by the Facilities is commercial or financial information which is proprietary and confidential, the disclosure of which could cause competitive harm to the Company and the owners, tenants and/or occupants of the Facilities. To the extent permitted by law, and subject to the requirements of the Texas Public Information Act, the City shall maintain the confidentiality of the Personal Information and the information contained in the Comptroller's Sales Tax Reports obtained by the City (collectively, the "Sales Information"), but shall be permitted to disclose the Sales Information to such City employees and consultants as the City, in its reasonable discretion, deems appropriate in furtherance of the purposes herein set forth.
- 5. The Company Representations. The Company makes the following representations and warranties to the City, and agrees to timely and fully perform the following obligations and duties:
 - a. The Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the term of this Agreement. As used herein, the term "good standing" means the status of the Company with the Comptroller of the State of Texas shall be "Active."
 - b. No litigation or governmental proceeding is pending or, to the knowledge of the Company, threatened against or affecting the Company that may result in any material adverse change in the Company's business or operation.
 - c. No bankruptcy proceedings or other similar proceedings are currently pending or contemplated against the Company, and the Company has not been informed of any potential involuntary bankruptcy proceedings against the Company.
 - d. The Company shall remain current and in good standing with all sales taxes, ad valorem taxes, fees and other recurring charges of the City, the State of Texas and Grayson County taxing jurisdictions throughout the term of this Agreement.
 - e. The Company represents and certifies that the Company does not and will not knowingly employ any undocumented worker at the Facilities or on the Property who is not lawfully admitted for permanent residence to the United States or

authorized under law to be employed in the United States. If, after receiving any public subsidy from the City under this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a(f), the Company shall repay to the City an amount equal to all Grant payments tendered to the Company under this Agreement and any other funds received by the Company from the City under this Agreement plus interest, at the rate of four percent (4%), not later than the 120th day after the date the public agency, state or local taxing jurisdiction notifies the Company of the violation.

6. Default.

- a. The following shall constitute an “Event of Default” under this Agreement:
 - (i) Upon the expiration of the notice and cure period set forth in the first sentence of Section 6(b) below, the City’s failure to process any portion of the Grant payments owing to the Company in accordance with this Agreement.
 - (ii) Upon the expiration of the notice and cure period set forth in the first sentence of Section 6(b) below, a failure of the Company to comply with and satisfy the Performance Requirements set forth in Section 4 of this Agreement.
 - (iii) A breach of a representation under this Agreement by Company.
- b. In the event of the occurrence of an Event of Default described under Section 6(a) above, the non-defaulting party may give written notice to the other party of such Event of Default, and the defaulting party shall have thirty (30) days thereafter to cure said Event of Default. Should said Event of Default remain uncured after such cure period and the non-defaulting party is not otherwise in default hereunder, then the non-defaulting party shall have the right to give the defaulting party a notice that this Agreement shall immediately terminate without further action by either party. In addition and without terminating this Agreement, the Company shall further have the power to enforce specific performance or bring an action to collect amounts owing upon an Event of Default by the City. No action shall lie for damages against the City beyond the foregoing amounts owed by the City arising from an Event of Default by the City, and no party shall seek or be entitled to recover punitive, special or consequential damages arising out of, or relating to, any Event of Default under this Agreement.
- c. This Agreement shall terminate upon the occurrence of any one of the following:
 - (i) the execution by both parties of a written agreement terminating this Agreement;
 - (ii) the expiration of the Grant Term; or

(iii) at the option of the non-defaulting party (subject to the notice and cure and other provisions of Section 6(b) above), after an Event of Default.

- d. The prevailing party in any action to enforce this Agreement shall be entitled to receive reasonable attorneys' fees from the non-prevailing party.
- e. The Company's sole and exclusive remedies for a breach by the City under this Agreement shall be those expressly provided for in this Section 6, and the Company hereby waives any other remedies under law or in equity.

7. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to the City: City of Sherman
 220 W. Mulberry
 Sherman, Texas 75090
 Attn: City Manager

With a copy to: Abernathy, Roeder, Boyd & Hullett, P.C.
 1700 Redbud Blvd., Suite 300
 McKinney, Texas 75069
 Attn: Ryan D. Pittman

If to the Company: Chick-fil-A, Inc.
 5200 Buffington Road,
 Atlanta, GA 30349
 Attn: Hillyer Bentley

8. Verification and Compliance. The Company shall allow the City to audit all of the Company's records (other than individual employee files), documents, agreements and other instruments in furtherance of the following purposes: (a) to ensure the Company's compliance with the affirmative covenants set forth in this Agreement; (b) to determine the existence of an event of default under the terms of this Agreement; and (c) to ensure compliance with any other terms and conditions set forth herein or any related documents, including, but not limited to, either of the Performance Agreements. The City will provide the Company with written notice of any request for an audit and shall cooperate with the Company to schedule audit activities during the Company's normal business hours so as to minimize disruption to the Company's normal business operations.

9. Miscellaneous.

- a. Binding Agreement. This Agreement shall constitute a valid and binding agreement by and between the City and the Company.
- b. Savings/Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances, or affect any other provision hereof. It is the intention and agreement of the parties to this Agreement that each such illegal, invalid or unenforceable provision shall be amended by the parties hereto to the extent necessary to make it legal, valid and enforceable while achieving the same objective of such provision, or, if that is not possible, by substituting therefore another provision that is legal, valid and enforceable and achieves the same objectives (or, if such provision cannot be amended or a provision substituted therefore in a manner that is legal, valid and enforceable and achieves the same objectives, then such provision shall be amended or a new provision substituted therefore that achieves as closely as possible the same objectives or economic position as the illegal, invalid or unenforceable provision, irrespective of whether such amendment or substituted provision is materially different than the illegal, invalid or unenforceable provision).
- c. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.
- d. Governing Law; Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- e. Vested Rights/Chapter 245 Waiver. This Agreement shall confer no vested rights on the Property, or any portion thereof. In addition, nothing contained in this Agreement shall constitute a “permit” as defined in Chapter 245 of the Texas Local Government Code, as amended, and nothing in this Agreement provides City with fair notice of any project of the Company. The Company waives any statutory claim under Chapter 245 of the Texas Local Government Code, as amended, arising out of any acts or omissions under this Agreement. This section shall survive the termination of this Agreement.
- f. Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

- g. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- h. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- i. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date of this Agreement.
- j. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- k. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.
- l. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- m. Immunity. It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

- n. Assignment. This Agreement or any part thereof shall not be assigned or transferred by any party without the prior written consent of the other party, which may be withheld in the other party's sole discretion.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager
Date executed: _____

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this __day of _____, 2024, personally appeared Robby Hefton, City Manager and duly authorized representative for the CITY OF SHERMAN, TEXAS, known to me to be one of the persons whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf thereof.

Notary Public, State of Texas

CHICK-FIL-A, INC.

By: _____
Name: _____
Title: _____
Date executed: _____

STATE OF _____ §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this __day of _____, 2024, personally appeared _____, as _____ and duly authorized representative of CHICK-FIL-A, INC., known to me to be one of the persons whose name is subscribed to the foregoing instrument, and who acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated on behalf thereof.

Notary Public, State of _____

Exhibit A
Legal Description of the Property

Lot 28, Block 2 of Sherman Crossroads, Phase IV
Inst # 2023-246
Plat Records Grayson County, Texas

Exhibit B
Waiver of Sales Tax Confidentiality

Date: _____

I authorize the Comptroller of Public Accounts to release sales and use tax information pertaining to the taxpayer indicated below to the City of Sherman. I understand that this waiver applies only to our retail store located in the _____.

Please print or type the following information as shown on your Texas Sales and Use Tax permit:

Name of Taxpayer Listed on Texas Sales Tax Permit

Name under Which Taxpayer is Doing Business (d/b/a or Outlet Name)

Taxpayer Mailing Address

Physical Location of Business Permitted for Sales Tax in Sherman, Texas

Texas Taxpayer ID Number

Authorized Signature*

Printed Name of Authorized Signature

Position of Authorized Signature

Phone Number of Authorized Signature

*The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at 1 (800) 531-5441.



City Council Regular Meeting

Agenda Item No. E.2.

Meeting Date: 7/1/2024

Prepared By: Clint Philpott, Assistant City Manager

Approved By: Teri Fine, Assistant to the City Manager

Caption:

RESOLUTION NO. 7328

Authorizing Execution of a Development Agreement Between the City of Sherman and Sherman MF 276, LTD. for Certain Street Improvements within an Approximate 13.640 Acres Generally Located at the Northwest Corner of O.B. Groner Road and F.M. Highway 1417

Issue:

Authorizing Execution of a Development Agreement Between the City of Sherman and Sherman MF 276, LTD. for Certain Street Improvements within and Approximate 13.640 Acres Generally Located at the Northwest Corner of O.B. Groner Road and F.M. Highway 1417

Background:

During the development of this project, staff brought up the need to expand OB Groner west from FM 1417 past the Development limits. The Developer paid for the design and the plans have been approved. This agreement would reimburse the developer for part of the street expansion construction cost. The expansion includes constructing four lanes with a median at the intersection and then two lanes along the development limits (similar to the Interurban Parkway expansion). The total cost to expand the intersection and street is a total of \$2,598,839.10. Of that total cost, the City will reimburse a total of \$500,000. This road is a minor arterial and on the master thoroughfare plan for expansion. Future expansion of this road will occur as additional development occurs.

Origination:

City Manager's Office

Financial Consideration:

\$500,000

Staff Recommendation:

Staff recommends approval of this agreement

Alternatives:

As directed by Council

Attachments:

1. Resolution No. 7328

2. Bakersfield Addition Dev Agreement
3. City Site Plan

RESOLUTION NO. 7328

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SHERMAN AND SHERMAN MF 276, LTD. FOR CERTAIN IMPROVEMENTS WITHIN AN APPROXIMATE 13.640 ACRES GENERALLY LOCATED AT THE NORTHWEST CORNER OF O.B. GRONER ROAD AND F.M. HIGHWAY 1417; 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 Sherman MF 276 for the certain improvements with in an approximate 13.640-acre tract of land in the Elizabeth Jones Survey, Abstract No. 625, in the City of Sherman, Texas, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 1st day of June 2024.

CITY OF SHERMAN, TEXAS

**BY: _____
DAVID PLYLER, MAYOR**

ATTEST:

**BY: _____
LINDA ASHBY, CITY CLERK**

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

**BY: _____
RYAN D. PITTMAN, CITY ATTORNEY**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS' LICENSE NUMBER.

After Recording Return to:
City of Sherman
City Manager
P. O. Box 1106
Sherman, TX 75091-1106

**DEVELOPMENT AGREEMENT BETWEEN
SHERMAN MF 276, LTD. AND THE CITY OF SHERMAN, TEXAS**

This DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF SHERMAN, TEXAS, a home-rule municipality ("Sherman"), and SHERMAN MF 276, LTD., a Texas limited partnership ("Developer"). Sherman and Developer are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, Developer represents and warrants that it is the sole owner of that certain tract of land situated in the City of Sherman, Grayson County, Texas, consisting of 13.640± acres in the Elizabeth Jones Survey, Abstract No. 625, as more particularly described in Exhibit A, attached hereto and incorporated herein for all purposes ("Property"); and

WHEREAS, Developer has designed and agrees to construct or have constructed, at its sole cost and expense and subject to the Reimbursement (hereinafter defined), the Street Improvements (hereinafter defined) under the terms and conditions of this Agreement; and

WHEREAS, Developer represents and warrants to Sherman that it has the capacity, ability, expertise, knowledge and experience necessary to have constructed the Street Improvements as required by this Agreement; and

WHEREAS, Sherman finds that it would be advantageous and beneficial to Sherman and its citizens to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Sherman and Developer agree as follows:

1. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct, are incorporated into the body of this Agreement and are adopted as findings of Sherman and the authorized representative of Developer.
2. Land Subject to Agreement. The land that is subject to this Agreement is the Property. Developer represents and warrants that Developer is the sole owner of the Property.
3. Design and Construction of the Street Improvements.
 - (a) Developer, at its sole cost and expense and subject to the Reimbursement, shall cause the design of those certain street improvements generally depicted in Exhibit

B, being (1) 650± linear feet of a four-lane, median-divided section, (2) 600± linear feet of two-lane section, and (3) related storm drainage improvements, intersection improvements and a standard size sidewalk along the north right-of-way line (collectively, the “Street Improvements”). Developer shall ensure that the design of the Street Improvements complies with all applicable ordinances, rules, regulations and requirements of Sherman and other applicable laws (collectively, the “Design Requirements”). Sherman has approved the design set forth in Exhibit B. Developer represents and warrants that the estimated design and construction costs of the Street Improvements are equal to two million five hundred ninety-eight thousand eight hundred thirty-nine and 10/100 Dollars (\$2,598,839.10) (“Estimated Street Improvements Costs”), as more particularly described in the estimated cost analysis set forth in Exhibit C, attached hereto and incorporated herein for all purposes.

- (b) As a condition of Sherman’s issuance of any building permits on the Property, Developer shall submit to Sherman the designs, plans and specifications for each of the Street Improvements in compliance with this Agreement and the Design Requirements (collectively, “Approved Plans”) and the Plans have been approved by Sherman. The general depiction of the Street Improvements attached as Exhibit B is for general informational purposes only, and the Approved Plans (hereinafter defined) are not required to be strictly bound by the same.
- (c) Developer, at its sole cost and expense and subject to the Reimbursement, shall promptly commence construction of the Street Improvements and diligently pursue completion of the same in accordance with the Approved Plans and pursuant to that certain Three-Party Agreement for Public Improvements, the mutually agreed form of which is attached hereto as Exhibit D. Until Developer provides to Sherman a fully executed version of the Three-Party Agreement for Public Improvements acceptable to Sherman, neither Developer nor its contractor or any other person for whom Developer is legally responsible shall be permitted to commence construction of the Street Improvements.
- (d) All of the Street Improvements must be completed and finally accepted by Sherman as provided herein and in accordance with the Approved Plans and any and all applicable ordinances, rules, regulations and requirements, as they exist, may be amended or in the future arising (collectively, “Sherman’s Final Acceptance”). Developer must complete all of the Street Improvements and obtain Sherman’s Final Acceptance of the same before, and as a condition of, Sherman’s issuance of the first Certificate of Occupancy on the Property. The parties agree that time is of the essence of this Agreement. Upon Sherman’s Final Acceptance of the Street Improvements, they shall become the sole property of Sherman. All construction or work in connection with the Street Improvements shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question. Developer shall have the full right and authority to use and enjoy all easements and rights of Sherman necessary to complete the Street Improvements and for no other purpose.

- (e) As a condition to Developer receiving the Reimbursement, Developer shall tender to Sherman evidence, in a form acceptable to Sherman, that all of the design and construction costs of each of the Street Improvements have been incurred and paid by Developer, including but not limited to, affidavits of payment/affidavits as to debts and liens and any other evidence reasonably required by Sherman (“Evidence of Payments”). The Evidence of Payments shall reflect Developer’s final, actual cost to design and construct the Street Improvements (“Actual Street Improvements Costs”).
- 4. Reimbursement. Provided that Developer fulfills all of its obligations under this Agreement, including but not limited to, (a) Developer obtaining Sherman’s Final Acceptance of the Street Improvements, and (b) Developer receiving from the Sherman City Engineer or his designee written verification of the Actual Street Improvements Costs, as evidenced by the subject construction contracts and the Evidence of Payments, Sherman shall participate in a portion of the Actual Street Improvements Costs by paying to Developer (the “Reimbursement”) an amount equal to Five Hundred Thousand Dollars (\$500,000.00), half being due and payable upon Sherman’s determination that Developer has completed fifty percent of the Street Improvements after receipt of Developer’s written notice thereof and half being due upon completion and Sherman’s Final Acceptance of the Street Improvements. Notwithstanding any statement to the contrary in this Agreement, Sherman agrees to provide, and Developer agrees to accept, the Reimbursement as Sherman’s sole financial participation in the costs incurred by Developer in connection with its obligations under this Agreement.
- 5. Default.
 - (a) If Developer fails to comply with any provision of this Agreement, and such failure is not cured within thirty (30) days after Sherman sends written notice of such failure to Developer, then Sherman shall have the following remedies, in addition to Sherman’s other rights and remedies:
 - (i) to refuse to accept any portion of any public improvements on the Property or associated with the development of the Property;
 - (ii) to terminate this Agreement by providing written notice of termination to Developer;
 - (iii) to refuse to issue building permits for any building on the Property;
 - (iv) to refuse to issue a Certificate of Occupancy for any building on the Property;
 - (v) to withhold the payment of all or a portion of the Reimbursement pursuant to Section 4 of this Agreement and/or to nullify Section 4 of this Agreement; and/or
 - (vi) to seek specific performance of this Agreement.

- (b) If Sherman fails to comply with the terms and conditions of this Agreement and such failure is not cured within thirty (30) days after Sherman receives written notice of such failure from Developer, then Developer may seek specific performance of this Agreement as its sole and exclusive remedy.
6. Limitation of Liability. Notwithstanding anything to the contrary herein, the parties agree and acknowledge that Sherman shall not, under any circumstance, be required to tender, or be liable to Developer for, any credit or reimbursement of, or payment of any monies, with regard to the matters set forth herein, except as expressly provided in Section 4 of this Agreement. Neither Sherman nor its Council Members, officers, agents, representatives or employees shall be liable or responsible for any loss or damage to persons or property resulting from any act, omission or neglect of Developer or Developer's agents, servants, employees, contractors, customers or invitees or from any defect or failure of any condition or element of the Property or the Street Improvements, including the construction thereof. Sherman and its Council Members, officers, agents, representatives and employees shall not be liable or responsible to Developer, its agents, servants, employees, contractors, customers or invitees for any damage to person or property caused by any act, omission or neglect of Developer or Developer's agents, servants, employees, contractors, customers or invitees.
7. Covenant Running with the Land. This Agreement shall be a covenant running with the land and Property and shall be binding upon Developer, and the duties and obligations of Developer under this Agreement shall be binding on Developer and its successors and assigns, including but not limited to each subsequent owner of any portion of the Property. The parties shall cause this Agreement to be filed in the Real Property Records of Grayson County, Texas. Developer represents and warrants that the filing of this Agreement as provided herein shall provide Sherman with a superior and priority encumbrance, lien or interest in, on and to the Property as to any and all other persons or entities. Developer represents and warrants that there are no liens, attachments or other encumbrances that prohibit or affect the rights of Sherman as described herein. If such a condition does exist, however, Developer shall obtain a signature with acknowledgment from the holder of such lien, attachment or encumbrance consenting to the recording of this Agreement.
8. Limitations of Agreement. Sherman ordinances covering property taxes, land use, zoning, utility rates, impact fees, permit fees, inspection fees, tree mitigation fees, development fees, tap fees, pro-rata fees and the like are not affected by this Agreement. Further, this Agreement does not waive or limit any of the obligations of Developer to Sherman under any ordinance, whether now existing or in the future arising.
9. Notices. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Sherman, addressed to it at:

City of Sherman
Attn: Robby Hefton, City Manager
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7327
Email: robbyh@cityofsherman.com

With a copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
Attn: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Email: rpittman@abernathy-law.com

If to Developer, addressed to it at:

Sherman MF 276, Ltd.
Attn: Robert Ruggio, Manager of the General Partner
11612 FM 2244 Building 1, Suite 140
Austin, Texas 78738
Email: bobr@cadencetexas.com

With a copy to:

Premier Multifamily Development, LLC
Attn: Charlie Moussa
129 S Main St #260
Grapevine, Texas 76051
Email: charlie@premiermfc.com

10. Indemnity.

- (a) DEVELOPER SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS SHERMAN 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 (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY) CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT, GROSSLY NEGLIGENT OR INTENTIONALLY WRONGFUL ACT OR OMISSION OF DEVELOPER OR ITS OFFICERS, DIRECTORS, PARTNERS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, TRUSTEES, LICENSEES, INVITEES OR ANY OTHER THIRD PARTY FOR WHOM DEVELOPER IS LEGALLY RESPONSIBLE (COLLECTIVELY, "DEVELOPER" FOR PURPOSES OF THIS SECTION), REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OF SHERMAN, (I) IN DEVELOPER'S PERFORMANCE OF THIS AGREEMENT; AND/OR (II) ARISING OUT OF GOODS OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND

THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST SHERMAN BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN DEVELOPER AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT OR SEPARATION FROM EMPLOYMENT WITH THE DEVELOPER, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS' COMPENSATION INSURANCE AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND SHERMAN AGAINST ALL SUCH CLAIMS.

- (b) IN ITS SOLE DISCRETION, SHERMAN SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY DEVELOPER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY SHERMAN, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY SHERMAN IN WRITING. SHERMAN RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, SHERMAN IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY SHERMAN IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO DEFEND SHERMAN OR AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY SHERMAN PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN SHERMAN-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF SHERMAN'S WRITTEN NOTICE THAT SHERMAN IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, SHERMAN SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND DEVELOPER SHALL BE LIABLE FOR ALL COSTS INCURRED BY SHERMAN.
- (c) THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11. Waiver and Release of Claims for Obligations Imposed by this Agreement.

- (a) DEVELOPER ACKNOWLEDGES AND AGREES THAT:
 - (i) THE CONVEYANCES, DEDICATIONS, EASEMENTS AND/OR PAYMENT OF MONEY REQUIRED BY THIS AGREEMENT TO BE PERFORMED BY DEVELOPER, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:
 - (A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;

- (B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;
 - (C) NUISANCE; OR
 - (D) CLAIM FOR DAMAGES OR REIMBURSEMENT AGAINST SHERMAN FOR A VIOLATION OF ANY FEDERAL OR STATE CONSTITUTION, STATUTE OR CASE LAW OR ANY FEDERAL, STATE OR LOCAL ORDINANCE, RULE OR REGULATION.
- (ii) THE AMOUNT OF DEVELOPER'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION OR CONVEYANCE OF REAL PROPERTY OR INTERESTS THEREIN (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT SUCH DEVELOPER'S DEVELOPMENT PLACES ON SHERMAN'S INFRASTRUCTURE.
- (iii) DEVELOPER HEREBY RELEASES SHERMAN FROM ANY OBLIGATION TO PERFORM OR COMMISSION A TAKINGS IMPACT ASSESSMENT UNDER CHAPTER 2007 OF THE TEXAS GOVERNMENT CODE, AS IT EXISTS OR MAY BE AMENDED.
- (iv) DEVELOPER HEREBY AGREES THAT ANY PROPERTY WHICH IT CONVEYS TO SHERMAN PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY DEVELOPER FOR SUCH LAND, AND DEVELOPER HEREBY WAIVES ANY CLAIM THEREFORE THAT IT MAY HAVE. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT ALL PREREQUISITES TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY SHERMAN RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTEND TO THE IMPACT OF THE DEVELOPMENT OF DEVELOPER'S ADJACENT PROPERTY ON SHERMAN'S INFRASTRUCTURE. DEVELOPER AND SHERMAN 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 THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.
- (v) DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS SHERMAN FROM AND AGAINST ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO, DEVELOPER'S PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES OR TRUSTEES, BROUGHT PURSUANT TO THIS SECTION.
- (b) DEVELOPER RELEASES SHERMAN FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS.
- (c) DEVELOPER WAIVES ANY CLAIM FOR DAMAGES OR REIMBURSEMENT AGAINST SHERMAN FOR A VIOLATION OF ANY FEDERAL OR STATE CONSTITUTION, STATUTE OR

CASE LAW OR ANY FEDERAL, STATE OR LOCAL ORDINANCE, RULE OR REGULATION, EXCEPT FOR THE REIMBURSEMENT DESCRIBED HEREIN.

(d) THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

12. Vested Rights/Chapter 245 Waiver. This Agreement shall confer no vested rights on the Property, or any portion thereof. Developer acknowledges and agrees that this Agreement does not confer vested rights on the Property and does not provide to Sherman “fair notice” of any “project” as defined in Chapter 245 of the Texas Local Government Code. In addition, nothing contained in this Agreement shall constitute a “permit” or an application for a “permit” as defined in Chapter 245 of the Texas Local Government Code. DEVELOPER HEREBY RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES CITY AND ITS CITY COUNCIL MEMBERS, OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, ATTORNEYS AND CONTRACTORS, IN EACH OF THEIR INDIVIDUAL, CORPORATE AND GOVERNMENTAL CAPACITIES, FROM ALL CLAIMS, DEMANDS AND CAUSES OF ACTION AND/OR PROPOSED CLAIMS, DEMANDS AND CAUSES OF ACTION WHICH COULD HAVE BEEN ALLEGED RELATING TO OR ARISING OUT OF VESTED RIGHTS UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE OR OTHER LAW IN CONNECTION WITH THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
13. Condemnation Procedures/Rights Waiver. AS ADDITIONAL CONSIDERATION FOR THE BENEFITS DEVELOPER IS RECEIVING UNDER THIS AGREEMENT, CITY AND ITS CITY COUNCIL MEMBERS, OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, ATTORNEYS AND CONTRACTORS, IN EACH OF THEIR INDIVIDUAL, CORPORATE AND GOVERNMENTAL CAPACITIES, FROM ALL CLAIMS, DEMANDS AND CAUSES OF ACTION AND/OR PROPOSED CLAIMS, DEMANDS AND CAUSES OF ACTION WHICH COULD HAVE BEEN ALLEGED RELATING TO OR ARISING OUT OF CHAPTER 2206 OF THE TEXAS GOVERNMENT CODE, AS AMENDED, AND/OR CHAPTER 21 OF THE TEXAS PROPERTY CODE, AS AMENDED.
14. Warranties/Representations. All warranties, representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
15. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties. To the extent of any conflict between the provisions of this Agreement and the exhibits, the provisions of this Agreement shall control.
16. Governing Law; Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.

17. Consideration. This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
18. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
19. Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date (hereinafter defined).
20. Savings; Severability. In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, 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 as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
21. Representations. Each party represents that it has carefully read this Agreement, knows the contents hereof, has consulted with an attorney of its choice regarding the meaning and effect hereof and is signing the same solely of its own judgment.
22. No Third Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
23. Assignment/Binding Effect.
 - (a) This Agreement is assignable, in whole or in part, upon the following conditions, all of which must be satisfied before any such assignment shall be valid and enforceable:
 - (i) the assignment of the Agreement must be evidenced by a recordable document ("Assignment");;
 - (ii) the Assignment must expressly contain, an acknowledgment and agreement that all obligations, covenants and conditions contained in this Agreement will be assumed solely and completely by the assignee, and the contact name, address, phone number, fax number and electronic mail address of the assignee;

- (iii) Developer will file any executed Assignment in the Real Property Records of Grayson County, Texas; and
 - (iv) Developer shall provide Sherman with a file-marked copy of the Assignment within ten (10) days of filing the same, and until Sherman receives said file-marked copy of the Assignment as provided herein, Sherman shall not, under any circumstance, recognize said Assignment.
 - (b) This Agreement shall be binding upon and inure to the benefit of Sherman and Developer.
 - (c) This Assignment provision shall in no way modify, alter, amend, reduce or waive the provision above titled “Covenant Running with the Land” or its effectiveness. In the event there is a conflict between this Assignment provision and the Covenant Running with the Land provision, the Covenant Running with the Land provision shall control and govern
24. Indemnification. The Parties agree that the Indemnity provisions set forth in this Agreement are conspicuous, and the parties have read and understood the same.
25. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party’s right thereafter to enforce and compel strict compliance.
26. Immunity. It is expressly understood and agreed that, in the execution and performance of this Agreement, Sherman has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.
27. Reference to Developer. When referring to “Developer” herein, this Agreement shall refer to and be binding upon Developer, and its officers, directors, partners, employees, representatives, contractors, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and any other third parties for whom Developer is legally responsible.
28. Reference to Sherman. When referring to “Sherman” herein, this Agreement shall refer to and be binding upon Sherman and Sherman’s Council Members, officers, agents, representatives, employees and any other authorized third parties for whom Sherman is legally responsible.
29. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager

Date executed: _____

ATTEST:

By: _____
Linda Ashby, City Clerk

APPROVED AS TO FORM:
Abernathy, Roeder, Boyd & Hullett, P.C.

By: _____
Ryan D. Pittman, City Attorneys

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared **Robby Hefton**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the City Manager and duly authorized representative for the **City of Sherman, Texas**, and that he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2024.

Notary Public, State of Texas
My Commission Expires: _____

SHERMAN MF 276, LTD.,
a Texas limited partnership,
By: Sherman MF 276 GP, LLC,
a Texas limited liability company,
its General Partner,

By: _____
Robert Ruggio, Manager
Date executed: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared **Robert Ruggio**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the duly authorized representative of **Sherman MF 276, Ltd.**, a Texas limited partnership, and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____,
2024.

Notary Public, State of Texas
My Commission Expires: _____

Exhibit A
Legal Description of the Property

Final Plat Bakersfield Addition, Lot 1, Block 1
Grayson County Document Number 2024-118

O. B. GRÖNER ROAD

F.M. HIGHWAY 1417
(VARIABLE WIDTH RIGHT-OF-WAY)

CITY SITE PLAN

Pacheco Koch
ARCHITECTS

350 UNIT GARDEN SKYLINE MID-RISE APARTMENTS

DATE: 10/1/01

SCALE: 1" = 40'

NO. 1

C12

Exhibit C

Estimated Cost Analysis



Project Name: **O.B. GRONER, PUBLIC ROADWAY**
& DRAINAGE IMPROVEMENTS (Intersection) Date: **06/06/24**

Item No.	Est. Quant.	Unit	Description	Unit Price	Total
Demolition					
1	3,400	SY	Remove/Dispose Conc./Asph. Pvmnt & Drive	\$21.85	\$74,290.00
2	3	EA	Remove Traffic or Street Sign	\$4,025.00	\$12,075.00
4	1	LS	Misc. Utility Adjustments Allowance	\$57,500.00	\$57,500.00
			Sub-Total (Section)		\$143,865.00
Pavement					
5	1,400	SY	8" Reinf. Concrete Pavement	\$69.00	\$96,600.00
6	1,000	LF	6" Concrete Curb	\$13.80	\$13,800.00
7	550	TONS	6" Asphalt Pavement (110 lb/(sy*in))	\$132.25	\$72,737.50
8	3,200	SY	6" Lime Stabilized Subgrade	\$5.75	\$18,400.00
9	58	TONS	Lime for Subgrade Stabilization (36 lbs/sy)	\$419.75	\$24,345.50
10	95	SY	4" Concrete Sidewalk	\$72.45	\$6,882.75
			Sub-Total (Section)		\$232,765.75
Storm					
12	1	EA	10' Recessed Curb Inlet	\$9,335.70	\$9,335.70
13	1	EA	20' Recessed Curb Inlet	\$12,233.70	\$12,233.70
14	45	LF	5'x3' Box Culvert	\$577.30	\$25,978.50
15	105	LF	42" Class III Reinforced Concrete Pipe	\$418.60	\$43,953.00
16	185	LF	36" Class III Reinforced Concrete Pipe	\$350.75	\$64,888.75
17	180	LF	24" Class III Reinforced Concrete Pipe	\$221.95	\$39,951.00
18	51	LF	18" Class III Reinforced Concrete Pipe	\$174.80	\$8,914.80
19	1	EA	5' Type "B" Manhole	\$17,965.30	\$17,965.30
20	1	EA	5'x5' Junction Box	\$13,111.15	\$13,111.15
21	1	EA	Reinforced Concrete Headwall	\$6,582.60	\$6,582.60
22	1	EA	Headwall FW-0	\$33,968.70	\$33,968.70
23	475	CY	24" Rip-Rap	\$217.35	\$103,241.25
			Sub-Total (Section)		\$380,124.45
Water					
24	160	LF	24" PVC Pipe	\$422.05	\$67,528.00
25	45	LF	10" PVC Pipe	\$138.00	\$6,210.00
26	85	LF	36" Steel Encasement Pipe	\$404.80	\$34,408.00
27	2	EA	24" Butterfly Valve	\$39,244.90	\$78,489.80
28	1	EA	10" Gate Valve	\$4,402.20	\$4,402.20
29	1	EA	24"x10" Tee	\$29,398.60	\$29,398.60
30	1	LS	Misc. Utility Adjustments Allowance	\$25,875.00	\$25,875.00
			Sub-Total (Section)		\$246,311.60
Traffic					
31	1	LS	Traffic Signal	\$98,019.10	\$98,019.10
32	3	EA	Reset Traffic or Street Signs	\$43,993.25	\$131,979.75
33	1	LS	Pavement Markings & Signage	\$28,750.00	\$28,750.00
			Sub-Total (Section)		\$258,748.85
Misc.					
34	1	LS	Mobilization	\$9,200.00	\$9,200.00
35	1	LS	Traffic Control	\$23,000.00	\$23,000.00
36	5	STA	Right of Way Preparation	\$13,800.00	\$69,000.00
37	1	LS	SWPPP Implementation	\$4,743.75	\$4,743.75
			Sub-Total (Section)		\$105,943.75
			Total		\$1,367,759.40



Project Name: **O.B. GRONER, PUBLIC ROADWAY
& DRAINAGE IMPROVEMENTS (Apartment Frontage)**

Date: **06/06/24**

Item No.	Est. Quant.	Unit	Description	Unit Price	Total
Demolition					
1	3,400	SY	Remove/Dispose Conc./Asph. Pvmnt & Drive	\$21.85	\$74,290.00
2	1	LS	Misc. Utility Adjustments Allowance	\$57,500.00	\$57,500.00
			Sub-Total (Section)		\$131,790.00
Pavement					
3	4,100	SY	8" Reinf. Concrete Pavement	\$69.00	\$282,900.00
4	2,750	LF	6" Concrete Curb	\$13.80	\$37,950.00
5	110	TONS	6" Asphalt Pavement (110 lb/(sy*in))	\$132.25	\$14,547.50
6	4,750	SY	6" Lime Stabilized Subgrade	\$5.75	\$27,312.50
7	86	TONS	Lime for Subgrade Stabilization (36 lbs/sy)	\$419.75	\$36,098.50
8	505	SY	4" Concrete Sidewalk	\$72.45	\$36,587.25
			Sub-Total (Section)		\$ 435,395.75
Water					
9	83	LF	24" WATER W/ 36" STEEL CASING BY BOC	\$719.00	\$59,677.00
10	72	EA	24" DR-18 PVC PUBLIC WATER	\$367.00	\$26,424.00
11	42	EA	10" PUBLIC WATER	\$120.00	\$5,040.00
12	119	EA	8" PUBLIC WATER	\$102.00	\$12,138.00
13	51	EA	1.5" COPPER	\$84.00	\$4,284.00
14	2	EA	CONNECT TO EX. 24" WATER	\$11,928.00	\$23,856.00
15	1	EA	CONNECT TO EX. 10" WATER	\$1,954.00	\$1,954.00
16	1	EA	24" X 8" CUT-IN-TEE	\$25,563.00	\$25,563.00
17	1	EA	10" X 8" CUT-IN-TEE	\$8,349.00	\$8,349.00
18	3	EA	24" BUTTERFLY VALVE	\$34,126.00	\$102,378.00
19	2	EA	10" GATE VALVE	\$3,828.00	\$7,656.00
20	2	EA	8" GATE VALVE	\$2,650.00	\$5,300.00
21	2	EA	8" COMBO FIRE/DOMESTIC VAULT	\$48,167.00	\$96,334.00
22	2	EA	1.5" IRRIGATION SERVICE	\$2,294.00	\$4,588.00
			Sub-Total (Section)		\$383,541.00
Sanitary Sewer					
23	301	LF	8" SDR-35	\$65.00	\$19,565.00
24	1	EA	4' Dia. Manhole	\$9,782.00	\$9,782.00
25	2	EA	5' Dia. Drop Manhole	\$11,565.00	\$23,130.00
			Sub-Total (Section)		\$52,477.00
Storm					
26	60	LF	24" Class III Reinforced Concrete Pipe	\$221.95	\$13,317.00
27	1	EA	4' Type "A" Manhole	\$10,865.20	\$10,865.20
			Sub-Total (Section)		\$24,182.20
Traffic					
28	1	LS	Pavement Markings & Signage	\$40,250.00	\$40,250.00
			Sub-Total (Section)		\$40,250.00
Misc.					
29	1	LS	Mobilization	\$9,200.00	\$ 9,200.00
30	1	LS	Traffic Control	\$11,500.00	\$ 11,500.00
31	10	STA	Right of Way Preparation	\$13,800.00	\$ 138,000.00
32	1	LS	SWPPP Implementation	\$4,743.75	\$ 4,743.75
			Sub-Total (Section)		\$ 163,443.75
				Total	\$ 1,231,079.70

Exhibit D
Agreed Form of Three-Party Agreement for Public Improvements



**Construction of Public Infrastructure in Public Rights-Of-Way or Easements
(Drainage, Pavement, Sanitary Sewer, Water and/or Other Public Facilities)**

CHECKLIST of items required for release of plans and issuance of notice to proceed. (See Item 7.)

<u>Submitted</u>	<u>N/A</u>	
_____	_____	Four (4) originals of the Contract, Bonds, Insurance Certificates and Acknowledgement Form (See instructions below.)
_____	_____	Three (3) to scale half size copies of approved construction plans, sealed by a Professional Engineer.
_____	_____	Plat has been approved by P&Z and City Council.
_____	_____	All necessary off-site easements executed and submitted per instructions.
_____	_____	Copy of SWPPP (booklet) and NOI as sent to TCEQ (or Site Notice) as applicable.
_____	_____	Copy of construction material submittals.
_____	_____	List of proposed subcontractors and emergency contact phone numbers.
_____	_____	Flash drive with construction plans in pdf format (by Engineer).
_____	_____	4.0% Inspection Fee (Paid)

INSTRUCTIONS FOR EXECUTION AND SUBMITTAL OF CONTRACT AND BONDS

1. Owner and Contractor must sign “**Three-Party Agreement**” and provide four (4) originals of documents.
2. Attach **Schedule of Values** (bid item costs) as **Exhibit “A”**. Do not use “lump sum” prices unless approved by City Engineer in writing in advance. Do not include any private facilities or private improvements in the Schedule of Values. The City Engineer or his designee must approve the Schedule of Values prior to submission of the completed Three-Party Agreement.
3. Bonds:
 - Execute **Performance Bond** and **Payment Bond** in the amount of One Hundred Percent (100%) of the value of the work (public infrastructure) to be performed.
 - Execute the **Maintenance Bond** in the amount of One Hundred Percent (100%) of the value of the work (public infrastructure) to be performed for a term of two (2) years from the date of acceptance of the work. (Note that the date of the Maintenance Bond must not be earlier than the date of the Contract.)
4. Provide a **Certificate of Insurance and All Applicable Endorsements**, in accordance with the attached form and sample, showing coverage with liability limits. The minimum limits are as specified below:
 - a. Workers’ Compensation/Employer’s Liability: Providing for payment of benefits as specified by the Workers’ Compensation Laws of the State of Texas.
 - b. Contractor’s Public Liability
 - (1) Bodily Injury: \$1,000,000 each person
\$1,000,000 each accident
 - (2) Property Damage: \$1,000,000 each accident
5. Sign **Acknowledgement** related to the payment of inspection fees and testing costs prior to acceptance of public improvements by the City.
6. Submit four (4) sets of documents as above, each with original signatures. The order of each set should be:
 - Contract
 - Exhibit “A” - Schedule of Values
 - Performance Bond, Payment Bond, Maintenance Bond; power of attorney must be submitted for all bonds
 - Certificate of Insurance and Endorsements and Contractor’s Certification of Workers’ Compensation
 - Acknowledgement Form
7. Beginning Construction: The written release of approved construction plans to the field via the City’s Engineering Inspector constitutes **Notice to Proceed (NTP)**.
8. If you have any questions, please call 903-892-7208.

THREE-PARTY AGREEMENT FOR PUBLIC IMPROVEMENTS

This THREE-PARTY AGREEMENT FOR PUBLIC IMPROVEMENTS is made and entered into by and between _____ (“OWNER”) and _____ (“CONTRACTOR”). OWNER and CONTRACTOR are each referred to herein as a “party” or collectively as the “parties.”

1. CONTRACTOR hereby agrees to furnish all labor, materials, tools, and the necessary equipment for the construction and installation (“work”) of the following:

See Exhibit “A” – Schedule of Values and scope of work (collectively, “Public Improvements”).

2. The construction and installation of the Public Improvements shall be performed according to the plans prepared by _____ (engineering firm), titled _____ (name of project), dated _____, and the current ordinances, standards, specifications, details and other requirements relating to the design and construction of public improvements (collectively, “Sherman Construction Standards”) adopted or issued by the City of Sherman (“CITY”), including the City Engineer and his designee (which are on file in the CITY Engineering Department), and the current edition of the Standard Specifications for Public Works Construction published by the North Central Texas Council of Governments. In the event of a conflict between the Sherman Construction Standards and the NCTCOG Standard Specifications, the Sherman Construction Standards and the NCTCOG Standard Specifications shall govern in that order. The parties agree that the Public Improvements construction, installation and the locations thereof shall be inspected and accepted by the City Engineer or his designee.

3. Inasmuch as the Public Improvements are proposed for dedication to the CITY, it is agreed by and between the parties that the CITY has an interest in the proper performance of this Agreement and any other contract relating to or arising out of the work, and that the CITY may bring suit for failure to comply with the terms of this Agreement and/or any such other contract, as a third-party beneficiary thereof. Although the Public Improvements may be accepted by the City Engineer, the CITY may recover damages and seek other remedies against the parties and/or upon the bonds if it is discovered that the Public Improvements were not built or completed in accordance with the terms of this Agreement.

4. It is agreed between the parties that a Performance Bond in the amount of one hundred percent (100%) of the contract price for work on the Public Improvements shall be furnished by the CONTRACTOR in favor of the CITY and shall be executed by a reputable and solvent surety company authorized to do business in the State of Texas and in the form required by the City Engineer. The Performance Bond shall indemnify the CITY for the completion of the Project in accordance with the terms of this Agreement. The Performance Bond shall be approved by the City Engineer or his designee prior to CONTRACTOR beginning work on the Public Improvements.

5. It is agreed between the parties that a Payment Bond in the amount of one hundred percent (100%) of the contract price for work on the Public Improvements shall be furnished by the CONTRACTOR in favor of the CITY and shall be executed by a reputable and solvent surety company authorized to do business in the State of Texas and in the form required by the City Engineer. The Payment Bond shall indemnify the CITY against any claims of nonpayment by all persons, firms, corporations and other entities who may furnish materials or perform labor in connection with the work. The Payment Bond shall be approved by the City

Engineer or his designee prior to CONTRACTOR beginning work on the Public Improvements

6. It is agreed between the parties that a Maintenance Bond in the amount of one hundred percent (100%) of the contract price for work on the Public Improvements shall be furnished by the CONTRACTOR in favor of the CITY and shall be executed by a reputable and solvent surety company authorized to do business in the State of Texas and in the form required by the City Engineer. The Maintenance Bond ensure the repair or remedy of any maintenance issues the CITY may have regarding the Public Improvements after the CITY accepts the same. The Maintenance Bond shall be approved by the City Engineer or his designee prior to CONTRACTOR beginning work on the Public Improvements

7. OWNER hereby agrees to pay CONTRACTOR for the work on the Public Improvements performed hereunder on the following basis:

See Exhibit "A" – Schedule of Values for unit prices and total value of work.

8. Each of the parties hereto has been furnished a copy of the plans referenced above. The project plans have been reviewed and accepted by the City Engineer or his designee.

9. EACH OF CONTRACTOR AND OWNER HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS SECTION) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS SECTION), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH PERFORMANCE UNDER THIS AGREEMENT AND/OR THE PUBLIC IMPROVEMENTS AND/OR THE WORK AND/OR THE GOODS AND/OR SERVICES PROVIDED BY CONTRACTOR, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONTRACTOR OR OWNER IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONTRACTOR" FOR PURPOSES OF THIS SECTION) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONTRACTOR IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OF CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. 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 CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

10. CONTRACTOR shall not start work under this Agreement until CONTRACTOR has obtained, at CONTRACTOR's expense, all of the insurance specified in, and required by, this Section, nor shall CONTRACTOR allow any subcontractor to commence work on its subcontract until similar insurance has been obtained by the subcontractor. CONTRACTOR shall procure and keep in full force and effect the types and amounts of insurance specified herein for and during all aspects and phases of CONTRACTOR's work at no expense to CITY. All policies shall name the CITY, its officers, agents, representatives and employees as additional insureds as to all applicable coverages with the exception of workers compensation insurance and professional liability insurance (if applicable). Such policies shall require the provision of written notice to CITY at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. General Liability Insurance shall provide for a Waiver of Subrogation against Sherman for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name Sherman as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance. All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A-" by A.M. Best's Key Rating Guide, or other equivalent rating service(s). A Certificate of Insurance and all applicable endorsement(s) evidencing the required insurance shall be submitted prior to commencing work on the Project.

General Liability insurance for personal injury (including death) and property damage	\$1 Million per occurrence \$2 Million aggregate
Statutory Worker's compensation insurance	as required by state law
Employers Liability insurance	\$1 Million bodily injury per accident \$1 Million bodily injury by disease-policy limit \$1 Million bodily injury by disease-each employee
Hired and Non-Owned Auto Liability insurance covering hired and non-owned autos	\$1 Million per occurrence
Umbrella / Excess Liability insurance	\$2 Million per occurrence (Projects less than \$100,000)
Umbrella Liability insurance only	\$2 Million per occurrence (Projects more than \$100,000)

11. This Agreement shall bind the parties, their heirs, successors, assigns and representatives for the full and faithful performance of the terms hereof, jointly and severally.

12. In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, 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 as if such invalid, illegal, void, unenforceable or unlawful provision had never been included in this Agreement.

13. It is understood and agreed that the Public Improvements, all work and all installations of whatever kind made under the terms of this Agreement shall, upon the written acceptance thereof by the City Engineer or his designee, immediately become the property of the CITY, subject only to such reimbursement to the OWNER as provided by the ordinances of the CITY or by separate written agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

Signature of Contractor's Representative

Signature of Owner's Representative

Print Name/Title of Contractor's Representative

Print Name/Title of Owner's Representative

Name of Contractor (company)

Name of Owner (company)

Address

Address

City, State, Zip

City, State, Zip

Area Code - Telephone Number

Area Code - Telephone Number

STATE OF TEXAS §
 §
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me that he/she is the duly authorized representative and agent of OWNER, and that he/she executed the same for the purposes and consideration therein stated and in the capacity therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this ____ day of _____, 2022.

Notary Public, State of Texas
My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me that he/she is the duly authorized representative and agent of CONTRACTOR, and that he/she executed the same for the purposes and consideration therein stated and in the capacity therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office this _____ day of _____, 2022.

Notary Public, State of Texas
My Commission Expires: _____

RECEIVED AND APPROVED AS TO FORM:

Engineer, City of Sherman

Attachments: Exhibit "A"- Schedule of Values, Performance, Payment, and Maintenance Bonds, Certificate of Insurance/Endorsements, Contractor's Certification of Workers' Compensation, Acknowledgement Form

PERFORMANCE BOND

BOND NO. _____

STATE OF TEXAS §

§ KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF Grayson §

THAT _____ (Name of Contractor) of _____ (City) _____ County, State of _____, as PRINCIPAL and _____ (Name of Surety) as SURETY, authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Sherman (CITY), in the penal sum of _____ and _____/100 Dollars (\$_____) for the payment whereof, the said PRINCIPAL and SURETY bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the PRINCIPAL has entered into a certain written contract with the CITY, for _____ (Name of Project) which contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said PRINCIPAL shall faithfully perform the said contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said contract agreed and covenanted by the PRINCIPAL to be observed and performed, and according to the true intent and meaning of said contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect:

“PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code for Public Works as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.”

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bonds, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have signed and sealed this instrument this _____ day of _____, 20_____.

PRINCIPAL:

SURETY:

Name of Contractor

Name of Surety

Signature

Signature

Printed Name and Title

Printed Name and Title

Address

Address

City, State, Zip

City, State, Zip

The name, address and phone number of the Resident Agent of Surety is:

PAYMENT BOND

BOND NO. _____

STATE OF TEXAS §

§ KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF Grayson §

THAT _____ (Name of Contractor) of _____ (City) _____ County, State of _____, as PRINCIPAL and _____ (Name of Surety) as SURETY, authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto the City of Sherman (CITY), in the penal sum of _____ and _____/100 Dollars (\$_____) for the payment whereof, the said PRINCIPAL and SURETY bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the PRINCIPAL has entered into a certain written contract with the CITY, for _____ (Name of Project) which contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said PRINCIPAL shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be void; otherwise to remain in full force and effect:

“PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code for Public Works as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.”

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this bonds, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have signed and sealed this instrument this _____ day of _____, 20_____.

PRINCIPAL:

SURETY:

Name of Contractor

Name of Surety

Signature

Signature

Printed Name and Title

Printed Name and Title

Address

Address

City, State, Zip

City, State, Zip

The name, address and phone number of the Resident Agent of Surety is:

MAINTENANCE BOND

BOND NO. _____

STATE OF TEXAS §

§ KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF Grayson §

THAT _____ (Name of Contractor) of _____ (City) _____ County, State of _____ as PRINCIPAL and _____ (Name of Surety) as SURETY, a corporation organized under the laws of the State of _____ as sureties, do hereby expressly acknowledge themselves to be held and bound to pay unto the City of Sherman, a municipal corporation, chartered by virtue of a special act of legislature of the State of Texas, at Sherman, Grayson County, Texas, the sum of _____ and _____/100 Dollars (\$ _____) for the payment of which sum will truly be made unto said City of Sherman, and its successors, and said principal and sureties to hereby bind themselves, their assigns and successors jointly and severally.

This obligation is conditioned, however, that whereas the said contractor has this day entered into a written contract with the said City of Sherman to build and construct _____ (Name of Project) which contract, plans and specifications therein mentioned are hereby expressly made a part hereof as though the same were written embodied herein.

WHEREAS, under the plans, specifications, and contract, it is provided that the contractor will maintain and keep in good repair the work herein contracted to be done and performed for a period of two (2) years from the date of the acceptance of said work, and to do all necessary repairing and/or reconstructing in whole or in part of said improvements that should be occasioned by settlement of foundation, defective workmanship or materials furnished in the construction or any part thereof or any of the accessories thereto constructed by the contractor. It being understood that the purpose of this section, in part, is to cover all defective conditions arising by reason of defective material and charge the same against the said contractor and sureties on this obligation, and the said contractor sureties hereon shall be subject to the liquidation damages mentioned in said contract for each day's failure on its part to comply with the terms of said provisions of said contract. Now, therefore, if the said contractor shall keep and perform its said agreement to maintain said work and keep the same in repair for the said maintenance period of two (2) years, as provided, then these presents shall be null and void, and have no further effect, but if default shall be made by said contractor in the performance of its contract to so maintain and repair said work, then these presents shall have full force and effect, and said City of Sherman shall have and recover from the said contractor and its principal and sureties damages in the premises, as provided; and it is further agreed that this obligation shall be continuing one against the principal and sureties, hereon, and that successive recoveries may be and had hereon for successive branches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished or in any manner affected from any cause during said time.

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have signed and sealed this instrument this _____ day of _____, 20_____.

PRINCIPAL:

SURETY:

Name of Contractor

Name of Surety

Signature

Signature

Printed Name and Title

Printed Name and Title

Address

Address

City, State, Zip

City, State, Zip

The name, address and phone number of the Resident Agent of Surety is:

ACKNOWLEDGEMENT

As the person or entity constructing public improvements in public rights-of-way or easements in the City of Sherman ("City"), as set forth in the attached City of Sherman Private Contract, _____(Name of Contractor) and _____(Name of Owner) acknowledge and agree to the following prior to the construction of said improvements:

1. Give at least five (5) work days' notice to the City Engineer of the construction start date.
2. Confirm that the plans to be followed are those which have been approved by the City Engineer, or that any changes thereto are approved in writing by the City Engineer.
3. Provide to the City Engineer Performance, Maintenance, and Payment Bonds for the improvements in the same amounts as if the City were engaging a contractor to do the work. The City shall be a named beneficiary on these bonds.
4. Provide to the City Engineer any soil tests deemed appropriate by the City Engineer.
5. Prior to acceptance of the improvements by the City, pay any fees for any reasonable retesting deemed appropriate by the City Engineer.
6. Provide timely notice to the City Engineer for the purposes of inspecting the work on the improvements, and make the work site available for City inspectors as needed.
7. Pay review, inspection and testing fees in the amount of four percent (4.0%) of the value of the improvements inspected or \$_____.
8. Provide the City with a flash drive containing record drawings in pdf format and dwg/dxf format of the public improvements installed.

AGREED AND ACKNOWLEDGED this the _____ day of _____, 20_____.

Name of Contractor (company)

Name of Owner (company)

Signature of Contractor's Representative

Signature of Owner's Representative

Print Name/Title of Contractor's Representative

Print Name/Title of Owner's Representative



City Council Regular Meeting

Agenda Item No. E.3.

Meeting Date: 7/1/2024

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

RESOLUTION NO. 7329

Authorizing Execution of Amendment No. 1 to the Professional Services Agreement with Huitt-Zollars, Inc. for the Development Plan Reviews

Issue:

To consider Amendment No. 1 to the Professional Services Agreement with Huitt-Zollars, Inc. for the Development Plan Reviews

Background:

On September 6, 2022, City Council awarded a Professional Services Agreement with Huitt-Zollars, Inc. for Development Plan Reviews with an estimated 12-month amount of \$183,040. This contract is utilized to augment City staff and ensure timely review of development plans submitted to the Engineering Department. This contract is renewable upon agreement of both parties.

This Amendment No. 1 renews the contract for a 12-month period with Huitt-Zollars, Inc., for an estimated amount of \$150,000.00 per 12-month period.

Origination:

Engineering Department

Financial Consideration:

This will be funded on a project by project basis out of the Engineering Department's Professional Services budget.

Staff Recommendation:

It is recommended that Amendment No. 1 to the Professional Services Agreement with Huitt-Zollars, Inc. for the Development Plan Reviews contract be approved.

Alternatives:

As may be directed by the City Council.

Attachments:

1. Resolution No. 7329
2. Unsigned Amendment No. 1
3. Res No. 6950

RESOLUTION NO. 7329

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH HUITT-ZOLLARS, INC. FOR DEVELOPMENT PLAN REVIEWS; 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 Amendment No. 1 to the Professional Services Agreement with Huitt-Zollars, Inc. for Development Plan Reviews, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 1st day of June 2024.

CITY OF SHERMAN, TEXAS

**BY: _____
DAVID PLYLER, MAYOR**

ATTEST:

**BY: _____
LINDA ASHBY, CITY CLERK**

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

**BY: _____
RYAN D. PITTMAN, CITY ATTORNEY**

AMENDMENT NO. 1

TO THE AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF SHERMAN (CITY) AND
HUITT-ZOLLARS, INC. (CONSULTANT)
FOR THE DEVELOPMENT PLAN REVIEWS PROJECT

Dated September 6, 2022 (“Original Agreement”)

Owner and Engineer desire to amend the Original Agreement for the purpose of: (i) renewing the contract for another twelve (12) months, and (ii) making other necessary amendments as follows:

This Amendment No. 1 shall be effective on the date it is executed by the last party to execute it. The CITY and CONSULTANT hereby agree to amend ARTICLE 3 of the Original Agreement to read as follows:

3.1. **Compensation for Consultant’s Services** – As described in “Article 1, Consultants Services” of this Agreement, compensation for this Project shall be: (a) on an hourly basis in an amount not to exceed **One Hundred Eighty-Three Thousand and Forty Dollars (\$183,040.00)** for the period from the Effective Date of the Original Agreement to the Effective Date of this Amendment No. 1, and in an amount not to exceed **One Hundred Fifty Thousand Dollars (\$150,000.00)** for the period from the Effective Date of this Amendment No. 1 to the first anniversary of the Effective Date of this Amendment No. 1 (collectively, “Consultant’s Fee”); and (b) paid in accordance with this Article 3 and as set forth in **Exhibit B** and **Exhibit B-1**.

The CITY and CONSULTANT hereby agree to amend ARTICLE 12 of the Original Agreement to read as follows:

12.22. **Appropriation of Funds** – Funds are not presently budgeted for City’s performance under this Agreement beyond the end of the City’s 2023-2024 fiscal year. City will give Consultant sixty (60) days’ notice if funds for the City’s performance are not budgeted to continue beyond that time. City shall not have liability for payment of any money for services performed after the end of City’s 2023-2024 fiscal year that have not been encumbered with a Purchase Order (PO) unless and until such funds are budgeted.

The CITY and CONSULTANT hereby agree to amend the Original Agreement by adding EXHIBIT B-1 to read as follows:

EXHIBIT B-1 PLAN REVIEW FEE SCHEDULE

Compensation will be billed on the below fee schedule. An estimated budget of **One Hundred Fifty Thousand (\$150,000.00)** is established for a twelve (12) month period and may be renewed at the mutual agreement of the City and Consultant. Below is the Huitt-Zollars Fee Schedule for the period of this Amendment No. 1.



Dallas/Fort Worth Office

2024 HOURLY RATE SHEET

Engineering/Architecture

Principal	\$325.00
Sr. Project Manager	\$285.00
QA Manager	\$300.00
Design Principal	\$310.00
Sr. Structural Engineer	\$270.00
Project Manager	\$240.00
Sr. Civil Engineer	\$250.00
Sr. Mechanical Engineer	\$250.00
Sr. Electrical Engineer	\$250.00
Civil Engineer	\$200.00
Structural Engineer	\$200.00
Mechanical Engineer	\$200.00
Electrical Engineer	\$200.00
Plumbing Engineer	\$200.00
EIT	\$155.00
Sr. Architect	\$250.00
Sr. NL Architectural Staff	\$170.00
NL Architectural Staff	\$135.00
Architect	\$175.00
Architect Intern 1	\$110.00
Architect Intern 2	\$120.00
Architect Intern 3	\$145.00
Sr. Landscape Architect	\$195.00
Landscape Architect	\$155.00
Landscape Architect Intern	\$115.00
Sr. Planner	\$300.00
Planner	\$165.00
Planner Intern	\$130.00
Sr. Sustainability Professional	\$175.00
Sustainability Professional	\$145.00
Sr. Designer	\$175.00
Designer	\$140.00
Sr. CADD Technician	\$160.00
CADD Technician	\$110.00

Interior Design

Sr. Interior Designer	\$ 155.00
Interior Designer	\$ 125.00
Interior Designer Intern	\$ 100.00

Survey

Survey Manager	\$240.00
Sr. Project Surveyor	\$200.00
Project Surveyor	\$150.00
Sr. Survey Technician	\$130.00
Survey Technician	\$120.00

Survey Crews

1-Person Survey Crew	\$120.00
2-Person Survey Crew	\$180.00
3-Person Survey Crew	\$205.00

Construction

Sr. Construction Manager	\$220.00
Construction Manager	\$200.00
Resident Engineer	\$155.00
Sr. Resident Project Representative	\$200.00
Resident Project Representative	\$160.00
Sr. Construction Inspector	\$155.00

Administrative

Sr. Project Support	\$115.00
Project Support	\$100.00

Reimbursable Expenses

Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

**Subject to Annual Escalation

The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and acknowledge and agree that the Original Agreement remains in full force and effect, except as amended in this Amendment No. 1. To the extent that any provision contained herein conflicts with the Original Agreement, the provision contained herein shall supersede such conflicting provision contained in the Original Agreement. This Amendment No. 1 and the Original Agreement contain the entire agreement of the parties with respect to the matters contained herein. This Amendment No. 1 may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto. Any term not defined herein shall be deemed to have the meaning ascribed to it under the Original Agreement.

EXECUTED on behalf of CONSULTANT as shown below, and on behalf of the CITY by its City Manager (thereunto duly authorized) this ____ day of _____, 2024.

CITY:
City of Sherman, Texas
a Texas Home-Rule Municipality

CONSULTANT
Huitt-Zollars, Inc.
a Texas corporation

Robby Hefton, City Manager

John Ho, P.E. Vice President

ATTEST:

ATTEST:

Linda Ashby
City Clerk

APPROVAL RECOMMENDED:

Wayne E. Lee, P.E., CFM / Director Engineering

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

BY: _____
Ryan D. Pittman
City Attorney

CORPORATE ACKNOWLEDGMENT

**THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §**

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared JOHN HO of HUITT-ZOLLARS, INC. known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said HUITT-ZOLLARS, INC., a corporation, that (s)he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D. 2024.

Notary Public In and For Dallas County, Texas

My Commission Expires:

RESOLUTION NO. 6950

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH HUITT-ZOLLARS, INC. FOR DEVELOPMENT PLAN REVIEWS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Huitt-Zollars, Inc. for Development Plan Reviews, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TX on this the 6th day of September, 2022.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

BY: David Plyler
DAVID PLYLER, MAYOR

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

BY: Ryan D. Pittman
RYAN D. PITTMAN, CITY ATTORNEY

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
HUITT-ZOLLARS, INC.
FOR
PROFESSIONAL SERVICES

Made as of the 6 day of September, 2022:

Between City: **The City of Sherman, Texas**
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7208

and Consultant: **Huitt-Zollars, Inc.**
5430 LBJ Freeway
Suite 1500
Dallas, Texas 75240
Telephone: (214) 871-3311
Facsimile: (214) 871-0757

for the following Project: **Development Plan Reviews**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sherman, Texas, a home-rule municipality ("City"), and Huitt-Zollars, Inc., a Texas corporation ("Consultant"), to be effective from and after the date as provided above. City and Consultant are at times each referred to herein as a "party" or collectively as the "parties."

WHEREAS, City desires to engage Consultant to provide professional civil engineering services for the Development Plan Reviews Project ("Project"); and

WHEREAS, Consultant desires to render such professional services ("Services") for City on the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, for the mutual benefits to be obtained hereby and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 CONSULTANT'S SERVICES

- 1.1 **Employment of Consultant** – City hereby agrees to retain Consultant to perform the Services in connection with the Project. Consultant agrees to perform the Services in accordance with the terms and conditions of this Agreement. Consultant further agrees that if any employee of Consultant who is performing the day-to-day Services under this Agreement for the Project is separated, for any reason, from employment with Consultant, Consultant shall provide City with written notice thereof at least five (5) business days' prior to said separation unless circumstances reasonably warrant a shorter notice period, which shall not exceed two (2) business days following the separation.
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform the Services as are set forth and described in **Exhibit A**, attached hereto and incorporated herein by reference for all purposes ("**Scope of Services**"). The parties understand and agree that deviations or modifications to the Scope of Services described in **Exhibit A**, in the form of a written amendment to this Agreement, may be authorized from time to time by City ("**Amendment(s)**").
- 121 **Requirement of Written Amendment** – "Extra" work, "claims" invoiced as "extra" work or "claims" which have not been issued as a duly executed, written Amendment by the Sherman Director of Engineering or designee will not be authorized for payment and/or shall not become part of this Agreement. A duly executed, written Amendment requiring additional funding of \$50,000 or more of the original contract amount shall be preceded by the Sherman City Council's authorization for the Sherman City Manager to execute said Amendment.
- 122 **CONSULTANT SHALL NOT PERFORM ANY "EXTRA" WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED, WRITTEN AMENDMENT ISSUED BY THE CITY.**
- 1.3 **Schedule of Work** – Consultant agrees to commence work immediately on the execution of this Agreement, and to proceed diligently with said work to completion as described in the Project Engineering Budget, attached hereto as **Exhibit B** and incorporated herein by reference for all purposes.
- 1.4 **Standard of Care** – Consultant shall perform the Services required hereunder in accordance with the prevailing engineering standard of care by exercising the skill and care ordinarily utilized by engineers performing the same or similar services under the same or similar circumstances in the State of Texas.

ARTICLE 2 CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the Services of Consultant:

- 2.1 **Project Data** – City shall furnish required information that is reasonably requested by Consultant and that City has in its possession at the time of Consultant's request, as expeditiously as necessary for the orderly progress of the Project, and Consultant shall be entitled to rely upon the accuracy and completeness of the information furnished by City under this Article 2.1.
- 2.2 **City Project Manager** – When necessary in City's sole discretion, City shall designate a representative authorized to act on City's behalf with respect to the Project ("Project Manager"). City, the Project Manager and/or his or her authorized designee shall examine the documents submitted by Consultant and shall render any required decisions pertaining thereto as soon as practicable to avoid unreasonable delay in the progress of Consultant's Services.

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) on an hourly basis in an amount not to exceed **One Hundred Eighty-Three Thousand and Forty Dollars (\$183,040.00)** ("Consultant's Fee"); and (b) paid in accordance with this Article 3 and the Project Engineering Budget Summary as set forth in Exhibit B.
- 3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in Exhibit B, and consistent with Exhibit C, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for

Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.

- 3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in **Exhibit A** of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly basis in accordance with this paragraph ("**Additional Services**") and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:
- 33.1 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.
 - 33.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
 - 33.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
 - 33.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
 - 33.5 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on direct billable labor rates and expenses.
 - 33.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.
- 3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual hours of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task. On all submitted invoices for Services rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts

and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.

- 3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5 of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.
- 3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" of the TEX. GOV'T CODE. City shall not be required to pay any invoice submitted by Consultant if Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project ("Scope of the Project") or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant's compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.

- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of City** – The Project is the property of City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in **Exhibit A**. Upon completion of the work, or any earlier termination of this Agreement under **Article 3** and/or **Article 8** of this Agreement, Consultant will revise plans, data, documents, maps, and any other information as defined in **Exhibit A** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under **Article 3** and/or **Article 8** of this Agreement, and promptly furnish the same to City in an acceptable electronic format. All such reproductions shall be the property of City who may use them without Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at City's own risk.
- 4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) under this Agreement are instruments of service in respect of the Project and property of City. Upon completion of the Project, all of the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) shall thereafter be subject to the Texas Public Information Act (Chapter 552, TEX.

GOV'T CODE, as amended) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5

CONSULTANT'S INSURANCE REQUIREMENTS

- 5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of **Exhibit D**, Contractor Insurance Guidelines, which is attached hereto and incorporated herein by reference for all purposes, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall name City, its officers, agents, representatives, and employees as additional insureds as to all applicable coverage. Such policy shall provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.
- 5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of **Exhibit D**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each claim, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.
- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of **Exhibit D**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key

Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

- 5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If the Project's size and scope warrant, and if identified on the checklist located in **Exhibit D**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars (\$2,000,000.00). Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to City as indicated in Article 3.4 of this Agreement. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be made available if requested.

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

Consultant agrees that at any time during normal business hours and as often as City may deem necessary, Consultant shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, TEX. LOC. GOV'T CODE, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute and deliver to City the Conflict of Interest Questionnaire, Form CIQ, attached hereto as **Exhibit E** and incorporated herein for all purposes, no later than the Effective Date of this Agreement.

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 of this Agreement and agrees to pay any costs over and above the fee which City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from Consultant's Fee due Consultant as set forth in Article 3 of this Agreement. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may agree to attempt to resolve any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator. However, if both parties do not agree to voluntarily mediate any such controversy, claim or dispute, mediation shall not be required.

ARTICLE 10 INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL

ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF

CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing the same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; by facsimile; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to City, addressed to:

Wayne E. Lee, P.E., CFM
Director of Engineering
City of Sherman
220 W Mulberry St.
Sherman, TX 75091
Telephone: (903) 892-7327
Email: waynel@cityofsherman.com

With a copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
Attention: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4054
Email: rpittman@abernathy-law.com

If to Consultant, addressed to:

John Ho, P.E.
Vice President
Huitt-Zollars, Inc.
5430 LBJ Freeway
Suite 1500
Dallas, Texas 75240
Telephone: (214) 871-3311
Email: JHo@Huitt-Zollars.com

ARTICLE 12 MISCELLANEOUS

121 **Complete Agreement** – This Agreement, including the exhibits hereto labeled “A” through “E,” all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 **Exhibit A**, Scope of Services.

12.1.2 **Exhibit B**, Project Engineering Budget Summary.

12.1.3 **Exhibit C**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

12.1.4 **Exhibit D**, Contractor Insurance Guidelines.

12.1.5 **Exhibit E**, Conflict of Interest Questionnaire, Form CIQ.

To the extent that **Exhibit A**, **Exhibit B**, **Exhibit C**, **Exhibit D**, or **Exhibit E**, are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of **Exhibit C**, **Exhibit D**, **Exhibit E**, **Exhibit B** or **Exhibit A** shall prevail in that order.

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

shall be billed through Consultant, and there shall be no third party billing.

- 123 **Attorney's Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 124 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 125 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, 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 as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 126 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 127 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 128 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 129 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

- 1210 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 1211 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 1212 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.
- 1213 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.
- 1214 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 1215 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 1216 **No Third Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 1217 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 1218 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied

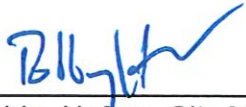
upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.

- 1219 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.
- 1220 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 1221 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 1222 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2021-2022 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2021-2022 fiscal year unless and until such funds are budgeted.
- 1223 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.
- 1224 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives,

employees and/or any other authorized third parties for whom City is legally responsible.

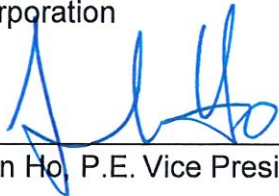
IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date set forth in the introductory clause of this Agreement.

CITY:
City of Sherman, Texas,
a Texas home-rule municipality

By: 

Robby Hefton, City Manager

CONSULTANT:
Huitt-Zollars, Inc.
a Texas corporation

By: 

John Ho, P.E. Vice President

APPROVED AS TO FORM:



Abernathy, Roeder, Boyd & Hullett, P.C.
Ryan D. Pittman, City Attorneys

STATE OF TEXAS §
 §
COUNTY OF Dallas §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **JOHN HO**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **HUITT-ZOLLARS, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 1 DAY
OF September 2022.

Toni Lynn Hollingsworth
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 11-10-24

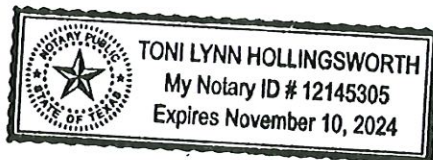


EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

The City of Sherman desires to retain an outside Consultant to assist the City in providing private development engineering plan review. The scope of services of the plan review tasks are but not limited to the following:

- Site Plan
- Grading Plan
- Water and Wastewater Plan
- Drainage Area Map
- Storm Sewer Plan & Calculation(s) with Detention (if required)
- Paving Plan
- Structural Retaining walls that benefit public improvements
- Erosion Control Plan
- Traffic Study
- Preliminary and Final Plat
- Flood Study
- Compliance with City Codes & Regulations, Construction Materials and Construction Details
- Assist City with review and issuance of appropriate project permits (i.e. driveway, Utility installation, etc.)
- Pre-Development Conference
- Assist with Preparation of 3-way contracts
- Pre-Construction Meeting
- Construction Observation
- Final Acceptance
- Assist with obtaining project(s) 2-year 100% warranty
- Any other tasks as directed by the City of Sherman

**EXHIBIT B
PROJECT ENGINEERING BUDGET**

Compensation will be billed on an hourly basis, an estimated budget of **One Hundred and Eighty-Three Thousand and Forty (\$183,040.00)** is established for a twelve (12) months period and could be renewed at the discretion of the City. Below is the Huitt-Zollars Hourly Rate Sheet for period ending December 31, 2022.

Huitt-Zollars 2022 Hourly Rate Sheet

Position	Hourly Rate
Principal	\$285.00
Sr. Project Manager	\$275.00
QA Manager	\$250.00
Design Principal	\$240.00
Sr. Structural Engineer	\$240.00
Project Manager	\$225.00
Sr. Civil Engineer	\$220.00
Sr. Mechanical Engineer	\$205.00
Sr. Electrical Engineer	\$195.00
Civil Engineer	\$180.00
Structural Engineer	\$195.00
Mechanical Engineer	\$160.00
Electrical Engineer	\$160.00
Plumbing Engineer	\$160.00
EIT	\$130.00
Sr. Architect	\$220.00
Architect	\$165.00
Architect Intern 1	\$100.00
Architect Intern 2	\$115.00
Architect Intern 3	\$145.00
Sr. Landscape Architect	\$195.00
Landscape Architect	\$155.00
Landscape Architect Intern	\$115.00
Sr. Planner	\$255.00
Planner	\$165.00
Planner Intern	\$115.00
Sr. Sustainability Professional	\$175.00
Sustainability Professional	\$145.00
Sr. Designer	\$160.00
Designer	\$140.00
Sr. CADD Technician	\$140.00
CADD Technician	\$110.00

EXHIBIT B

Survey Manager	\$210.00
Sr. Project Surveyor	\$200.00
Project Supervisor	\$150.00
Survey Technician	\$120.00
1-Person Survey Crew	\$120.00
2-Person Survey Crew	\$180.00
3-Person Survey Crew	\$205.00
Construction Manager	\$200.00
Resident Engineer	\$155.00
Sr. Resident Project Representative	\$180.00
Resident Project Representative	\$140.00
Sr. Project Support	\$110.00
Project Support	\$90.00

Reimbursable Expenses

Consultants	Cost + 10%
Other Direct Costs	Cost + 10%
Mileage	IRS Standard Business Mileage Rate

EXHIBIT C
CONSULTANT'S GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

- I. **CONSULTANT'S RESPONSIBILITY**. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment(s) for services; however, this shall not be City's sole and exclusive remedy for said over-payment.

II. **GUIDELINES FOR DIRECT EXPENSES**.

- A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

- B. **Supplies, Material, Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.
- C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- D. **In-House Reproduction** – Consultant shall make arrangements with City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as

EXHIBIT C
CONSULTANT'S GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

a prerequisite for payment, including the number or reproductions, the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

- E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.
- G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.
- H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of Consultant and/or Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.
- I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

EXHIBIT C
CONSULTANT'S GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

- A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

- A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by City's Project Manager.
- B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

**EXHIBIT D
CONTRACTOR'S INSURANCE GUIDELINES**

I. GENERAL INSURANCE REQUIREMENTS –

- A. All policies shall name the City of Sherman, its officers, agents, representatives and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance and professional liability insurance.
- B. Such policies shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail.
- C. Such policies shall provide for a waiver of subrogation against City for injuries, including death, property damage or any other loss to the extent the same is covered by the proceeds of the insurance.

II. INSURANCE COMPANY QUALIFICATION – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. CERTIFICATE OF INSURANCE – A Certificate of Insurance and policy endorsement(s) evidencing the required insurance shall be submitted prior to execution of the Agreement. If the Agreement is renewed or extended by City, a Certificate of Insurance and policy endorsement(s) shall also be provided to City prior to the date the Agreement is renewed or extended.

IV. INSURANCE CHECKLIST – "X" means that the following coverage(s) is required for this Agreement.

Coverage Required		Limits
<u> X </u>	1. Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
<u> X </u>	2. General Liability	▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate
<u> </u>	3. XCU Coverage	▪ Minimum \$1,000,000.00 each occurrence;

EXHIBIT D
CONTRACTOR'S INSURANCE GUIDELINES

- X 4. Professional Liability
- Minimum \$2,000,000.00 in the aggregate
 - Minimum \$1,000,000.00 each claim;
 - Minimum \$2,000,000.00 in the aggregate
- X 5. Umbrella Coverage of Excess Liability Coverage
- An amount of \$2,000,000.00
 - Minimum \$2,000,000.00 in the aggregate
- X 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.
- X 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name the City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).
- X 10. The Certificate of Insurance must state the project title and bid number.
11. Other Insurance Requirements (State Below):

EXHIBIT E
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY 	
1 Name of vendor who has a business relationship with local governmental entity. None		
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. None _____ Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☒ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☒ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 <i>John Ho</i> _____ Signature of vendor doing business with the governmental entity 09/06/2022 _____ Date		

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 1/1/2021



City Council Regular Meeting

Agenda Item No. E.4.

Meeting Date: 7/1/2024

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Teri Fine, Assistant to the City Manager

Caption:

RESOLUTION NO. 7330

Accepting the Contract with Red River Construction Company, Inc. for the Construction of the Post Oak Wastewater Treatment Plant Aeration and Other Secondary Treatment Improvements as Complete

Issue:

To consider and act upon a resolution approving the Greater Texoma Utility Authority's (GTUA) acceptance of the contract with Red River Construction Company, Inc. as complete for the construction of the Post Oak Wastewater Treatment Plant Aeration and Other Secondary Treatment Improvements.

Background:

This project is one of seven projects at the wastewater treatment plant initiated in 2017. Funding of \$13,595,000 through the Texas Water Development Board through the State Revolving Fund was utilized. This project has been completed in substantial compliance to Plans and Specifications and the recommendation of our engineers on the project. The new Aeration system and biological clarifiers are currently in service and working perfectly.

The TWDB requires the City to accept the project as a matter of closeout document.

Origination:

Engineering Department

Financial Consideration:

The staff recommends accepting the construction contract with Red River Construction Company, Inc. in the amount of \$5,633,069.07 as complete for the construction of the Post Oak Wastewater Treatment Plant Aeration and Other Secondary Treatment Improvements as complete.

Staff Recommendation:

It is recommended that the City Council approve the resolution and accept the contract as complete for this project.

Alternatives:

As may be directed by the City Council

Attachments:

1. Resolution No.
2. Location Map
3. Resolution No. 7330

RESOLUTION NO.

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ACCEPTING THE CONTRACT WITH RED RIVER CONSTRUCTION COMPANY, INC. FOR THE POST OAK WASTEWATER TREATMENT PLANT AERATION AND OTHER SECONDARY TREATMENT IMPROVEMENTS AS COMPLETE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman, Texas, has entered into a Contract for Water Supply and Sewer Service with the Greater Texoma Utility Authority; and

WHEREAS, the Greater Texoma Utility Authority has entered into a contract with Red River Construction Company, Inc. for the construction of the Post Oak Wastewater Treatment Plant Aeration and Other Secondary Treatment Improvements for the City of Sherman, Texas; and

WHEREAS, representatives of the City of Sherman, the Greater Texoma Utility Authority, and the project engineer have inspected the Post Oak Wastewater Treatment Plant Aeration and Other Secondary Treatment Improvements and found it to be complete;

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

SECTION 1. That the City Council of the City of Sherman, Texas, hereby formally accepts the contract with Red River Construction Company, Inc. for construction of the Post Oak Wastewater Treatment Plant Aeration and Other Secondary Treatment Improvements as complete.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TX on this the _____ day of _____, 2024.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

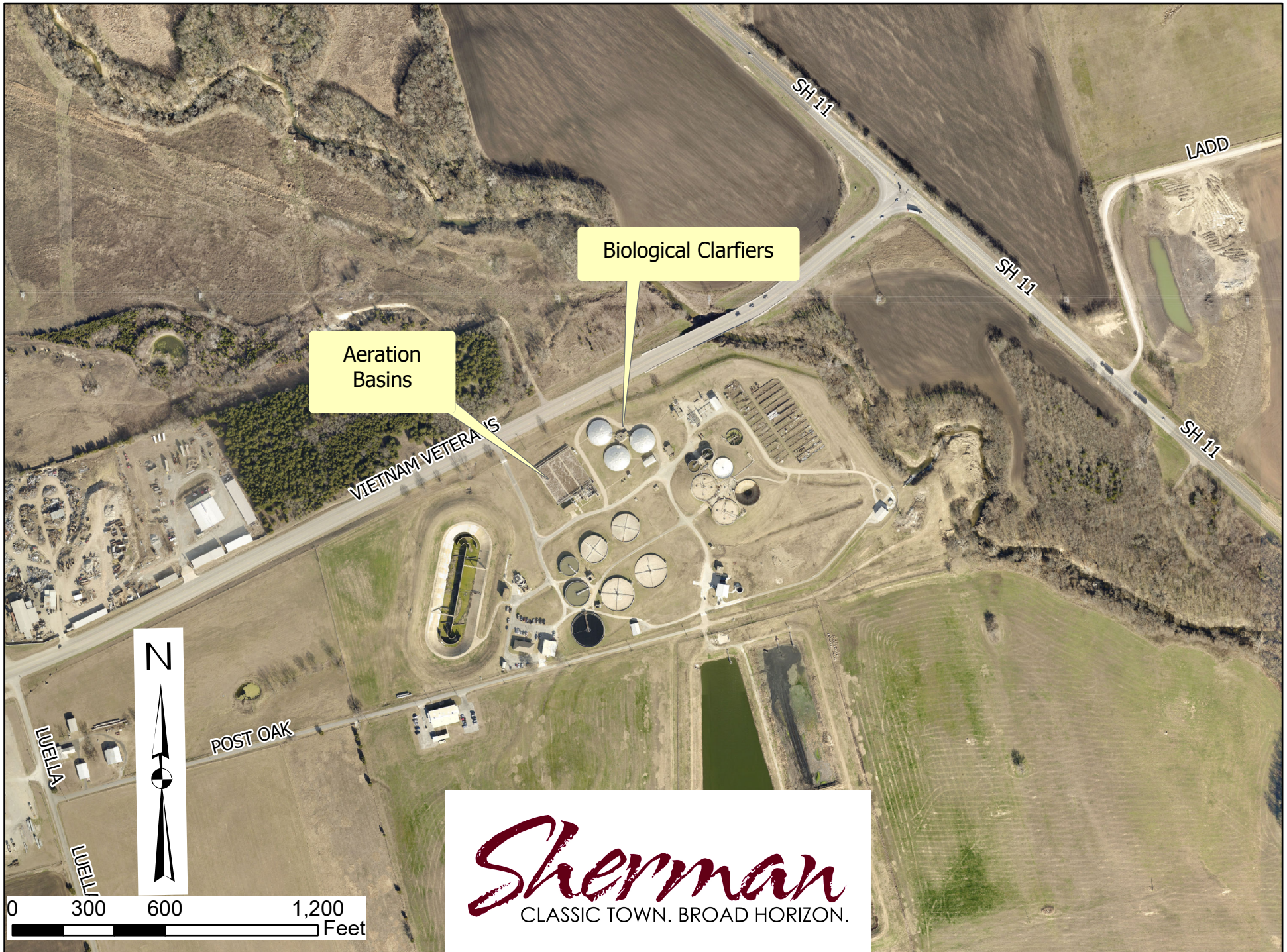
BY: _____
DAVID PLYLER, MAYOR

Resolution No. _____

Page 1 of 2

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

BY: _____
NAME: _____
CITY ATTORNEY



Sherman
CLASSIC TOWN. BROAD HORIZON.

RESOLUTION NO. 7330

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ACCEPTING THE CONTRACT WITH RED RIVER CONSTRUCTION COMPANY, INC. FOR THE POST OAK WASTEWATER TREATMENT PLANT AERATION AND OTHER SECONDARY TREATMENT IMPROVEMENTS AS COMPLETE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Sherman, Texas, has entered into a Contract for Water Supply and Sewer Service with the Greater Texoma Utility Authority; and

WHEREAS, the Greater Texoma Utility Authority has entered into a contract with Red River Construction Company, Inc. for the construction of the Post Oak Wastewater Treatment Plant Aeration and Other Secondary Treatment Improvements for the City of Sherman, Texas; and

WHEREAS, representatives of the City of Sherman, the Greater Texoma Utility Authority, and the project engineer have inspected the Post Oak Wastewater Treatment Plant Aeration and Other Secondary Treatment Improvements and found it to be complete;

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

SECTION 1. That the City Council of the City of Sherman, Texas, hereby formally accepts the contract with Red River Construction Company, Inc. for construction of the Post Oak Wastewater Treatment Plant Aeration and Other Secondary Treatment Improvements as complete.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 1st day of June 2024.

CITY OF SHERMAN, TEXAS

BY: _____
DAVID PLYLER, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY



City Council Regular Meeting

Agenda Item No. E.5.

Meeting Date: 7/1/2024

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 7331**

Authorizing Execution of a Professional Services Agreement with Freese and Nichols, Inc. for the Lead and Copper Rule Revision Compliance Program - Phase 3 Services

Issue:

To consider a Professional Services Agreement with Freese and Nichols, Inc. for the Lead and Copper Rule Revision Compliance Program - Phase 3 Services

Background:

The U.S. Environmental Protection Agency (EPA) released the Lead and Copper Rule Revisions (LCRR) on January 15, 2021, setting new standards to remove harmful levels of lead and copper from drinking water. The LCRR's compliance date is set for October 16, 2024. On November 30, 2023, the EPA announced the proposed Lead and Copper Rule Improvements (LCRI). The proposed LCRI maintains the requirement to submit and begin public communications of the initial service line material inventory in October 2024, and defers remaining compliance items to the proposed LCRI compliance date of approximately October 2027. There are significant new requirements proposed by the LCRI, most notably to replace all lead and Galvanized Requiring Replacement (GRR) service lines to the customer building inlet by 2037, to eliminate all unknowns from the inventory, and to perform randomized potholing to validate inventory entries.

In 2023 and 2024, Freese and Nichols, Inc. (FNI) completed Phase 2, which provided an initial service line inventory, a pilot study for service line identification, and a plan for the next phase. FNI recommends continuing the phased approach to the LCRR program and proposes supporting the City of Sherman (City) in its compliance with the LCRR as described below.

1. Phase 1 – LCRR Effort Assessment (Completed)
2. Phase 2 – Initial Service Line Inventory Development (Completed)
3. Phase 3 – Service Line Inventory Update through Field Inspections
4. Future Phases Not Included with this Scope and Fee
 - Phase 4 & 5 – Sampling Plan Update, Preliminary Sampling, Other Compliance Preparations, Lead/GRR Service Line Replacement, Verification, and Updated Communications Activities per Proposed LCRI

Origination:

Engineering Department

Financial Consideration:

Funding needed for the agreement for \$479,652.00 will be funded through the 2023 and 2024A open market

bonds.

Staff Recommendation:

It is recommended that the contract for professional services with Freese and Nichols, Inc. for the Lead and Copper Rule Revision Compliance Program - Phase 3 Services be approved.

Alternatives:

As may be directed by the City Council

Attachments:

1. Resolution No. 7331
2. Professional Services Agreement

RESOLUTION NO. 7331

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE AND NICHOLS, INC. FOR THE LEAD AND COPPER RULE REVISION COMPLIANCE PROGRAM – PHASE 3 SERVICES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Freese and Nichols, Inc. for the Lead and Copper Rule Revision Compliance Program – Phase 3 Services, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 1st day of June 2024.

CITY OF SHERMAN, TEXAS

**BY: _____
DAVID PLYLER, MAYOR**

ATTEST:

**BY: _____
LINDA ASHBY, CITY CLERK**

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

**BY: _____
RYAN D. PITTMAN, CITY ATTORNEY**

AGREEMENT

BETWEEN

THE CITY OF SHERMAN, TEXAS AND

FREESE AND NICHOLS, INC.

FOR

PROFESSIONAL SERVICES

Made as of the _____ day of _____, 2024:

Between City: **The City of Sherman, Texas**
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7208

and Consultant: **Freese and Nichols, Inc.**
801 Cherry St., Suite 2800
Fort Worth, Texas 76102
Telephone: (817) 220-4340
Facsimile: (817) 735-7491

for the following Project: **Lead and Copper Rule Revision Compliance Program – Phase 3 Services**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sherman, Texas, a home-rule municipality ("City"), and Freese and Nichols, Inc., a Texas corporation ("Consultant"), to be effective from and after the date as provided above. City and Consultant are at times each referred to herein as a "party" or collectively as the "parties."

WHEREAS, City desires to engage Consultant to provide professional civil engineering services for the Lead and Copper Rule Revision Compliance Program – Phase 3 Services Project ("Project"); and

WHEREAS, Consultant desires to render such professional services ("Services") for City on the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, for the mutual benefits to be obtained hereby and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 CONSULTANT'S SERVICES

- 1.1 **Employment of Consultant** – City hereby agrees to retain Consultant to perform the Services in connection with the Project. Consultant agrees to perform the Services in accordance with the terms and conditions of this Agreement. Consultant further agrees that if any employee of Consultant who is performing the day-to-day Services under this Agreement for the Project is separated, for any reason, from employment with Consultant, Consultant shall provide City with written notice thereof at least five (5) business days' prior to said separation unless circumstances reasonably warrant a shorter notice period, which shall not exceed two (2) business days following the separation.
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform the Services as are set forth and described in **Exhibit A**, attached hereto and incorporated herein by reference for all purposes ("**Scope of Services**"). The parties understand and agree that deviations or modifications to the Scope of Services described in **Exhibit A**, in the form of written amendment to this Agreement, may be authorized from time to time by City ("**Amendment(s)**").
- 121 **Requirement of Written Amendment** – "Extra" work, "claims" invoiced as "extra" work or "claims" which have not been issued as a duly executed, written Amendment by the Sherman Director of Engineering or designee will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed, written Amendment requiring additional funding of \$50,000 or more of the original contract shall be preceded by the Sherman City Council's authorization for the Sherman City Manager to execute said Addendum.
- 122 **CONSULTANT SHALL NOT PERFORM ANY "EXTRA" WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED, WRITTEN ADDENDUM ISSUED BY THE CITY OF SHERMAN.**
- 1.3 **Schedule of Work** – Consultant agrees to commence work immediately on the execution of this Agreement, and to proceed diligently with said work to completion as described in the Project Engineering Budget Summary, attached hereto as **Exhibit B** and incorporated herein by reference for all purposes.
- 1.4 **Standard of Care** – Consultant shall perform the Services required hereunder in accordance with the prevailing engineering standard of care by exercising the skill and care ordinarily utilized by engineers performing the same or similar services under the same or similar circumstances in the State of Texas.

ARTICLE 2 CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the Services of Consultant:

- 2.1 **Project Data** – City shall furnish required information that is reasonably requested by Consultant and that City has in its possession at the time of Consultant's request, as expeditiously as necessary for the orderly progress of the Project, and Consultant shall be entitled to rely upon the accuracy and completeness of the information furnished by City under this Article 2.1.
- 2.2 **City Project Manager** – When necessary in City's sole discretion, City shall designate a representative authorized to act on City's behalf with respect to the Project ("Project Manager"). City, the Project Manager and/or his or her authorized designee shall examine the documents submitted by Consultant and shall render any required decisions pertaining thereto as soon as practicable to avoid unreasonable delay in the progress of Consultant's Services.

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be:
(a) for Basic Services, on a lump sum basis in an amount not to exceed **Four Hundred Fifty-Six Thousand Six Hundred Forty-Four Dollars (\$456,644.00)**;
(b) for Special services, a cost plus basis an amount not to exceed **Twenty-Three Thousand Eight Dollars (\$23,008.00)** (collectively, "Consultant's Fee"); and (c) paid in accordance with this Article 3 and the Project Design Budget Summary as set forth in Exhibit B.
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in Exhibit C, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a

determination whether or not to certify that sufficient cause exists for City to declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

- 3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be solely responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and for consulting with such agencies and utilities to obtain all necessary approvals and/or permissions. Consultant shall be responsible for preparation and timely submittal of documents required for review, approval and/or recording by such agencies and/or utilities. Consultant shall be solely responsible for making such changes in the construction documents ("Construction Documents") as may be required by existing written standards promulgated by such agencies and/or utilities at no additional charge to City.

- 3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in **Exhibit B**, and consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.

- 3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in **Exhibit A** of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly basis in accordance with this paragraph ("Additional Services") and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:

- 3.3.1 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in **Exhibit A**.

- 3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
- 3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
- 3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.
- 3.3.5 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on direct billable labor rates and expenses.
- 3.3.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.

Hourly Billable Rates by Position

Position	Hourly Rate Range
Professional 1	\$91 – 182
Professional 2	\$123 – 200
Professional 3	\$140 – 305
Professional 4	\$161 – 333
Professional 5	\$238 – 361
Professional 6	\$242 – 448
Construction Manager 1	\$119 – 168
Construction Manager 2	\$123 – 207
Construction Manager 3	\$154 – 207
Construction Manager 4	\$179 – 270
Construction Manager 5	\$214 – 315
Construction Manager 6	\$284 – 375
Construction Representative 1	\$81 – 95
Construction Representative 2	\$95 – 123
Construction Representative 3	\$130 – 196
Construction Representative 4	\$130 – 196
CAD Technician/Designer 1	\$88 – 126
CAD Technician/Designer 2	\$105 – 207
CAD Technician/Designer 3	\$137 – 263
Corporate Project Support 1	\$74 – 165
Corporate Project Support 2	\$84 – 242
Corporate Project Support 3	\$105 – 350

- 3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task listed in **Exhibit B**. On all submitted invoices for Services rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.
- 3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of **Article 3.5** of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.
- 3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of **Article 3.6** of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" of the TEX. GOV'T CODE. City shall not be required to pay any

invoice submitted by Consultant if Consultant breached any provision(s) herein.

- 3.8 **Adjusted Compensation** – If the Scope of the Project (“Scope of the Project”) or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant’s compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant’s compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of City** – The Project is the property of City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any materials for any other purpose not relating to the Project without City’s prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in **Exhibit A**. Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8 of this Agreement, Consultant will revise plans, data, documents, maps, and any other information as defined in **Exhibit A** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8 of this Agreement, and promptly furnish the same to City in an acceptable electronic format. All such reproductions shall be the property of City who may use them without Consultant’s permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at City’s own risk.

- 42 **Documents Subject to Laws Regarding Public Disclosure** – Consultant

acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) under this Agreement are instruments of service in respect of the Project and property of City. Upon completion of the Project, all of the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or sub-consultants) shall thereafter be subject to the Texas Public Information Act (Chapter 552, TEX. GOV'T CODE, as amended) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

- 5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Contractor Insurance Guidelines, which is attached hereto and incorporated herein by reference for all purposes, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall name City, its officers, agents, representatives, and employees as additional insureds as to all applicable coverage. Such policy shall provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.
- 5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each claim, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on

the Project.

- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.
- 5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If the Project's size and scope warrant, and if identified on the checklist located in **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars (\$2,000,000.00). Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to City as indicated in **Article 3.4** of this Agreement. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be made available if requested.

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

Consultant agrees that at any time during normal business hours and as often as City may deem necessary, Consultant shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of

final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, TEX. LOC. GOV'T CODE, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute and deliver to City the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit F and incorporated herein for all purposes, no later than the Effective Date of this Agreement.

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 of this Agreement and agrees to pay any costs over and above the fee which City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from Consultant's Fee due Consultant as set forth in Article 3 of this Agreement. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

In addition to all remedies at law, the parties may agree to attempt to resolve any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator. However, if both parties do not agree to voluntarily mediate any such controversy, claim or dispute, mediation shall not be required.

ARTICLE 10

INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY") FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS,

OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN

COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS ARTICLE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing the same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; by facsimile; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to City, addressed to:

Wayne E. Lee, P.E., CFM
Director of Engineering
City of Sherman
220 W Mulberry St.
Sherman, TX 75091
Telephone: (903) 892-7327
Email: waynel@cityofsherman.com

With a copy to:

Abernathy, Roeder, Boyd & Hullett, P.C.
Attention: Ryan D. Pittman
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Facsimile: (214) 544-4054
Email: rpittman@abernathy-law.com

If to Consultant, addressed to:

Trey Shanks
Project Manager
Freese and Nichols, Inc.
801 Cherry St., Suite 2800
Fort Worth, Texas, 76102
Telephone: (817) 735-7383
Email: TS@freese.com

ARTICLE 12 MISCELLANEOUS

121 **Complete Agreement** – This Agreement, including the exhibits hereto labeled “A” through “F,” all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 **Exhibit A**, Scope of Services.

12.1.2 **Exhibit B**, Project Engineering Budget Summary.

12.1.3 **Exhibit C**, Guidelines for Computer Aided Design and Drafting (CADD).

12.1.4 **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

12.1.5 **Exhibit E**, Contractor Insurance Guidelines.

12.1.6 **Exhibit F**, Conflict of Interest Questionnaire, Form CIQ.

To the extent that **Exhibit A**, **Exhibit B**, **Exhibit C**, **Exhibit D**, **Exhibit E**, or **Exhibit F** are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of **Exhibit B**, **Exhibit C**, **Exhibit D**, **Exhibit E**, **Exhibit F** or **Exhibit A** shall prevail in that order.

122 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.

- 123 **Attorney's Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 124 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 125 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, 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 as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 126 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 127 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 128 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 129 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 1210 **Headings** – The headings of the various sections of this Agreement are included

solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

- 12.11 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.
- 12.13 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.
- 12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.16 **No Third Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as

an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.

- 1220 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 1221 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 1222 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2023-2024 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2023-2024 fiscal year unless and until such funds are budgeted.
- 1223 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.
- 1224 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the date set forth in the introductory clause of this Agreement.

CITY:
City of Sherman, Texas,
a Texas home-rule municipality

CONSULTANT:
Freese and Nichols, Inc.
a Texas corporation

By: _____
Robby Hefton, City Manager

By: Trey Shanks
Trey Shanks Principal/Vice President

APPROVED AS TO FORM:

Abernathy, Roeder, Boyd & Hullett, P.C.
Ryan D. Pittman, City Attorneys

STATE OF TEXAS §
 §
COUNTY OF Tarrant §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **TREY SHANKS**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS A PRINCIPAL / VICE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **FREESE AND NICHOLS, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 23rd DAY
OF June 2024.

Stephene Stephenson
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: July 24, 2027

EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

- A.** The U.S. Environmental Protection Agency (EPA) released the Lead and Copper Rule Revisions (LCRR) on January 15, 2021, setting new standards to remove harmful levels of lead and copper from drinking water. The LCRR's compliance date is set for October 16, 2024. On November 30, 2023, the EPA announced the proposed Lead and Copper Rule Improvements (LCRI). The proposed LCRI maintains the requirement to submit and begin public communications of the initial service line material inventory in October 2024, and defers remaining compliance items to the proposed LCRI compliance date of approximately October 2027. There are significant new requirements proposed by the LCRI, most notably to replace all lead and Galvanized Requiring Replacement (GRR) service lines to the customer building inlet by 2037, to eliminate all unknowns from the inventory, and to perform randomized potholing to validate inventory entries.
- B.** In 2023 and 2024, Freese and Nichols, Inc. (FNI) completed Phase 2, which provided an initial service line inventory, a pilot study for service line identification, and a plan for the next phase. FNI recommends continuing the phased approach to the LCRR program and proposes supporting the City of Sherman (City) in its compliance with the LCRR as described below.
- i Phase 1 – LCRR Effort Assessment (Completed)
 - ii Phase 2 – Initial Service Line Inventory Development (Completed)
 - iii Phase 3 – Service Line Inventory Update through Field Inspections
 - iv Future Phases Not Included with this Scope and Fee
 - Phase 4 & 5 – Sampling Plan Update, Preliminary Sampling, Other Compliance Preparations, Lead/GRR Service Line Replacement, Verification, and Updated Communications Activities per Proposed LCRI
- C.** The scope of the Phase 3 services and related fee is proposed below. The level of effort related to Phases 4 to 5 may be prepared as part of a future proposal if and when requested by the City. As part of this phase, a detailed description of the work associated with each of the remaining future phases of the compliance program will be developed as the original compliance program plan described in the City's May 2022 *Lead and Copper Rule Revision Compliance Program – Phase 1: Initial Risk and Resource Screening Report* does not address all the regulatory changes associated with the LCRI.

EXHIBIT A SCOPE OF SERVICES

- D.** For Phase 3, FNI recommends aggressively reducing unknowns before 2028 to put the City in an optimal position for compliance with the proposed LCRI requirements. This phase focuses on further identification of service line materials through field inspection, submittal support for items due October 2024, updating the compliance budget following the finalization of the LCRI, and funding support. FNI recommends the following major scope items:
- i Basic Services**
 - a. Project Management and Coordination Meetings**
[July 2024 – May 2025]
 - b. Initial Inventory Finalization and Submittal Support**
[July 2024 – October 2024]
 - Finalization of inventory and submittal to TCEQ.
 - Preparation of public-facing inventory.
 - Support to issue and certify service line material notification letters.
 - c. Field Inspections to Identify Service Line Materials**
[July 2024 – May 2025]
 - Data collection application development and training.
 - Field Inspections.
 - Data QC and ongoing inventory support.
 - d. Updated Compliance Budget Based on Finalized LCRI**
[January 2025 – May 2025]
 - ii Special Services**
 - a. TWDB Funding Application & Closing Support**
[July 2024 – May 2025]

II. GENERAL REQUIREMENTS

- A.** Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.
- B.** Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which has facilities within or adjacent to the Project.
- C.** Each time the Consultant submits memoranda or reports to City, two (2) copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the memoranda or reports are returned to the City, the original and reviewed memoranda or reports shall also be returned to the City. All memoranda, reports, documents, provisions, attachments, and

EXHIBIT A SCOPE OF SERVICES

correspondence provided in accordance with this contract shall be dated.

- D. The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.

E. **Communications and Reporting:**

- i Attend a project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
- ii Attend update review meeting with the City as outlined in the specific tasks below.
- iii Prepare and submit monthly invoices in the format acceptable to the City.
- iv Prepare and submit monthly progress reports.
- v Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
- vi Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
- vii With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs and make changes necessary to meet their requirements.
- viii Attend additional project coordination meetings, if needed.

III. **TASK SUMMARY. BASIC SERVICES:** FNI shall render the following professional services in connection with the development of the Project.

A. **Project Management and Coordination Meeting**

- i Project Management
 - a. Perform general administrative duties associated with the Project, including planning, progress monitoring and monthly progress reporting, scheduling, quality control/quality assurance, general correspondence, documentation, office administration, and invoicing for the scope items identified below. Documentation shall be in accordance with any regulatory requirements for the Project. These duties include maintaining regular contact with the City to help meet the needs of the City in a timely manner and executing work in accordance with the work plan, budget, and schedule.

EXHIBIT A SCOPE OF SERVICES

- ii. Project Kick-off Meeting
 - a. Conduct a virtual project kick-off meeting with the City to 1) review the scope of services, 2) verify the City's requirements for the Project, and 3) discuss roles and Project deliverables.
- iii. Project Coordination Meetings
 - a. Conduct up to eight (8) virtual and two (2) in-person one (1) hour topic-specific project coordination meetings with the City as needed over the span of the Project. Topics for each meeting will be identified in advance and related to the execution of the remaining tasks within this project.
 - b. At each meeting, FNI will be responsible for the following:
 - Developing and distributing the agenda in advance of each meeting.
 - Moderating the discussion.
 - Distributing meeting minutes and action items after each meeting.
 - c. The City will be responsible for the following:
 - Reviewing the agenda and securing the participation of relevant staff for each meeting.
 - Reviewing meeting minutes and providing timely feedback to FNI.
 - Addressing action items on time.

B. Initial Inventory Finalization and Submittal Support

- i. Final Review and Export of the Service Line Inventory for Submittal to TCEQ by Compliance Date (October 16, 2024):
 - a. FNI will incorporate data from the City's meter inspection program, which is being conducted by City staff, and add any additional data available by September 1, 2024, to the GIS-based service line inventory.
 - b. FNI will review the GIS-based service line inventory with the City in up to two (2) one-hour virtual work sessions and walk through the export into the TCEQ template.
 - c. FNI will perform a final review, present the final draft inventory during the first virtual work session, and send it to the City for one round of comments.
 - d. FNI will update the final inventory based on the City's comments and present the final service line inventory to the City during the second virtual work session. During the work session, FNI will complete the certification section with the City's approval and provide the completed Excel file to the City for submission to TCEQ by the compliance deadline.
 - e. FNI will provide up to 8 hours of submittal and post-submittal support

EXHIBIT A SCOPE OF SERVICES

- in answering TCEQ questions on the submitted documents.
- ii. **Public-Facing Service Line Inventory & Website Content:**
 - a. FNI will develop an ESRI ArcGIS Online web map with a customized ArcGIS dashboard created in the City's AGOL environment and an Excel spreadsheet to serve as the City's public-facing inventory. FNI will provide a draft web map and dashboard to the City to review and conduct a coordination meeting to discuss options for displaying required information and recommend additional information to include to the public. FNI will incorporate the City's feedback into a final web map and Excel spreadsheet. (Note: The rule requires systems that serve a population of 50,000 or more to post the inventory online. At the writing of this Scope of Services, Sherman is listed by TCEQ to serve a population of 43,645. It is not currently required for Sherman to have an online inventory; however, it is recommended by FNI as a transparent and easily accessible way to communicate with water customers about the service line inventory.)
 - b. FNI will provide recommended webpage content for the City to include with the public-facing inventory online. Website design and creation are outside the scope of this project. If the City posts the inventory online, the City will be responsible for the website development, and FNI will provide a review and comments to the City on the website.
 - iii. **Support to Issue and Certify Service Line Material Notification Letters**
 - a. FNI will provide the City with up to 12 hours of support for issuing the annual service line material notification letters and addressing customer questions. FNI will support the City in completing the TCEQ required certification form (due January 30, 2025) verifying the 2024 notification letters were sent to customers.
 - iv. **Initial Inventory Finalization and Submittal Support – Deliverables**
 - a. Final service line inventory in TCEQ template (Excel spreadsheet).
 - b. Public-facing service line inventory as web map with customized ArcGIS dashboard and Excel spreadsheet.
 - c. An initial and final list of addresses with material types to send service line material notification letters.
 - d. Final templates for annual service line material notification letters.
 - e. Completed TCEQ certification form verifying the service line material notification letters were sent to customers.
 - v. **Initial Inventory Finalization and Submittal Support – Assumptions**
 - a. If the TCEQ requires the initial inventory submittal to be performed by a City employee or official, it is assumed that the City will submit the initial inventory by October 16, 2024. FNI can submit the inventory on the City's behalf if permitted by the TCEQ. This will be determined before the October deadline.
 - b. The City will prepare the public webpage connecting to the web map

EXHIBIT A SCOPE OF SERVICES

inventory prepared by FNI. FNI would like to review a draft of the webpage prepared by the City at least four (4) weeks before the compliance deadline (September 18, 2024).

- c. The City will print and send the service line material notification letters to customers. The TCEQ has confirmed that the letters can be sent as a standalone letter, a bill insert, an email, or a hand-delivery to customers.
- d. FNI prepared a list of FAQs included in the Phase 2 compliance program report. FNI will send the City a Word Version of the FAQs for the City to use as a living document that will be edited by the City as required to meet their ongoing needs.
- e. A City employee or official will sign and submit the service line material notification certification form to the TCEQ by January 30, 2025.

C. Field Inspections to Identify Service Line Materials

- i. To meet the proposed LCRI requirements, FNI recommends aggressively reducing unknowns before 2028. This will lower the number of future replacements required and will help avoid future public notices for unknown material types, which may cause unnecessary public concern about non-lead service lines. FNI will contract field inspectors to support the City with additional inspections. FNI will coordinate with the field inspectors, set up an updated data collection application to be used during inspections, provide training and oversight for field inspectors, assist the inspectors with GIS support, and provide data QC for the inventory based on the field inspections.
- ii. Field Inspection Mobile Application
 - a. FNI will develop an updated mobile application using ESRI ArcGIS technology to support the field investigation efforts. The application will be hosted in the City's AGOL environment. The application will allow the field inspectors to document the meter location, service line material, and provide photos of each meter box inspected. The City is expected to provide FNI one (1) ArcGIS Online Creator License.
 - b. FNI will provide training on the application for City staff and other inspectors. The mobile application will require an ArcGIS Online Mobile Worker license for each user. The City will provide up to two (2) user accounts for the inspectors' use during this project, as well as licenses for any desired City users.
 - c. The updated mobile application will be directly connected through ArcGIS Online to the service line inventory web map described in Task B.ii. to allow data collected in the field to update the City's internal inventory, which will be used to update the public-facing inventory.

EXHIBIT A SCOPE OF SERVICES

iii. Field Inspections

- a. FNI will assist the City in planning for and conducting inspections at up to 2,500 connections. FNI will prioritize field inspections based on likelihood of lead and identifying as many unknowns as possible.
- b. FNI will provide the City with a map and written content (approximately two [2] letter-sized pages) for the City to use in public communication of the field inspections. The City will issue any public communication regarding inspections.
- c. FNI will host a pre-inspection meeting to review the goals, communication plans, and the workflows before inspections begin.
- d. FNI will perform inspections at up to 2,500 meter boxes to record observed SL materials. If materials cannot be located inside the meter box, the SL material will be inspected by a small dig within 12 inches of the meter box. This scope includes up to 500 small digs. Lead-identification methods such as scratch, magnet, and lead swab testing will be used for the field inspections. As part of the inspection process, dirt and sediment will be removed from the meter boxes and lines will be wiped clean to expose the material, as needed. Data will be recorded for each service line (e.g., size, material, condition), pictures will be taken, and site cleanup/restoration will be performed to return sites to their original condition.
- e. FNI will provide monthly updates regarding the progress of the inspections as well as periodic check-ins to review any issues or decisions regarding inspections.

iv. Inspection Data QC and Ongoing Inventory Support

- a. FNI will provide quality control support of new data added to the inventory from both the City's ongoing meter replacements and FNI's inspectors. FNI will review 100% of lead entries, a minimum of 15% of GRR entries, and 10% of the non-lead entries.

v. Field Inspections to Identify Service Line Materials – Deliverables

- a. An updated mobile application for field inspections.
- b. Written content for public communication of field inspections including a map and approximately two (2) letter-sized pages of text and figures. This information will be provided electronically.
- c. Monthly email updates detailing inspection progress.

vi. Field Inspections to Identify Service Line Materials – Assumptions

- a. The City will provide at least one (1) ESRI ArcGIS Online Creator License to develop the application.
- b. The City will provide up to two (2) ESRI ArcGIS Online Mobile Worker licenses for FNI's inspectors' use during this project as well as any user licenses for City staff.
- c. The City will issue any public communication regarding inspections.

EXHIBIT A SCOPE OF SERVICES

D. Updated Compliance Budget Based on Finalized LCRI

- i. FNI will review the finalized LCRI regulations and the City's most updated service line inventory to prepare an updated compliance plan and budget for the City to comply with LCRI requirements.
- ii. Data and Regulatory Information Review
 - a. After the LCRI is finalized, FNI will review the requirements of the final rule, attend up to two (2) public meetings to assist the City in responding to questions about the rule, and communicate with regulators to answer additional questions about the requirements for the City.
 - b. FNI will review City-specific information required to update the compliance plan including the schedule and goals for continued inspections before the 2027 LCRI deadline.
- iii. Updated Compliance Plan and Budget
 - a. FNI will develop an update to the City's compliance plan based on the final LCRI requirements. The plan will be in the form of a spreadsheet listing each major rule component broken into subtasks. For each subtask, there will be a task description, a schedule in the form of a start/end date, and an estimated budget.
 - b. This recommended plan will be discussed during the proposed project coordination meetings between the City and FNI. FNI will update the plan based on comments from the City and provide a draft of the LCRI Compliance Plan to the City for a final review. FNI will update the LCRI Compliance Plan based on one set of comments received on the draft and finalize the plan.
- iv. Updated Compliance Budget Based on Finalized LCRI – Deliverables
 - a. LCRI Compliance Plan in both Excel and pdf formats.

IV. TASK SUMMARY. SPECIAL SERVICES

A. TWDB Funding Application & Closing Support

- i. FNI will provide support to the City to develop and submit a full application and complete the closing process for TWDB funding. FNI will do the following to assist the City:
 - a. Participate in a pre-application conference with the TWDB and City Staff.
 - b. Participate in up to three (3) coordination calls with City Staff and others as needed assisting in the preparation of the application (e.g., City's Bond Counsel and Financial Advisor) to review content and assign action items.
 - c. Provide information needed to complete the application including the project description, maps, and the following engineering information – Preliminary Engineering Feasibility Report, Planning Information

EXHIBIT A SCOPE OF SERVICES

Form, project cost estimate budget, and information on social or environmental issues.

- d. Provide input and guidance during the closing process and assist with coordination between the City and the TWDB.
- ii. TWDB Funding Application & Closing Support Deliverables
 - a. Technical content to support development of the full application to the TWDB including the project description, maps, and the following engineering information – Preliminary Engineering Feasibility Report, Planning Information Form, project cost estimate budget, and information on social or environmental issues.

V. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

1. Field layouts or the furnishing of construction line and grade surveys.
2. Making property, boundary and right of way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
3. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the City.
4. Providing repairs of service lines found to be leaking or damaged as part of this Project.
5. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications except where identified in Exhibit A.
6. Preparing data and reports for assistance to the City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations thereof before any regulatory agency, court, arbitration panel or mediator.
7. Assisting the City in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such

EXHIBIT A SCOPE OF SERVICES

services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.

8. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
9. Design, contract modifications, studies, or analyses required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
10. Providing Basic or Special Services on an accelerated time schedule. The scope of this service includes cost for overtime wages of employees and consultants, inefficiencies in work sequence and printing or reproduction costs directly attributable to an accelerated time schedule directed by the City.
11. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

EXHIBIT B
PROJECT DESIGN BUDGET SUMMARY

I. Basic Services

A. Project Management and Coordination Meetings (Expected Completion: May 2025 – Est. Ten (10) Months from Notice to Proceed)	\$34,087.00
B. Initial Inventory Finalization and Submittal Support (Expected Completion: October 2024 – Est. Three (3) Months from Notice to Proceed)	\$10,687.00
C. Field Inspection to Identify Service Line Materials (Expected Completion: April 2025 – Est. Nine (9) Months from Notice to Proceed)	\$404,606.00
D. Updated Compliance Budget Based on Finalized LCRI (Expected Completion: May 2025 – Est. Ten (10) Months from Notice to Proceed)	\$7,264.00
<i>Total Basic Services (Lump Sum)</i>	<u>\$456,644.00</u>

II. Special Services

A. TWDB Funding Application & Closing Support (Expected Completion: May 2025 – Est. Ten (10) Months from Notice to Proceed)	\$23,008.00
<i>Total Authorized Special Services</i>	<u>\$23,008.00</u>
<i>Project Budget, Grand Total (Not-To-Exceed)</i>	<u>\$479,652.00</u>

EXHIBIT C
GUIDELINES FOR COMPUTER AIDED DESIGN AND DRAFTING (CADD)

1. Files shall done in DWG/DXF format.
2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83 Grid.
3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.
4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.
5. The file shall contain required features for the project type as detailed below:
 - a. Pre-Construction/As-Built Plans and/or Record Documents:
 - i. Layers from Final Plat Requirements as Applicable to Project Type.
 - ii. Water Utility Features.
 - iii. Sanitary Sewer Features.
 - iv. Storm Sewer Features.
6. Each required feature group should be provided as a separate layer within the file.
7. Layer names should be representative of the information contained in the layer.
8. Line work should be done per accepted industry norms.
9. Text should not be smaller than 0.08" on a full size sheet, and should be a font such as Simplex, Calibri, or Arial.

EXHIBIT D
CONSULTANT'S GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

- I. **CONSULTANT'S RESPONSIBILITY**. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment(s) for services; however, this shall not be City's sole and exclusive remedy for said over-payment.

II. **GUIDELINES FOR DIRECT EXPENSES**.

- A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

- B. **Supplies. Material. Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.
- C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- D. **In-House Reproduction** – Consultant shall make arrangements with City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as

EXHIBIT D
CONSULTANT'S GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

a prerequisite for payment, including the number or reproductions, the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

- E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of City's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.
- G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.
- H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of Consultant and/or Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.
- I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

EXHIBIT D
CONSULTANT'S GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

- A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

- A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by City's Project Manager.
- B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

- A. All policies shall name the City of Sherman, its officers, agents, representatives and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance and professional liability insurance.
- B. Such policies shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail.
- C. Such policies shall provide for a waiver of subrogation against City for injuries, including death, property damage or any other loss to the extent the same is covered by the proceeds of the insurance.

II. INSURANCE COMPANY QUALIFICATION – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. CERTIFICATE OF INSURANCE – A Certificate of Insurance and policy endorsement(s) evidencing the required insurance shall be submitted prior to execution of the Agreement. If the Agreement is renewed or extended by City, a Certificate of Insurance and policy endorsement(s) shall also be provided to City prior to the date the Agreement is renewed or extended.

IV. INSURANCE CHECKLIST – "X" means that the following coverage(s) is required for this Agreement.

Coverage Required		Limits
<u> X </u>	1. Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
<u> X </u>	2. General Liability	▪ Minimum \$1,000,000.00 each occurrence;
		▪ Minimum \$2,000,000.00 in the aggregate
<u> </u>	3. XCU Coverage	▪ Minimum \$1,000,000.00 each occurrence;
		▪ Minimum \$2,000,000.00 in the aggregate

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

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- | | | |
|---------------|--|--|
| <u> X </u> | 4. Professional Liability | <ul style="list-style-type: none">▪ Minimum \$1,000,000.00 each claim;▪ Minimum \$2,000,000.00 in the aggregate |
| <u> X </u> | 5. Umbrella Coverage of Excess Liability Coverage | <ul style="list-style-type: none">▪ An amount of \$2,000,000.00▪ Minimum \$2,000,000.00 in the aggregate |
| <u> X </u> | 6. City and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess. | |
| <u> X </u> | 7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name the City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance. | |
| <u> X </u> | 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates. | |
| <u> X </u> | 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s). | |
| <u> X </u> | 10. The Certificate of Insurance must state the project title and bid number. | |
| <u> </u> | 11. Other Insurance Requirements (State Below): | |

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

Freese and Nichols, Inc.

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

N/A

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

Reset

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

Reset

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 Stephanie Stephenson Digitally signed by Stephanie Stephenson
Date: 2024.06.11 09:36:04 -05'00'

Signature of vendor doing business with the governmental entity

06/11/2024

Date



City Council Regular Meeting

Agenda Item No. E.6.

Meeting Date: 7/1/2024

Prepared By: Tom Pruitt, Utility Engineer

Approved By: Teri Fine, Assistant to the City Manager

Caption:

*** RESOLUTION NO. 7332**

Approving the Greater Texoma Utility Authority's Intention to Award the Sherman WTP Flocculation and Sedimentation Improvements Project to Red River Construction Company

Issue:

To consider approving the Greater Texoma Utility Authority's Intention to Award the Sherman WTP Flocculation and Sedimentation Improvements Project to Red River Construction Company.

Background:

The original conventional Water Treatment Plant has a Flocculation and Sedimentation Basin as part of its treatment process. This part of the system has exceeded its design life expectancy and needs to have improvements made to it to keep the conventional plant in operation.

This construction contract will install a new Flocculation system and new weir collection troughs.

One bidder submitted a bid on May 24, 2024, who has been proven on many other City of Sherman projects to be a competent and timely contractor. The proposed equipment meets the city's satisfaction as well.

Origination:

Engineering

Financial Consideration:

Funding in the amount of \$1,822,700.00 will be provided through the GTUA Open Market bonds.

Staff Recommendation:

It is recommended that the City Council approve GTUA's intention to Award the Sherman WTP Flocculation and Sedimentation Improvement Project to Red River Construction Company

Alternatives:

As may be directed by the City Council

Attachments:

1. Resolution No. 7332
2. Unsigned Agreement
3. Bid Tabulation
4. Letter of Recommendation
5. Site Map

RESOLUTION NO. 7332

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S INTENTION TO AWARD THE SHERMAN WTP FLOCCULATION AND SEDIMENTATION IMPROVEMENTS PROJECT TO RED RIVER CONSTRUCTION COMPANY; 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 of Sherman hereby approves the Greater Texoma Utility Authority's intention to award the Sherman WTP Flocculation and Sedimentation Improvements Project to Red River Construction Company in the amount of One Million Eight Hundred Twenty-Two Thousand Seven Hundred Dollars and Zero Cents (\$1,822,700.00).

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 17th day of June 2024.

CITY OF SHERMAN, TEXAS

BY:

DAVID PLYLER, MAYOR

ATTEST:

BY:

LINDA ASHBY, CITY CLERK

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

BY:

RYAN D. PITTMAN, CITY ATTORNEY

AGREEMENT

THIS AGREEMENT is by and between the GREATER TEXOMA UTILITY AUTHORITY ("GTUA"), and _____, a _____ corporation (the "CONTRACTOR"). GTUA and CONTRACTOR are sometimes referred to collectively as the "parties" or individually as a "party."

GTUA and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Article 1. **WORK**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents (hereinafter defined) and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide the services and deliverables as specified by the terms and conditions of the Contract Documents (collectively, the "Work"). The Work is generally described as follows:

Sherman WTP Flocculation and Sedimentation Improvements

Article 2. **ENGINEER**

The Project has been designed by Garver, Frisco, Texas, who is hereinafter called ENGINEER and who is to act as GTUA'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. **CONTRACT TIME**

- 3.1 The Work must be substantially completed and ready for final payment within 210 calendar days from the date when the Contract Time commences to run, as provided in the General Conditions.
- 3.2 Liquidated Damages. GTUA and CONTRACTOR recognize that time is of the essence of this Agreement and that GTUA will suffer financial loss and actual damages if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss and damages suffered by GTUA if the Work is not completed on time. The exact amount of such loss and damages will be difficult to ascertain. Accordingly, instead of requiring any such proof, GTUA and CONTRACTOR agree that CONTRACTOR shall pay GTUA \$ 420.00 for each calendar day in which the Work is not completed, not as a penalty but as liquidated damages for the loss and damages that would be suffered by GTUA as a result of delay for each and every calendar day that the CONTRACTOR shall have failed to have completed the Work as required herein.

Article 4. **CONTRACT PRICE**

GTUA shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

At the unit prices shown on the Unit Price Bid Schedule included in the Contract Documents.

Article 5. **PAYMENT PROCEDURES**

CONTRACTOR shall submit a Application for Payment in accordance with the General Conditions. Applications for Payment will be processed by GTUA, as provided in the Special Provisions.

CONTRACTOR and GTUA acknowledge and agree that the continuation of this Agreement after the close of any given fiscal year of GTUA, which fiscal year ends on September 30th of each year, shall be subject to GTUA Board approval. In the event that the GTUA Board does not approve the appropriation of funds for this Agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated, and the parties shall have no further obligations hereunder, except that GTUA shall be obligated to pay monies owed CONTRACTOR for Services it has provided pursuant to this Agreement through the end of that fiscal year provided that CONTRACTOR is not in breach of this Agreement.

Article 6. **INTEREST**

If the contract amount of this Agreement is less than \$5,000,000, no interest will be paid to the CONTRACTOR on retained money. When the contract amount exceeds \$5,000,000, no interest will be paid unless required by law.

Article 7. **CONTRACTOR'S REPRESENTATIONS**

In order to induce GTUA to enter into this Agreement, CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that, in any manner, may affect cost, progress, performance or furnishing of the Work.
- 7.2 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 7.3 CONTRACTOR has reviewed and fully agrees to the limitation of liability provisions included in the Special Provisions.
- 7.4 CONTRACTOR certifies that they are eligible to be awarded government contracts. CONTRACTOR also certifies that any agreement entered into with a subcontractor will contain a clause stating that the subcontractor is eligible to be awarded government contracts.

Article 8. **CONTRACT DOCUMENTS**

The "Contract Documents," which comprise the entire agreement between GTUA and CONTRACTOR concerning the Work, consist of the following:

- 8.1 This Agreement
- 8.2 Solicitation for Bids
- 8.3 Instructions to Respondents
- 8.4 Certifications Required by Texas Law
- 8.5 Suspension and Debarment Certification
- 8.6 Bid Bond and Bid Bond POA
- 8.7 Statement of Respondent's Qualifications
- 8.8 Insurance Requirement Affidavit
- 8.9 Bid Submittal
- 8.10 Resolution of Award

- 8.11 Form 1295, Certificate of Interested Parties
- 8.12 Certificate of Insurance
- 8.13 Performance Bond and POA
- 8.14 Payment Bond and POA
- 8.15 Notice to Proceed
- 8.16 Closeout Documents
- 8.17 Special Provisions
- 8.18 Technical Specification prepared or issued by the City of Sherman dated_____.
- 8.19 Drawings, consisting of sheets numbered ____through ____ , inclusive with each sheet bearing the following general title: City of Sherman, _____
- 8.20 Addenda numbers__ to __, inclusive.
- 8.22 The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

All written Amendments, change orders, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the Special Provisions. The parties understand and agree that deviations or modifications to the scope of Work described in the Contract Documents, in the form of one or more written Contingency Change Allowance or also change orders, may be authorized from time to time by GTUA ("Change Orders"). "Extra" work, "claims" invoiced as "extra" work or "claims" which have not been issued as a duly executed, written Change Orders by the GTUA Manager or his designee will not be authorized for payment and/or shall not become part of this Agreement. A duly executed, written Change Order shall be preceded by the GTUA's authorization for the GTUA Manager to execute said Change Order. CONTRACTOR agrees that GTUA'S project managers are authorized to issue Contingency Allowance Authorization but GTUA'S project managers, superintendents and/or inspectors not authorized to issue verbal or written Change Orders.

There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented, as outlined in this Agreement.

Article 9. **INDEMNITY**

CONTRACTOR HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS **GTUA**, THE CITY OF SHERMAN AND THEIR RESPECTIVE BOARD OR CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "**GTUA**" FOR PURPOSES OF THIS SECTION) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS SECTION), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH GOODS AND/OR SERVICES PROVIDED BY **CONTRACTOR**, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM **CONTRACTOR** IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "**CONTRACTOR**" FOR PURPOSES OF THIS SECTION) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF **CONTRACTOR** IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OF **GTUA** (COLLECTIVELY, "**CLAIMS**"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "**CLAIMS**" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST **GTUA** BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN **CONTRACTOR** AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH **CONTRACTOR**, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL

ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

IN ITS SOLE DISCRETION, GTUA SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY GTUA, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY GTUA IN WRITING. GTUA RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, GTUA IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY GTUA IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND GTUA OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY GTUA PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN GTUA-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF GTUA'S WRITTEN NOTICE THAT GTUA IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, GTUA SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY GTUA.

THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

Article 10. **LIABILITY**

To the fullest extent permitted by law, CONTRACTOR shall be fully and solely responsible and liable for its own acts and omissions, including those of its officers, agents, representatives, employees, subcontractors, licensees, invitees and all other parties performing services for or on behalf of CONTRACTOR under this Agreement, and for any and all damage to CONTRACTOR's equipment and other property. GTUA and the City of Sherman assume no such responsibility or liability. GTUA and the City of Sherman shall have no such responsibility or liability to either CONTRACTOR or its officers, agents, representatives, employees, subcontractors, licensees, invitees or other persons.

Article 11. **TERMINATION**

GTUA or the City of Sherman is entitled to terminate this Agreement at any time for any reason or for no reason by giving CONTRACTOR at least thirty (30) days' prior written notice of the termination date.

GTUA or the City of Sherman is entitled to terminate this Agreement immediately on breach of any term or provision of the Contract Documents by CONTRACTOR. If at any time during the term of this Agreement, CONTRACTOR shall fail to commence the work in accordance with the provisions of the Contract Documents or fail to diligently perform the work in an efficient, timely and careful manner and in strict accordance with the provisions of the Contract Documents, then GTUA or the City of Sherman shall have the right to terminate this Agreement. Any such act by GTUA or the City of Sherman shall not be deemed a waiver of any other right or remedy of GTUA or the City of Sherman.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Article 12. **MISCELLANEOUS**

12.1 Terms used in the Agreement will have the meanings indicated in the Special Provisions.

12.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due, may not be assigned without such

consent (except to the extent that the effect of this restriction may be limited by law), 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 the Contract Documents.

- 12.3 CONTRACTOR acknowledges and agrees that the existence of a prohibited interest during the term of this Agreement will render this Agreement voidable. CONTRACTOR further acknowledges and agrees that it also is aware of, and will abide by, the vendor disclosure requirements set forth in Chapter 176 of the Texas Local Government Code, as amended.
- 12.4 Each party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing their signatures hereto, warrant and represent that they have the authority to bind their respective parties as duly authorized representatives thereof.
- 12.5 The parties acknowledge and agree that, in executing and performing this Agreement, GTUA has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it or the City of Sherman against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.
- 12.6 In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, 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 as if such invalid, illegal, void, unenforceable or unlawful provision had never been included in this Agreement.
- 12.7 If either party files any action or brings any proceeding against the other arising from this Agreement, then as between GTUA and CONTRACTOR, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 12.8 The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 12.9 Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.10 CONTRACTOR covenants and agrees that CONTRACTOR is an independent contractor and not an officer, agent, servant or employee of GTUA; that CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing the same; that the doctrine of respondent superior shall not apply as between GTUA and CONTRACTOR, its officers, agents, employees, contractors, subcontractors and consultants; and that nothing herein shall be construed as creating a partnership or joint enterprise between GTUA and CONTRACTOR.
- 12.11 GTUA and CONTRACTOR agree the City of Sherman is an intended third-party beneficiary of CONTRACTOR's obligations under the Contract Documents and shall be entitled to enforce such obligations as if it were a party hereto and may seek and obtain any and all available remedies against CONTRACTOR in the event

CONTRACTOR breaches any term or provision of the Contract Documents, it being the intent of GTUA and CONTRACTOR to confer direct benefits on the City of Sherman under the Contract Documents. In addition, GTUA and CONTRACTOR agree that the City of Sherman is entitled to exercise all rights of GTUA under the Contract Documents.

- 12.12 This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- 12.13 This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 12.14 GTUA and CONTRACTOR each binds itself, its partners, successors, assign, and legal representatives to the other party hereto, its partners, successors, assign and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

Article 13. **OTHER PROVISIONS**

None.

IN WITNESS WHEREOF, GTUA and CONTRACTOR have signed this Agreement in multiple copies. One counterpart each has been delivered to GTUA, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by GTUA and CONTRACTOR or by ENGINEER on their behalf. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement (the "Effective Date").

GTUA: CONTRACTOR: _____

By: _____

By: _____

Date: _____

Date: _____

(Corporate Seal)

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

CITY OF SHERMAN
PROJECT NAME: SHERMAN WTP - FLOCCULATION AND SEDIMENTATION IMPROVEMENTS
GARVER PROJECT NO: 2400730
BID PROPOSAL FORM: ORIGINAL
BIDS RECEIVED: MAY 24, 2024 2:30 PM

Red River Construction Co.

ITEM	QTY	UNITS	DESCRIPTION	UNIT PRICE	TOTAL AMOUNT
1	1	LS	All Work as defined in the Contract Documents, except those listed separately below	\$1,662,900.00	\$1,662,900.00
2	1	LS	Mobilization and demobilization	\$59,800.00	\$59,800.00
8	1	LS	Contingency Allowance 1 - WCDs	\$100,000.00	\$100,000.00
TOTAL BASE BID AMOUNTS					\$1,822,700.00



3000 Internet Blvd
Suite 400
Frisco, TX 75034
TEL 972.377.7480
FAX 972.377.8380
www.GarverUSA.com

May 29th, 2024

City of Sherman Engineering
Attn: Tom Pruitt, PE
220 W Mulberry St.
Sherman, TX 75090

Greater Texoma Utility Authority
Attn: Paul Sigle and Nichole Murphy
5100 Airport Dr.
Denison, TX 75020

Re: City of Sherman
WTP Flocculation and Sedimentation Improvements
Recommendation of Award

To whom it may concern:

Bids were received for the "Sherman WTP Flocculation and Sedimentation Improvements" project at the Sherman City Hall at 2:30 PM on May 24th, 2024. A total of one bidder submitted a bid on the project. A summary of the bid results can be found in the attached bid tabulation.

Red River Construction Company submitted the low bid for the project in the amount of \$1,822,700. This bid includes the Owner's Contingency Allowance as specified at \$100,000.

We believe that the bid submitted by Red River Construction Co. represents a good value for the City of Sherman. We recommend that the construction contract for the "Sherman WTP Flocculation and Sedimentation Improvements" be awarded to Red River Construction Co. in the amount of \$1,822,700.

Please call me if you have any questions.

Sincerely,
GARVER, LLC

Lance Klement, P.E.
Senior Project Manager

Attachments: Bid Tabulation

CITY OF SHERMAN
PROJECT NAME: SHERMAN WTP - FLOCCULATION AND SEDIMENTATION IMPROVEMENTS
GARVER PROJECT NO: 2400730
BID PROPOSAL FORM: ORIGINAL
BIDS RECEIVED: MAY 24, 2024 2:30 PM

Red River Construction Co.

ITEM	QTY	UNITS	DESCRIPTION	UNIT PRICE	TOTAL AMOUNT
1	1	LS	All Work as defined in the Contract Documents, except those listed separately below	\$1,662,900.00	\$1,662,900.00
2	1	LS	Mobilization and demobilization	\$59,800.00	\$59,800.00
8	1	LS	Contingency Allowance 1 - WCDs	\$100,000.00	\$100,000.00
TOTAL BASE BID AMOUNTS					\$1,822,700.00



Water Treatment
Flocculation / Sedimentation
Basin Rehab

Esri Community Maps Contributor
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Sherman
CLASSIC TOWN. BROAD HORIZON.



City Council Regular Meeting

Agenda Item No. E.7.

Meeting Date: 7/1/2024

Prepared By: Billy Hartsfield, Fire Chief

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 7333**

Authorizing the Purchase of a Specialty UTV Ambulance from Farrwest Specialty Vehicles for the Sherman Fire Department through BuyBoard

Issue:

Fire Department is replacing an aged and under capacity UTV Ambulance with a new unit.

Background:

The original UTV medical unit is 16 years old and does not meet the utilization criteria for usage.

Origination:

An aged UTV medical unit is undeserving Sherman Fire-Rescue.

Financial Consideration:

Total cost of \$77,907.75 paid for out of the 2024 budget amount of Ambulances

Staff Recommendation:

Fire Staff recommends approval

Alternatives:

N/A

Attachments:

1. Resolution No. 7333
2. FARRWEST_SPECIALTY_VEHICLES

RESOLUTION NO. 7333

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A SPECIALTY UTV AMBULANCE FROM FARRWEST SPECIALTY VEHICLES FOR THE SHERMAN FIRE DEPARTMENT THROUGH 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 a specialty UTV ambulance from Farrwest Specialty Vehicles for the Sherman Fire Department at a total price of Seventy-Seven Thousand Nine Hundred Seven dollars and Seventy-Five cents (\$77,907.75). Any agreements related to the purchase must be approved by the City Attorney

SECTION 2. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TX on this the 1st day of July 2024.

CITY OF SHERMAN, TEXAS

**BY: _____
DAVID PLYLER, MAYOR**

ATTEST:

**BY: _____
LINDA ASHBY, CITY CLERK**

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

**BY: _____
RYAN D. PITTMAN, CITY ATTORNEY**



FARRWEST

SPECIALTY VEHICLES

108 COMMERCIAL PLACE
SUITE 206
SCHERTZ, TX 78154
(210)566-1857

Estimate

Date	Estimate #
3/8/2024	2324

Name / Address	Ship To
SHERMAN FIRE DEPARTMENT CHIEF CHAD MARTIN 318 S TRAVIS SHERMAN, TX 75090	SHERMAN FIRE DEPARTMENT CHIEF CHAD MARTIN 318 S TRAVIS SHERMAN, TX 75090

Requested By	P.O. No.	Terms	Project
		Net 30	

Item	Description	Qty	Rate	Total
ATMU-HVACFL-6X-24	2024 FSV ALL-TERRAIN MEDICAL UNIT (ATMU) - 6x6 CAN-AM CHASSIS - FULL HVAC CAB AND EMS BOX - A/C WITH ONAN 2800i GENERATOR - SEE ATTACHED FOR DETAILED SPECS	1	77,907.75	77,907.75
	H-GAC PURCHASING CONTRACT; EP11-20 BUYBOARD PURCHASING CONTRACT; 703-23			
	QUOTE VALID FOR 120 DAYS FROM ESTIMATE DATE			

PRICES VALID FOR 30 DAYS BUT ARE SUBJECT TO CHANGE DUE TO SUPPLY CHAIN CHALLENGES. VERIFY PRICING BEFORE ISSUING A PO. SURCHARGES MAY APPLY. ***** DISCLAIMER ***** LABOR PRICING IS ONLY GOOD FOR ALL PRODUCTS AND SERVICES INCLUDED IN THIS QUOTE.	Subtotal	\$77,907.75
	Sales Tax (0.0%)	\$0.00
	Total	\$77,907.75



City Council Regular Meeting

Agenda Item No. F.1.

Meeting Date: 7/1/2024

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

Other Business

Consider Scheduling a Joint Meeting of the City Council and the Sherman Economic Development Corporation Board of Directors for 12:00p.m. on Tuesday, September 10, 2024, to Review and Approve SEDCO's Annual Budget and Work Plan

Issue:

To consider scheduling a joint meeting of the City Council and the Sherman Economic Development Corporation (SEDCO) Board of Directors for 12:00 p.m. on Tuesday, September 10, 2024, to review and approve SEDCO's annual budget and work plan

Background:

The SEDCO Bylaws require an annual meeting of their Board of Directors with the City Council. Topics for consideration are (1) SEDCO's 2023-2024 Program of Work Results and (2) SEDCO's Proposed 2024-2025 Program of Work and Budget.

Origination:

SEDCO Board Chairman Janie Bates
SEDCO President Kent Sharp
City Manager Robby Hefton

Financial Consideration:

Annual budget for SEDCO after review and consideration by the City Council

Staff Recommendation:

It is recommended that the City Council schedule a joint meeting with the SEDCO Board of Directors for 12:00 p.m. on Tuesday, September 10th in the City Council Chambers.

Alternatives:

An alternate date, if needed, is Thursday, September 12th.

Attachments:

1. Joint Meeting Letter Request 5-29-24



SHERMAN

ECONOMIC DEVELOPMENT CORPORATION

May 29, 2024

Mr. David Plyler
Mayor, City of Sherman
220 W. Mulberry St.
Sherman, Texas 75090

Mayor Plyler:

The Bylaws of the Sherman Economic Development Corporation (SEDCO) require the organization to present an annual program of work and budget to the Sherman City Council.

SEDCO requests a joint meeting of the SEDCO Board of Directors and Sherman City Council to be held at 12:00 p.m. on either Tuesday, September 10th or Thursday, September 12th in the Council Chambers at City Hall or at an alternative meeting location if the Council Chambers are not available.

At the meeting, SEDCO will present the results of the 2023-2024 Program of Work, the proposed 2024-2025 Program of Work, and the proposed 2024-2025 Budget.

Thank you for your consideration of this request.

Best Regards,

Kent Sharp
SEDCO President



City Council Regular Meeting

Agenda Item No. F.2.

Meeting Date: 7/1/2024

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Consider and act on Petition from Jon L. Brown and Lovanda L. Brown related to approximately 1.3 acres of land located in the Dripping Springs Addition, Lot 2, as recorded in Volume 3268, Page 285 of the Real Property Records, Grayson County, Texas, located within the City of Sherman's Extraterritorial Jurisdiction

Issue:

Consider and act on petition from Jon L. Brown and Lovanda L. Brown related to approximately 1.3 acres of land located in the Dripping Springs Addition, Lot 2, as recorded in Volume 3268, Page 285 of the Real Property Records, Grayson County, Texas, located within the City of Sherman's Extraterritorial Jurisdiction

Background:

The City received a petition from Jon L. Brown and Lovanda L. Brown on June 5, 2024. The petition purports to seek a "release" of approximately 1.3 acres of land located in the Dripping Springs Addition, Lot 2, as recorded in Volume 3268, Page 285 of the Real Property Records, Grayson County, Texas, located within the City of Sherman's Extraterritorial Jurisdiction pursuant to Chapter 42 of the Texas local Government Code.

Origination:

Petition Submitted by Jon L. Brown and Lovanda L. Brown

Financial Consideration:

Staff Recommendation:

Recommend denying the petition submitted by Jon L. Brown and Lovanda L. Brown for the release of property from the City's extraterritorial jurisdiction because Senate Bill 2038, Local Government Codes Sections 42.104 and Section 42.105, are unconstitutional delegations of legislative authority, and are in direct and irreconcilable conflict with Local Government Code Section 42.023, and the City has not consented and does not consent to release of the property from its ETJ or any reduction of the City's ETJ. City Council has denied all other such petitions received since this legislation became effective in September 2023.

Alternatives:

Attachments:

1. Petition for Release from Extraterritorial Jurisdiction
2. Location Map

The Law Office of

MUNSON, MUNSON, CARDWELL, TILLET & BROWN

A Texas Professional Corporation
Attorneys and Counselors at Law

William M. Stevens
A Texas Licensed Attorney *
(903) 893-8161
(903) 893-1345 fax

123 S. Travis Street
Sherman, Texas 75090

June 3, 2024



by US Mail First Class

Pam Williams
City Secretary
220 W Mulberry St.
Sherman, Texas 75090

Re: Dripping Springs Road, Sherman, Texas
GCAD Parcel 446448
Petition by Landowners for Release from Extraterritorial Jurisdiction

Dear City Secretary,

Please file the enclosed Petition by Landowners for Release from Extraterritorial Jurisdiction.

Please return a time stamped copy of the Petition by Landowners for Release from Extraterritorial Jurisdiction.

Please present the petition to the City Council for consideration.

Thank you for your assistance. If you have any questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

William M. Stevens

WMS/lma
Enc: Petition by Landowners for Release from ETJ for 446448.
Cc: Client
file: Z244f

*Admitted to practice law in The State of Texas; DOJ EOIR Immigration Courts; The US Northern, Eastern, and Southern District Courts of Texas; and The US 5th Circuit Court of Appeals

**PETITION BY LANDOWNERS FOR RELEASE FROM
EXTRATERRITORIAL JURISDICTION**

TO THE MAYOR OF THE GOVERNING BODY OF SHERMAN, TEXAS:

Pursuant to Texas Local Government Code Sections 42.102 et seq., the undersigned owners petition your honorable Body for the release of land located in the extraterritorial jurisdiction of the City of Sherman, Texas.

This request includes the following property of approximately 1.3 acres of land, consisting of portions of GCAD Property ID 446448 to the full extent that such Property is currently within the ETJ of the City of Sherman, Texas.

Said property is located on

Dripping Springs Road, Sherman, Texas

The property is listed in Grayson County Appraisal District and described as

G-0789 MCCLENIHAN JOHN A-G0789, ACRES 32.871

and more particularly described as:

Lot 2, a 1.3 acre parcel, being part of a 70 acre tract of land described in the ded recorded in Volume 3268, Page 285, of Grayson County Official Public Records.

The property is further described graphically and by meets and bounds in the attached January 25, 2023 survey.

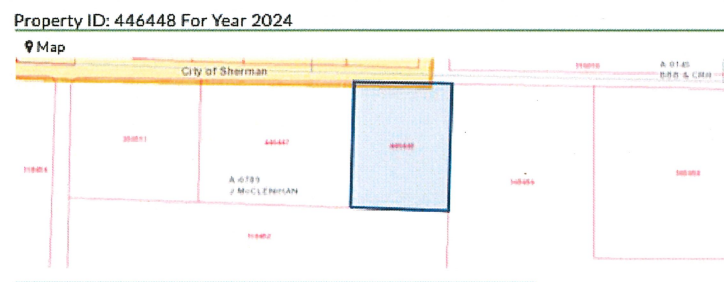
The undersigned certify that the following required information concerning the land and its inhabitants is reasonably accurate and assumes responsibility for the completion of said information prior to scheduled action by the City.

This petition is initiated by a majority in value of the holders of title of the land in the area, being each and every one of the landowners.

0 dwelling units are located within the area requested for release.

The population of the area in request is 0 in total, of which 0 are registered voters.

No part of the area is designated as an industrial district under Local Government Code § 42.044



Petition Signatories
per Election Code § 277.002

GCAD Parcel IDs 446448



Jon L. Brown

1022 Brown Road, Sherman, Texas
Residence Address

January 1, 1958
Date of Birth or Voter ID

5/30/24
Date Signed



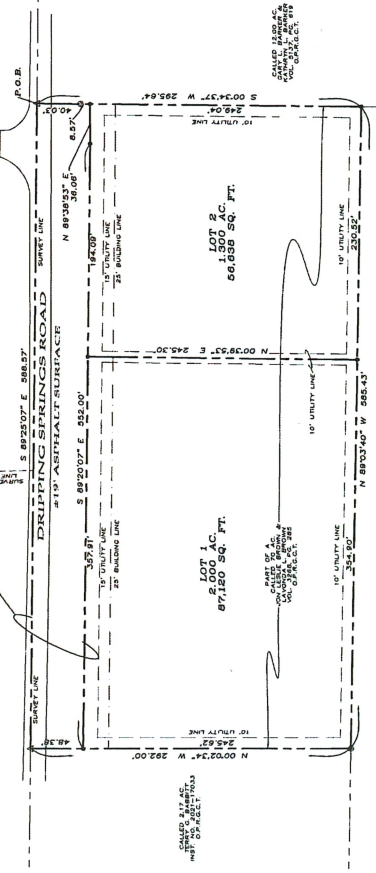
Lavonda L. Brown

1022 Brown Road, Sherman, Texas
Residence Address

July 8, 1960
Date of Birth or Voter ID

5-30-24
Date Signed

JAMES B. SHANNON
ABSTRACT NO. 1065
RIGHT-OF-WAY DEDICATION
(45' FROM THE CENTERLINE OF ROAD)
B.B. & B. C. R. NO. 145
SURVEY



JOHN V. SHERMAN SURVEY

GENERAL NOTES -
1. The Survey is to be made by a Licensed Surveyor.
2. The Survey is to be made by a Licensed Surveyor.
3. The Survey is to be made by a Licensed Surveyor.
4. The Survey is to be made by a Licensed Surveyor.
5. The Survey is to be made by a Licensed Surveyor.
6. The Survey is to be made by a Licensed Surveyor.
7. The Survey is to be made by a Licensed Surveyor.
8. The Survey is to be made by a Licensed Surveyor.
9. The Survey is to be made by a Licensed Surveyor.
10. The Survey is to be made by a Licensed Surveyor.

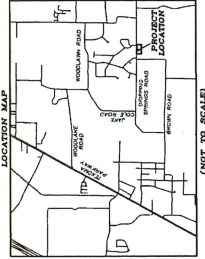
FINAL PLAT
BROWN'S DRIPPING
SPRINGS ADDITION
Part of a Called 70 acre tract of land
Described in Vol. 3268, Pg. 285, O.P.R.G.C.T.
Being a part of the John McClanahan Survey,
Abstract Number 789,
Being in the ETJ of City of Sherman, Grayson County, Texas.
Containing 3.959 acres of land

STATE OF TEXAS
COUNTY OF GRAYSON
CITY OF SHERMAN
I, the undersigned, being a duly qualified Surveyor in and for said County, do hereby certify that the foregoing is a true and correct copy of the original survey as the same appears in my records, and that the same has been duly recorded in my office.

GRAPHIC SCALE
1 inch = 60 feet
10-26-2022

DRIPPING SPRINGS ADDITION
JOHN V. SHERMAN SURVEY
10-26-2022

3404 INTERURBAN ROAD DENSON, TEXAS 75021 (937)465-2151



(NOT TO SCALE)

OWNERS DEDICATION

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being a duly qualified Surveyor in and for said County, do hereby certify that the foregoing is a true and correct copy of the original survey as the same appears in my records, and that the same has been duly recorded in my office.

WITNESS MY HAND AND SEAL OF OFFICE this 10th day of May, 2023.

STATE OF TEXAS

COUNTY OF GRAYSON

CITY OF SHERMAN

I, the undersigned, being a duly qualified Surveyor in and for said County, do hereby certify that the foregoing is a true and correct copy of the original survey as the same appears in my records, and that the same has been duly recorded in my office.

WITNESS MY HAND AND SEAL OF OFFICE this 10th day of May, 2023.

STATE OF TEXAS

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STATE OF TEXAS

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COUNTY OF GRAYSON

CITY OF SHERMAN

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STATE OF TEXAS

COUNTY OF GRAYSON

CITY OF SHERMAN

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STATE OF TEXAS

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STATE OF TEXAS

COUNTY OF GRAYSON

CITY OF SHERMAN

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WITNESS MY HAND AND SEAL OF OFFICE this 10th day of May, 2023.

STATE OF TEXAS

COUNTY OF GRAYSON

CITY OF SHERMAN

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WITNESS MY HAND AND SEAL OF OFFICE this 10th day of May, 2023.

STATE OF TEXAS

COUNTY OF GRAYSON

CITY OF SHERMAN

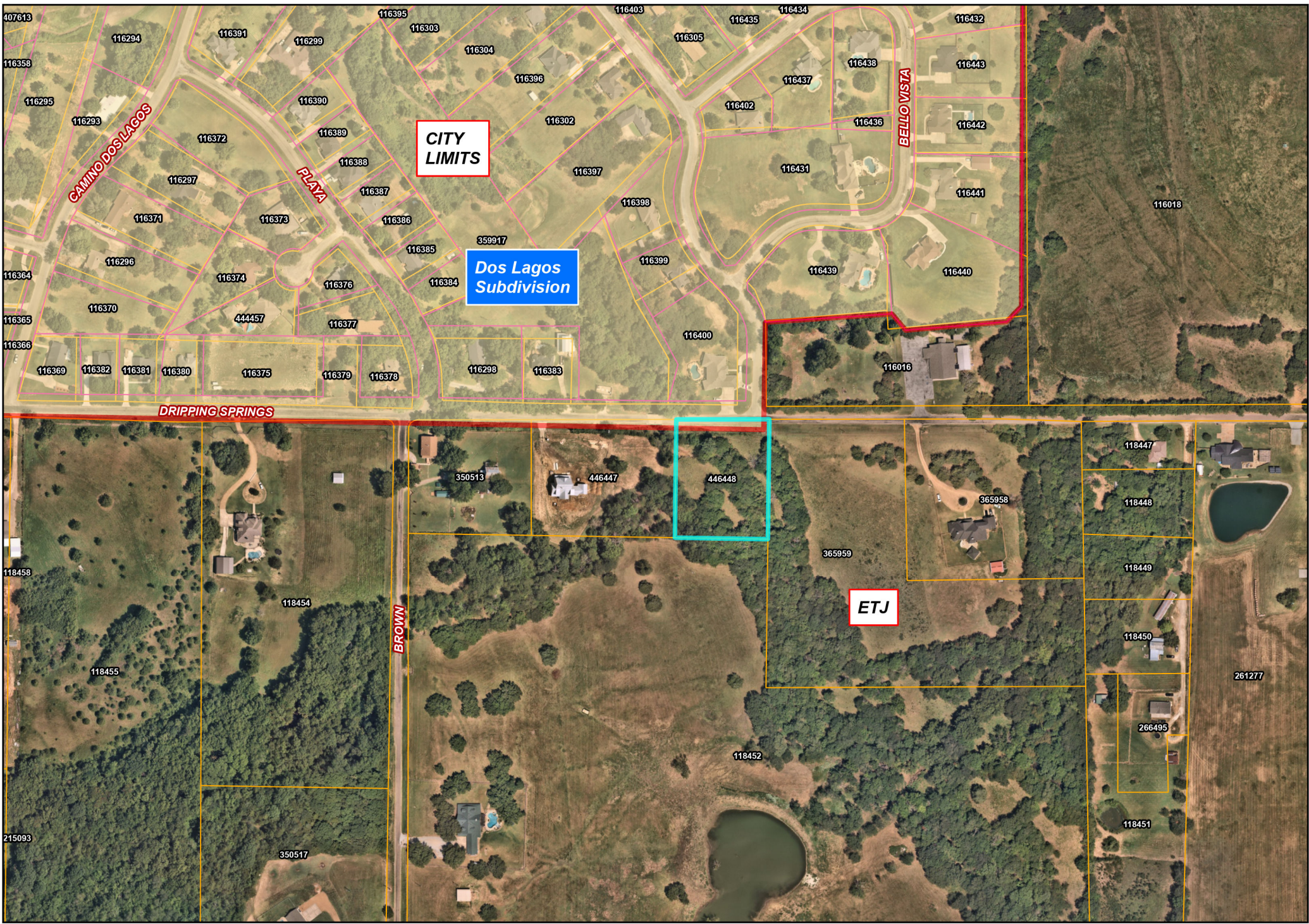
I, the undersigned, being a duly qualified Surveyor in and for said County, do hereby certify that the foregoing is a true and correct copy of the original survey as the same appears in my records, and that the same has been duly recorded in my office.

WITNESS MY HAND AND SEAL OF OFFICE this 10th day of May, 2023.

STATE OF TEXAS

COUNTY OF GRAYSON

CITY OF SHERMAN





City Council Regular Meeting

Agenda Item No. F.3.

Meeting Date: 7/1/2024

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Teri Fine, Assistant to the City Manager

Caption:

Other Business

Consider and act on a Petition from Benjamin M. Crouse and Sarah M. Crouse related to approximately 8 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 517, Page 619, of the Grayson County Official Public Records and being that same tract conveyed as record in Document Number 2024-2259 of the Official Public Records, Grayson County, Texas located within the City of Sherman's Extraterritorial Jurisdiction

Issue:

Consider and act on a Petition from Benjamin M. Crouse and Sarah M. Crouse related to approximately 8 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 517, Page 619, of the Grayson County Official Public Records and being that same tract conveyed as record in Document Number 2024-2259 of the Official Public Records, Grayson County, Texas located within the City of Sherman's Extraterritorial Jurisdiction

Background:

The City received a petition from Benjamin M. Crouse and Sarah M. Crouse on June 10, 2024. The petition purports to seek a "release" of approximately 8 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 517, Page 619, of the Grayson County Official Public Records, Grayson County, Texas from the City's Extraterritorial Jurisdiction pursuant to Chapter 42 of the Texas local Government Code.

Origination:

Petition Submitted by Benjamin M. Crouse and Sarah M. Crouse

Financial Consideration:

Staff Recommendation:

Recommend denying the petition submitted by Benjamin M. Crouse and Sarah M. Crouse from the release of property from the City's extraterritorial jurisdiction because Senate Bill 2038, Local Government Codes Sections 42.104 and Section 42.105, are unconstitutional delegations of legislative authority, and are in direct and irreconcilable conflict with Local Government Code Section 42.023, and the City has not consented and does not consent to release of the property from its ETJ or any reduction of the City's ETJ. City Council has denied all other such petitions received since this legislation became effective in September 2023

Alternatives:

Attachments:

1. Dripping Springs Road - Parcel #365959 - June 2024
2. Location Map

The Law Office of

MUNSON, MUNSON, CARDWELL, TILLET & BROWN

A Texas Professional Corporation
Attorneys and Counselors at Law

William M. Stevens
A Texas Licensed Attorney *
(903) 893-8161
(903) 893-1345 fax

123 S. Travis Street
Sherman, Texas 75090

June 7, 2024



by US Mail First Class

Pam Williams
City Secretary
220 W Mulberry St.
Sherman, Texas 75090

Re: Dripping Springs Road in Sherman, Texas
GCAD Parcel 365959
Petition by Landowners for Release from Extraterritorial Jurisdiction

Dear City Secretary,

Please file the enclosed Petition by Landowners for Release from Extraterritorial Jurisdiction.

Please return a time stamped copy of the Petition by Landowners for Release from Extraterritorial Jurisdiction.

Please present the petition to the City Council for consideration.

Thank you for your assistance. If you have any questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

William M. Stevens

WMS/lma
Enc: Petition by Landowners for Release from ETJ for 365959.
Cc: Client
file: Z244f

*Admitted to practice law in The State of Texas; DOJ EOIR Immigration Courts; The US Northern, Eastern, and Southern District Courts of Texas; and The US 5th Circuit Court of Appeals

**PETITION BY LANDOWNERS FOR RELEASE FROM
EXTRATERRITORIAL JURISDICTION**

TO THE MAYOR OF THE GOVERNING BODY OF SHERMAN, TEXAS:

Pursuant to Texas Local Government Code Sections 42.102 et seq., the undersigned owners petition your honorable Body for the release of land located in the extraterritorial jurisdiction of the City of Sherman, Texas.

This request includes the following property of approximately 8 acres of land, consisting of portions of GCAD Property ID 365959 to the full extent that such Property is currently within the ETJ of the City of Sherman, Texas.

Said property is located on

Drippings Springs Road in Sherman, Texas

The property is listed in Grayson County Appraisal District and described as

G-0789 MCCLENIHAN JOHN A-G0789, ACRES 8

and more particularly described as:

8 acres, more or less, situated in Grayson County, Texas, being part of the John McClenihan Survey, Abstract No. 789, and being part of that 12 acre tract of land conveyed as recorded in Volume 5137, Page 619, of the Grayson County Official Public Records and being that same tract conveyed as recorded in Document Number 2024-2259 of the Grayson County Official Public Records

The property is further described by meets and bounds in the attached Exhibit A and again by legal description and graphically described on the attached February 12, 2024 survey.

The undersigned certify that the following required information concerning the land and its inhabitants is reasonably accurate and assumes responsibility for the completion of said information prior to scheduled action by the City.

This petition is initiated by a majority in value of the holders of title of the land in the area, being each and every one of the landowners.

0 dwelling units are located within the area requested for release.

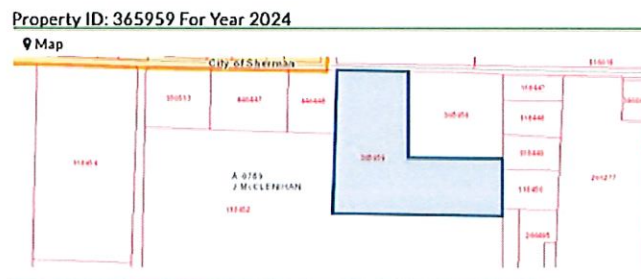
The population of the area in request is 0 in total, of which 0 are registered voters.

No portion of the area of request includes territory within the extraterritorial jurisdiction of another municipality.

No part of the area in request is subject to a non-annexation agreement.

No part of the area in request is subject to a strategic partnership agreement under Local Government Code § 43.0751.

No part of the area is designated as an industrial district under Local Government Code § 42.044



Petition Signatories
per Election Code § 277.002

GCAD Parcel IDs 365959

For Ben Crouse, LLC,
being all the members of Ben Crouse, LLC and
holding 100% of the membership interest.



Benjamin M. Crouse
Managing Member (50% interest)

January 1, 1990
Date of Birth or Voter ID

May 22, 2024
Date Signed

920 Brown Road, Sherman, Texas
Residence Address



Sarah M. Crouse
Managing Member (50% interest)

June 15, 1988
Date of Birth or Voter ID

June 7, 2024
Date Signed

920 Brown Road, Sherman, Texas
Residence Address

EXHIBIT A

Situated in the County of Grayson, State of Texas, being a part of the John McClenihan Survey, Abstract No. 789 and being a part of that 12.00 acre tract of land conveyed to Gary L. Barker and Kathryn L. Barker as recorded in Volume 5137, Page 619, Official Public Records, Grayson County, Texas and being described by metes and bounds as follows:

Beginning at a 1/2" steel rod found for the southwest corner of said 12.00 acre tract;

Thence North 00°34'37" East, with the westerly line of said 12.00 acre tract, passing en route at a distance of 635.71 feet a found 1/2" steel rod, and continuing on said course a total distance of 675.77 feet to a P/K nail set for the northwest corner of said 12.00 acre tract, said point also being near the center of Dripping Springs Road;

Thence South 89°25'22" East, with the northerly line of said 12.00 acre tract, and along the center of said Dripping Springs Road, a distance of 331.22 feet to a P/K nail set for the northern-most northeast corner of the herein described tract of land;

Thence South 01°04'18" East, over and across said 12.00 acre tract, a distance of 400.00 feet to a set 1/2" steel rod;

Thence South 89°25'23" East, continuing across said 12.00 acre tract, a distance of 435.78 feet to a 1/2" steel rod set for the southern-most northeast corner of the herein described tract of land, said point also being in the east line of said 12.00 acre tract;

Thence South 01°04'18" East, with the easterly line of said 12.00 acre tract, a distance of 270.53 feet to a 1/2" steel rod found for the southeast corner of said 12.00 acre tract;

Thence North 89°49'30" West, with the southerly line of said 12.00 acre tract, a distance of 786.31 feet to the Point-of-Beginning and containing 8.000 acres of land, more or less.



City Council Regular Meeting

Agenda Item No. F.4.

Meeting Date: 7/1/2024

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Teri Fine, Assistant to the City Manager

Caption:

Other Business

Consider and act on a Petition from Benjamin M. Crouse and Sarah M. Crouse related to approximately 129.7 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 2664, Page 266 and as recorded in Instrument No. 20217-28819 of the Official Public Records, Grayson County, Texas, located within the City of Sherman's Extraterritorial Jurisdiction

Issue:

Consider and act on a Petition from Benjamin M. Crouse and Sarah M. Crouse related to approximately 129.7 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 2664, Page 266 and as recorded in Instrument No. 20217-28819 of the Official Public Records, Grayson County, Texas, located within the City of Sherman's Extraterritorial Jurisdiction

Background:

The City received a petition from Benjamin M. Crouse and Sarah M. Crouse on June 10, 2024. The petition purports to seek a "release" of approximately 128.7 acres of land located in the John McClenihan Survey, Abstract No 789, as recorded in Volume 2664, Page 266 and as recorded in Instrument No. 20217-28819 of the Official Public Records, Grayson County, Texas from the City's Extraterritorial Jurisdiction pursuant to Chapter 42 or the Texas local Government Code.

Origination:

Petition submitted from Benjamin M. Crouse and Sarah M. Crouse

Financial Consideration:

Staff Recommendation:

Recommend denying the petition submitted by Benjamin M. Crouse and Sarah M. Crouse from the release of property from the City's extraterritorial jurisdiction because Senate Bill 2038, Local Government Codes Sections 42.104 and Section 42.105, are unconstitutional delegations of legislative authority, and are in direct and irreconcilable conflict with Local Government Code Section 42.023, and the City has not consented and does not consent to release of the property from its ETJ or any reduction of the City's ETJ. City Council has denied all other such petitions received since this legislation became effective in September 2023.

Alternatives:

Attachments:

1. 872 Brown Road - Parcel 118465 - June 2024
2. Location Map

The Law Office of

MUNSON, MUNSON, CARDWELL, TILLET & BROWN

A Texas Professional Corporation
Attorneys and Counselors at Law

William M. Stevens
A Texas Licensed Attorney *
(903) 893-8161
(903) 893-1345 fax

123 S. Travis Street
Sherman, Texas 75090

June 7, 2024



by US Mail First Class

Pam Williams
City Secretary
220 W Mulberry St.
Sherman, Texas 75090

Re: 872 Brown Road, Sherman, Texas
GCAD Parcel 118465
Petition by Landowners for Release from Extraterritorial Jurisdiction

Dear City Secretary,

Please file the enclosed Petition by Landowners for Release from Extraterritorial Jurisdiction.

Please return a time stamped copy of the Petition by Landowners for Release from Extraterritorial Jurisdiction.

Please present the petition to the City Council for consideration.

Thank you for your assistance. If you have any questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

William M. Stevens

WMS/lma
Enc: Petition by Landowners for Release from ETJ for 118465.
Cc: Client
file: Z244f

*Admitted to practice law in The State of Texas; DOJ EOIR Immigration Courts; The US Northern, Eastern, and Southern District Courts of Texas; and The US 5th Circuit Court of Appeals

**PETITION BY LANDOWNERS FOR RELEASE FROM
EXTRATERRITORIAL JURISDICTION**

TO THE MAYOR OF THE GOVERNING BODY OF SHERMAN, TEXAS:

Pursuant to Texas Local Government Code Sections 42.102 et seq., the undersigned owners petition your honorable Body for the release of land located in the extraterritorial jurisdiction of the City of Sherman, Texas.

This request includes the following property of approximately 129.7 acres of land, consisting of portions of GCAD Property ID 118465 to the full extent that such Property is currently within the ETJ of the City of Sherman, Texas.

Said property is located at

872 Brown Road, Sherman, Texas

The property is listed in Grayson County Appraisal District and described as

G-0789 MCCLENIHAN JOHN A-G0789, ACRES 129.689

and more particularly described as:

All that certain tract or parcel of land situated in the County of Grayson, State of Texas, being a part of the JOHN MCCLENIHAN SURVEY, ABSTRACT NO. 789.

The property is further described by meets and bounds in the attached Exhibit A and graphically described on the February 15, 2022 survey included with this Petition.

The undersigned certify that the following required information concerning the land and its inhabitants is reasonably accurate and assumes responsibility for the completion of said information prior to scheduled action by the City.

This petition is initiated by a majority in value of the holders of title of the land in the area, being each and every one of the landowners.

0 dwelling units are located within the area requested for release.

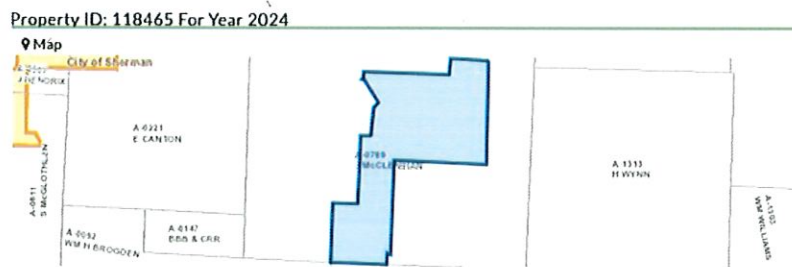
The population of the area in request is 0 in total, of which 0 are registered voters.

No portion of the area of request includes territory within the extraterritorial jurisdiction of another municipality.

No part of the area in request is subject to a non-annexation agreement.

No part of the area in request is subject to a strategic partnership agreement under Local Government Code § 43.0751.

No part of the area is designated as an industrial district under Local Government Code § 42.044



Petition Signatories
per Election Code § 277.002

GCAD Parcel IDs 118465



Benjamin M. Crouse

920 Brown Road, Sherman, Texas
Residence Address

January 1, 1990
Date of Birth or Voter ID

May 22, 2024
Date Signed



Sarah M. Crouse

920 Brown Road, Sherman, Texas
Residence Address

June 15, 1988
Date of Birth or Voter ID

June 7, 2024
Date Signed

EXHIBIT "A"
(Page 2 of 2)

Thence North 88°44'19" West, with a southerly line of said 128.300 acre tract, a distance of 1101.58 feet to a fence corner post found for the southwest corner, common to the southeast corner of a called 16.487 acre tract of land described as Exhibit "A" in the deed to Marile P. Sullivan, recorded in Volume 5176, Page 402, and on the northerly line of a called 166.29 acre tract of land described in the deed to Gene Luscombe and Carmen Lucombe, recorded in Volume 2664, Page 266, said Official Public Records;

Thence North 01°31'04" East, with a westerly line of said 128.300 acre tract, along or near a fence, a distance of 1094.28 feet to a fence corner post found for the western-most northwest corner of said 128.300 acre tract, common to the northeast corner of said 16.487 acre tract, and on the southerly line of a called 10.428 acre tract of land described in the deed to Steven Gene Faries and Debra Kay Faries, recorded in Volume 4955, Page 330, said Official Public Records;

Thence North 89°23'06" East, with a northerly line of said 128.300 acre tract, along or near a fence, a distance of 451.60 feet to a fence corner post found for a re-entrant corner on the northerly line of said 128.300 acre tract, common to the southeast corner of said 10.428 acre tract;

Thence North 00°34'10" East, with a westerly line of said 128.300 acre tract, along or near a fence, a distance of 1262.89 feet to a 1/2" steel rod found for the southwest corner of a called 5.00 acre tract of land described in the deed to Freling E. Baker, Trustee for the Freling E. Baker Separate Property Trust, recorded in Volume 2390, Page 582; said Real Property Records, and on the easterly line of a called 10.00 acre tract of land described in the deed to Wayne Nicholson and Tammi Nicholson, recorded in Volume 5860, Page 724, said Official Public Records;

Thence with the southerly, northerly, and westerly lines of said 128.300 acre tract, and with the southerly, northerly, and easterly line of said 5.00 acre tract, the following 5 courses:

1. South 88°29'19" East, a distance of 213.01 feet to a set 1/2" steel rod;
2. North 01°06'12" East, a distance of 359.48 feet to a found 1/2" steel rod;
3. North 14°50'49" East, a distance of 947.88 feet to a found 1/2" steel rod;
4. North 26°17'14" West, a distance of 804.50 feet to a set 1/2" steel rod;
5. North 64°47'14" West, a distance of 83.06 feet to a set 1/2" steel rod, and on the easterly line of a called 10.00 acre tract;

Thence North 01°00'57" East, with a westerly line of said 128.300 acre tract, a distance of 33.23 feet to a 1/2" steel rod found for the northeast corner of said 10.00 acre tract, and on the southerly line of a called 10.16 acre tract of land described in the deed to Stalin Neal Click and Kayla Click, recorded in Volume 4807, Page 821; said Official Public Records, and at a bend in said Brown Road;

Thence South 89°13'43" East, with a southerly line of said 10.16 acre tract, a distance of 16.44 feet to a set 1/2" steel rod, and at a bend in said Brown Road;

Thence North 00°04'48" East, with the easterly line of said 10.16 acre tract, and in said Brown Road, a distance of 129.66 feet to the Point of Beginning and containing 129.66 acres of land, more or less;

Situated in the County of Grayson, State of Texas, being a part of John McClenhart Survey, Abstract No. 789, and being a retracement survey of a called 128.300 acre tract of land described in the deed to Fred E. Baker, Shirley Cantwell, and Horace A. Baker, Co-Trustees of the Indenture Trust of Carl E. Baker, recorded in Instrument No. 2017-28819, Official Public Records, Grayson County, Texas, and being described by metes and bounds as follows:

Beginning at 1/2" steel rod found for the southwest corner of a called 11.000 acre tract of land described in the deed to Ben M. Crouse and Sarah M. Crouse, recorded in Instrument No. 2018-16035, said Official Public Records, and in Brown Road:

Thence South 88°40'19" East, with a northerly line of said 128.300 acre tract, a distance of 1617.88 feet to a fence corner post found for a re-entrant corner.

Thence North 05°28'54" East, with a westerly line of said 128.300 acre tract, along or near a fence, a distance of 262.47 feet to a fence corner post found for the northern-most northwest corner of said 128.300 acre tract.

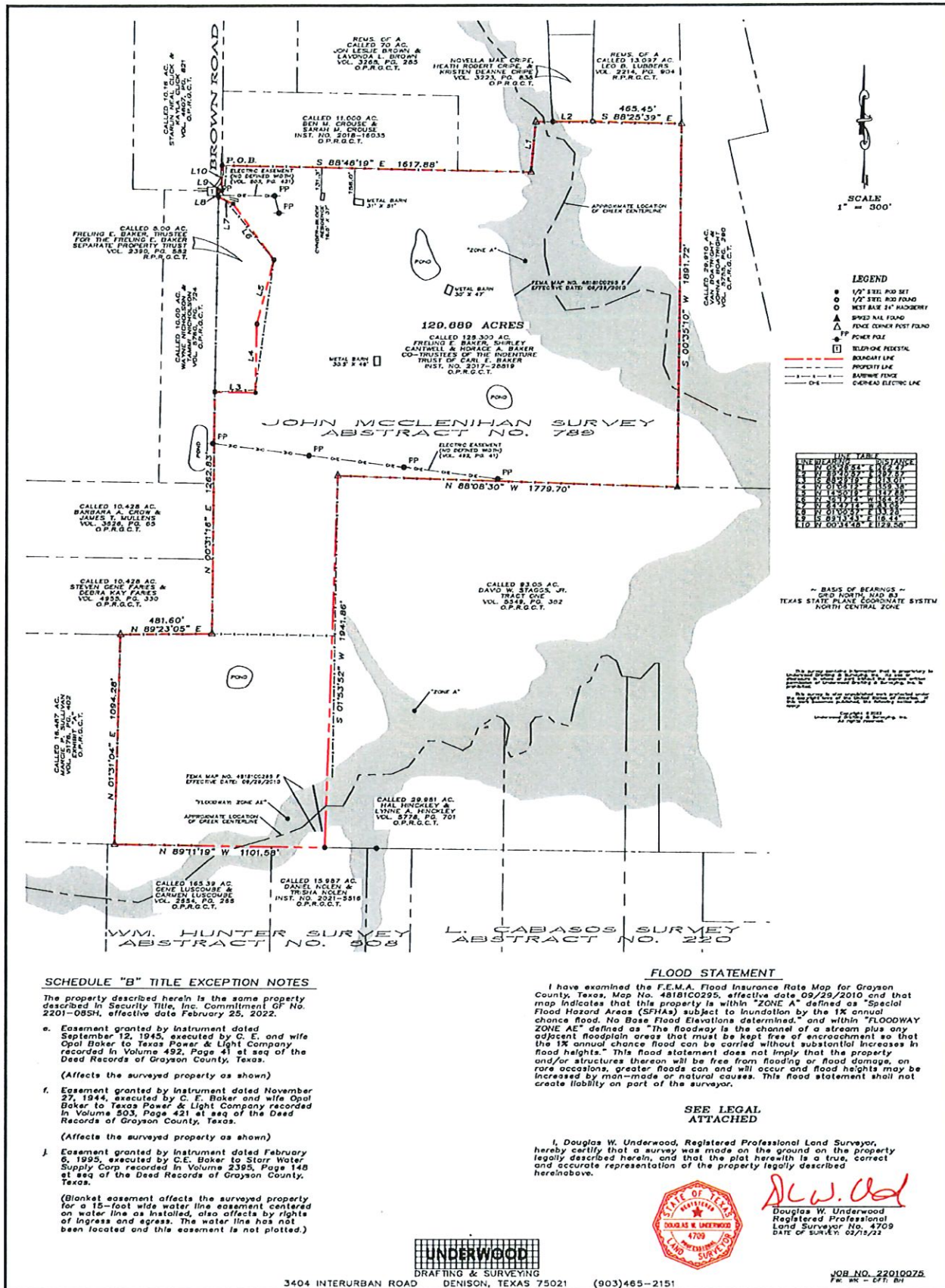
Thence North 89°40'57" East, with a northerly line of said 128.300 acre tract, passing en route at a distance of 67.69 feet a 1/2" steel rod found for the southwest corner of a tract of land described in the deed to Novella Mae Cripe, Heath Robert Cripe, and Kristen Deanne Cripe, recorded in Volume 3223, Page 898, said Official Public Records, and continuing on said course a total distance of 297.57 feet to the west base of a 24" Hackberry Tree found for the southwest corner of a called 13.097 acre tract of land described in the deed to Leo B. Lubbars, recorded in Volume 2214, Page 904, Real Property Records, Grayson County, Texas;

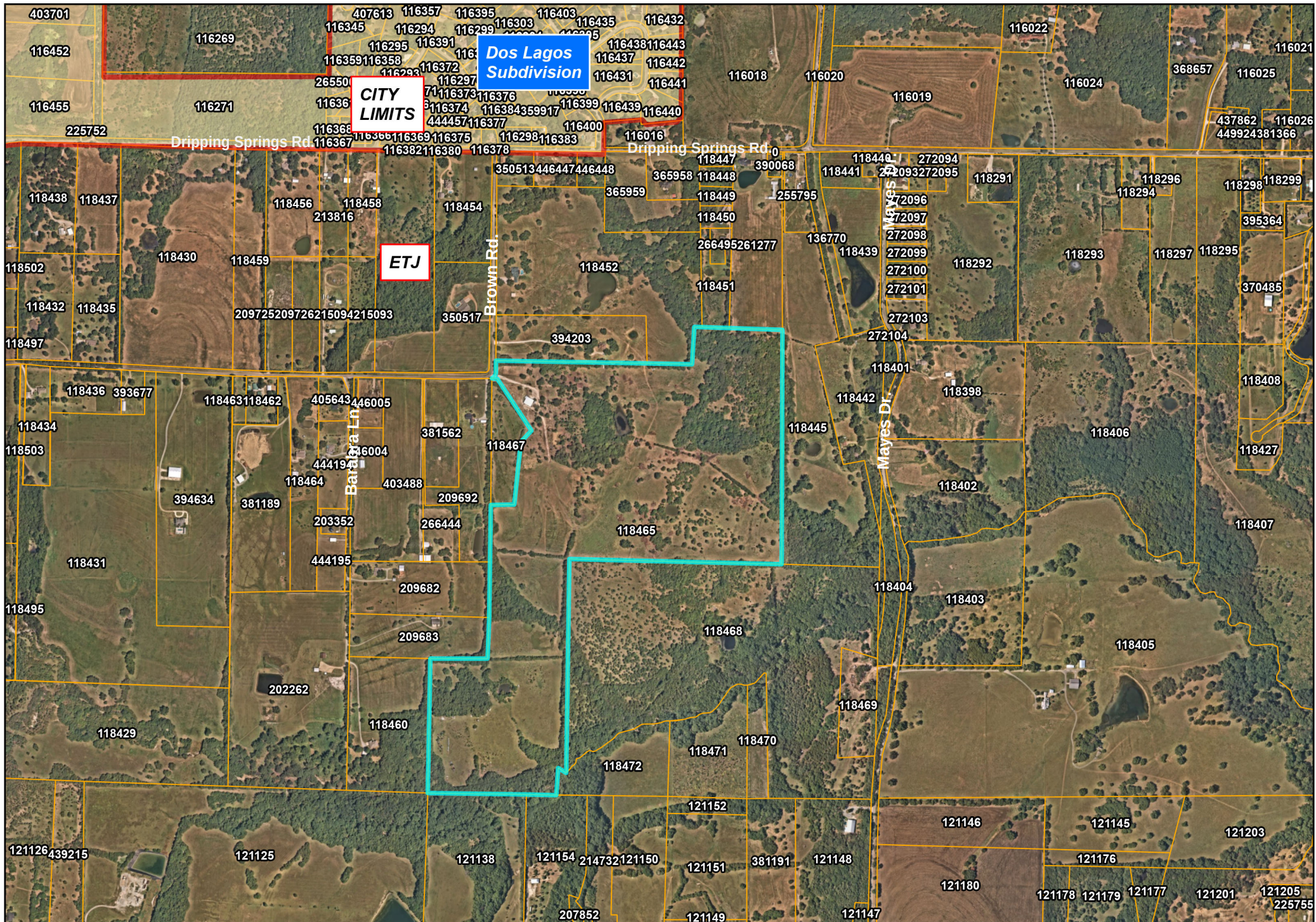
Thence South 88°25'39" East, continuing with a northerly line of said 128.300 acre tract, a distance of 465.48 feet to a fence corner post found for the northeast corner of said 128.300 acre tract, common to the southeast corner of said 13.097 acre tract, and on the westerly line of a called 29.910 acre tract of land described in the deed to Van Boatright and Johna Boatright, recorded in Volume 5765, Page 290, said Official Public Records;

Thence South 00°36'10" West, with an easterly line of said 128.300 acre tract, along or near a fence, a distance of 1891.72 feet to a spiked nail found for the eastern-most southeast corner of said 128.300 acre tract, common to the southwest corner of a called 29.910 acre tract, and on the northerly line of a called 93.05 acre tract of land described as Tract One in the deed to David W. Stagg, Jr., recorded in Volume 5649, Page 382, said Official Public Records;

Thence North 88°08'30" West, with a southerly line of said 128.300 acre tract, along or near a fence, a distance of 1779.70 feet to a fence corner post found for a re-entrant corner on the southerly line of said 128.300 acre tract, common to the northwest corner of said 93.05 acre tract;

Thence South 01°53'52" West, with an easterly line of said 128.300 acre tract, a distance of 1941.89 feet to a 1/2" steel rod found for the southern-most southeast corner of said 128.300 acre tract, common to the western-most southwest corner of a called 29.981 acre tract of land described in the deed to Hal, Hinkley and Lynne A. Hinkley, recorded in Volume 5779, Page 701, said Official Public Records, and on the northerly line of a called 15.987 acre tract of land described in the deed to Daniel Nolen and Tisha Nolen, recorded in Instrument No. 2021-5546, said Official Public Records;





PETITION FROM LANDOWNERS FOR RELEASE FROM ETJ
PROP ID: 118465

$$1'' = 1000'$$




City Council Regular Meeting

Agenda Item No. F.5.

Meeting Date: 7/1/2024

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Teri Fine, Assistant to the City Manager

Caption:

Other Business

Consider and act on a Petition from Benjamin M. Crouse and Sarah M. Crouse related to approximately 11 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 3291, Page 193, of the Official Public Records, Grayson County, Texas, and being that same tract conveyed as record in Document Number 2018-16035 of the Official Public Records, Grayson County, Texas located within the City of Sherman's Extraterritorial Jurisdiction

Issue:

Consider and act on a Petition from Benjamin M. Crouse and Sarah M. Crouse related to approximately 11 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 3291, Page 193, of the Official Public Records, Grayson County, Texas, and being that same tract conveyed as record in Document Number 2018-16035 of the Official Public Records, Grayson County, Texas located within the City of Sherman's Extraterritorial Jurisdiction.

Background:

The City received a petition from Benjamin M. Crouse and Sarah M. Crouse on June 10, 2024. The petition purports to seek a "release" of approximate 11 acres of land located in the John McClenihan Survey, Abstract No. 789, as recorded in Volume 3291, Page 193, of the Official Public Records, Grayson County, Texas, located within the City of Sherman's Extraterritorial Jurisdiction pursuant to Chapter 42 of the Texas Local Government Code

Origination:

Petition Submitted by Benjamin M. Crouse and Sarah M. Crouse

Financial Consideration:

Staff Recommendation:

Recommend denying the petition submitted by Benjamin M. Crouse and Sarah M. Crouse for the release of property from the City's extraterritorial jurisdiction because Senate Bill 2038, Local Government Codes Sections 42.104 and Section 42.105, are unconstitutional delegations of legislative authority, and are in direct and irreconcilable release of the property from its ETJ or any reduction of the City's ETJ. City Council has denied all other such petitions received since the legislation became effective in September 2023.

Alternatives:

Attachments:

1. 920 Brown Road - Parcel #394203 - June 2024
2. Location Map

The Law Office of

MUNSON, MUNSON, CARDWELL, TILLET & BROWN

A Texas Professional Corporation
Attorneys and Counselors at Law

William M. Stevens
A Texas Licensed Attorney *
(903) 893-8161
(903) 893-1345 fax

123 S. Travis Street
Sherman, Texas 75090

June 7, 2024



by US Mail First Class

Pam Williams
City Secretary
220 W Mulberry St.
Sherman, Texas 75090

Re: 920 Brown Road, Sherman, Texas
GCAD Parcel 394203
Petition by Landowners for Release from Extraterritorial Jurisdiction

Dear City Secretary,

Please file the enclosed Petition by Landowners for Release from Extraterritorial Jurisdiction.

Please return a time stamped copy of the Petition by Landowners for Release from Extraterritorial Jurisdiction.

Please present the petition to the City Council for consideration.

Thank you for your assistance. If you have any questions regarding this matter, please contact me at your earliest convenience.

Sincerely,

William M. Stevens

WMS/lma
Enc: Petition by Landowners for Release from ETJ for 394203.
Cc: Client
file: Z244f

*Admitted to practice law in The State of Texas; DOJ EOIR Immigration Courts; The US Northern, Eastern, and Southern District Courts of Texas; and The US 5th Circuit Court of Appeals

**PETITION BY LANDOWNERS FOR RELEASE FROM
EXTRATERRITORIAL JURISDICTION**

TO THE MAYOR OF THE GOVERNING BODY OF SHERMAN, TEXAS:

Pursuant to Texas Local Government Code Sections 42.102 et seq., the undersigned owners petition your honorable Body for the release of land located in the extraterritorial jurisdiction of the City of Sherman, Texas.

This request includes the following property of approximately 11 acres of land, consisting of portions of GCAD Property ID 394203 to the full extent that such Property is currently within the ETJ of the City of Sherman, Texas.

Said property is located at

920 Brown Road, Sherman, Texas

The property is listed in Grayson County Appraisal District and described as

G-0789 MCCLENIHAN JOHN A-G0789, ACRES 11.0

and more particularly described as:

11 Acres situated in the County of Grayson, Texas, being a part of the John McClenihan Survey, Abstract No. 789.

The property is further described by meets and bounds in the attached Field Notes and graphically depicted in the attached May 8, 2018 survey.

The undersigned certify that the following required information concerning the land and its inhabitants is reasonably accurate and assumes responsibility for the completion of said information prior to scheduled action by the City.

This petition is initiated by a majority in value of the holders of title of the land in the area, being each and every one of the landowners.

1 dwelling units are located within the area requested for release.

The population of the area in request is 2 in total, of which 2 are registered voters.

No portion of the area of request includes territory within the extraterritorial jurisdiction of another municipality.

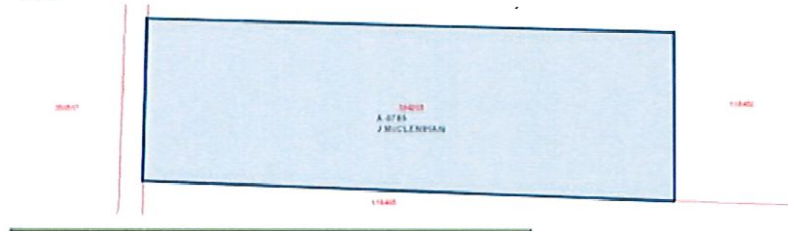
No part of the area in request is subject to a non-annexation agreement.

No part of the area in request is subject to a strategic partnership agreement under Local Government Code § 43.0751.

No part of the area is designated as an industrial district under Local Government Code § 42.044

Property ID: 394203 For Year 2024

Map



Petition Signatories
per Election Code § 277.002

GCAD Parcel IDs 394203



Benjamin M. Crouse 920 Brown Road, Sherman, Texas
Residence Address

January 1, 1990 May 22, 2024
Date of Birth or Voter ID Date Signed

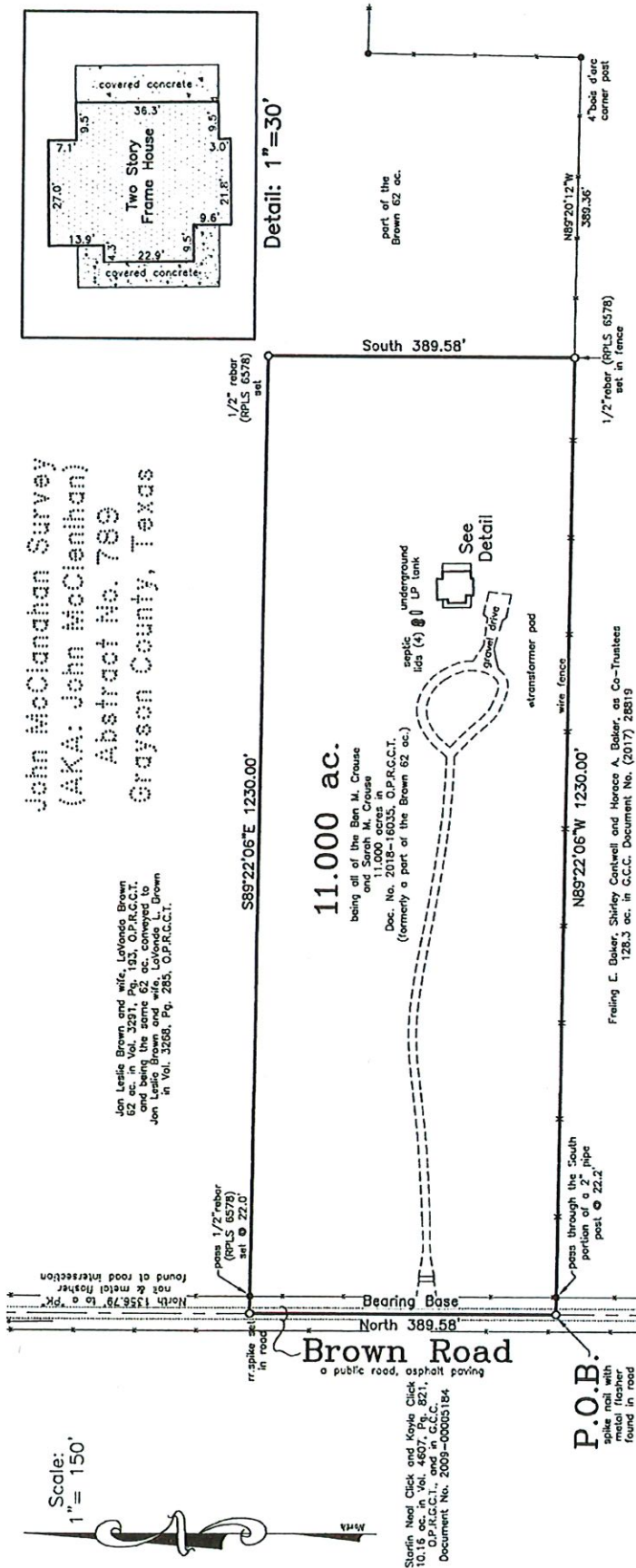


Sarah M. Crouse 920 Brown Road, Sherman, Texas
Residence Address

June 15, 1988 June 7, 2024
Date of Birth or Voter ID Date Signed

John McClanahan Survey
(AKA: John McClanahan)
Abstract No. 789
Grayson County, Texas

Jon Leslie Brown and wife, Lavonda Brown
62 ac. in Vol. 3291, Pgs. 133-134, O.P.R.G.C.T.
and being the same 62 ac. conveyed to
Jon Leslie Brown and wife, Lavonda L. Brown
in Vol. 3288, Pg. 285, O.P.R.G.C.T.



Owner: Ben M. Crouse &
Sarah M. Crouse
Address: 920 Brown Road
Sherman, Texas

Job No. BGS220420

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

I, Kate A. Wagner, Registered Professional Land Surveyor, do hereby certify that a survey was performed on the ground of the property shown hereinabove and that this survey complies with the current Texas Society of Professional Surveyors Manual of Practice for a Category 1A, Condition 4, TSPS Land Title Survey and is a true and correct representation of the property shown hereon. Field Notes attached hereto.

The subject property shown hereon does not lie within the limits of any designated 100-year Flood Hazard Areas, as shown on the "FEMA" Flood Insurance Rate Map for Grayson County, Texas, Map No. 48181C0295 F, Revised Date: September 29, 2010.

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

Kate A. Wagner, R.P.L.S. No. 6578
Boundary Survey, May 8, 2018
Locate Improvements: April 8, 2020

Helvey-Wagner Surveying, Inc.

222 West Main Street · Denison, Texas 75020

Ph: (903) 463-6191 · Fax: (903) 463-4088 · Email: helveysurvey@cableone.net

TBPLS Firm Registration No. 10088100

Billy F. Helvey, RPLS No. 4488 – Kate A. Wagner, RPLS No. 6578 – Kenneth N. Russell, RPLS No. 4409

FIELD NOTES

11.000 Acres

SITUATED in the County of Grayson, State of Texas, being a part of the John McClanahan Survey (AKA: John McClenihan Survey), Abstract No. 789, being a part of the 62 acre tract of land conveyed by General Warranty Deed FROM: Dorothy Oleta Brown, TO: Jon Leslie Brown and wife, LaVonda Brown, on August 5, 2002, and recorded in Volume 3291, Page 193, Official Public Records, Grayson County, Texas, SAID Brown 62 ac. being the same 62 acre tract of land conveyed by General Warranty Deed FROM: Dorothy Kaye Brown Reed, TO: Jon Leslie Brown and wife, LaVonda L. Brown, on June 18, 2002, and recorded in Volume 3268, Page 285, said Official Public Records, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a spike nail with metal flasher found in or near the center of Brown Road, a "North-South" public road, at the Southwest corner of said Brown 62 ac., and at the Northwest corner of the Freling E. Baker, Shirley Cantwell and Horace A. Baker (as Co-Trustees) 128.3 ac. in G.C.C. Document No. (2017) 28819, SAID beginning nail being North 89 deg. 22 min. 06 sec. West, 22.2 ft. from a 2 inch metal corner post standing in the East line of said road;

THENCE (Due) North, somewhat along or near the center of Brown Road, a distance of 389.58 ft. to a railroad spike set in the West line of said Brown 62 ac., at the Northwest corner of the herein described tract of land, SAID railroad spike being (Due) South, 1356.79 ft. from a "PK" nail with metal flasher found at a road intersection;

THENCE South 89 deg. 22 min. 06 sec. East, over and across said Brown 62 ac., PASSING a ½ inch rebar (RPLS 6578) set in the East line of said road at 22.0 ft., and continuing for a TOTAL distance of 1230.00 ft. to a ½ inch rebar (RPLS 6578) set at the Northeast corner of the herein described tract of land;

THENCE (Due) South, again over and across said Brown 62 ac., a distance of 389.58 ft. to a ½ inch rebar (RPLS 6578) set in an "East-West" wire fence maintaining the most Southern South line of said Brown 62 ac., and maintaining the North line of said Baker, Cantwell and Baker 128.3 ac., at the Southeast corner of the herein described tract of land, SAID rebar being North 89 deg. 20 min. 12 sec. West, 389.36 ft. from a 4 inch bois d'arc corner post standing at the most Southern Southeast corner of said Brown 62 ac. and at an ELL corner in said 128.3 ac.;

THENCE North 89 deg. 22 min. 06 sec. West, with the North line of said Baker, Cantwell and Baker 128.3 ac., and with the general course of said wire fence, PASSING through the Southern portion of said 2 inch metal corner post standing in the East line of Brown Road and leaving said wire fence at 1207.8 ft., and continuing for a TOTAL distance of 1230.00 ft. to the PLACE OF BEGINNING and containing 11.000 ACRES of land.



Kate A. Wagner
Kate A. Wagner, R.P.L.S. No. 6578
May 8, 2018



2024 Council Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	8	8	9	10
12	13	13	14	15	16	17
18	19	20	22	22	23	24
25	26	27	28	29		

March						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

April						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

May						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

June						
Su	Mo	Tu	We	Th	Fr	Sa
						1
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23	24	25	26	27	28	29
30						

July						
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14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

August						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

September						
Su	Mo	Tu	We	Th	Fr	Sa
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

October						
Su	Mo	Tu	We	Th	Fr	Sa
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13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November						
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24	25	26	27	28	29	30

December						
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

CALLED MEETINGS	
4/19/2024	Budget Planning Meeting
5/23/2024	CIP Work Session
6/26/2024	Budget Workshop