CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COUNCIL CHAMBERS OF THE CITY HALL
220 WEST MULBERRY STREET
SHERMAN, TEXAS
MONDAY, OCTOBER 20, 2008
5:00 P.M.

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

A.2 PLEDGE OF ALLEGIANCE

A.3 INVOCATION BY COUNCIL MEMBER ROBERT G. SOFTLY

A.4 APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF OCTOBER 6, 2008

Proclamations

A.5 PROCLAMATION
"Chamber of Commerce Week" – October 20-24, 2008

A.6 PROCLAMATION
"National Business Women's Week" – October 20-24, 2008

Public Hearing

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

B.2 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5569
Denying Oncor Electric Delivery Company's Requested Increases to its Electric Transmission and Distribution Rates and Charges within the City; Finding that the City's Reasonable Rate Case Expenses Shall be Reimbursed by the Company; Requiring Notice of this Ordinance to the Company and Legal Counsel for the Steering Committee

B.3 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5570
Establishing a Maximum Rate of Speed on U.S. Highway 82 in the Corporate Limits of Sherman, Grayson County, Texas, during the Texas Department of Transportation's Construction Project PTF 2008 (247); Fixing Penalties for Violation Thereof; Declaring an Emergency

Close Public Hearing and Consider Adoption of Ordinances

B.4 ADOPTION OF ORDINANCES
Consider Adoption of Ordinance Numbers:
a) 5569
b) 5570

B.5 CONSENT AGENDA
Asterisked (*) items are considered to be routine and will be enacted in one motion without discussion unless a Council Member or a citizen requests a specific item be discussed and voted on separately

Resolutions

C.1 ** RESOLUTION NO. 5281*
Authorizing the Cities Aggregation Power Project, Inc. (CAPP) to Negotiate an Electric Supply Agreement for Deliveries of Electricity and Necessary, Related Services Effective January 1, 2009; Authorizing CAPP to Act as an Agent on Behalf of the City to Enter Into a Contract for Electricity; Approving CAPP Contracting with FPL Energy and Direct Energy and Authorizing the Chairman of CAPP to Execute an Electric Supply Agreement for Deliveries of Electricity Effective January 1, 2009; Committing to Budget for Energy Purchases and to Honor the City's Commitments to Purchase Power Through CAPP for its Electrical Needs beginning January 1, 2009, through December 31, 2013

C.2 ** RESOLUTION NO. 5282*
Authorizing Execution of an Agreement with Barton Capital, LTD for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1508 South Montgomery Street

C.3 ** RESOLUTION NO. 5283*
Authorizing Execution of an Agreement with Barton Capital, LTD for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1512 South Montgomery Street

Request to Advertise

D.1 ** REQUEST TO ADVERTISE*
Luella 3 Trinity Well Repairs

Change Order and Payment Approval

D.2 ** CHANGE ORDER NO. 1*

Travis Street Water Main Replacement between U.S. Highway 75 and Washington Street; $8,007.59, Increase

D.3 PAYMENT APPROVAL

Approve Payment to A-S 71 Sherman-Phase III, L.P., a Texas Limited Partnership (NewQuest Properties), in Relation to the Purchase of Infrastructure at the Sherman Town Center

Other Business

D.4 OTHER BUSINESS

Seeking Council Direction on Various Zoning Issue

D.5 CITIZEN REQUESTS

D.6 MEDIA QUESTIONS

D.7 COUNCIL COMMENTS

Executive Session

E.1 EXECUTIVE SESSION

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

Section 551.074 Personnel Matters:

(a) Consider the Qualifications, Appointment and Removal of Members to Boards and Commissions:

(i) Planning and Zoning Commission (1)

The Council reconvenes into General Session

F.1 OPEN MEETING

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

F.2 ADJOURNMENT

COUNCIL CALENDAR

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. A.1

CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. A.2

PLEDGE OF ALLEGIANCE

The Honorable Robert G. Softly, Council Member

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. A.3

INVOCATION BY COUNCIL MEMBER ROBERT G. SOFTLY

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. A.4

APPROVE MINUTES
THE REGULAR CITY COUNCIL MEETING OF OCTOBER 6, 2008

STATE OF TEXAS §

October 6, 2008

COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Council Chambers of City Hall on October 6, 2008.

MEMBERS PRESENT:	**MAYOR BILL MAGERS; DEPUTY MAYOR CARY WACKER. COUNCIL MEMBERS ADAMI, HOWETH, SMITH, SOFTLY, STEELE.**
MEMBERS ABSENT:	**NONE.**

CALL TO ORDER

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

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of September 15, 2008 and the Called City Council Meeting (held jointly with the Sherman Economic Development Board of Directors) of September 18, 2008. Council Member Steele moved to approve the Minutes as presented; Second by Council Member Adami. All present voted AYE.
MOTION CARRIED.

SPECIAL RECOGNITION

RECOGNITION OF FREDDIE ORR, SR.'S SERVICE ON THE TEXOMA AREA PARATRANSIT BOARD OF DIRECTORS – OCTOBER 15, 1998 – SEPTEMBER 24, 2008

RECOGNITION OF FREDDIE ORR, SR. (TAPS BOARD)

Sheriff Keith Gary, a Member of the Texoma Area Paratransit (TAPS) Board of Directors, presented a plaque to Freddie Orr, Sr. in appreciation for his 10 years of service on the Board. During his term, Mr. Orr also served as Secretary/ Treasurer and as Chairman

Mr. Orr thanked the Texoma Area Paratransit Board and the City Council for the opportunity to serve on the Board. He added that TAPS does a wonderful job in the community and he urged the Council and citizens to support TAPS.

PROCLAMATION

"DOMESTIC VIOLENCE AWARENESS MONTH" – OCTOBER 2008

DOMESTIC VIOLENCE AWARENESS MONTH (OCT. 2008)

Deputy Mayor Wacker presented a proclamation to Martha Rhynes, Women's Crisis Center Outreach Coordinator, designating October 2008 as "Domestic Violence Awareness Month."

Mrs. Rhynes thanked the Mayor and City Council adding that the Women's Crisis Center is dedicated to providing a safe

haven, crisis intervention, and comprehensive support services to victims of family violence.

<u>"NATIONAL NIGHT OUT – TEXAS" -- OCTOBER 7, 2008</u>

NATIONAL NIGHT OUT (OCT. 7, 2008)

Council Member Softly presented a proclamation to Sergeant Bruce Dawsey, Sherman Police Department, designating October 7, 2008 as "National Night Out – Texas."

Sergeant Dawsey thanked the Mayor and City Council on behalf of the neighborhood organizations that participate in the "National Night Out – Texas."

<u>"RED RIVER HISTORICAL MUSEUM DAY" – OCTOBER 11, 2008</u>

RED RIVER MUSEUM DAY (OCT. 11, 2008)

Mayor Magers presented a proclamation to Marcia Rolbiecki, Director of the Red River Historical Museum and Mike Mitchell, President of the Friends of the Red River Historical Museum, designating October 11, 2008 as "Red River Historical Museum Day."

Mr. Mitchell thanked the Mayor and City Council for the proclamation and their continued support of the Red River Historical Museum.

<u>SECOND READING, PUBLIC HEARING AND FINAL VOTE ON ORDINANCE NO. 5562</u>

ORD 5562 ATMOS ENERGY FRANCHISE

Mayor Magers called for the second reading and a public hearing for Ordinance 5562:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, GRANTING TO ATMOS ENERGY CORPORATION, MID-TEX DIVISION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH, TRANSPORT AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; REPEALING ALL PREVIOUS ATMOS ENERGY GAS FRANCHISE ORDINANCES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING A MOST FAVORED NATIONS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

No citizens appeared before the City Council to discuss Ordinance 5562.

<u>INTRODUCTION AND PUBLIC HEARING OF ORDINANCES</u>

ORD 5563 CAPP ELECTRIC POWER

Mayor Magers introduced Ordinance 5563 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AN ELECTRIC POWER

CONTRACT WITH CITIES AGGREGATION POWER PROJECT, INC. ("CAPP") FOR ELECTRIC CAPACITY AND ENERGY, PROVIDING CAPACITY PAYMENTS AS PUBLIC PROPERTY FINANCE CONTRACTUAL OBLIGATIONS OF THE CITY, PLEDGING AND LEVYING AN AD VALOREM TAX TO SUCH PAYMENTS, PROVIDING FOR ENERGY PAYMENTS FOR ELECTRIC ENERGY SUBJECT TO ANNUAL APPROPRIATION BY THE CITY, PROVIDING FOR THE ASSIGNMENT OF SUCH CAPACITY PAYMENTS TO SUPPORT DEBT ISSUED BY CAPP INCURRED TO ACQUIRE ELECTRIC CAPACITY RIGHTS FROM LUMINANT GENERATION COMPANY AND RELATED ENTITIES PURSUANT TO A 24-YEAR POWER PURCHASE AGREEMENT ("PPA"); AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR EMPLOYEE TO EXECUTE AND DELIVER THE MEMBER CONTRACT; FURTHER AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN ADDITIONAL AGREEMENTS ARRANGED BY CAPP FOR ELECTRIC POWER NEEDED BY THE CITY IN THE PERIOD 2009-2011 IN EXCESS OF THE AMOUNT OBTAINED UNDER THE MEMBER CONTRACT; ACKNOWLEDGING, AUTHORIZING AND DIRECTING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN AND RETURN CAPP'S DISCLOSURE LETTER; FURTHER AUTHORIZING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR OTHER CITY EMPLOYEE TO ACCEPT CONFORMING CHANGES TO THE MEMBER CONTRACT DEPENDENT ON THE FINAL TERMS OF THE CAPP PPA; PROVIDING FOR VALIDITY AND SUFFICIENCY OF CITY EMPLOYEE'S OR CITY OFFICER'S SIGNATURE IF THE OFFICER OR EMPLOYEE LEAVES OFFICE OR EMPLOYMENT PRIOR TO THE DELIVERY OF THE MEMBER CONTRACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

No citizens appeared before the City Council to discuss Ordinance 5563.

ORD 5564
SOLID WASTE
RATE INCREASE

Mayor Magers introduced Ordinance 5564 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES, ENTITILED "UTILITIES", AT ARTICLE 13.06, ENTITLED "SOLID WASTE", AT SECTIONS 13.06.005, 13.06.086, 13.06.087, AND 13.06.088 TO INCREASE CERTAIN SOLID WASTE FEES; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

No citizens appeared before the City Council to discuss Ordinance 5564.

Mayor Magers introduced Ordinance 5565 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING ORDINANCE NO. 5408 AND AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES, ENTITLED "UTILITIES", AT ARTICLE 13.08, ENTITLED "UTILITY BILLING", ADDING SECTIONS 13.08.005, "WATER RATES", AND 13.08.006, "SEWER CHARGES"; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ORD 5565
WATER/SEWER
RATE INCREASE

No citizens appeared before the City Council to discuss Ordinance 5565.

Mayor Magers introduced Ordinance 5566 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO DONNA REAST (OWNER), BRYAN LUCKETT (PROSPECTIVE BUYER), AND SARTIN & ASSOCIATES (SURVEYORS) TO ALLOW A CONSTRUCTION, EQUIPMENT SALES, SERVICE, RENTAL AND REPAIR SHOP AND YARD (CRANE SERVICE) IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND THE O-1.2 (SAM RAYBURN) OVERLAY DISTRICT AT 3111 U.S. HIGHWAY 75 SOUTH, BEING 2.7 ACRES IN THE PRESTON KITCHEN SURVEY, ABSTRACT NO. 667; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.

ORD 5566
SUP FOR
CRANE SERVICE

No citizens appeared before the City Council to discuss Ordinance 5566.

Mayor Magers introduced Ordinance 5567 and called for a public hearing:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO TX SW 1 LP, C/O LEVCOR (OWNERS) AND JOE OBLAS (TENANT) TO ALLOW A COMMMERCIAL AMUSEMENT CENTER (BASEBALL ACADEMY) IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND THE O-1 (75 & 82) OVERLAY DISTRICT AT 2711 U.S. HIGHWAY 75 NORTH, BEING LOT 5, BLOCK 1 OF TEXOMA CROSSING ADDITION, REPLAT OF LOTS 5 & 5A; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.

ORD 5567
SUP FOR
COMMERCIAL
AMUSEMENT
CENTER

No citizens appeared before the City Council to discuss Ordinance 5567.

The Ordinances were introduced and the Public Hearing was closed.

CLOSE PUBLIC HEARING

ADOPTION OF ORDINANCES

Ordinance 5562

ORD 5662 ATMOS ENERGY FRANCHISE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, GRANTING TO ATMOS ENERGY CORPORATION, MID-TEX DIVISION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH, TRANSPORT AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; REPEALING ALL PREVIOUS ATMOS ENERGY GAS FRANCHISE ORDINANCES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; PROVIDING A MOST FAVORED NATIONS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

ACTION TAKEN.

Motion by Council Member Adami to approve Ordinance No. 5562, as presented. Second by Council Member Steele.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

Ordinance 5563

ORD 5563 CAPP ELECTRIC POWER

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING AN ELECTRIC POWER CONTRACT WITH CITIES AGGREGATION POWER PROJECT, INC. ("CAPP") FOR ELECTRIC CAPACITY AND ENERGY, PROVIDING CAPACITY PAYMENTS AS PUBLIC PROPERTY FINANCE CONTRACTUAL OBLIGATIONS OF THE CITY, PLEDGING AND LEVYING AN AD VALOREM TAX TO SUCH PAYMENTS, PROVIDING FOR ENERGY PAYMENTS FOR ELECTRIC ENERGY SUBJECT TO ANNUAL APPROPRIATION BY THE CITY, PROVIDING FOR THE ASSIGNMENT OF SUCH CAPACITY PAYMENTS TO SUPPORT DEBT ISSUED BY CAPP INCURRED TO ACQUIRE ELECTRIC CAPACITY RIGHTS FROM LUMINANT GENERATION COMPANY AND RELATED ENTITIES PURSUANT TO A 24-YEAR POWER PURCHASE AGREEMENT ("PPA"); AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR EMPLOYEE TO EXECUTE AND DELIVER THE MEMBER OR OTHER APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN ADDITIONAL AGREEMENTS ARRANGED BY CAPP FOR ELECTRIC POWER NEEDED BY THE CITY IN THE PERIOD 2009-2011 IN EXCESS OF THE AMOUNT OBTAINED UNDER THE MEMBER CONTRACT; ACKNOWLEDGING, AUTHORIZING AND DIRECTING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR CITY

EMPLOYEE TO SIGN AND RETURN CAPP'S DISCLOSURE LETTER; FURTHER AUTHORIZING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR OTHER CITY EMPLOYEE TO ACCEPT CONFORMING CHANGES TO THE MEMBER CONTRACT DEPENDENT ON THE FINAL TERMS OF THE CAPP PPA; PROVIDING FOR VALIDITY AND SUFFICIENCY OF CITY EMPLOYEE'S OR CITY OFFICER'S SIGNATURE IF THE OFFICER OR EMPLOYEE LEAVES OFFICE OR EMPLOYMENT PRIOR TO THE DELIVERY OF THE MEMBER CONTRACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

Mayor Magers explained that the CAPP contract locks the City's utility rates in at very competitive prices for a long-term agreement, which will allow the City to better plan for expenses.

Council Member Adami asked if the CAPP contract would prohibit the City from creating their own power in some capacity over the 24 year period.

Robby Hefton, Assistant City Manager/CFO, explained that the City's commitment with the contract is to purchase 60% of the amount allocated. The allocated amount will be "fixed" at the time the contract is finalized.

The City can go to other sources for power above that allocated amount. He added that the City will be negotiating other agreements through CAPP for the remaining power needs.

ACTION TAKEN.
Motion by Council Member Smith to approve Ordinance No. 5563, as presented. Second by Deputy Mayor Wacker.
VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

ORD 5564
SOLID WASTE
RATE INCREASE

Ordinance 5564
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES, ENTITILED "UTILITIES", AT ARTICLE 13.06, ENTITLED "SOLID WASTE", AT SECTIONS 13.06.005, 13.06.086, 13.06.087, AND 13.06.088 TO INCREASE CERTAIN SOLID WASTE FEES; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

Mayor Magers said the City is increasing solid waste rates 11% even though the City's tipping fees and Texoma Area Solid Waste Authority costs have increased 17%. This is the first solid waste rate increase in four years, since TASWA was opened.

Council Member Adami advised taxpayers that tipping fees and costs to the City are expected to increase again and the

City will probably see an additional cost increase next year. Mayor Magers said he also expected the rates to increase again next year because of TASWA increases.

ACTION TAKEN.
Motion by Council Member Adami to approve Ordinance No. 5564, as presented. Second by Council Member Softly.
VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

Ordinance 5565
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING ORDINANCE NO. 5408 AND AMENDING CHAPTER 13 OF THE CODE OF ORDINANCES, ENTITLED "UTILITIES", AT ARTICLE 13.08, ENTITLED "UTILITY BILLING", ADDING SECTIONS 13.08.005, "WATER RATES", AND 13.08.006, "SEWER CHARGES"; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ORD 5565
WATER/SEWER
RATE INCREASE

Mayor Magers said the City is increasing water rates 4% which is well below the inflation rate. He said the City is trying to keep the rates low, but costs have increased over the last 12 months and some of the additional costs must be passed along to the users.

ACTION TAKEN.
Motion by Council Member Adami to approve Ordinance No. 5565, as presented. Second by Council Member Howeth.
VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

Ordinance 5566
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO DONNA REAST (OWNER), BRYAN LUCKETT (PROSPECTIVE BUYER), AND SARTIN & ASSOCIATES (SURVEYORS) TO ALLOW A CONSTRUCTION, EQUIPMENT SALES, SERVICE, RENTAL AND REPAIR SHOP AND YARD (CRANE SERVICE) IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND THE O-1.2 (SAM RAYBURN) OVERLAY DISTRICT AT 3111 U.S. HIGHWAY 75 SOUTH, BEING 2.7 ACRES IN THE PRESTON KITCHEN SURVEY, ABSTRACT NO. 667; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.

ORD 5566
SUP FOR
CRANE SERVICE

Council Member Adami verified that the building is the Air Liquide building. He asked if the Planning and Zoning Commission felt there was adequate screening for cranes.

Scott Shadden, Director of Developmental Services, said the area for cranes will be paved and the owner must meet the standards for the Overlay District. A condition of the SUP was that the owner would bring the current building up to the new standards.

ACTION TAKEN.
Motion by Council Member Adami to approve Ordinance No. 5566, as presented. Second by Council Member Steele.
VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

Ordinance 5567

ORD 5567 SUP FOR COMMERCIAL AMUSEMENT CENTER

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SECTION 8, SUBSECTION (5)(A), ORDINANCE NO. 2280, SO AS TO GRANT A SPECIFIC USE PERMIT TO TX SW 1 LP, C/O LEVCOR (OWNERS) AND JOE OBLAS (TENANT) TO ALLOW A COMMMERCIAL AMUSEMENT CENTER (BASEBALL ACADEMY) IN A C-2 (GENERAL COMMERCIAL) DISTRICT AND THE O-1 (75 & 82) OVERLAY DISTRICT AT 2711 U.S. HIGHWAY 75 NORTH, BEING LOT 5, BLOCK 1 OF TEXOMA CROSSING ADDITION, REPLAT OF LOTS 5 & 5A; PROVIDING FOR A REPEALER; PROVIDING THAT THIS SPECIFIC USE PERMIT SHALL BE GRANTED SUBJECT TO CERTAIN CONDITIONS; PROVIDING A PENALTY NOT TO EXCEED $2,000.

ACTION TAKEN.
Motion by Council Member Adami to approve Ordinance No. 5567, as presented. Second by Deputy Mayor Wacker.
VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

CONSENT AGENDA

CONSENT AGENDA

The Council reviewed the Consent Agenda. Mayor Magers said Item C-7 entitled "Resolution 5275 – Authorizing execution of an agreement with John Robert Hooker, individually and d/b/a J&S Aviation, for the operation of an Aircraft Maintenance Shop and the provision of customer service assistance at the Sherman Municipal Airport" and Item C-10 entitled "Resolution 5278 – Authorizing the purchase of a 2009 Ford F-450 Frazer Ambulance for the Sherman Fire Department through the Houston-Galveston Area Council of Governments (H-GAC), have been removed from the Consent Agenda for consideration in their regular order of business.

Deputy Mayor Wacker moved to approve the Consent Agenda, with the exception of Item C-7 and Item C-10, which will be considered in their regular order of business. Second by Council Member Adami. All present voted AYE.

RESOLUTIONS

RESOLUTION NO. 5269 – AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND GRAYSON COUNTY FOR EMERGENCY MANAGEMENT AND RELATED HOMELAND SECURITY SERVICES

RES 5269 INTERLOCAL AGREEMENT FOR EMERGENCY MGMT.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SHERMAN AND GRAYSON COUNTY FOR EMERGENCY MANAGEMENT AND RELATED HOMELAND SECURITY SERVICES.

Drue Bynum, Grayson County Judge, said about a year ago, the City of Sherman approved, in concept, the idea of a multi-jurisdictional emergency management coordinator position. Grayson County has moved forward and is presenting an interlocal agreement between the City of Sherman and Grayson County. The agreement requires Sherman to pay $20,000 annually to Grayson County.

Judge Bynum said in the last several months, the County has already begun to implement a multi-jurisdictional operations center. He introduced Sarah Sommers, Grayson County Emergency Management Coordinator, saying that they are working well with the City's Emergency Management Coordinator.

He reiterated that bringing Sherman, Denison, and Grayson County together will save the taxpayers money and will help deliver the emergency services that the citizens deserve.

Mayor Magers verified that operational control of an emergency situation will still be handled in the field, but the multi-jurisdictional agreement will be a way to pool resources for the administrative duties. Judge Bynum agreed that the County's role is to offer logistical support to the effected City.

ACTION TAKEN.

Motion by Council Member Smith to approve Resolution No. 5269, as presented. Second by Council Member Steele.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

RESOLUTION NO. 5270 – AUTHORIZING EXECUTION OF A DEED WITHOUT WARRANTY TO HARRY REYNOLDS AND ALERA REYNOLDS FOR THE CONVEYANCE OF A PORTION OF A 15-FOOT ALLEY IN BLOCK 22 OF THE COLLEGE PARK

RES 5270 CONVEY ALLEY COLLEGE PARK ADDITION

ADDITION, WITH UTILITY EASEMENT, BOUNDED BY THE 400 BLOCKS OF NORTH GRAND AVENUE AND NORTH LEE STREET AND THE RAILROAD RIGHT-OF-WAY

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEED WITHOUT WARRANTY TO HARRY REYNOLDS AND ALERA REYNOLDS FOR THE CONVEYANCE OF A PORTION OF A 15-FOOT ALLEY IN BLOCK 22 OF THE COLLEGE PARK ADDITION, WITH UTILITY EASEMENT, BOUNDED BY THE 400 BLOCKS OF NORTH GRAND AVENUE AND NORTH LEE STREET AND THE RAILROAD RIGHT-OF-WAY.
CONSENT AGENDA.

RES 5271
LEASE OF SHERMAN DAY CARE CENTER

RESOLUTION NO. 5271 – AUTHORIZING THE LEASE OF CERTAIN CITY-OWNED PROPERTY LOCATED AT 1003 NORTH EAST STREET, TO RECREATIONAL COUNCIL – JACK AND JILL DAY CARE CENTER, INC.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE LEASE OF CERTAIN CITY-OWNED PROPERTY LOCATED AT 1003 NORTH EAST STREET, TO RECREATIONAL COUNCIL – JACK AND JILL DAY CARE CENTER, INC.

Council Member Smith expressed his appreciation to City staff for working to find a winning solution for the Day Care situation.

ACTION TAKEN.
Motion by Deputy Mayor Wacker to approve Resolution No. 5271, as presented. Second by Council Member Adami.
VOTING AYE: Adami, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
ABSTAIN: Magers, Howeth.
MOTION CARRIED.

RES 5272
CHILD CARE LOCAL MATCH

RESOLUTION NO. 5272 – AUTHORIZING EXECUTION OF A CHILD CARE LOCAL MATCH CONTRIBUTION AGREEMENT WITH WORKFORCE SOLUTIONS TEXOMA FOR THE PERIOD OF OCTOBER 1, 2008 THROUGH DECEMBER 31, 2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A CHILD CARE LOCAL MATCH CONTRIBUTION AGREEMENT WITH WORKFORCE SOLUTIONS TEXOMA FOR THE PERIOD OF OCTOBER 1, 2008 THROUGH DECEMBER 31, 2008.
CONSENT AGENDA.

RES 5273
SCAH & MUSEUM ANNUAL CONTRACTS

RESOLUTION NO. 5273 – AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS WITH THE SHERMAN COUNCIL FOR THE ARTS & HUMANITIES, INC. AND THE FRIENDS OF THE RED RIVER HISTORICAL MUSEUM (AKA RED RIVER HISTORICAL MUSEUM)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS WITH THE SHERMAN COUNCIL FOR THE ARTS & HUMANITIES, INC. AND THE FRIENDS OF THE

RED RIVER HISTORICAL MUSEUM (AKA RED RIVER HISTORICAL MUSEUM).
CONSENT AGENDA.

<u>RESOLUTION NO. 5274 – APPOINTING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH PATTILLO, BROWN & HILL, L.L.P. TO PERFORM THE FISCAL YEAR 2008 AUDIT</u>
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPOINTING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH PATTILLO, BROWN & HILL, L.L.P. TO PERFORM THE FISCAL YEAR 2008 AUDIT.
CONSENT AGENDA.

RES 5274
ANNUAL AUDIT

<u>RESOLUTION NO. 5276 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH BARTON CAPITAL, LTD FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 616 EAST SYCAMORE STREET</u>
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH BARTON CAPITAL, LTD FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 616 EAST SYCAMORE STREET.
CONSENT AGENDA.

RES 5276
RESIDENTIAL TAX ABATEMENT
(616 E. SYCAMORE)

<u>RESOLUTION NO. 5277 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH TERRY PETERSON FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1302 SOUTH ELM STREET</u>
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH TERRY PETERSON FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1302 SOUTH ELM STREET.
CONSENT AGENDA.

RES 5277
RESIDENTIAL TAX ABATEMENT
(1302 S. ELM)

<u>RESOLUTION NO. 5275 – AUTHORIZING EXECUTION OF A CONTRACT WITH J&S AVIATION FOR THE OPERATION OF AN AIRCRAFT MAINTENANCE SHOP AND THE PROVISION OF CUSTOMER SERVICE ASSISTANCE AT THE SHERMAN MUNICIPAL AIRPORT</u>
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH JOHN ROBERT HOOKER, INDIVIDUALLY AND D/B/A J&S AVIATION, FOR THE OPERATION OF AN AIRCRAFT MAINTENANCE SHOP AND THE PROVISION OF CUSTOMER SERVICE ASSISTANCE AT THE SHERMAN MUNICIPAL AIRPORT.

RES 5275
AIRPORT OPERATIONS

Mayor Magers removed Item C-7 from the Consent Agenda for consideration in its regular order of business.

Council Member Adami verified that the operating agreement was to provide day-to-day operations at the Municipal Airport and that the City also received rent on their hangar.

George Olson, City Manager, explained that J&S Aviation operates a maintenance shop at the Airport and helps the City with customer service, since the City has no staff at the location. The company also handles operation and maintenance of the gas sales. J&S Aviation pays approximately $575 per month for use of a hangar.

RES 5278 PURCHASE OF AMBULANCE

<u>RESOLUTION NO. 5278 – AUTHORIZING THE PURCHASE OF A 2009 FORD F-450 FRAZER AMBULANCE FOR THE SHERMAN FIRE DEPARTMENT THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC)</u>
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A 2009 FORD F-450 FRAZER AMBULANCE FOR THE SHERMAN FIRE DEPARTMENT THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC).

Mayor Magers removed Item C-7 from the Consent Agenda for consideration in its regular order of business.

Council Member Adami said several years ago the City decided to replace boxes and chassis separately on the ambulances. He asked if this program was still in effect.

Jeff Jones, Fire Chief, said that is the plan, but this is the last ambulance of the old style and when this one is replaced, the entire ambulance fleet will be the type that the box and chassis can be replaced separately.

ACTION TAKEN.
Motion by Council Member Adami to approve Resolution Nos. 5275 and 5278, as presented. Second by Council Member Steele.
VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

RES 5279 PURCHASE OF FIRE ENGINE

<u>RESOLUTION NO. 5279 – AUTHORIZING THE PURCHASE OF A 2009 PIERCE FIRE ENGINE FOR THE SHERMAN FIRE DEPARTMENT THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD)</u>
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A 2009 PIERCE FIRE ENGINE FOR THE SHERMAN FIRE DEPARTMENT THROUGH THE TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE (BUYBOARD).
CONSENT AGENDA.

OTHER BUSINESS

CONSIDER REQUEST OF THE AUSTIN COLLEGE KAPPA GAMMA CHI TO TEMPORARILY CLOSE CERTAIN STREETS FOR THE HOMECOMING 2008 'ROO RUN AND JOEY WALK ON SATURDAY, OCTOBER 25, 2008

CLOSE STREETS FOR AUSTIN COLLEGE HOMECOMING

Mayor Magers introduced the request of Kappa Gamma Chi from Austin College to temporarily close certain streets for the Homecoming 2008 'Roo Run and Joey Walk on Saturday, October 25, 2008.

ACTION TAKEN.

> **Motion by Council Member Smith to approve the request of Austin College Kappa Gamma Chi to temporarily close certain streets for the Homecoming 2008 'Roo Run and Joey Walk on Saturday, October 24, 2008, as presented. Second by Council Member Adami.**

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

FINAL PLAT APPROVAL OF THE BRYAN LUCKETT ADDITION; DONNA REAST, OWNER; BRYAN LUCKETT, PROSPECTIVE BUYER (3111 U.S. HIGHWAY 75 SOUTH)

APPROVE FINAL PLAT BRYAN LUCKETT ADDITION

The City Council approved the Final Plat of the Bryan Luckett Addition, located at 3111 U.S. Highway 75 South. The building on the tract was previously occupied by Air Liquide. The applicant would like to operate a crane service to store and lease cranes. The Planning and Zoning Commission recommended approval of the Final Plat.
CONSENT AGENDA.

CITIZENS REQUESTS

BEEKEEPING IN CITY LIMITS

BEEKEEPING IN CITY LIMITS

Madelyn Bryant, 613 N. Grand, addressed the City Council about beekeeping for hobbyists. She expressed concern about Colony Collapse Disorder for honey bees, where the adult population of a bee hive abruptly disappears from their home leaving behind their young to fend for themselves.

There has been up to a 90% loss for honey bees. About $15 billion in crop value is dependent on bee pollination, therefore honey bees are a mainstay of the agricultural system.

Ms. Bryant added that there is reason to believe that hobby backyard beekeeping is immune to this disease. Sherman has outlawed beekeeping inside the City limits. Honey bee hives are declared to be a nuisance, however they only sting when provoked and are generally not aggressive.

She felt the City's ordinance declaring beekeeping by hobbyists as unlawful, needs to be changed and she urged the City Council to consider her request. She said responsible beekeepers never allow their bees to be a nuisance to their neighbors. Their top priority is to create a mutually beneficial relationship between humans and honey bees.

Mayor Magers confirmed that Ms. Bryant was asking the City Council to consider a change in their ordinance to allow hobby backyard beekeeping.

Ms. Bryant presented information to Scott Shadden, Director of Developmental Services.

MEDIA QUESTIONS

MEDIA QUESTIONS AFTER EXECUTIVE SESSION

MEDIA QUESTIONS AFTER EXECUTIVE SESSION

Kathy Williams, Herald Democrat Reporter, asked to hold her remarks until after the Executive Session.

COUNCIL COMMENTS

VIETNAMESE BUS CRASH RECEPTION

VIETNAMESE BUS CRASH RECEPTION

Mayor Magers displayed a plaque that was presented to Sherman City officials by survivors, family and friends of the recent Vietnamese Bus Crash in Sherman. Members of the Vietnamese community in Houston came to Sherman to erect a roadside memorial at the crash site and to thank the emergency responders, health care professionals, and various groups that assisted during the tragedy that killed 17 people.

Mayor Magers said on behalf of the City Council, he was very touched by the outpouring of gratitude.

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

EXECUTIVE SESSION

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

SECTION 551.074 --	**PERSONNEL MATTERS: CONSIDER THE QUALIFICATIONS, APPOINTMENT AND REMOVAL OF MEMBERS TO BOARDS AND COMMISSIONS: SHERMAN HIGHER EDUCATION FINANCE CORPORATION BOARD (7)**
	TEXOMA AREA PARATRANSIT SYSTEMS (TAPS) BOARD OF DIRECTORS (1)
	TRI-COUNTY SENIOR NUTRITION BOARD OF DIRECTORS (1)
	CONSIDER THE QUALIFICATIONS, APPOINTMENT, EMPLOYMENT

AND DUTIES OF A PUBLIC OFFICER OR EMPLOYEE: INTERIM CITY ATTORNEY

SECTION 551.087 -- DELIBERATIONS REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS: DELIBERATE REGARDING COMMERCIAL OR FINANCIAL INFORMATION THAT THE CITY HAS RECEIVED FROM BUSINESS PROSPECTS AND DELIBERATE ANY OFFERS OR INCENTIVES TO THE BUSINESS PROSPECTS, INCLUDING THE FOLLOWING: PANDA ENERGY

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:40 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:00 p.m. and reconvened in Open Meeting.

OPEN MEETING

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

CONSIDER THE QUALIFICATIONS, APPOINTMENT AND REMOVAL OF MEMBERS TO BOARDS AND COMMISSIONS: SHERMAN HIGHER EDUCATION FINANCE CORPORATION BOARD (7)

SHERMAN HIGHER EDUCATION FINANCE CORP.

ACTION TAKEN.

Motion by Deputy Mayor Wacker to reappoint Wiliam Richardson, Danna Bennett, Rad Richardson, Jerry Chapman, Delinda Lough, and Dr. Al Hambrick to the Sherman Higher Education Finance Corporation Board for a term from April 18, 2008 to April 18, 2010 and to appoint George Rowland for a term from October 7, 2008 to April 18, 2010. Second by Council Member Adami.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

TEXOMA AREA PARATRANSIT SYSTEMS (TAPS) BOARD OF DIRECTORS (1)

TAPS BOARD

ACTION TAKEN.

Motion by Council Member Adami to appoint Deputy Mayor Cary Wacker to the Texoma Area Paratransit Systems (TAPS) Board of Directors for a term from October 7, 2008 to October 7, 2010. Second by Council Member Smith.

VOTING AYE: Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

<u>TRI-COUNTY SENIOR NUTRITION BOARD OF DIRECTORS (1)</u>

TRI-COUNTY SENIOR NUTRITION BOARD

Mayor Magers clarified that during the past year, the Tri-County Senior Nutrition Board of Directors has consisted of the Mayors of Sherman, Denison, Bonham, and Gainesville, and the County Judges of Grayson, Cooke, and Fannin Counties.

The Members feel like representation should be returned to interested citizens that volunteer to serve on the Board. Council Members will consider applications from citizens interested in serving on the Board at a future meeting.

<u>RESOLUTION NO. 5280 – AUTHORIZING EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR WATER SERVICES</u>

RES 5280 WATER SERVICES FOR PANDA ENERGY

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH PANDA SHERMAN POWER, LLC FOR WATER SERVICES.

Mayor Magers said former Mayor David Sprowl and past City Councils set forth to accumulate surface water for Sherman, Texas. They understood that industrial companies located in the Blalock Industrial District needed water. Today's Council is proud to carry on with this tradition.

The execution of an agreement with Panda Energy allows Sherman to provide water for new businesses, provide for growth for our citizens, and provide growth for neighboring municipalities.

The City has been in negotiations with Panda Energy to locate a power plant in Sherman. Mayor Magers said both parties want to make this a win-win venture.

He thanked Council Member Adami for serving with the Mayor on the negotiating team, saying he was instrumental on the team. He also thanked Jerry Chapman, Greater Texoma Utility Authority Executive Director, for providing valuable information on water and how the deal could be structured for the long-term benefit of Sherman and the surrounding areas.

Mayor Magers thanked Members of the Sherman Economic Development Corporation Board of Directors for taking the lead on the project and for providing incentives to the company. He also thanked City Manager George Olson, Assistant City Manager/CFO Robby Hefton, and former City Attorney Doreen McGookey for the many hours they spent working on the proposed terms of the contract. Without them, the deal would not have been possible.

Mayor Magers thanked members of the City Council, both past and present. This is not a typical economic development deal and it takes a lot of courage to "step outside the box."

Mayor Magers explained that the Panda Energy Power Plant will be phase one of a 500 megawatt power plant with a possible phase two at some point. They will be purchasing raw water from Sherman with a "take or pay" contract. Gross water revenues are expected to be between $30 million and $50 million, tax revenues of approximately $10 million, and net to the City after all costs and incentives will be between $27 million and $42 million in revenues, over the 30 year span of the contract.

This doesn't include the higher paying jobs the company will bring and all the other intangible economic benefits that will be realized. The project will also mean about $39 million in ad valorem property taxes to our partners in Grayson County and the Sherman Independent School District. Total community value is estimated to be between $65 and $80 million.

The plant also means power and growth for the State of Texas with clean energy from a natural gas powered plant. It means growth, jobs, and prosperity. Long-term for the citizens of Sherman it means water for growth and for future expansion.

Mayor Magers explained that the project is for a maximum of 4,500 acre feet per year and will allow the City to purchase an additional 15,000 acre feet of storage in Lake Texoma, plus any additional amount that might be available. The purchase of additional water will be from these funds and not from taxpayers.

Council Member Adami said he appreciated working with and getting to know the officials at Panda Energy and he looks forward to a bright future. He also thanked Mr. Olson, Mr. Hefton, and all the members of SEDCO.

ACTION TAKEN.
> **Motion by Council Member Adami to approve Resolution No. 5280, as presented. Second by Deputy Mayor Wacker.**

VOTING AYE: Magers, Adami, Howeth, Smith, Softly, Steele, Wacker.
VOTING NAY: None.
MOTION CARRIED.

Wayne Morton, Senior Director, Asset Management, at Panda Energy, said they have been working long and hard with the City as a partner, as two partners aligning their needs. He said he appreciated the professionalism and knowledge that was shared during the negotiations. Panda Energy looks forward to a long relationship with the City of Sherman.

<u>MEDIA QUESTIONS</u>
<u>PANDA ENERGY</u>

PANDA ENERGY

Kathy Williams, Herald Democrat Reporter, wanted to verify the numbers given and ask if that included incentives. Mayor Magers said it was net numbers and offered her written information on the amounts.

<u>ADJOURNMENT</u>

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 6:12 p.m.

____
MAYOR

____
CITY CLERK

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. A.5

PROCLAMATION
"Chamber of Commerce Week" – October 20-24, 2008

Issue
To present a proclamation designating October 20 through 24, 2008 as "Chamber of Commerce Week" in the City of Sherman

Background
October 20 through 24, 2008 has been designated Texas Chamber of Commerce Week.

Origination
The request came from the Chamber of Commerce.

Financial Consideration
There is no financial consideration.

Staff Recommendation
The staff recommendation is to present a proclamation designating October 20 through 24, 2008 as "Chamber of Commerce Week" in Sherman.

Alternatives
The City Council could choose not to present the proclamation.

Attachments
The proclamation is attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

SHERMAN

Proclamation

WHEREAS, more than six hundred local chambers of commerce in Texas distinguish themselves as the voice of business in our state, and

WHEREAS, the work accomplished by those local chambers has benefited our state through their economic development and community development programs, and

WHEREAS, the local chambers of commerce unceasingly promote their community for quality growth and development, and

WHEREAS, the business community, represented through local chambers of commerce, has been a driving force in fostering enhanced educational opportunities, infrastructure improvements, leadership development, the creation of jobs, and a positive vision of the future, and

WHEREAS, the chamber of commerce community in Texas has sought to achieve successful results for our state in a cooperative spirit with other organizations.

NOW THEREFORE, I, Bill Magers, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim October 20 through 24, 2008 as

CHAMBER OF COMMERCE WEEK

in the City of Sherman and encourage all citizens to recognize the hard work and dedication of the Sherman Chamber of Commerce in the growth and development of our community.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed this the 20th day of October, 2008.

____
Mayor

ATTEST:

Linda Ashby
City Clerk

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. A.6

PROCLAMATION
"National Business Women's Week" – October 20-24, 2008

Issue
To present a proclamation designating October 20-24, 2008 as "National Business Women's Week" in the City of Sherman

Background
Each year, the Business & Professional Women's (B&PW) organization celebrates a week in October to recognize the accomplishments of business women throughout the community.

Origination
The request for this proclamation originated with the B&PW.

Financial Consideration
There is no financial consideration to the City.

Staff Recommendation
It is the recommendation of the staff to present a proclamation proclaiming "National Business Women's Week."

Alternatives
The Council could choose not to present the proclamation.

Attachments
A proclamation proclaiming "National Business Women's Week" is attached.

Prepared by:
Linda Ashby, City Clerk

Approved by:
George Olson, City Manager

SHERMAN

Proclamation

WHEREAS, working women constitute 70 million of the nation's workforce and strive to serve their communities, their states and their nation in professional, civic and cultural capacities, and

WHEREAS, women-owned businesses account for 30 percent of all U.S. business, generating $1.5 trillion in sales and employing 9.2 million people, and

WHEREAS, the major goals of Business and Professional Women / USA are to promote equality for all women and to help create better conditions for working women through the study of social, educational, economic and political problems; all of us are proud of their leadership in these many fields of endeavor, and

WHEREAS, since 1928, Business and Professional Women / USA has been spotlighting the achievements and contributions of working women during National Business Women's Week, and

WHEREAS, Sherman Business and Professional Women's Club proudly support the contributions of all working women.

NOW THEREFORE, I, Bill Magers, Mayor of the City of Sherman, Texas, by the authority vested in me, do hereby proclaim October 20 through 24, 2008

NATIONAL BUSINESS WOMEN'S WEEK

in the City of Sherman and encourage all citizens, all civic and fraternal groups, all educational associations, and all news media and other community organizations to join in this salute to working women in honor of this 80th Anniversary and to encourage and promote the celebration of the achievements of all business and professional women as they contribute daily to our economic, civic and cultural purposes.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Sherman to be affixed, this the 20th day of October, 2008.

Mayor

ATTEST:

Linda Ashby

City Clerk

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. B.1

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

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

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

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

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

Staff Recommendation
Staff recommends approval of the proposed franchise ordinance.

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

Attachments
Ordinance No. 5568 and Route Map

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

ORDINANCE NO. 5568

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

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

SECTION 1. <u>GRANT OF AUTHORITY</u>

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

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

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

SECTION 2. <u>DEFINITIONS</u>

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

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

B. “City” shall mean the City of Sherman, Texas.

C. “City Manager” means City’s manager, or his or her designee.

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

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

(1) “Gross revenues” shall include:

(a) revenues derived from the following ‘miscellaneous charges’:

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

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

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

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

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

(c) gross receipts fees;

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

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

(2) "Gross revenues" shall not include:

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

(b) sales taxes; and

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

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

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

G. "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.

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

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

SECTION 3. CONDITIONS OF OCCUPANCY

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

B. The Company shall install, maintain, construct, operate and replace its facilities in accordance with applicable city ordinances and so as to interfere as little as possible with traffic. The placement of new facilities in the Public Rights-of-Way shall be subject to the approval of the City Manager. In determining the location of the Company's new facilities within the City, the Company shall minimize interferences with then-existing or documented planned underground structures of the City or with existing facilities of other users of the Public Rights-of-Way. Company shall attempt to utilize the alleys of the City insofar as is reasonably practicable in conducting its work and activities hereunder. Notwithstanding the foregoing, however, Company may, when reasonably necessary, utilize the streets and other Public Rights-of-Way to perform such work and activities.

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

D. Company's property and operations within the Public Rights-of-Way shall be subject to the City's ordinances and the City Charter, including, but not limited to, the provisions of ARTICLE VIII. FRANCHISE AND PUBLIC UTILITIES of the City Charter, whether expressed in this Ordinance or not. This Ordinance shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other local, state or federal Law.

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

SECTION 4. RELOCATION OF SYSTEM FACILITIES

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

SECTION 5. LAYING OF LINES IN ADVANCE OF PUBLIC IMPROVEMENTS

A. Whenever the City shall decide to make any public improvements in any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes, the Company will be provided the opportunity, at no expense to the City, in advance of such public improvements, to renew such mains or pipes, if defective or inadequate in size, and to lay service lines, or renew same, if inadequate in size or defective, to the property lines where buildings are already located.

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

SECTION 6. RATES

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

SECTION 7. PAYMENTS TO THE CITY

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

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

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

SECTION 8. <u>RESERVATION OF RIGHTS: GENERAL</u>

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

B. The rights, privileges, and Franchise granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other Person for the purpose of furnishing gas for light, heat, and power for City and the inhabitants thereof.

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

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

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

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

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

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

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

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

SECTION 10. <u>INSURANCE</u>

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

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

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

(a) Personal injury and property damage.

(b) Contractual liability.

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

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

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

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

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

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

SECTION 11. <u>TERMINATION</u>

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

B. Procedures for Termination.

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

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

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

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

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

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

SECTION 12. <u>RENEGOTIATION</u>

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

SECTION 13. <u>NO THIRD PARTY BENEFICIARIES</u>

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

SECTION 14. <u>SUCCESSORS AND ASSIGNS</u>

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

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

SECTION 15. COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

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

SECTION 16. FORCE MAJEURE

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

SECTION 17. NOTICES

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY	**COMPANY**
City Manager City of Sherman P.O. Box 1106 Sherman, Texas 75091	Enterprise Texas Pipeline, L.L.C. Attn: Land Department P. O. Box 4324 Houston, Texas 77210-4324
City Attorney City of Sherman P.O. Box 1106 Sherman, Texas 75091	

SECTION 18. PARAGRAPH HEADINGS, CONSTRUCTION

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

SECTION 19. SEVERABILITY

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

SECTION 20. NO WAIVER

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

SECTION 21. EFFECTIVE DATE

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

SECTION 22. ACCEPTANCE OF TERMS OF FRANCHISE

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

SECTION 23. That it is hereby officially found and determined that the meetings at which this ordinance was introduced and passed were open to the public and that public notice of the time, place and purpose of said meetings were given all as required by law.

INTRODUCED on this the _____________ day of _________________, 2008.

ADOPTED on this the _________________ day of _________________, 2008.

EFFECTIVE DATE on this the _________ day of _________________, 2008.

CITY OF SHERMAN, TEXAS

ATTEST:

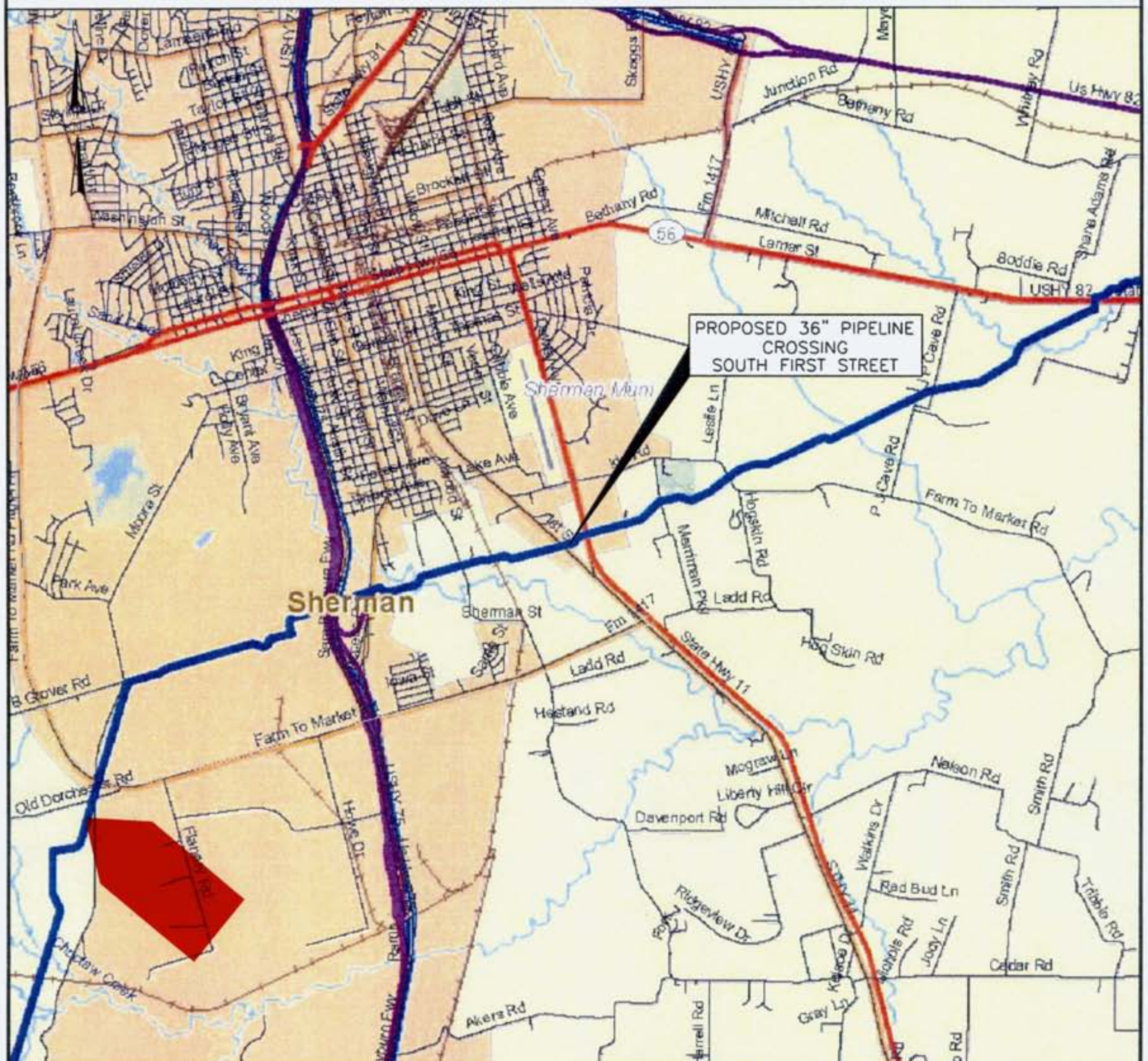
BY: ______________________________
LINDA ASHBY, CITY CLERK

BY: ______________________________
BILL MAGERS, MAYOR

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________
INTERIM CITY ATTORNEY

GRAYSON COUNTY, TEXAS
ROBERT THOMPSON SURVEY, A-1200



Enterprise Texas Pipeline LLC

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

SHEET 1 OF 2

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

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

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. B.2

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5569
Denying Oncor Electric Delivery Company's Requested Increases to its Electric Transmission and Distribution Rates and Charges within the City; Finding that the City's Reasonable Rate Case Expenses Shall be Reimbursed by the Company; Requiring Notice of this Ordinance to the Company and Legal Counsel for the Steering Committee

Issue
Denial of the request of Oncor Electric Delivery Company for increases to its electric transmission and distribution rates and charges in the City of Sherman

Background
At the July 7, 2008 meeting, the City Council suspended the August 8, 2008 effective date of the Company's statement of intent to increase its electric transmission and distribution rates for the maximum period authorized by law. This action was taken at the recommendation of Lloyd Gosselink Rochelle & Townsend, P.C., general counsel to the Oncor Cities Steering Committee (OCSC), giving the cities time to evaluate the filing and develop strategy while the city retained its original jurisdiction. If approved, the $275 million increase would have raised rates for the average residential customer by approximately $60 per year. The OCSC Executive Committee met by conference call on September 25th to discuss the consultants' preliminary findings and to develop a recommendation for action for all OCSC members with original jurisdiction. Based upon the information received from the consultants that Oncor's requested rate increase cannot be supported by evidence, the Executive Committee recommended that all OCSC members take action to deny the requested increase. The City of Sherman's denial must take place by November 6, 2008. If the City fails to take action to deny Oncor's request by November 6th or receives an extension from the Company, the rate increase can be charged to all customers within the City's jurisdiction.

Origination
Geoffrey Gay & Kristen Doyle of Lloyd Gosselink Rochelle & Townsend, P.C., OCSC General Counsel

Financial Consideration
All costs (legal and consulting) incurred by the City will be reimbursed by Oncor.

Staff Recommendation
It is recommended that Ordinance No. 5569 be adopted denying the Company's requested rate increases.

Alternatives
No alternatives can be recommended at this time.

Attachments
Ordinance No. 5569; OCSC General Counsel Memo; Staff Report; List of Cities; Summary Information

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

ORDINANCE NO. 5569

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DENYING ONCOR ELECTRIC DELIVERY COMPANY'S REQUESTED INCREASES TO ITS ELECTRIC TRANSMISSION AND DISTRIBUTION RATES AND CHARGES WITHIN THE CITY; FINDING THAT THE CITY'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; REQUIRING NOTICE OF THIS ORDINANCE TO THE COMPANY AND LEGAL COUNSEL FOR THE STEERING COMMITTEE; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, pursuant to § 33.001 of the Public Utility Regulatory Act ("PURA"), the City has exclusive original jurisdiction over the electric rates, operations, and services provided within the city limits; and

WHEREAS, on or about June 27, 2008, Oncor Electric Delivery Company ("Oncor" or "Company"), pursuant to PURA §§ 33.001 and 36.001, filed with the City of Sherman ("City") a Statement of Intent to increase electric transmission and delivery rates by $275 million on a system-wide basis within its service area effective August 8, 2008; and

WHEREAS, pursuant to PURA § 36.108, the City lawfully suspended the August 8, 2008, effective date by resolution to provide time to study the reasonableness of the Company's application to increase rates; and

WHEREAS, the City is a member of the Oncor Cities Steering Committee (Steering Committee) and has cooperated with 145 similarly situated city members to conduct a review of the Company's application, to hire and direct legal counsel and consultants, to prepare a common response to the filing, to negotiate with the Company, and to direct any necessary litigation appealing final city action; and

WHEREAS, the City, in a reasonably noticed meeting that was open to the public, considered the Company's application; and

WHEREAS, the consultants who were retained by the Steering Committee to evaluate the merits of the Company's application have determined that the Company's requested $275 million increase in revenues for its transmission and distribution system is not supported by evidence; and

WHEREAS, PURA § 33.023 provides that reasonable costs incurred by cities in ratemaking activities are to be reimbursed by the regulated utility;

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

SECTION 1. That the rates proposed by Oncor Electric Delivery Company, to be recovered through its electric transmission and distribution rates charged to customers located within the City limits, are hereby found to be unreasonable and shall be denied.

SECTION 2. That the Company shall continue to charge its existing rates for transmission and distribution services to customers within the City.

SECTION 3. That the City's reasonable rate case expenses shall be reimbursed by Oncor.

SECTION 4. That a copy of this Ordinance shall be sent to Oncor, care of Debra Anderson, Oncor Electric Delivery Company, 1601 Bryan St., Suite 23-055C, Dallas, Texas 75201 and to Geoffrey Gay, General Counsel to the Oncor Cities Steering Committee, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

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

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

INTRODUCED on this the _____________ day of _________________, 2008.

ADOPTED on this the _________________ day of _________________, 2008.

EFFECTIVE DATE on this the _________ day of _________________, 2008.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: ______________________________
BILL MAGERS, MAYOR

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________
INTERIM CITY ATTORNEY

Lloyd Gosselink
ATTORNEYS AT LAW

816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

Ms. Doyle's Direct Line: (512) 322-5820
Email: kdoyle@lglawfirm.com

MEMORANDUM

TO: Members of the Oncor Cities Steering Committee With Original Jurisdiction

FROM: Geoffrey M. Gay
Kristen Doyle
Thomas Brocato

DATE: September 29, 2008

RE: **ACTION NEEDED BY NOVEMBER 6, 2008** – Denying Oncor's Requested Rate Increase

The Executive Committee of the Oncor Cities Steering Committee ("Steering Committee") met last Thursday to hear recommendations from the attorneys and consultants working on Oncor's proposed $275 million rate increase and to discuss final action to be taken at the city level. Based upon the information provided by the consultants, the Executive Committee members approved a motion recommending that all Steering Committee members with original jurisdiction take action to DENY Oncor's requested $275 million rate increase.

The attached documents (model resolution and staff report, list of Steering Committee members and supporting documents) will accomplish this objective. Please place the resolution denying Oncor's requested increase on your city council's agenda for consideration and action on or before November 6, 2008. Note that because the city will not be setting new rates (only maintaining existing rates), final action by resolution should be sufficient. **If you are unable to meet the November 6th deadline for action, please contact me as soon as possible.**

The Company will appeal the final actions taken by cities to the Public Utility Commission, where the appeals will be consolidated with the pending docket created by the PUC for the Company's request, Docket No. 35717. Testimony by the Steering Committee will be filed on November 26, 2008. A hearing on the merits is scheduled to begin on January 13, 2009. A final order from the Commission is expected on or before June 26, 2009.

In addition to the projected annual residential rate impact of approximately $60 for the Company's rate request, the Company has recently received approval from the PUC to collect $27 annually from residential customers through a surcharge that will be in place for the next 11 years to pay for advanced metering. This is on top of a projected increase to annual rates paid by all ERCOT customers of $70 - $100 beginning as early as 2010 to pay for the build-out of transmission lines to transport energy generated by wind from West Texas to the rest of the ERCOT market.

If you have any questions, please feel free to contact Geoffrey (512/322-5875, ggay@lglawfirm.com), Kristen (512/322-5820, kdoyle@lglawfirm.com) or Thomas (512/322-5857, tbrocato@lglawfirm.com).

MODEL STAFF REPORT

*****ACTION MUST BE TAKEN TO DENY THE REQUESTED RATE INCREASE ON OR BEFORE NOVEMBER 6, 2008*****

PURPOSE

Oncor Electric Delivery Company ("Oncor" or "the Company") filed an application on or about June 27, 2008 with cities retaining original jurisdiction seeking to increase system-wide transmission and distribution rates by $275 million. (Until last year, Oncor was known as TXU Electric Delivery Company.) The Company asks the City to approve a 17.6% increase in residential rates, a 9.1% increase in commercial rates, and a 5.8% increase in street lighting rates. According to Oncor, annual rates would increase by approximately $60 for an average residential customer. Oncor's request has been assigned Public Utility Commission Docket No. 35717.

The resolution denies the Company's requested rate increase and requires that the Company's current rates be maintained for all customers within the City.

DISCUSSION

The City, pursuant to § 33.001 of the Public Utility Regulatory Act, has exclusive original jurisdiction over the electric rates charged by the Company. In accordance with that authority, the City lawfully suspended the August 8th effective date for 90 days to review the Company's requested rate increase.

The City's review of Oncor's rate increase request is coordinated by the Oncor Cities Steering Committee ("Steering Committee"). The City is a member of the 145-city Steering Committee. The Steering Committee has been the primary public interest advocate before the Public Utility Commission, the Courts, and the Legislature on electric utility regulation matters for the last 20 years.

To conduct the review and any necessary litigation of Oncor's requested rate increase, the Executive Committee of the Steering Committee retained lawyers and consultants with expertise in regulatory rate making issues. Legal efforts are being directed by Geoffrey Gay, Kristen Doyle and Thomas Brocato with the law firm of Lloyd Gosselink Rochelle & Townsend. All reasonable consulting and legal fees incurred by the Steering Committee are reimbursable by the Company.

The major components underlying Oncor's requested $275 million increase include an increase for depreciation expense ($131 million), a substantial increase to the Company's storm reserve ($81 million) and additional costs for pension and post retirement benefits ($36 million). Based upon the analysis of the Company's filing and review of discovery responses, the Steering Committee's consultants have determined that the Company's increase cannot be substantiated by evidence. In particular, Steering Committee experts have identified problems with the evidence offered by the Company supporting its requested rate of return, cash working capital, depreciation expense, consolidated taxes, federal income taxes, storm damage reserve and pension and post retirement benefits. The preliminary analysis indicates that Cities will likely be proposing cumulative reductions to the Company's requested rate increase in excess of $200 million. In addition, Cities' experts will file testimony regarding the rate design and cost allocation proposals made by Oncor.

The action taken by the City to deny Oncor's rate increase will be appealed by the Company to the Public Utility Commission ("PUC") of Texas. The appeals of all individual city actions will be consolidated into the current proceeding at the PUC, Docket No. 35717. The Steering Committee is already actively involved in Docket No. 35717 and will file testimony challenging the Company's support for the rate increase. The hearing regarding Oncor's requested rate increase will begin January 13, 2009 and is expected to last three weeks. In an effort to avoid litigation if at all possible, parties to the proceeding have scheduled meetings with the Company to investigate the possibility of settlement.

<u>Explanation of "Be It Resolved" Paragraphs</u>:

Section 1. This section finds that the new rates proposed by the Company to be unreasonable and denies Oncor's request to increase rates.

Section 2. This section requires Oncor to continue to charge its existing transmission and distribution rates to customers within the City.

Section 3. The Company will reimburse the Steering Committee for its reasonable rate case expenses. Legal counsel and consultants approved by the Executive Committee of the Steering Committee will submit monthly invoices that will be forwarded to Oncor for reimbursement. No individual city incurs liability for payment of rate case expenses by taking action to deny the Company's rate increase.

Section 4. This section recites that the resolution was passed at a meeting that was open to the public and that the consideration of the resolution was properly noticed.

Section 5. This section provides that both Oncor and Steering Committee counsel will be notified of the City's action by sending a copy of the approved and signed resolution to certain designated individuals.

Steering Committee of Cities Served by Oncor
with Original Jurisdiction

Addison
Allen
Andrews
Archer City
Arlington
Bedford
Bellmead
Belton
Benbrook
Big Spring
Beverly Hills
Breckenridge
Bridgeport
Brownwood
Burkburnett
Burleson
Carrollton
Cedar Hill
Celina
Cleburne
Colleyville
Coahoma
Commerce
Coppell
Copperas Cove
Dallas
Dalworthington Gardens
De Soto
DeLeon
Denison
Duncanville
Early
Eastland
Euless
Fairview
Farmers Branch
Fate
Flower Mound
Forest Hill
Fort Worth
Frisco
Gainesville
Garland
Glenn Heights
Grand Prairie
Grapevine
Haltom City
Harker Heights
Heath
Henrietta
Highland Park
Howe
Hurst
Iowa Park
Irving
Keller
Lake Worth
Lakeside
Lamesa
Lewisville
Lindale
Little Elm
Little River Academy
Mansfield
McKinney
Mesquite
Midland
Midlothian
Murphy
North Richland Hills
O'Donnell
Oak Point
Odessa
Palestine
Pantego
Paris
Plano
Prosper
Pottsboro
Richardson
Richland Hills
River Oaks
Roanoke
Robinson
Rockwall
Rowlett
Sachse
Saginaw
Seagoville
Sherman
Snyder
Southlake
Stephenville
Sulphur Springs
Sunnyvale
Sweetwater
Temple
The Colony
Tyler
University Park
Waco
Watauga
Waxahachie
White Settlement
Wichita Falls
Willow Park
Woodway
Wylie

Oncor Cities Steering Committee

Addison
Allen
Alvarado
Andrews
Anna
Archer City
Argyle
Arlington
Bedford
Bellmead
Belton
Benbrook
Big Spring
Beverly Hills
Breckenridge
Bridgeport
Brownwood
Buffalo
Burkburnett
Burleson
Caddo Mills
Cameron
Canton
Carrollton
Cedar Hill
Celina
Centerville
Cleburne
Colleyville
Collinsville
Coahoma
Comanche
Commerce
Coppell
Copperas Cove
Corinth
Crowley
Dallas
Dalworthington Gardens
De Soto
DeLeon
Denison
Duncanville
Early
Eastland
Edgecliff Village
Euless
Everman
Fairview
Farmers Branch
Fate
Flower Mound
Forest Hill
Fort Worth
Frisco
Frost
Gainesville
Garland
Glenn Heights
Grand Prairie
Granger
Grapevine
Gunter
Haltom City
Harker Heights
Heath
Henrietta
Hewitt
Highland Park
Honey Grove
Howe
Hurst
Hutto
Iowa Park
Irving
Jolly
Josephine
Justin
Kaufman
Keller
Kerens
Lake Worth
Lakeside
Lamesa
Lewisville
Lindale
Little Elm
Little River Academy
Malakoff
Mansfield
McKinney
Mesquite
Midland
Midlothian
Murchison
Murphy
Nacogdoches
New Chapel Hill
North Richland Hills
O'Donnell
Oak Leaf
Oak Point
Odessa
Ovilla
Palestine
Pantego
Paris
Plano
Prosper
Pottsboro
Ranger
Rhome
Richardson
Richland Hills
River Oaks
Roanoke
Robinson
Rockwall
Rosser
Rowlett
Sachse
Saginaw
Seagoville
Sherman
Snyder
Southlake
Springtown
Stephenville
Sulphur Springs
Sunnyvale
Sweetwater
Temple
Terrell
The Colony
Tyler
University Park
Venus
Waco
Watauga
Waxahachie
White Settlement
Wichita Falls
Willow Park
Woodway
Wylie

ONCOR RATE CASE SUMMARY

OVERVIEW

- Oncor reached agreements with the Cities and the PUC to file a rate review by July 1, 2008.
- Oncor has not had a rate review since 2001.
- Rate Review filing purportedly represents Oncor's current costs to provide electric delivery service.
- Oncor is requesting an increase in system wide rates of 2.7 percent, or about $5.09 per month for the average residential customer (1300 kWh/month).

RATE REQUEST

- Rate filing requests a total system-wide increase of $275 million.
- Oncor also seeks approval for $42 million for energy efficiency expenditures.
- Retail delivery service revenues would increase $230 million and transmission revenues would increase by $45 million.
- Major Components Supporting Requested Increase

Depreciation	$131 million
Storm Cost/Self Insurance	$ 81 million
Pension and Post Retirement Benefits	$ 36 million

COMPANY FILING (made on June 27, 2008)

26 Witnesses

- 14 Internal Company Experts
- 12 External Experts
- Rate filing package is 12 volumes = 4,283 plus pages of testimony, schedules and work papers
- 17,950 pages of voluminous material
- Overall annual cost to run business = $2.8 billion
- Significant infrastructure investment – Rate Base of $7.3 billion
- Depreciation rates do not reflect current level of investment
- Storm losses have increased dramatically - i.e., - 8 out of the top 10 worst storms in company history have occurred in the past seven years
- Pension and Retirement costs have increased

CUSTOMER IMPACT

- Impact on average (1300 kWh) residential customer = $5.09/month.
- Total residential monthly bill @ 1300 kWh = $193.46
  (Total bill includes energy charges purchased through a Retail Electric Provider (REP). The total bill reflected here is based on the average REP rates developed by the PUC for April 2008.)
- Oncor's current T&D rates for a residential customer using 1300 kWh equal $34.71. (Current rates are 17.9% of the total bill paid by the customer.)

- Oncor's proposed T&D rates for a residential customer using 1300 kWh equal $39.80. (Proposed rates are 20.6% of the total bill paid by the customer.)

- Customer impact does not include Advanced Metering Deployment surcharge of $2.21/month (to be charged beginning January 1, 2009).

- Customer impact does not include Energy Efficiency Cost Riders.

- Customer impact does not include projected $6 - $9 monthly increase to T&D rates for transmission build-out in the ERCOT West Zone approved by the PUC (expected to begin as early as 2010.)

PROPOSED CHANGES SPECIFICALLY AFFECTING CITIES

Cities Settlement Agreement Commitments

- Street Light Tariff rates lower than they otherwise would have been – increase capped at no more than 10% for any city.

- Municipal Rates – proposed waiver of demand ratchet on all municipal owned accounts.

- Underground Facilities Cost Recovery Factor - Provides ability for Non-OJ City to use this provision.

Other Proposed Additions/Changes Affecting Cities

- Franchise Fee Cost Recovery Factor – allows cities to increase franchise fee payments

- Street Light Maintenance Cost Recovery Factor (Non-standard)
  - Allows City to Request Pole Painting, Straightening, Pole Numbering, Patrolling, and Circuit Bulb and Photocell Replacement and have residents of requesting City pay

- New Discretionary Service Charges for Non-Standard Street Light maintenance

- Revised Street Light tariff to close certain rate options to new installations, add customer-owned LED/Low-wattage options, define standard repair and maintenance, master street light agreement

TIMELINE

•	June 27	Case Filed
•	November 6	Deadline for City Action
•	November 26, 12:00	Intervenor Direct Testimony
•	December 23, 12:00	Rebuttal/Cross Rebuttal
•	January 13-February 6	Hearing on the Merits
•	June 26	Jurisdictional Deadline

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. B.3

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5570
Establishing a Maximum Rate of Speed on U.S. Highway 82 in the Corporate Limits of Sherman, Grayson County, Texas, during the Texas Department of Transportation's Construction Project PTF 2008 (247); Fixing Penalties for Violation Thereof; Declaring an Emergency

Issue
The Texas Department of Transportation (TxDOT) is requesting a temporary construction speed zone on a segment of U.S. Highway 82.

Background
TxDOT is requesting a temporary construction speed zone on U.S. Highway 82 where the future Highway 289 will cross. The anticipated time frame for this speed zone is from October 2008 through October 2009. The speed zone will be located from mile point 13.879 approximately 1.2 miles easterly to mile point 15.079; and the speed limit is proposed to drop from seventy (70) miles per hour to sixty (60) miles per hour during the construction phase. TxDOT will advise the City when the project is complete (no later than October 2009) so that this temporary speed zone ordinance can be repealed, thus restoring the seventy (70) mile per hour speed limit.

Origination
Texas Department of Transportation Area Engineer

Financial Consideration
None

Staff Recommendation
It is recommended that the temporary construction speed zone on U.S. Highway 82 be approved.

Alternatives
As may be directed by the City Council

Attachments
Ordinance No. 5570
Request from TxDOT
Location Map

Prepared by:
Jeff Miller, Director of Public Works

Approved by:
George Olson, City Manager

ORDINANCE NO. 5570

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ESTABLISHING A MAXIMUM RATE OF SPEED ON U.S. HIGHWAY 82 IN THE CORPORATE LIMITS OF SHERMAN, GRAYSON COUNTY, TEXAS, DURING THE TEXAS DEPARTMENT OF TRANSPORTATION'S CONSTRUCTION PROJECT PTF 2008 (247); FIXING PENALTIES FOR VIOLATION THEREOF; DECLARING AN EMERGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, by the direction and authority of the City Council of the City of Sherman, Texas, that the following is the maximum, reasonable and prudent rate of speed for vehicular traffic upon U.S. 82 during the Texas Department of Transportation's Construction Project PTF 2008 (247);

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

SECTION 1. That no person shall drive a vehicle on U.S. 82 in the City of Sherman, Texas, at a speed greater than is reasonable and prudent under the conditions and circumstances during Project PTF 2008 (247). Except when a special hazard exists that requires lower speeds for compliance with the above requirements, the limits hereinafter set out shall be lawful but any speed in excess of the limits are hereinafter set out for U.S. 82 and portions thereof to which they apply shall be prima facie evidence that speed is not reasonable or prudent:

> On U.S. 82 in the corporate limits of Sherman, Grayson County, Texas from mile point 13.879 approximately 1.200 miles easterly to mile point 15.079, a construction speed limit of sixty (60) miles per hour during the construction phase of Project PTF 2008 (247).

SECTION 2. That any person violating the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed TWO HUNDRED AND NO/100 ($200.00) DOLLARS.

SECTION 3. That the fact that present traffic regulations are inadequate to control traffic in areas covered by this ordinance creates an emergency which is here and now declared, and all rules and regulations providing for the reading of ordinance is passed as an emergency measure and shall be in full force and effect from and after its passage and publication and after the installation of speed limit signs.

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

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

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

INTRODUCED on this the _____________ day of _________________, 2008.

ADOPTED on this the ________________ day of _________________, 2008.

EFFECTIVE DATE on this the _________ day of _________________, 2008.

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM
AND CONTENT:

____
INTERIM CITY ATTORNEY

Texas Department of Transportation
1365 N. MAIN • PARIS, TEXAS 75460 • (903) 737-9300

September 29, 2008

Honorable Bill Magers
Mayor, City of Sherman
P.O. Box 1106
Sherman, TX 75091

Dear Mayor Magers:

Our District Traffic Office has worked with Austin for the approval of construction speed zone on US 82 that would be in effect during the TxDOT project number PTF 2008(247).

The attached speed zone maps show the results from this study and the proposed speed zone limits.

Also attached is a sample speed zoning ordinance covering the proposed speed zones. The sample ordinance may be used in its present form, or may be rewritten, using the distances and speed limits given.

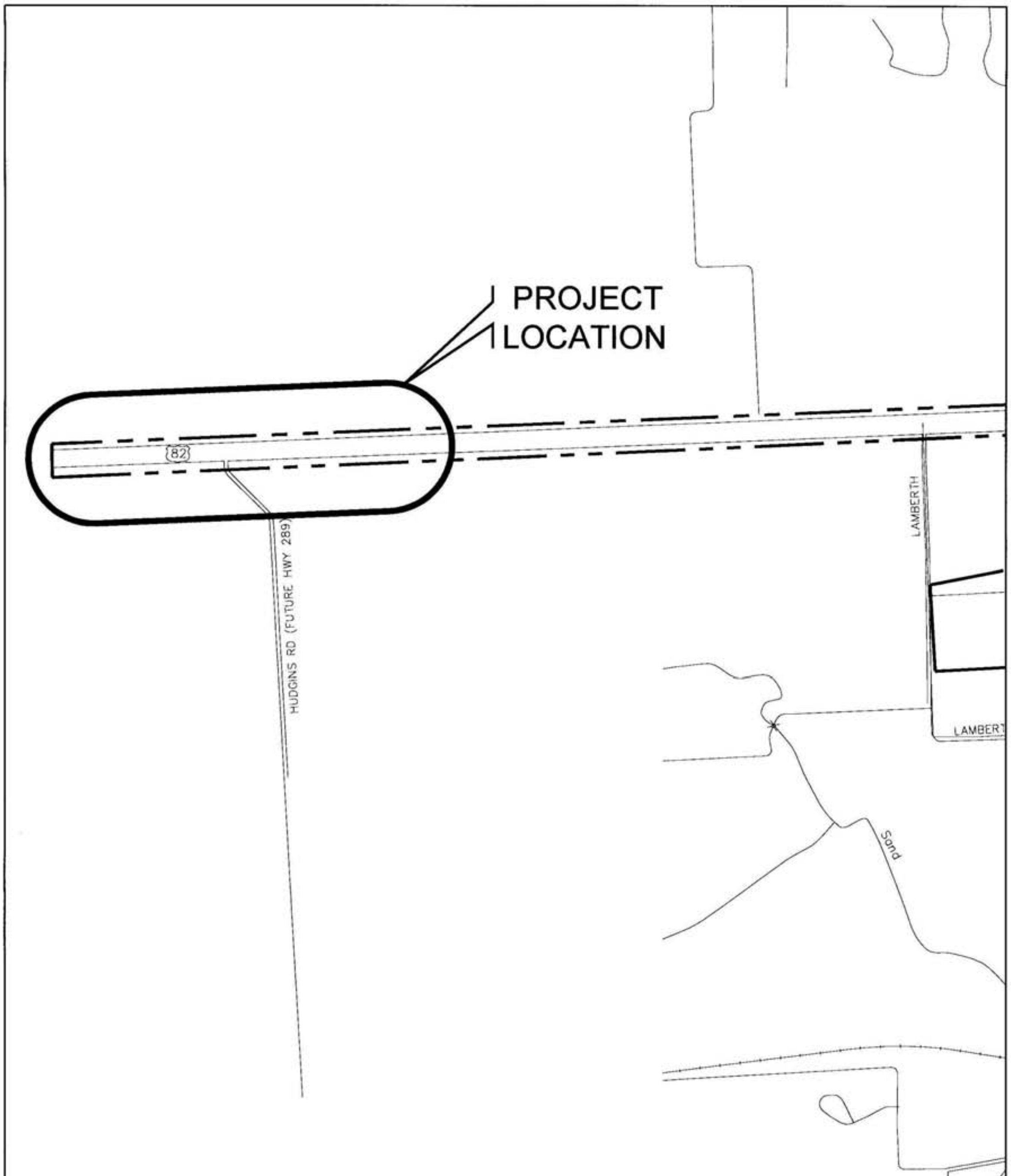
Please present the proposed speed zoning plan to the city council for their review and passage of the required ordinance. When approved, **two (2) sealed and signed copies of the completed ordinance** should be sent to this office before signs can be posted.

If you have any questions contact Kim Walker in the District Traffic Office at 903-737-9344.

Sincerely,

Jerry Keisler, P.E.
Director of Traffic Operations

JEK:akw
Attachments
Cc: Kevin Harris
Joe Strickland
DTO file



City of Sherman, Texas

TEMPORARY CONSTRUCTION SPEED ZONE

PROJECT LOCATION MAP

N

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. B.4

ADOPTION OF ORDINANCES
Consider Adoption of Ordinance Numbers: 5569 and 5570

B.2 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5569
Denying Oncor Electric Delivery Company's Requested Increases to its Electric Transmission and Distribution Rates and Charges within the City; Finding that the City's Reasonable Rate Case Expenses Shall be Reimbursed by the Company; Requiring Notice of this Ordinance to the Company and Legal Counsel for the Steering Committee

B.3 INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 5570
Establishing a Maximum Rate of Speed on U.S. Highway 82 in the Corporate Limits of Sherman, Grayson County, Texas, during the Texas Department of Transportation's Construction Project PTF 2008 (247); Fixing Penalties for Violation Thereof; Declaring an Emergency

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. B.5

CONSENT AGENDA

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

C.1 **** RESOLUTION NO. 5281***

Authorizing the Cities Aggregation Power Project, Inc. (CAPP) to Negotiate an Electric Supply Agreement for Deliveries of Electricity and Necessary, Related Services Effective January 1, 2009; Authorizing CAPP to Act as an Agent on Behalf of the City to Enter Into a Contract for Electricity; Approving CAPP Contracting with FPL Energy and Direct Energy and Authorizing the Chairman of CAPP to Execute an Electric Supply Agreement for Deliveries of Electricity Effective January 1, 2009; Committing to Budget for Energy Purchases and to Honor the City's Commitments to Purchase Power Through CAPP for its Electrical Needs beginning January 1, 2009, through December 31, 2013

C.2 **** RESOLUTION NO. 5282***

Authorizing Execution of an Agreement with Barton Capital, LTD for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1508 South Montgomery Street

C.3 **** RESOLUTION NO. 5283***

Authorizing Execution of an Agreement with Barton Capital, LTD for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1512 South Montgomery Street

D.1 **** REQUEST TO ADVERTISE***

Luella 3 Trinity Well Repairs

D.2 **** CHANGE ORDER NO. 1***

Travis Street Water Main Replacement between U.S. Highway 75 and Washington Street; $8,007.59, Increase

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. C.1

**** RESOLUTION NO. 5281***

Authorizing the Cities Aggregation Power Project, Inc. (CAPP) to Negotiate an Electric Supply Agreement for Deliveries of Electricity and Necessary, Related Services Effective January 1, 2009; Authorizing CAPP to Act as an Agent on Behalf of the City to Enter Into a Contract for Electricity; Approving CAPP Contracting with FPL Energy and Direct Energy and Authorizing the Chairman of CAPP to Execute an Electric Supply Agreement for Deliveries of Electricity Effective January 1, 2009; Committing to Budget for Energy Purchases and to Honor the City's Commitments to Purchase Power Through CAPP for its Electrical Needs beginning January 1, 2009, through December 31, 2013

Issue

This resolution gives the Cities Aggregation Power Project, Inc. (CAPP) the authority to lock in very favorable electrical rates for the City of Sherman's consumption during the five-year period of January 1, 2009, through December 31, 2013.

Background

The City is a member of CAPP, which acts on behalf of its members to secure power at favorable rates to member cities because of the economies of scale realized by aggregating the power needs of many cities. This item procures power for five (5) years through FPL Energy and Direct Energy to cover the power needs of the City not covered by the recently approved long-term power purchase contract with Luminant. The rates projected with this agreement will be at least 20% below current market rates for power.

Origination

Geoffrey Gay and Kristen Doyle of Lloyd Gosselink Rochelle & Townsend, P.C. on behalf of CAPP

Financial Consideration

There is no financial consideration to approving this resolution. Participating in this contract is expected to save the City at least 20% over the costs that would otherwise be spent on power without such an agreement.

Staff Recommendation

The staff recommends approval of this resolution.

Alternatives

While not recommended, the City Council could reject the resolution and instruct the staff to seek another aggregation group or negotiate rates on its own.

<u>Attachments</u>
Memorandum from Geoffrey Gay and Kristen Doyle dated October 10, 2008
Resolution No. 5281

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

Lloyd Gosselink
ATTORNEYS AT LAW

816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

Ms. Doyle's Direct Line: (512) 322-5820
Email: kdoyle@lglawfirm.com

MEMORANDUM

TO: CAPP Members

FROM: Geoffrey Gay
Kristen Doyle

DATE: October 10, 2008

RE: **ACTION NEEDED BY ALL CAPP MEMBERS** - Resolution to support locking in electric prices and authorizing contracts with Direct Energy and FPL Energy

IMPORTANT NOTICE – PLEASE PLACE THE ATTACHED RESOLUTION ON THE AGENDA FOR COUNCIL CONSIDERATION AT THE NEXT SCHEDULED MEETING.

CAPP's current electric contract will expire on December 31, 2008. The CAPP Board has approved indicative electric pricing available through FPL Energy and Direct Energy Business Services (DEBS) for all CAPP members for a five (5) year term beginning January 1, 2009 through December 31, 2013. Energy markets have been falling in response to recessionary pressures and the CAPP Board desires to lock-in very favorable gas based pricing for as long as possible (five years). If members act quickly, CAPP should be able to fix rates for each of the next five years at commodity prices (i.e. excluding non-bypassable wires charges) that range from 8.0 cents (possibly lower) to 8.5 cents per kilowatt hour. This means that CAPP members will lock-in prices for five years that are <u>below</u> electric prices members are currently paying.

Adopting this resolution is a necessary step for all CAPP members that will not participate in the long term contract. The contract with FPL Energy and DEBS that will be negotiated and secured as a result of the authority granted by the attached resolution is structured like the energy contracts CAPP has put together for members over the past six years. There is no prepayment of capacity costs or debt allocation associated with this contract.

For those members that have passed or are planning to pass an ordinance to participate in the long term purchase power agreement (PPA) with Luminant, you should also take action to pass the attached resolution. FPL Energy will be the wrap energy provider for the power needs not served by the PPA. Because of this and at the Board's instruction to provide added protection for all CAPP members, FPL Energy has agreed to initially secure 100 percent of the power needs for all CAPP members, including those participating in the PPA. For those members participating in the PPA, FPL Energy will allow CAPP/STAP to exercise a one-time option to back out of the FPL Energy contract the portion of energy associated with base load and substitute energy under the Luminant agreement. Although we don't anticipate that

CAPP will be unable to issue bonds to fund the prepayment required by the PPA, this added security provided by FPL Energy is critical as we await the full ramifications of the unfolding credit crisis.

Explanation of the Contracting Process

The contracting process is exactly like the process used the last several contracting periods. Your council will need to approve one of the two attached model resolutions. One resolution (Model Resolution A) authorizes CAPP to act as an agent to negotiate and execute a contract for the member's electricity needs while the other resolution (Model Resolution B) requires the city to contract with CAPP to purchase power for the member through CAPP and to designate an individual with the power to execute the contract.

The resolutions streamline contracting procedures. The resolutions empower the Chairman of CAPP to sign a contract with the selected power provider on behalf of all CAPP members for 2009 - 2013 energy needs. A majority of CAPP members previously authorized the CAPP Chairman to execute the 2007 energy contract on their behalf. Model Resolution A accomplishes that objective for 2009 - 2013. Model Resolution B is to be adopted by those cities whose charters prevent the cities from delegating contracting power to anyone but the mayor or other designated city representative. For those cities, the resolution directs the city to contract with CAPP for the city's 2009 -2013 electricity needs. In addition, both resolutions reiterate that each member is obligated only for its proportionate share of the contracted load. Every CAPP member should expeditiously adopt one of the two resolutions and provide a copy of the resolution to our office.

(To assist you in determining which model resolution your city should adopt this year, the following cities adopted Model Resolution B last contracting cycle: Addison, Allen, Benbrook Library District, Cisco, Colleyville, Colorado City, Comanche, Copperas Cove, Crockett, Denison, Fort Stockton, Highland Park, Irving, Lewisville, Mansfield, North Richland Hills, Odessa, Paris, Richland Hills, Rotan, Saginaw, San Angelo, Sweetwater, and Watauga.)

If you have any questions or need more information, please contact Geoffrey (512/322-5875, ggay@lglawfirm.com) or Kristen (512/322-5820, kdoyle@lglawfirm.com).

RESOLUTION NO. 5281

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITIES AGGREGATION POWER PROJECT, INC. (CAPP) TO NEGOTIATE AN ELECTRIC SUPPLY AGREEMENT FOR DELIVERIES OF ELECTRICITY AND NECESSARY, RELATED SERVICES EFFECTIVE JANUARY 1, 2009; AUTHORIZING CAPP TO ACT AS AN AGENT ON BEHALF OF THE CITY TO ENTER INTO A CONTRACT FOR ELECTRICITY; APPROVING CAPP CONTRACTING WITH FPL ENERGY AND DIRECT ENERGY AND AUTHORIZING THE CHAIRMAN OF CAPP TO EXECUTE AN ELECTRIC SUPPLY AGREEMENT FOR DELIVERIES OF ELECTRICITY EFFECTIVE JANUARY 1, 2009; COMMITTING TO BUDGET FOR ENERGY PURCHASES AND TO HONOR THE CITY'S COMMITMENTS TO PURCHASE POWER THROUGH CAPP FOR ITS ELECTRICAL NEEDS BEGINNING JANUARY 1, 2009, THROUGH DECEMBER 31, 2013; 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 ("City") is a member of Cities Aggregation Power Project, Inc. ("CAPP"), a nonprofit political subdivision corporation dedicated to securing electric power for its 111 political subdivision members in the competitive retail market; and

WHEREAS, CAPP negotiated favorable contract terms and a reasonable commodity price for delivered electricity since 2002 resulting in significant savings for its members; and

WHEREAS, the City's current contract for power expires December 31, 2008; and

WHEREAS, CAPP members must secure power supplies for 2009 or revert to high price standard contracts and independently shop for a power contract; and

WHEREAS, the CAPP Board of Directors is currently considering indicative retail energy prices that point to favorable pricing for the five-year period ending December 31, 2013; and

WHEREAS, power providers desire to execute a contract with one, and only one, entity rather than have unique contracts for each CAPP member; and

WHEREAS, CAPP believes that the pricing opportunity window for favorable 2009 deliveries will be short-lived and that CAPP must be able to commit contractually to prices within a 24-hour period in order to lock-in favorable prices; and

WHEREAS, experiences in contracting for CAPP load since 2002 demonstrated that providers demand immediate response to an offer and may penalize delay with higher prices; and

WHEREAS, aggregated rates contracted during favorable pricing periods are likely to be lower than prices obtained by the City contracting individually during the same time period; and

WHEREAS, suppliers demand assurance that CAPP will pay for all contracted load; and

WHEREAS, the City needs to assure CAPP that it will budget for energy purchases and honor its commitments to purchase power for its electrical needs through CAPP for the period beginning January 1, 2009, and extending through December 31, 2013; and

WHEREAS, CAPP intends to continue to contract with both FPL Energy (power supply) and Direct Energy (billing, administrative and other customer services); and

WHEREAS, the current contractual relationships between CAPP and FPL Energy and Direct Energy have been beneficial and cost effective for CAPP members and the City;

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

SECTION 1. That the CAPP Board and its consultants and advisors are agents authorized to negotiate for the City's electric power needs as a member of CAPP and to contract for the electric power supply and related, necessary services for the City for a term to begin January 1, 2009 and extending up to December 31, 2013.

SECTION 2. That the City approves CAPP contracting with FPL Energy and Direct Energy for the supply of electric power and related, necessary services for the City for a term to begin January 1, 2009, and extending up to December 31, 2013.

SECTION 3. That the Chairman of CAPP is hereby authorized to sign a Commercial Electric Service Agreement ("CESA") for the City pursuant to the contract approved and recommended by the CAPP Board of Directors within 24 hours of said approval and recommendation.

SECTION 4. That the City will budget and approve funds necessary to pay electricity costs proportionate to the City's load under the supply agreement arranged by CAPP and the CESA signed by the Chairman of CAPP on behalf of the City for the term beginning January 1, 2009, and extending up to December 31, 2013.

SECTION 5. That a copy of the resolution shall be sent to Mary Bunkley with the City Attorney's office in Arlington and to Geoffrey M. Gay, legal counsel to CAPP.

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

PASSED AND APPROVED on this the _____ day of ________________, 2008.

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

BY: ______________________________
INTERIM CITY ATTORNEY

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. C.2

**** RESOLUTION NO. 5282***
Authorizing Execution of an Agreement with Barton Capital, LTD for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1508 South Montgomery Street

Issue
This item is to consider property tax abatement for the construction of a new single-family residence at 1508 South Montgomery Street.

Background
Several years ago, the City Council began a residential tax abatement program to encourage the redevelopment of older sections of town. This application is for the construction of a new single-family residence at this location. This lot is in the designated zone for residential tax abatements.

Origination
Barton Capital, LTD, Applicant

Financial Consideration
A $75.00 application fee has been received for this residential lot. If granted, the initial abatement for this lot will be approximately $192.00 annually.

Staff Recommendation
The staff recommends approval of this abatement since it meets the requirements of the process.

Alternatives
The City Council could decide against granting this abatement.

Attachments
Resolution No. 5282
Residential Tax Abatement Agreement
Application
Building Permit Application
Survey
Location Map

Prepared by:
Scott Shadden, Director of Development Services

Approved by:
George Olson, City Manager

RESOLUTION NO. 5282

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH BARTON CAPITAL, LTD FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1508 SOUTH MONTGOMERY STREET; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to receipt of a fully-executed agreement from Barton Capital, LTD and subject to all contract documents being properly completed and approved by the Interim City Attorney, to execute an agreement with Barton Capital, LTD for the abatement of ad valorem property taxes for a period of ten (10) years, for the construction of one (1) new single-family residence at 1508 South Montgomery Street, lying within the City of Sherman's Residential Tax Reinvestment Zone, in accordance with the City's policies and procedures established for this purpose.

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

PASSED AND APPROVED on this the _____ day of ________________, 2008.

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

____
INTERIM CITY ATTORNEY

THE STATE OF TEXAS §
§
COUNTY OF GRAYSON §

AGREEMENT

THIS AGREEMENT, entered into by and between the **CITY OF SHERMAN, TEXAS**, a home rule city and municipal corporation of the State of Texas, duly acting herein by and through its City Manager, hereinafter referred to as CITY and **BARTON CAPITAL, LTD**, hereinafter referred to as OWNER.

WITNESSETH:

WHEREAS, on the 16th day of June, 2003, the City Council of Sherman, Texas, passed Ordinance No. 5136 establishing a reinvestment zone for residential tax abatement, as authorized by Chapter 312 of the Texas Tax Code, as amended, hereinafter referred to as CODE; and

WHEREAS, the CITY has adopted a resolution (Resolution No. 4685) stating that it elects to be eligible to participate in a residential tax abatement program; and

WHEREAS, the CITY desires to create the proper economic and social environment to induce the investment of private resources in real estate construction located in incorporated areas of the CITY; and

WHEREAS, the CITY hereby finds that it may effectively encourage and assist the creation of such an environment by participating in tax abatement pursuant to the CITY; and

WHEREAS, the CITY has created a reinvestment zone within its jurisdiction to induce the investment of private resources in real estate construction located in incorporated areas of the CITY, and OWNER has agreed to construct certain real property improvements; and

WHEREAS, OWNER is prepared to comply with the provisions of the CITY'S guidelines and criteria enacted the 16th day of June, 2003;

NOW, THEREFORE, WITNESS THIS TAX ABATEMENT AGREEMENT which provides as follows:

I.

1.01 To the extent authorized by the Texas Constitution and by the Tax Code, CITY hereby agrees to exempt from City of Sherman taxation a portion of the increase in value of taxable real property of OWNER in the CITY over the same real property and its value as calculated by the Grayson Appraisal District for ad valorem property tax purposes in accordance with the following schedule. Such tax exemption shall be in effect for tax years beginning January 1, 2008, and continuing for tax years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 with same constituting ten (10) tax years. However, nothing contained herein shall be construed to grant an abatement of taxes to be assessed based on the change of use of the property from an agricultural use to another use, sometimes referred to as rollback taxes, penalties or interest. In the event rollback taxes are applicable for the real property utilized by OWNER, then such increase in value of taxable property resulting from such rollback shall be used as the tax value for such property for the tax year 2008, sometimes referred to herein as the Base Tax Year.

SCHEDULE OF TAXES ASSESSED

TAX YEAR	ABATEMENT
2008	100%
2009	100%
2010	100%
2011	100%
2012	100%
2013	100%
2014	80%
2015	60%
2016	40%
2017	20%

II.

2.01 OWNER warrants and represents that the real property upon which OWNER has constructed or will construct improvements is qualified property within the meaning of that Act, and that such has been and will remain eligible for tax abatement under the provisions of the Property Redevelopment and Tax Abatement Act, Sections 312.001, et seq., Texas Tax Code.

2.02 To continue to qualify for tax abatement under the terms of this Agreement, OWNER hereby warrants and represents that the improvements made by OWNER on the real property described herein are for residential use.

2.03 The tax abatement granted under the terms of the Agreement shall only be implemented if appraised value of all real property and improvements located thereon owned by OWNER and lying within designated zone exceeds the base year value. The OWNER agrees that Grayson Appraisal District shall, at reasonable times upon reasonable notice, have access to the property made the subject of this Agreement, and that the above set forth inspectors shall be able to inspect the property to insure that the improvements are being made in accordance with the terms and conditions hereof and utilized in accordance with this Agreement.

III.

3.01 The term of this Agreement shall be for tax years 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016, and 2017 as indicated above in paragraph 1.01.

IV.

4.01 The kind, number and location of all proposed property improvements are set forth as follows:

Construction of one (1) new single-family residence at 1508 South Montgomery Street, Sherman, Texas, and as more particularly describe by the following:

BEING Lot 2, Block 1 of J. P. Geren's South Montgomery Addition.

V.

5.01 OWNER agrees that, should he fail to make improvements substantially as described or fail to perform any other term or covenant hereof, CITY shall have the right, after giving notice and opportunity to cure as hereinafter set out, to recapture all tax revenue on said property in the zone lost as a result of this Agreement for the entire term of the Agreement. Such recapture shall mean that all of such property shall be taxed at the full improved value as assessed by the Grayson Appraisal District for all years this Agreement has been in effect. The payment of such recaptured taxes minus any taxes paid by OWNER during the years this Agreement has been in force shall be due January 1 of the next following year and shall be delinquent if not paid on or prior to January 31st. Penalties and interest shall be calculated thereafter as if all taxes had become due in the same year. The CITY agrees prior to enforcement of the terms of this paragraph to give 120 days written notice to the address shown below of OWNER'S default in completing the improvements called for in this Agreement, and OWNER shall have the right to cure such default within the 120-day period.

VI.

6.01 This Agreement shall inure to the benefit of CITY and OWNER, and shall be binding upon them, their heirs, successors and assigns. It is specifically provided and agreed that the right to tax abatement shall inure to the benefit of subsequent owners so long as the term and conditions of this Agreement are in effect.

VII.

7.01 CITY agrees that this Agreement may be assigned and the improvements leased or sub-leased, without any further necessity for consent, by the OWNER to any person, firm or corporation.

VIII.

8.01 At any time before the expiration of the term hereof, this Agreement may be modified by the mutual action of the parties hereto to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. Such modification must be in writing and signed by all the parties hereto and made by the same procedure by which the original Agreement was approved and executed. In no event may the original Agreement be modified so as to extend the term beyond the original term of this Agreement.

IX.

9.01 This Agreement shall be construed subject to the laws of the State of Texas, and particularly to the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code.

9.02 All appraisal values for real property shall be made by the Grayson Appraisal District or such other entity as may succeed or replace such District.

9.03 OWNER is hereby notified that the Grayson Appraisal District may impose additional requirements which must be met in order for OWNER to realize the benefit of tax abatement and this Agreement. Contact should be made by OWNER with the District in person at 205 North Travis Street, Sherman, Texas, or by telephone at (903) 893-9673.

X.

10.01 This Agreement is subject to all provisions of all outstanding bond issues of CITY. To the extent that this Tax Abatement Agreement conflicts with any of the provisions of such bond issues, such bond issues and attendant documents thereto shall control.

XI.

11.01 This Tax Abatement Agreement is specifically subject to present laws of the State of Texas and any future laws enacted subsequent to the execution of this Agreement which may provide retroactively for a modification of Agreements of this type as a matter of law. Upon the effective date of any such law, then this Agreement shall automatically be so modified.

XII.

12.01 Notices required by this Agreement shall be mailed to the following addresses as same may be in the future changed by either party upon written notice to the other:

City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106
(903) 892-7200

Barton Capital, LTD
715 S. Sam Rayburn Frwy.
Sherman, Texas 75090
(903) 868-4201

Copy to: Grayson Appraisal District
205 North Travis Street
Sherman, Texas 75090
(903) 893-9673

This Agreement is performable in Grayson County, Texas. Witness our hands on this the

_____ day of __________________________, 2008.

CITY:	**OWNER:**
CITY OF SHERMAN, TEXAS	**BARTON CAPITAL, LTD**
BY: ______________________	**BY: ______________________**
GEORGE OLSON	**NAME: ____________________**
CITY MANAGER	**TITLE: ____________________**
ATTEST:	**(CORPORATE SEAL)**

BY: ______________________

LINDA ASHBY
CITY CLERK

APPROVED AS TO FORM:

____
INTERIM CITY ATTORNEY

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared Ron Barton, Barton Capital, LTD, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein express.

GIVEN UNDER MY HAND and seal of office this _____day of _________, 2008 A.D.

____
Tammy Biggar
Notary Public

CITY OF SHERMAN
APPLICATION FOR RESIDENTIAL TAX ABATEMENT

Property Owner:

Name: BARTON CAPITAL

Mailing Address: 715 S. HWY 75 SHERMAN, TX 75090

Telephone Number: 903 - 868 - 4201

Contact (if different than owner):

Name: Ron Barton

Mailing Address: Same

Telephone Number: SAME

Property:

Physical Address: 1508 S. MONTGOMERY

Summary Legal Description: Lot: 2 Block: 1 Addition: J.P. GERENS S. MONTGOMERY Add.

Full Legal Description: Include as an attachment a full legal description with metes and bounds.

Improvements:

Type of Improvements (please check one). New Construction: ✓ Remodeling: ____

Estimated Value of Improvements: $60,000

Estimated Date of Start of Construction: 9-25-08

Estimated Date of Completion of Project: 11-25-08

Description of Project: NEW SINGLE FAMILY DWELLING

Applicant(s): [signature] Date: 9-25-08

70 2008 00010977

Wilma Blackshear Bush
County Clerk
Sherman, Texas 75090

5481

Instrument Number: 2008-00010977

As

Recorded On: May 08, 2008

Recordings

Parties: W DOUGLAS DISTRIBUTING LTD

To BARTON CAPITAL LTD

Billable Pages: 3

Number of Pages: 5

Comment: WD/VL

(Parties listed above are for Clerks reference only)

** Examined and Charged as Follows: **

Recordings	24.00
Total Recording:	24.00

************* DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT *************

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2008-00010977
Receipt Number: 265853
Recorded Date/Time: May 08, 2008 10:20:32A
Book-Vol/Pg: BK-OR VL-4451 PG-730
User / Station: G WHITE - Cashiering Station 1

Record and Return To:

RED RIVER TITLE CO
421 N. CROCKETT ST
SHERMAN TX 75090

COUNTY COURT OF GRAYSON COUNTY, TEXAS

THE STATE OF TEXAS
COUNTY OF GRAYSON
I hereby certify that this instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Grayson County, Texas

Wilma Blackshear Bush

Wilma Blackshear Bush, Grayson County Clerk

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

GENERAL WARRANTY DEED WITH VENDOR'S LIEN

THE STATE OF TEXAS *
KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF GRAYSON *

That **W. DOUGLAS DISTRIBUTING, LTD.,** for and in consideration of the sum of TEN AND NO/100THS ($10.00) DOLLARS and other valuable consideration to the undersigned paid by the Grantee herein named, the receipt of which is hereby acknowledged herein, and the further consideration of the execution and delivery by Grantee of one certain promissory note of even date herewith, in the principal sum of **EIGHTY-ONE THOUSAND FIVE HUNDRED SIX AND NO/100THS ($81,506.00) DOLLARS,** payable to the order of **AMERISTATE BANK ,** as therein specified and bearing interest as therein provided, containing the usual clauses providing for acceleration of maturity and for attorney's fees; the payment of which note is secured by the vendor's lien herein retained, and is additionally secured by a Deed of Trust of even date herewith to **CHARLES A. MCCALL, Trustee,** has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto **BARTON CAPITAL, LTD.,** all of the following described real property in Grayson County, Texas, to-wit:

BEING Lots 1 through 14 of the J.P. GEREN'S SOUTH MONTGOMERY ADDITION to the City of Sherman, Texas, as shown by plat of record in Vol. 341, Page 13, Deed Records, Grayson County, Texas, being more particularly described on the attached Exhibit "A"...............................

SAVE AND EXCEPT and there is hereby excepted from the warranties herein conveyed all prior reservations of any oil, gas, and other minerals, easements, and restrictive covenants and conditions of record in the County Clerk's Office, Grayson County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, Grantee's successors or assigns forever; and Grantor does hereby bind Grantor, Grantor's successors or assigns, to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, Grantee's successors or assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

AMERISTATE BANK, at the instance and request of the Grantee herein, having advanced and paid in cash to the Grantor herein that portion of the purchase price of the hereinbefore described **$81,506.00** Note, the vendor's lien, together with the superior title to said property is retained herein for the benefit of **AMERISTATE BANK,** and the same is hereby transferred and assigned to **AMERISTATE BANK.**

But it is expressly agreed that the Vendor's Lien, as well as the Superior title in and to the above described premises, is retained against the above described property, premises and improvements until the above described note and all interest thereon are fully paid according to the face, tenor, effect and reading thereof, when this Deed shall become absolute.

EXECUTED this 8 day of May, 2008.

W. DOUGLAS DISTRIBUTING, LTD.

BY: William P. Douglas
NAME PRINTED: William P. Douglas
TITLE: CEO

GRANTEE'S MAILING ADDRESS:

Barton Capital, Ltd.
715 S. Hwy 75
Sherman TX 75090

ACKNOWLEDGMENT

STATE OF TEXAS *

COUNTY OF Grays *

This instrument was acknowledged before me on the 8 day of May, 2008, by William P. Douglas in the capacity of CEO for **W. DOUGLAS DISTRIBUTING, LTD.**, on its behalf and in the capacity therein stated.

DORIS C. CASTON
Notary Public
STATE OF TEXAS
My Commission
Expires 02/06/2009

Notary Public, State of Texas

EXHIBIT A

SITUATED in the City of Sherman, County of Grayson, State of Texas, being a part of the Samuel Blagg Survey, Abstract No. 56, being all of J. P. Geren's South Montgomery Addition, to the City of Sherman, Texas, recorded in Volume 341, Page 13, Deed Records, Grayson County, Texas, said Geren's Addition being the 2.272 acre tract of land described as Parcel One, conveyed in the Warranty Deed from Keystone Consolidated Industries, Inc., to DSO Acquisition Corporation, on September 27, 1996, recorded in Volume 2497, Page 797, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at 1/2 inch rebar found in the North line of Lake Avenue and the East line of an alley, at the Southwest corner of said Geren's Addition and said DSO 2.272 acres;

THENCE North 16 deg. 00 min. 00 sec. West, with the East line of said alley, a distance of 697.00 ft. to a 1/2 inch rebar found in the South line of Olive Street, at the Northwest corner of said Geren's Addition and said DSO 2.272 acres;

THENCE North 74 deg. 00 min. 00 sec. East, with the South line of Olive Street, a distance of 142.00 ft. to a 1/2 inch rebar found in the West line of Montgomery Street, at the Northeast corner of said Geren's Addition and said DSO 2.272 acres;

THENCE South 16 deg. 00 min. 00 sec. East, with the West line of Montgomery Street, a distance of 697.00 ft. to a 1/2 inch rebar found in the North line of Lake Avenue, at the Southeast corner of said Geren's Addition and said DSO 2.272 acres;

THENCE South 74 deg. 00 min. 00 sec. West, with the North line of Lake Avenue, a distance of 142.00 ft. to the **PLACE OF BEGINNING** and containing **2.272 ACRES** of land.

SARTIN & ASSOCIATES, INC.
Registered Professional Land Surveyors
P.O. Box 1843 - 109 S. Travis - Sherman, Texas 75091-1843
phone (903)892-8003 - fax (903)868-2970

SURVEY FOR: ______________________

I, Marshall Sartin, Registered Professional Land Surveyor, hereby certify that a survey of the property shown hereon was made on the ground on the 21 st day of May, 2008 of the following described property:

Lot TWO (2) of J. P. GEREN'S SOUTH MONTGOMERY ADDITION to the City of Sherman, Texas as shown by plat of record in Volume 341, Page 13, Deed Records, Grayson County, Texas.

That the improvements located on said property are known as 1508 **S. MONTGOMERY STREET, SHERMAN, TEXAS,** and that this survey substantially complies with the current Minimum Standards for Professional Land Surveyors as adopted by the Texas Board of Professional Land Surveying, and is subject to all easements of record or as shown on recorded plat that may affect said property.

THIS SURVEY PLAT WAS PREPARED FROM A SURVEY PERFORMED ON THE DATE SHOWN HEREON FOR THE CLIENT NAMED HEREINABOVE AND FOR THE TRANSACTION TAKING PLACE AT THE TIME OF THIS SURVEY. THIS SURVEY PLAT IS NOT TO BE USED IN CONNECTION WITH ANY FUTURE TRANSACTIONS WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE UNDERSIGNED SURVEYOR AND THE UNDERSIGNED SURVEYOR ACCEPTS NO LIABILITY FOR ANY FUTURE UNAUTHORIZED USE OF THIS SURVEY PLAT.

Marshall Sartin, R.P.L.S. 3694

STATE OF TEXAS
REGISTERED
MARSHALL SARTIN
3694
PROFESSIONAL LAND SURVEYOR

GEREN-2.pcs

1508 S Montgomery

CITY OF SHERMAN

RESIDENTIAL BUILDING PERMIT

PERMIT #: 81774

SUBCONTRACTOR: CUPID HOMES

DATE ISSUED: 9/25/2008

PROJECT ADDRESS:	1508 S MONTGOMERY ST	LOT #:	2
PARCEL ID:		BLK #:	1
SUBDIVISION:	J P GEREN'S S MONTGOMERY ADDN	ZONE ORD:	
ISSUED TO:	CUPID HOMES	CONTRACTOR:	CUPID HOMES
ADDRESS:	715 S HIGHWAY 75	ADDRESS:	715 S HIGHWAY 75
CITY, ST ZIP:	SHERMAN TX 75090-7260	CITY, ST ZIP:	SHERMAN TX 75090-7260
PHONE:	903-868-4201	PHONE:	
PROP.USE:	RESIDENTIAL	SQ FT:	1,039.00
WORK:	NEW RESIDENTIAL CONSTRUCTION	BEDROOMS:	2
VALUATION:	$ 60,000.00	BATHROOMS:	1
OCCP TYPE:	RESIDENTIAL	STORIES:	1
CNST TYPE:	WOOD FRAME		

FEE CODE	DESCRIPTION	AMOUNT
BLD10	RESIDENTIAL STORMWATER MGMT	$ 25.00
	TOTAL	$ 25.00

NOTES:

NOTICE

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS STARTED.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISION OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

______________________________ (SIGNATURE OF CONTRACTOR OR AUTHORIZED AGENT

___/___/___ DATE

______________________________ (APPROVED BY)

___/___/___ DATE

City of Sherman, Texas

1508 SOUTH MONTGOMERY

PROJECT LOCATION MAP

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. C.3

**** RESOLUTION NO. 5283***
Authorizing Execution of an Agreement with Barton Capital, LTD for the Abatement of Ad Valorem Property Taxes for the Construction of a New Single-Family Residence at 1512 South Montgomery Street

Issue
This item is to consider property tax abatement for the construction of a new single-family residence at 1512 South Montgomery Street.

Background
Several years ago, the City Council began a residential tax abatement program to encourage the redevelopment of older sections of town. This application is for the construction of a new single-family residence at this location. This lot is in the designated zone for residential tax abatements.

Origination
Barton Capital, LTD, Applicant

Financial Consideration
A $75.00 application fee has been received for this residential lot. If granted, the initial abatement for this lot will be approximately $192.00 annually.

Staff Recommendation
The staff recommends approval of this abatement since it meets the requirements of the process.

Alternatives
The City Council could decide against granting this abatement.

Attachments
Resolution No. 5283
Residential Tax Abatement Agreement
Application
Building Permit Application
Photo
Survey
Location Map

Prepared by:
Scott Shadden, Director of Development Services

Approved by:
George Olson, City Manager

RESOLUTION NO. 5283

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN AGREEMENT WITH BARTON CAPITAL, LTD FOR THE ABATEMENT OF AD VALOREM PROPERTY TAXES FOR THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE AT 1512 SOUTH MONTGOMERY STREET; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to receipt of a fully-executed agreement from Barton Capital, LTD and subject to all contract documents being properly completed and approved by the Interim City Attorney, to execute an agreement with Barton Capital, LTD for the abatement of ad valorem property taxes for a period of ten (10) years, for the construction of one (1) new single-family residence at 1512 South Montgomery Street, lying within the City of Sherman's Residential Tax Reinvestment Zone, in accordance with the City's policies and procedures established for this purpose.

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

PASSED AND APPROVED on this the _____ day of ________________, 2008.

CITY OF SHERMAN, TEXAS

BY: ______________________________
BILL MAGERS, MAYOR

ATTEST:

BY: ______________________________
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

____
INTERIM CITY ATTORNEY

THE STATE OF TEXAS §
§
COUNTY OF GRAYSON §

AGREEMENT

THIS AGREEMENT, entered into by and between the **CITY OF SHERMAN, TEXAS**, a home rule city and municipal corporation of the State of Texas, duly acting herein by and through its City Manager, hereinafter referred to as CITY and **BARTON CAPITAL, LTD**, hereinafter referred to as OWNER.

WITNESSETH:

WHEREAS, on the 16th day of June, 2003, the City Council of Sherman, Texas, passed Ordinance No. 5136 establishing a reinvestment zone for residential tax abatement, as authorized by Chapter 312 of the Texas Tax Code, as amended, hereinafter referred to as CODE; and

WHEREAS, the CITY has adopted a resolution (Resolution No. 4685) stating that it elects to be eligible to participate in a residential tax abatement program; and

WHEREAS, the CITY desires to create the proper economic and social environment to induce the investment of private resources in real estate construction located in incorporated areas of the CITY; and

WHEREAS, the CITY hereby finds that it may effectively encourage and assist the creation of such an environment by participating in tax abatement pursuant to the CITY; and

WHEREAS, the CITY has created a reinvestment zone within its jurisdiction to induce the investment of private resources in real estate construction located in incorporated areas of the CITY, and OWNER has agreed to construct certain real property improvements; and

WHEREAS, OWNER is prepared to comply with the provisions of the CITY'S guidelines and criteria enacted the 16th day of June, 2003;

NOW, THEREFORE, WITNESS THIS TAX ABATEMENT AGREEMENT which provides as follows:

I.

1.01 To the extent authorized by the Texas Constitution and by the Tax Code, CITY hereby agrees to exempt from City of Sherman taxation a portion of the increase in value of taxable real property of OWNER in the CITY over the same real property and its value as calculated by the Grayson Appraisal District for ad valorem property tax purposes in accordance with the following schedule. Such tax exemption shall be in effect for tax years beginning January 1, 2008, and continuing for tax years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 with same constituting ten (10) tax years. However, nothing contained herein shall be construed to grant an abatement of taxes to be assessed based on the change of use of the property from an agricultural use to another use, sometimes referred to as rollback taxes, penalties or interest. In the event rollback taxes are applicable for the real property utilized by OWNER, then such increase in value of taxable property resulting from such rollback shall be used as the tax value for such property for the tax year 2008, sometimes referred to herein as the Base Tax Year.

SCHEDULE OF TAXES ASSESSED

TAX YEAR	ABATEMENT
2008	100%
2009	100%
2010	100%
2011	100%
2012	100%
2013	100%
2014	80%
2015	60%
2016	40%
2017	20%

II.

2.01 OWNER warrants and represents that the real property upon which OWNER has constructed or will construct improvements is qualified property within the meaning of that Act, and that such has been and will remain eligible for tax abatement under the provisions of the Property Redevelopment and Tax Abatement Act, Sections 312.001, et seq., Texas Tax Code.

2.02 To continue to qualify for tax abatement under the terms of this Agreement, OWNER hereby warrants and represents that the improvements made by OWNER on the real property described herein are for residential use.

2.03 The tax abatement granted under the terms of the Agreement shall only be implemented if appraised value of all real property and improvements located thereon owned by OWNER and lying within designated zone exceeds the base year value. The OWNER agrees that Grayson Appraisal District shall, at reasonable times upon reasonable notice, have access to the property made the subject of this Agreement, and that the above set forth inspectors shall be able to inspect the property to insure that the improvements are being made in accordance with the terms and conditions hereof and utilized in accordance with this Agreement.

III.

3.01 The term of this Agreement shall be for tax years 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016, and 2017 as indicated above in paragraph 1.01.

IV.

4.01 The kind, number and location of all proposed property improvements are set forth as follows:

Construction of one (1) new single-family residence at 1512 South Montgomery Street, Sherman, Texas, and as more particularly describe by the following:

BEING Lot 3, Block 1 of J. P. Geren's South Montgomery Addition.

V.

5.01 OWNER agrees that, should he fail to make improvements substantially as described or fail to perform any other term or covenant hereof, CITY shall have the right, after giving notice and opportunity to cure as hereinafter set out, to recapture all tax revenue on said property in the zone lost as a result of this Agreement for the entire term of the Agreement. Such recapture shall mean that all of such property shall be taxed at the full improved value as assessed by the Grayson Appraisal District for all years this Agreement has been in effect. The payment of such recaptured taxes minus any taxes paid by OWNER during the years this Agreement has been in force shall be due January 1 of the next following year and shall be delinquent if not paid on or prior to January 31st. Penalties and interest shall be calculated thereafter as if all taxes had become due in the same year. The CITY agrees prior to enforcement of the terms of this paragraph to give 120 days written notice to the address shown below of OWNER'S default in completing the improvements called for in this Agreement, and OWNER shall have the right to cure such default within the 120-day period.

VI.

6.01 This Agreement shall inure to the benefit of CITY and OWNER, and shall be binding upon them, their heirs, successors and assigns. It is specifically provided and agreed that the right to tax abatement shall inure to the benefit of subsequent owners so long as the term and conditions of this Agreement are in effect.

VII.

7.01 CITY agrees that this Agreement may be assigned and the improvements leased or sub-leased, without any further necessity for consent, by the OWNER to any person, firm or corporation.

VIII.

8.01 At any time before the expiration of the term hereof, this Agreement may be modified by the mutual action of the parties hereto to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. Such modification must be in writing and signed by all the parties hereto and made by the same procedure by which the original Agreement was approved and executed. In no event may the original Agreement be modified so as to extend the term beyond the original term of this Agreement.

IX.

9.01 This Agreement shall be construed subject to the laws of the State of Texas, and particularly to the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code.

9.02 All appraisal values for real property shall be made by the Grayson Appraisal District or such other entity as may succeed or replace such District.

9.03 OWNER is hereby notified that the Grayson Appraisal District may impose additional requirements which must be met in order for OWNER to realize the benefit of tax abatement and this Agreement. Contact should be made by OWNER with the District in person at 205 North Travis Street, Sherman, Texas, or by telephone at (903) 893-9673.

X.

10.01 This Agreement is subject to all provisions of all outstanding bond issues of CITY. To the extent that this Tax Abatement Agreement conflicts with any of the provisions of such bond issues, such bond issues and attendant documents thereto shall control.

XI.

11.01 This Tax Abatement Agreement is specifically subject to present laws of the State of Texas and any future laws enacted subsequent to the execution of this Agreement which may provide retroactively for a modification of Agreements of this type as a matter of law. Upon the effective date of any such law, then this Agreement shall automatically be so modified.

XII.

12.01 Notices required by this Agreement shall be mailed to the following addresses as same may be in the future changed by either party upon written notice to the other:

City of Sherman
P.O. Box 1106
Sherman, Texas 75091-1106
(903) 892-7200

Barton Capital, LTD
715 S. Sam Rayburn Frwy.
Sherman, Texas 75090
(903) 868-4201

Copy to: Grayson Appraisal District
205 North Travis Street
Sherman, Texas 75090
(903) 893-9673

This Agreement is performable in Grayson County, Texas. Witness our hands on this the

_____ day of __________________________, 2008.

CITY:
CITY OF SHERMAN, TEXAS

OWNER:
BARTON CAPITAL, LTD

BY: ___________________________

GEORGE OLSON

CITY MANAGER

ATTEST:

BY: ___________________________

LINDA ASHBY
CITY CLERK

BY: ___________________________

NAME: ________________________

TITLE: ________________________

(CORPORATE SEAL)

APPROVED AS TO FORM:

____
INTERIM CITY ATTORNEY

THE STATE OF TEXAS §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared Ron Barton, Barton Capital, LTD, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein express.

GIVEN UNDER MY HAND and seal of office this _____day of _________, 2008 A.D.

____
Tammy Biggar
Notary Public

CITY OF SHERMAN
APPLICATION FOR RESIDENTIAL TAX ABATEMENT

Property Owner:

Name: BARTON CAPITAL

Mailing Address: 715 S. HWY 75 SHERMAN, TX 75090

Telephone Number: 903 - 868 - 4201

Contact (if different than owner):

Name: Ron Barton

Mailing Address: SAME

Telephone Number: SAME

Property:

Physical Address: 1512 S. MONTGOMERY

Summary Legal Description: Lot: 3 Block: 1 Addition: J.P. GERENS ADD S. MONTGOMERY

Full Legal Description: Include as an attachment a full legal description with metes and bounds.

Improvements:

Type of Improvements (please check one). New Construction: ✓ Remodeling: ______

Estimated Value of Improvements: $60,000

Estimated Date of Start of Construction: 9/25/08

Estimated Date of Completion of Project: 11/25/08

Description of Project: NEW SINGLE FAMILY DWELLING

Applicant(s): [signature] Date: 9-25-08

70 2008 00010977

Wilma Blackshear Bush
County Clerk
Sherman, Texas 75090

5481

Instrument Number: 2008-00010977

As

Recordings

Recorded On: May 08, 2008

Parties: W DOUGLAS DISTRIBUTING LTD

To BARTON CAPITAL LTD

Billable Pages: 3

Number of Pages: 5

Comment: WD/VL

(Parties listed above are for Clerks reference only)

** Examined and Charged as Follows: **

Recordings	24.00
Total Recording:	24.00

************ DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT ************

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2008-00010977
Receipt Number: 265853
Recorded Date/Time: May 08, 2008 10:20:32A
Book-Vol/Pg: BK-OR VL-4451 PG-730
User / Station: G WHITE - Cashiering Station 1

Record and Return To:

RED RIVER TITLE CO
421 N. CROCKETT ST
SHERMAN TX 75090

COUNTY COURT OF GRAYSON COUNTY, TEXAS

THE STATE OF TEXAS
COUNTY OF GRAYSON
I hereby certify that this instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Grayson County, Texas

Wilma Blackshear Bush

Wilma Blackshear Bush, Grayson County Clerk

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

GENERAL WARRANTY DEED WITH VENDOR'S LIEN

THE STATE OF TEXAS *
KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF GRAYSON *

That **W. DOUGLAS DISTRIBUTING, LTD.,** for and in consideration of the sum of TEN AND NO/100THS ($10.00) DOLLARS and other valuable consideration to the undersigned paid by the Grantee herein named, the receipt of which is hereby acknowledged herein, and the further consideration of the execution and delivery by Grantee of one certain promissory note of even date herewith, in the principal sum of **EIGHTY-ONE THOUSAND FIVE HUNDRED SIX AND NO/100THS ($81,506.00) DOLLARS,** payable to the order of **AMERISTATE BANK ,** as therein specified and bearing interest as therein provided, containing the usual clauses providing for acceleration of maturity and for attorney's fees; the payment of which note is secured by the vendor's lien herein retained, and is additionally secured by a Deed of Trust of even date herewith to **CHARLES A. MCCALL, Trustee,** has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto **BARTON CAPITAL, LTD.,** all of the following described real property in Grayson County, Texas, to-wit:

> BEING Lots 1 through 14 of the J.P. GEREN'S SOUTH MONTGOMERY ADDITION to the City of Sherman, Texas, as shown by plat of record in Vol. 341, Page 13, Deed Records, Grayson County, Texas, being more particularly described on the attached Exhibit "A"……………………………

> SAVE AND EXCEPT and there is hereby excepted from the warranties herein conveyed all prior reservations of any oil, gas, and other minerals, easements, and restrictive covenants and conditions of record in the County Clerk's Office, Grayson County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, Grantee's successors or assigns forever; and Grantor does hereby bind Grantor, Grantor's successors or assigns, to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, Grantee's successors or assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

AMERISTATE BANK, at the instance and request of the Grantee herein, having advanced and paid in cash to the Grantor herein that portion of the purchase price of the hereinbefore described **$81,506.00** Note, the vendor's lien, together with the superior title to said property is retained herein for the benefit of **AMERISTATE BANK,** and the same is hereby transferred and assigned to **AMERISTATE BANK.**

But it is expressly agreed that the Vendor's Lien, as well as the Superior title in and to the above described premises, is retained against the above described property, premises and improvements until the above described note and all interest thereon are fully paid according to the face, tenor, effect and reading thereof, when this Deed shall become absolute.

EXECUTED this 8 day of May, 2008.

W. DOUGLAS DISTRIBUTING, LTD.

BY: William P. Douglas
NAME PRINTED: William P. Douglas
TITLE: CEO

GRANTEE'S MAILING ADDRESS:

Barton Capital, Ltd.
715 S. Hwy 75
Sherman TX 75090

ACKNOWLEDGMENT

STATE OF TEXAS *

COUNTY OF Grays *

This instrument was acknowledged before me on the 8 day of May, 2008, by William P. Douglas in the capacity of CEO for **W. DOUGLAS DISTRIBUTING, LTD.**, on its behalf and in the capacity therein stated.

DORIS C. CASTON
Notary Public
STATE OF TEXAS
My Commission
Expires 02/06/2009

Notary Public, State of Texas

EXHIBIT A

SITUATED in the City of Sherman, County of Grayson, State of Texas, being a part of the Samuel Blagg Survey, Abstract No. 56, being all of J. P. Geren's South Montgomery Addition, to the City of Sherman, Texas, recorded in Volume 341, Page 13, Deed Records, Grayson County, Texas, said Geren's Addition being the 2.272 acre tract of land described as Parcel One, conveyed in the Warranty Deed from Keystone Consolidated Industries, Inc., to DSO Acquisition Corporation, on September 27, 1996, recorded in Volume 2497, Page 797, Official Public Records, Grayson County, Texas, and being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at 1/2 inch rebar found in the North line of Lake Avenue and the East line of an alley, at the Southwest corner of said Geren's Addition and said DSO 2.272 acres;

THENCE North 16 deg. 00 min. 00 sec. West, with the East line of said alley, a distance of 697.00 ft. to a 1/2 inch rebar found in the South line of Olive Street, at the Northwest corner of said Geren's Addition and said DSO 2.272 acres;

THENCE North 74 deg. 00 min. 00 sec. East, with the South line of Olive Street, a distance of 142.00 ft. to a 1/2 inch rebar found in the West line of Montgomery Street, at the Northeast corner of said Geren's Addition and said DSO 2.272 acres;

THENCE South 16 deg. 00 min. 00 sec. East, with the West line of Montgomery Street, a distance of 697.00 ft. to a 1/2 inch rebar found in the North line of Lake Avenue, at the Southeast corner of said Geren's Addition and said DSO 2.272 acres;

THENCE South 74 deg. 00 min. 00 sec. West, with the North line of Lake Avenue, a distance of 142.00 ft. to the **PLACE OF BEGINNING** and containing **2.272 ACRES** of land.

SARTIN & ASSOCIATES, INC.
Registered Professional Land Surveyors
P.O. Box 1843 - 109 S. Travis - Sherman, Texas 75091-1843
phone (903)892-8003 - fax (903)868-2970

SURVEY FOR: ______________________________

I, Marshall Sartin, Registered Professional Land Surveyor, hereby certify that a survey of the property shown hereon was made on the ground on the 21 st day of May, 2008 of the following described property:

Lot THREE (3) of J. P. GEREN'S SOUTH MONTGOMERY ADDITION to the City of Sherman, Texas as shown by plat of record in Volume 341, Page 13, Deed Records, Grayson County, Texas.

That the improvements located on said property are known as 1512 **S. MONTGOMERY STREET, SHERMAN, TEXAS,** and that this survey substantially complies with the current Minimum Standards for Professional Land Surveyors as adopted by the Texas Board of Professional Land Surveying, and is subject to all easements of record or as shown on recorded plat that may affect said property.

THIS SURVEY PLAT WAS PREPARED FROM A SURVEY PERFORMED ON THE DATE SHOWN HEREON FOR THE CLIENT NAMED HEREINABOVE AND FOR THE TRANSACTION TAKING PLACE AT THE TIME OF THIS SURVEY. THIS SURVEY PLAT IS NOT TO BE USED IN CONNECTION WITH ANY FUTURE TRANSACTIONS WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE UNDERSIGNED SURVEYOR AND THE UNDERSIGNED SURVEYOR ACCEPTS NO LIABILITY FOR ANY FUTURE UNAUTHORIZED USE OF THIS SURVEY PLAT.

Marshall Sartin, R.P.L.S. 3694

STATE OF TEXAS REGISTERED MARSHALL SARTIN 3694 PROFESSIONAL LAND SURVEYOR

GEREN-3.pcs

1512 S Montgomery

CITY OF SHERMAN

RESIDENTIAL BUILDING PERMIT

SUBCONTRACTOR: CUPID HOMES

PERMIT #: 81775

DATE ISSUED: 9/25/2008

PROJECT ADDRESS:	1512 S MONTGOMERY ST	LOT #:	3
PARCEL ID:		BLK #:	1
SUBDIVISION:	J P GEREN'S S MONTGOMERY ADDN	ZONE ORD:	
ISSUED TO:	CUPID HOMES	CONTRACTOR:	CUPID HOMES
ADDRESS:	715 S HIGHWAY 75	ADDRESS:	715 S HIGHWAY 75
CITY, ST ZIP:	SHERMAN TX 75090-7260	CITY, ST ZIP:	SHERMAN TX 75090-7260
PHONE:	903-868-4201	PHONE:	
PROP.USE:	RESIDENTIAL	SQ FT:	1,039.00
WORK:	NEW RESIDENTIAL CONSTRUCTION	BEDROOMS:	2
VALUATION:	$ 60,000.00	BATHROOMS:	1
OCCP TYPE:	RESIDENTIAL	STORIES:	1
CNST TYPE:	WOOD FRAME		

FEE CODE	DESCRIPTION	AMOUNT
BLD10	RESIDENTIAL STORMWATER MGMT	$ 25.00
	TOTAL	$ 25.00

NOTES:

NOTICE

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS STARTED.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS DOCUMENT AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISION OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

____________________________________ ___/___/___
(SIGNATURE OF CONTRACTOR OR AUTHORIZED AGENT) DATE

____________________________________ ___/___/___
(APPROVED BY) DATE

City of Sherman, Texas

1512 SOUTH MONTGOMERY

PROJECT LOCATION MAP

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. D.1

**** REQUEST TO ADVERTISE***
Luella 3 Trinity Well Repairs

Issue
Approval of a request to advertise for a bid to repair the Luella 3 Trinity water well

Background
The Luella 3 Trinity water well has experienced a loss of production. The pump should be pulled and repaired or replaced as required; and the well requires inspection and possible repair.

Origination
Department of Utilities Administration

Financial Consideration
Funds for the well repairs are available in the Water Production budget. Costs for advertising are expected to be less than $200.

Staff Recommendation
It is recommended that the City Council approve this request to advertise for a bid to repair this well.

Alternatives
As may be directed by the City Council

Attachments
None

Prepared by:
Mark Gibson, Director of Utilities & Engineering

Approved by:
George Olson, City Manager

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. D.2

**** CHANGE ORDER NO. 1***

Travis Street Water Main Replacement between U.S. Highway 75 and Washington Street; $8,007.59, Increase

Issue

To consider approval of a change order for the Travis Street Water Main Replacement

Background

Change Order No. 1 is a final reconciliatory change order to adjust the final project quantities for the Travis Street Water Main Replacement between U.S. Highway 75 and Washington Street.

Origination

Department of Utilities Administration

Financial Consideration

The change order results in an $8,007.59 increase in the contract amount, yielding a final contract price of $148,569.78. Capital Improvement Program funds are available to cover this change order.

Staff Recommendation

It is recommended that Change Order No. 1 be approved.

Alternatives

As may be directed by the City Council

Attachments

Change Order No. 1
Location Map

Prepared by:
Mark Gibson, Director of Engineering & Utilities

Approved by:
George Olson, City Manager

CHANGE ORDER

No. 1

PROJECT Travis Street Waterline between U.S. Highway 75 and Washington Street

DATE OF ISSUANCE 10/1/08 EFFECTIVE DATE

OWNER City of Sherman

OWNER's Contract No.

CONTRACTOR Jerry Paul Higgins, Ltd. ENGINEER Morris Engineers

You are directed to make the following changes in the Contract Documents:

Description: Increase contract price $8,007.59 to $148,569.78

Reason for Change Order: Reconcile contract price to final quantities of work

Attachments: Spreadsheet; Contractor's lists of Additions and Deletions

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price $ 140,562.19	Original Contract Times Substantial Completion: Ready for Final Payment:
Net changes from previous Change Orders No. _ to _. $ -0-	Net change from previous Change Orders No. _ to _. Days
Contract Price prior to this Change Order $ 140,562.19	Contract times prior to this Change Order Substantial Completion: Ready for Final Payment:
Net Increase (~~Decrease~~) of this Change Order $ 8,007.59	Net Increase (Decrease) of this Change Order Days
Contract Price with all approved Change Orders $ 148,569.78	Contract Times with all approved Change Orders Substantial Completion: Ready for Final Payment:

RECOMMENDED: Morris Engineers	APPROVED: City of Sherman	ACCEPTED: Jerry Paul Higgins, Ltd.
By: [signature] Engineer (Authorized Signature)	By: Owner (Authorized Signature)	By: Don Charles Whitley Contractor (Authorized Signature)
Date: 10/13/08	Date:	Date: 10/13/2008

EJCDC No. 1910-8-B (1990 Edition)
Prepared by the Engineers Joint Contract Documents Committee and endorsed by the Associated General Contractors of America.

CITY OF SHERMAN

CONSTRUCTION OF TRAVIS STREET WATERLINE BETWEEN U.S. HIGHWAY 75 AND WASHINGTON STREET

JERRY PAUL HIGGINS, LTD.

CHANGE ORDER NO. 1

10/1/08

ITEM NO	ITEM DESCRIPTION	EST. QTY.	UNIT	UNIT PRICE	ORIGINAL CONTRACT	CHANGE ORDER NO. 1 ADD	CHANGE ORDER NO. 1 DEDUCT	CHANGE ORDER NO. 1 TOTAL	REV'D QTY.	TOTAL CONTRACT
1	F&I 8" DIA. AWWA C900 SDR 18 PVC WATERLI	1940	LF	35.55	68,967.00				1940	68,967.00
2	F&I 6" DIA. AWWA C900 SDR 18 PVC WATERLI	200	LF	36.25	7,250.00	87		3,153.75	287	10,403.75
3	F&I 8" DIA. AWWA GATE VALVES	5	EA	758.68	3,793.40	1		758.68	6	4,552.08
4	F&I 6" DIA. AWWA GATE VALVES	6	EA	520.64	3,123.84				6	3,123.84
5	F&I 2" DIA. AWWA GATE VALVES	1	EA	318.62	318.62		-1	(318.62)	0	-
6	F&I FIRE HYDRANT ASSEMBLY	5	EA	2,268.88	11,344.40				5	11,344.40
7	F&I CEMENT LINED D.I. FITTINGS	1.12	TONS	5,262.20	5,893.66				1.12	5,893.66
8	PRICE FOR 14" STEEL ENCASEMT W/SPACER	20	LF	46.16	923.20				20	923.20
9	F&I 5/8" TO 1" SERVICE CONNECTIONS									
A.	EAST SIDE	12	EA	177.25	2,127.00	1		177.25	13	2,304.25
B.	WEST SIDE	7	EA	1,041.55	7,290.85		-1	(1,041.55)	6	6,249.30
10	F&I 1-1/2" TO 2" SERVICE CONNECTIONS									
	WEST SIDE	1	EA	1,528.64	1,528.64				1	1,528.64
11	F&I ASPHALT STREET REPAIR	2010	LF	10.59	21,285.90	252		2,668.68	2262	23,954.58
12	F&I CONCRETE DRIVEWAY REPAIR	66	LF	50.38	3,325.08	36.2		1,823.76	102.2	5,148.84
13	FURNISH EQPT & LABOR TO INSTALL METER									
	BOX, METER LOOP, & METER FURN. BY CITY	5	EA	207.12	1,035.60		-3	(621.36)	2	414.24
14	TRENCH EXCAVATION PROTECTION	2140	LF	0.75	1,605.00		-2140	(1,605.00)	0	-
15	PREPARE SWPPP	1	JOB	750.00	750.00		-1	(750.00)	0	-
CO1	CONCRETE DRIVEWAY @ CAM CORNERS		LF	6.60		570		3,762.00	570	3,762.00
	TOTAL				$ 140,562.19			$ 8,007.59		$ 148,569.78

City of Sherman, Texas

TRAVIS STREET between HWY 75 and WASHINGTON

PROJECT LOCATION MAP

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. D.3

PAYMENT APPROVAL
Approve Payment to A-S 71 Sherman-Phase III, L.P., a Texas Limited Partnership (NewQuest Properties), in Relation to the Purchase of Infrastructure at the Sherman Town Center

Issue
Approve payment to NewQuest for the purchase of up to $1.25 million in public infrastructure from A-S 71 Sherman-Phase III, L.P. (NewQuest Properties), pursuant to the Developer's Agreement and the Letter of Credit

Background
At the May 2, 2005 meeting, the City Council approved a Developer's Agreement with NewQuest for the expansion of the Sherman Town Center to the north and south of the original development. The agreement required NewQuest to create at least $5 million in taxable value in the expanded area; and, in return, the City agreed to reimburse NewQuest for building additional public infrastructure, in an amount of up to $1.25 million, plus interest costs. NewQuest has met its obligations under the agreement and is seeking reimbursement under the terms of the agreement.

Staff is proposing to make the payment using two methods of financing: 1) existing cash reserves in the TIF#1 Fund of about $500,000, and 2) issuance of debt in Fiscal Year (FY) 2009 of about $900,000. Payment of these amounts was appropriated in the FY09 budget.

Origination
NewQuest Properties and City Manager's Office

Financial Consideration
Payment of amounts due under the agreement will total about $1.4 million, including interest. These amounts are proposed to be paid from existing cash on hand (reserves) and from debt, issuance of which is expected in March 2009.

Staff Recommendation
The staff recommends paying these amounts in accordance with the plan stated above.

Alternatives
As may be directed by Council

Attachments
Developer's Agreement and Location Map

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

THE SHERMAN TAX INCREMENT FINANCING REINVESTMENT ZONE NUMBER ONE DEVELOPMENT AGREEMENT FOR A PROJECT TO BE BUILT IN AREA INTO WHICH THE ZONE EXPANDED NOVEMBER 15, 2004

THIS DEVELOPMENT AGREEMENT ("Agreement") by and between THE CITY OF SHERMAN, a Texas home-rule municipal corporation ("City"), and A-S 71 SHERMAN-PHASE III, L.P., a Texas limited partnership ("Developer"), entered into on this second day of May, 2005, and is pursuant to the authority granted to the City by its powers as a home rule municipal corporation and additionally by the authority to promote economic development for the municipality in accordance with § 380.001 of the Local Government Code.

WHEREAS, Developer is the owner of appropriate property rights of that certain tract of land in Sherman, Grayson County, Texas, more fully described by legal instruments marked as Exhibit "A" attached hereto and incorporated herein for all purposes ("Property"), which Property comprises the land described and referred to in Developer's Preliminary and Final Plats and Conceptual Plan for the Sherman Town Center-Phase III and is located entirely within the city limits of the City and within the City's Sherman Tax Increment Financing Reinvestment Zone Number One ("STIF-1"), as expanded;

WHEREAS, the City's Planning and Zoning Commission approved Developer's Preliminary and Final Plat with preliminary related utility and storm water drawings for the proposed expansion of "Sherman Town Center" development on February 8, 2005, with conditions and subject to this Agreement being approved by both parties;

WHEREAS, Developer will develop the Property in accordance with the approved Preliminary and Final Plats and the submitted Conceptual Plan, attached hereto, marked Exhibit "B" and incorporated herein for all purposes (such development being referred to herein as the "Project");

WHEREAS, the City Council determined in Resolution No. 4693 (a copy of which is attached hereto as Exhibit "C") that this Agreement constitutes an Economic Development Program within the meaning of Local Government Code § 380.001, that the development of the Project by Developer will stimulate economic growth in the Sherman area and in the State of Texas, and that construction of the Project is in the best interest of the City;

WHEREAS, the City Council has determined that the area within the Property is predominantly open and, because of obsolete platting, deteriorating structures, or other factors (such as insufficient roads for traffic circulation, insufficient drainage facilities, and a hilly topography that retards orderly, cost-effective development), the area within the Property substantially impairs the growth of the City;

WHEREAS, the City Council has further determined that the development of the Project will promote local economic development and stimulate business and commercial activity in the City by significantly increasing the tax base of the Sherman area over a period of approximately three (3) years required for the build-out of the Project;

WHEREAS, the City has enacted development regulations which govern development of the Property, including, but not limited to, the City of Sherman Subdivision Regulations, Sign Ordinance, Building Codes, Construction Standards and Specifications for Roads, Streets, Structures and Utilities, Storm Drainage Design Manual and Zoning Ordinance, as may be amended by the City from time to time ("Development Regulations");

WHEREAS, Developer is proposing to develop the Project on the Property in full and complete compliance with all Development Regulations and all other applicable codes and ordinances of City, which Developer states it, or its agents, has read and understands;

WHEREAS, Developer and the City have determined that the development of the Property will best be accomplished through a development agreement; and,

WHEREAS, the City and Developer agree that the development requirements of the City and this Agreement substantially advance a legitimate interest of the City.

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the City and Developer hereby agree as follows:

1. Definitions. As used in this Agreement the following words shall mean:

(a.) Abandon: Failure to significantly and continually build out the Project for twelve (12) or more months by the construction of at least thirty percent (30%) of the building sites as shown on the Conceptual Plan during any twelve (12) month period.

(b.) Operation and Easement Agreement: That recordable agreement among the Developer and the owners of property that is adjacent to the Project, establishing operational, maintenance and easement requirements for the Project and the property that is adjacent to the Project.

(c.) Base Year Assessed Value: The eligible taxable value of the Property contained in the expanded area of the STIF-1, as of January 1, 2004, as determined by the Grayson County Appraisal District.

(d.) Build Out: The construction and completion of the commercial structures as shown on the Conceptual Plan.

(e.) Conceptual Plan: That plan or map depicting the build out sites and location for the completed Project as submitted to the City by Developer, as amended.

(f.) Development Regulations: All current City, State and Federal codes, ordinances, and regulations applicable to the Project and specifically including, but not limited to, the City's Subdivision Regulations, Sign Ordinance, Building Codes, Construction Standards and Specifications for Roads, Streets, Structures and Utilities, Zoning Ordinance and the City's Storm Drainage Design Manual.

(g.) Final Plat: As set forth in the City's zoning ordinances.

(h.) Incremental Value: The amount by which the eligible taxable value of the Property contained in the expanded area of the STIF-1, as determined by the Grayson County Appraisal District from time to time, exceeds the Base Year Assessed Value.

(i.) Preliminary Plat: As set forth in the City's zoning ordinances.

(j) Project Improvements: As listed on Attachment D (it being understood and agreed that the storm water drainage facilities within Graham Drive and the engineering expenses relating thereto are included in such list).

(k.) Property: That real property owned or controlled by Developer located within the expanded areas of STIF-1, as shown on "Exhibit A".

(l.) Storm Water Facility Maintenance: The maintenance and repair (and, to the extent reasonably necessary, replacement and reconstruction) of the detention ponds and entire storm water drainage system within the Project, so that such facilities remain in good repair, and free and clear of all trash, debris and all materials or things that would reduce their maximum capacity.

2. The Project. Developer is planning to expand an existing retail shopping center project, named the Sherman Town Center, on the Property, in accordance with its Conceptual Plan and Preliminary and Final Plats, over a period of approximately three (3) years. The City hereby authorizes Developer to construct and develop on the Property retail and service business and commercial uses, together with related support facilities, all as is authorized in the approved C-1 and C-2 zoning classifications, substantially in accordance with the Conceptual Plan, Preliminary and Final Plats. For purposes of this Agreement, Developer and the City agree that the acceptance of the Conceptual Plan, together with the approval of the Preliminary and Final Plats, constitutes the first permit required in the series of permits and approvals required to develop the Project, and no developmental requirements of the City other than the Development Regulations and this Agreement shall be applicable to the development of the Project, except as specifically provided in this Agreement. Developer agrees and acknowledges that if the Conceptual Plan or the Final Plat is revised, the permits and approvals for the unfinished portion of the Project shall be subject to the Developmental Regulations of the City in effect on the date of the approval of the revised Conceptual Plan or Final Plat. The City agrees to support, as it deems appropriate, all such subsequent applications for approvals of whatever kind or nature from the Developer, its tenants, and their respective successors and assigns, so long

as such applications comply with all applicable City regulations, ordinances and procedures together with this Agreement and the Development Regulations, and substantially conform to the Conceptual Plan and Final Plat as may be revised. The Developer agrees to create at least Five Million Dollars ($5,000,000) of taxable value in the expanded area of STIF-1, such amount being necessary in order to qualify under the City of Sherman's tax increment financing policy.

3. Water and Wastewater Service. Upon completion of the infrastructure for water and wastewater service to the Property by Developer (which is a part of the "Project Improvements" referred to hereinafter), the City shall provide water and wastewater service to the Property in capacities at least sufficient to accommodate the uses set forth on the Conceptual Plan and as fully built out. Such water and wastewater service, as needed, shall be provided by the City in accordance with the same policies and ordinances for similarly situated City water and wastewater customers, as may be amended from time to time. The City shall waive tap fees for water and sewer service to any building owned by the Developer.

4. Conveyance of Easements for Utilities. The Developer shall timely convey to the City such permanent easements for the provision of water, wastewater and storm water services to the Property as shall be required to service the various customers within the Project. Such easements shall be in form and content reasonably acceptable to the City Attorney and City Engineer and shall be reflected on a plat filed with the City.

5. Provision of Waste Collection Services. The City shall provide its solid waste collection services to Developer, limited to construction material debris, especially excluding any trees, created by Developer's own work on the Project during the construction of the Project on or before December 31, 2007. The Developer shall only be billed for the actual tipping fees for disposing of this material at a landfill.

6. Reimbursement of Cost of Project Improvements. In accordance with the City's policy on tax increment financing, the City will consider the future purchase of infrastructure from the Developer that is identified as a project cost of the STIF-1 in the project and financing plans (collectively, the "Project Improvements"). Upon completion of the Project Improvements and acceptance by the City of the Project Improvements, the Developer may request that the City purchase the Project Improvements upon the Project having generated sufficient projected annual revenue to support the debt service of the Debt (as hereinafter defined) from annual ad valorem revenues from the real property within the Project, which for the purposes hereof, shall be determined by multiplying the City's tax rate times a certified estimate of value (from the Grayson County Appraisal District) of the real property within the Project reduced by the Base Year Assessed Value. Such request must be made no later than December 31, 2008. For purposes of this Agreement, the defined term "Reimbursement Amount" shall mean the cost of the Project Improvements (not to exceed $1,250,000) plus interest cost (the "Interest Costs") from the date the Developer paid for the Project Improvements to the date that the Project Improvements may be purchased by the City. The Interest Costs to be reimbursed shall be capped at the rate the City may incur on any debt to purchase the Project Improvements. For purposes of this Agreement, the defined term "Debt" shall mean the

amount of bonded indebtedness (a certificate of obligation with level principal and interest payments maturing over a twenty (20) year period at an interest rate or rates consistent with the market at the time of sale and whose primary source of repayment is the City's tax increment of the property contained in the area into which STIF-1 expanded by Resolution 4636 on November 15, 2004 and whose secondary source of repayment is a pledge of property tax revenues from the City) to be issued by the City necessary to reimburse the Developer for the Reimbursement Amount. As soon as tax increment of the City based on the property contained in the area into which STIF-1 expanded by Resolution 4636 on November 15, 2004, is finally determined by the Grayson Appraisal District to support Debt (which includes Project Improvements, Interest Costs and cost of issuance), the City shall make a final determination as to the purchase of infrastructure and, should it decide to purchase such infrastructure, use its best efforts to issue certificates of obligation as described above in an amount sufficient to pay the Developer the Reimbursement Amount and also pay the costs of issuance. The City shall retain the right to decline the purchase of any infrastructure that does not meet its standards, until such time that infrastructure is brought into compliance with the City's standards.

7. [Intentionally Omitted].

8. Project Improvements.

(a.) The Developer shall design and construct the wastewater collection and storm water collection and drainage systems for the Project, including, without limitation, wastewater gravity lines, service lines, manholes, storm water collection lines, detention areas and other necessary or required facilities. Subject to the City's inspection and acceptance, the City will operate and maintain the wastewater collection system, specifically excluding wastewater service lines. Developer shall retain full ownership (except for the storm water drainage facilities within Graham Drive) and all maintenance, repairs and replacement responsibilities and liabilities to keep the entire storm water collection and drainage system and outfall pipe in good repair, as further defined in Section 1(l) hereinabove. This maintenance requirement shall be set forth in the separate recordable Covenants and Restrictions reasonably acceptable to the City in form and content. The City agrees that Developer may utilize high density polyethylene pipe for the storm water collection and drainage system, with the high density polyethylene pipe within Graham Drive that is to be owned by the City being forty-eight (48") or less in diameter.

(b.) The Developer shall design and construct the water distribution system for the Project, including distribution lines and fire hydrants. The City will operate and maintain the water distribution system upon inspection and acceptance by the City. Developer shall maintain all water service lines from any building to its meter, which shall be stated in the recorded Operation and Easement Agreement.

(c.) The Developer shall design and construct Graham Drive and any other public street(s) in the expanded area of the STIF-1 (save and except any acceleration or deceleration lane required to be constructed by TxDot), together with all fire lanes, as reflected on the Conceptual Plan, Preliminary and Final Plats. All such streets shall be owned and maintained by City. Developer shall own and maintain all fire lanes, which shall be stated in the recorded Operation and Easement Agreement.

(d.) Developer shall design and construct a storm water detention facility, to include detention ponds and drainage system, within the STIF-1 Zone including any expanded areas suitable to handle a 100 year flood event. Design of the facilities shall be in accordance with criteria set forth in the City's Storm Drainage Design Manual. Developer agrees that ownership and maintenance of the detention facility, as defined in Section 1(l) hereinabove, shall be the obligation of Developer and shall be so stated in the recorded Operation and Easement Agreement and in Developer's separate recordable Covenants and Restrictions reasonably acceptable to the City in form and content.

(e.) The Developer shall perform the rough grading of the Property in order to make the development cost of the aforementioned streets reasonable and at acceptable grades.

(f.) The Developer shall construct and install all reasonable and necessary traffic control devices (including signs) within the Project (but in any event within the STIF-1 Zone, including any expanded areas) as reflected on the Conceptual Plan and Final Plat. The City will operate and maintain, upon inspection and acceptance by the City, such traffic control devices located on City owned public property and excluding the Property.

All improvements that the Developer wishes the City to consider purchasing are clearly defined in Exhibit "D" attached hereto and in the Project Plan and Financing Plan for STIF-1, as expanded. Developer shall have the right to substitute mutually agreeable, qualified improvements for those listed on Exhibit "D" attached hereto, provided that any such substitution improvements comply with all applicable rules, policies and regulations relating to the purchase by the City of such improvements. The City shall consider the future purchase from the Developer of Project Improvements in a total amount not to exceed that described in Paragraph 6. All of such Project Improvements shall be designed and constructed in accordance with the Development Regulations. In no event shall the Developer be obligated to publicly bid any portion of the Project Improvements or to follow or comply with any rules and regulations relating to the public bidding of construction of public improvement projects, it being contemplated that the Developer will privately bid the construction of all of the Project Improvements. Whenever possible and feasible, Developer will consider the employment of Historically Underutilized Businesses for work performed on the Project as stated in the Texas Tax Code Chapter 311, Section 311.

9. Cost of Improvements to be Funded by the Developer.

(a.) The Developer shall promptly pay (or cause to be paid) all costs of constructing the Project Improvements as the same become due, including, without limitation: (i) all costs of design, engineering, materials, labor, construction, testing and inspection, arising in connection with the construction of the Project Improvements (except for those items which are being contested in good faith by Developer); (ii) all payments arising under any contracts entered into for the construction of the Project Improvements (except for those items which are being contested in good faith by Developer); and (iii) all costs incurred in connection with obtaining governmental approvals, certificates, and permits required in connection with the construction of the Project Improvements. The City shall not be liable to any contractor, engineer, attorney, materialman, laborer, or other party employed by or on behalf of the Developer in connection with the construction of the Project Improvements.

(b.) City will independently inspect and may selectively test, at its own cost and expense, all infrastructure of the Project to be owned or maintained, in whole or in part, by the City, as provided for in this Agreement. The Developer shall call the City to inspect the construction of all public infrastructures and City shall have the right to inspect all underground work before it is backfilled and covered up.

(c.) City agrees to waive the City's standard review and inspection fee, as applied to this project.

10. Sales Tax Exemption. The parties hereto acknowledge and agree that the City qualifies for exemption from Texas state and local sales taxes pursuant to the provisions of Section 151.309(5) of the Texas Tax Code, as amended, and that the Developer shall, in purchasing all materials to be incorporated into the Project Improvements and in purchasing, renting, or leasing all materials, supplies and equipment to be used or consumed in the construction of the Project Improvements, cause to be issued to its suppliers or the suppliers of any contractor for the Project Improvements, with the cooperation of the City, if applicable, and authorized by the State Comptroller, an exemption certificate in lieu of said sales tax, all to be in accordance with applicable rules and rulings of the State Comptroller of Public Accounts.

11. Notice of STIF-1. To the extent required by applicable law, the Developer covenants and agrees to provide written notice to everyone that purchases land within the Project of the existence of the STIF-1, as expanded.

12. Default of this Agreement. An "Event of Default" under this Agreement shall occur upon the failure of either party hereto to timely and fully perform or comply with any of the terms and conditions of this Agreement. However, with respect to any breach of this Agreement, which may be cured by the payment of money, an Event of Default shall not occur (a) until the defaulting party has received written notice of such default and has not completely and fully cured such default within ten (10) working days after receipt of such written notice from any source, and (b) with respect to any other breach of this Agreement, an Event of Default shall not occur until the defaulting party has received written notice of such default and has not cured such default within thirty (30) calendar days (or, if such default is not susceptible of being cured within such thirty (30) day period, such additional period of time as may be reasonable to cure such default, provided that the defaulting party initiates the cure of such default in such thirty (30) calendar day period and thereafter continuously and diligently, by using its commercially reasonable efforts, prosecutes the cure of such default to completion). If an Event of Default occurs, the non-defaulting party shall be entitled to pursue any and all remedies available at law or in equity, which remedies shall be cumulative and not exclusive.

13. Separate Status. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

14. Construction and Interpretation.

(a.) Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

(b.) The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

(c.) Invalidation of any of the provisions contained in this Agreement shall in no way affect any of the other provisions hereof and the same shall remain in full force and effect.

(d.) This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

15. INDEMNIFICATION AND HOLD HARMLESS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, DEVELOPER OBLIGATES ITSELF TO THE CITY TO FULLY AND UNCONDITIONALLY PROTECT, INDEMNIFY AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITY FOR INJURIES TO PROPERTY, INJURIES TO PERSONS (INCLUDING DEVELOPERS EMPLOYEES), INCLUDING DEATH, AND FROM ANY OTHER COSTS, EXPENSES, REASONABLE ATTORNEY FEES, CLAIMS, SUITS, LOSSES OR LIABILITIES OF ANY AND EVERY NATURE WHATSOEVER ARISING IN ANY MANNER, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION HEREWITH, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF DEVELOPER, ITS OFFICERS, AGENTS OR EMPLOYEES. THIS INDEMNIFICATION AND SAVE

HARMLESS SHALL APPLY TO ANY IMPUTED OR ACTUAL JOINT ENTERPRISE LIABILITY.

16. Developer's Guarantee. Developer guarantees and warrants that, with respect to that portion of the Project Improvements for which the City has agreed to consider ownership and/or maintenance thereof, if, within one (1) year after the acceptance by City of such portion of the Project Improvements, defects should appear in the materials or workmanship relating to such portion of the Project Improvements, the Developer shall have such defects promptly repaired at no cost or expense to the City. This guarantee will apply to all parts of the Project Improvements that have been accepted by the City. This provision is for the sole benefit of the City and shall not in any way be construed to limit or modify any right or claim that the Developer may have against any person or entity that may have furnished such defective materials or performed such defective work.

17. Miscellaneous Provisions.

(a.) Actions Performable. The City and the Developer agree that all actions to be performed under this Agreement are performable solely in Grayson County, Texas.

(b.) Assignability. Performance by Developer under the terms and conditions of this agreement are deemed personal and, as such, any attempt to convey, assign or transfer those duties and obligations without the prior written approval and consent by City are void. Such approval and consent by City will not be unreasonably withheld, however, any such assignment shall not operate or be construed to release Developer of any of its obligations hereunder. However, Developer may assign its interests in this Agreement, but not its duties or obligations, to Developer's financial lenders of this Project.

(c.) Severability. If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

(d.) Complete Agreement. This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all parties hereto.

(e.) Exhibits. All exhibits attached to this Agreement are incorporated herein by reference and expressly made part of this Agreement as if copied verbatim.

(f.) Notice. Any notice or demand which either the City or the Developer is required to or may desire to serve upon the other, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by facsimile, (iii) sent by registered or certified mail, postage prepaid, or (iv) sent by commercial overnight carrier, and addressed to:

If to the City:
CITY OF SHERMAN
220 West Mulberry Street
Sherman, Texas 75090
Attention: City Manager and City Attorney
Telephone: (903) 892-7201
Fax: (903) 892-7355

or any other address or addresses which the Developer may be notified of in writing by the City;

If to the Developer:
A-S 71 SHERMAN-PHASE III, L.P.
8807 W. Sam Houston Parkway N., Suite 200
Houston, Texas 77070
Attention: Steven D. Alvis
Telephone: (281) 477-4300
Fax: (281) 477-4311

or such other address or addresses which the City may be notified in writing by the Developer.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U.S. Postal Service, except when lost, destroyed, improperly addressed or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed, improperly addressed or delayed by the courier, or (d) the date of receipt by facsimile (as reflected by electronic confirmation); provided, however, that should such notice pertain to the change of address to either of the parties hereto, such notice shall be deemed to have been served upon receipt thereof by the party to whom such notice is given.

(g.) Force Majeure. Developer and the City agree that the obligations of each party shall be subject to force majeure events such as natural calamity, fire or strike.

(h.) Forum Selection. This Agreement and the relationship between the City and Developer shall be governed and interpreted under the laws of Texas without regard to any conflict of laws provision. Venue for any suit arising out of any relationship between the City and Developer shall be the appropriate court in Grayson County, Texas. Developer specifically consents to, and waives any objections to, in personam jurisdiction in Grayson County, Texas.

(i.) Appointment of Representatives. To further the commitment of the parties to cooperate in the implementation of this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representative for the City (the "City Representative") shall be L. Scott Wall, and the initial representative for Developer shall be Steven D. Alvis (the "Developer Representative"). The representatives shall be available at all reasonable times and places to discuss and review the performance of the parties to this Agreement and the development of the Property pursuant to the Conceptual Plan, Preliminary and Final Plats.

18. Term of Agreement. This Agreement shall terminate on December 31, 2008.

19. Effective Date. This Agreement shall be binding and take effect only upon both parties signature hereto, attachment of all required exhibits, receipt by City of a fully executed and recorded Developer's Covenants and Restrictions to run with the land, as required in this Agreement at Section 8(a-d), being filed prior to any of the Project property having been sold to any third party, in a form and content reasonably acceptable to City. If this effective date is not achieved in all respects on or before December 31, 2007, this Agreement shall be void.

20. Preamble. The findings of fact, recitations and provisions set forth in the preamble to this Agreement are true and are adopted and made a part of the body of this agreement, biding the parties hereto, as if the same were fully set forth herein.

21. Representation of Authority. The City represents and warrants to the Developer that the City is duly authorized and empowered to enter into this Agreement and is a proper party to this Agreement. The Developer represents and warrants to the City that it has the requisite authority to enter into this Agreement and is a proper party to this Agreement.

23. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the City and Developer, respectively.

CITY:

CITY OF SHERMAN, a Texas home-rule municipal corporation

By: ______________________
L. Scott Wall
City Manager

DEVELOPER:

A-S 71 SHERMAN-PHASE III, L.P.
Texas limited partnership

By: A-S 71, L.C., a Texas limited liability company, General Partner

By: ______________________
Steven D. Alvis
Member-Manager

Approved:

Chas W. Rowland
Charles W. Rowland
City Attorney

STATE OF TEXAS §
§
COUNTY OF GRAYSON §

THIS INSTRUMENT was subscribed, sworn to and acknowledged before me on May 18, 2005, by L. Scott Wall, City Manager of the **CITY OF SHERMAN,** a Texas home-rule municipal corporation, on behalf of said corporation.

PAMELA CLOER
Notary Public
STATE OF TEXAS
My Comm. Exp. 4-1-2006

Pamela Cloer
Notary Public, State of Texas
Printed Name of Notary: Pamela Cloer
My Commission Expires: 04/01/2006

STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS INSTRUMENT was subscribed, sworn to and acknowledged before me on May 17, 2005, by Steven D. Alvis, Member-Manager of A-S 71, L.C., a Texas limited liability company, General Partner of **A-S 71 SHERMAN-PHASE III, L.P.**, a Texas limited partnership, on behalf of said limited partnership.

MARGARET GALLAGHER
NOTARY PUBLIC STATE OF TEXAS
COMMISSION EXPIRES:
AUGUST 12, 2008

Margaret Gallagher
Notary Public, State of Texas
Printed Name of Notary: Margaret Gallagher
My Commission Expires: 8/12/2008

EXHIBIT A

Description of Property

Lots Two (2), Four (4), Five (5), Six (6), Eight (8) and Nine (9), all in Block One (1), SHERMAN TOWN CENTER SECTION TWO, an Addition to the City of Sherman, Grayson County, Texas, as shown by the Final Plat of Sherman Town Center Section Two, filed of record on April 1, 2005, in Volume 17, Pages 99-102, Plat Records, Grayson County, Texas.

Restricted Reserve "A", SHERMAN TOWN CENTER SECTION TWO, an Addition to the City of Sherman, Grayson County, Texas, as shown by the Final Plat of Sherman Town Center Section Two, filed of record on April 1, 2005, in Volume 17, Pages 99-102, Plat Records, Grayson County, Texas.

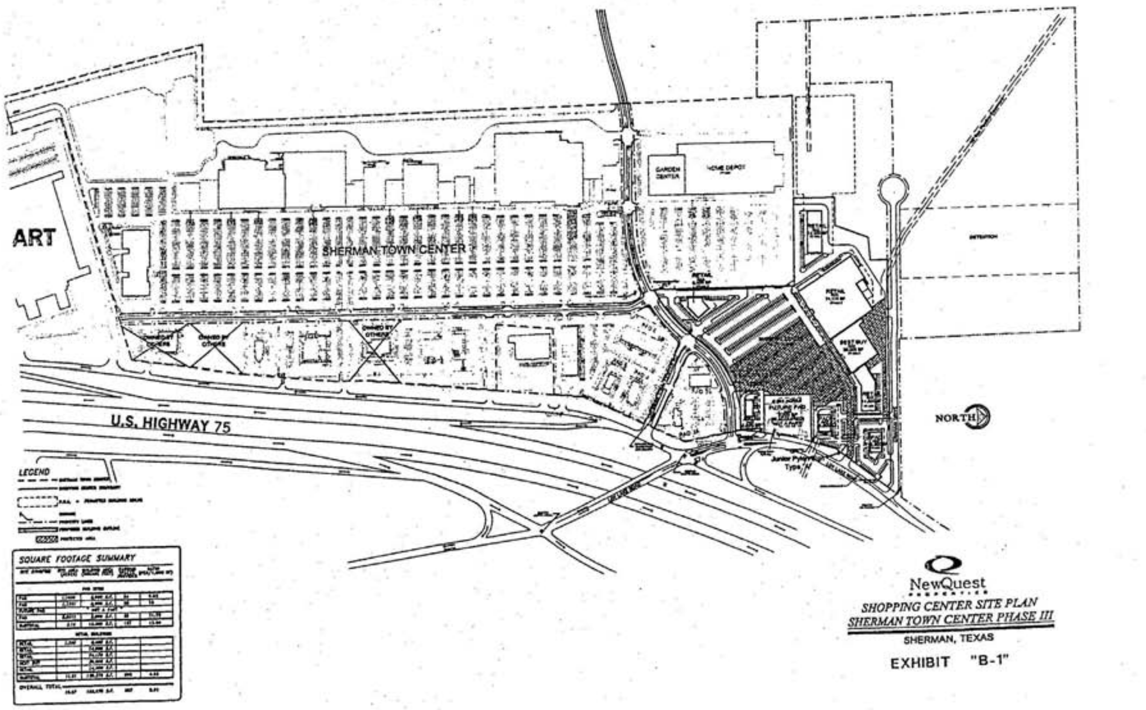
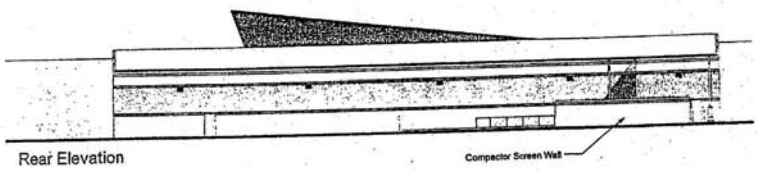
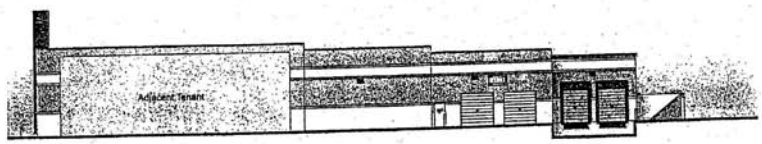

ART
SHERMAN TOWN CENTER
GARDEN CENTER
HOME DEPOT
OWNED BY OTHERS
OWNED BY OTHERS
BEST BUY
U.S. HIGHWAY 75
NORTH
LEGEND
SQUARE FOOTAGE SUMMARY
NewQuest
SHOPPING CENTER SITE PLAN
SHERMAN TOWN CENTER PHASE III
SHERMAN, TEXAS

EXHIBIT "B-1"

Front Elevation



Rear Elevation



Right Elevation

BEST BUY

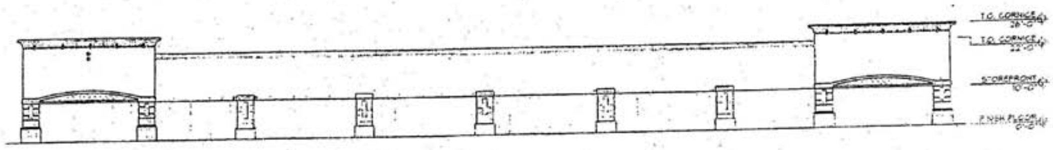
Site Location:
Sherman Town Center
Sherman, TX

Project Information

Prepared by:

[redacted]

EXTERIOR ELEVATIONS FOR 14,000 SF RETAIL BUILDING LOCATED NORTH
OF HOME DEPOT TRACT AND EAST RETAIL BUILDING LOCATED WEST OF
DEVELOPER TRACT 17



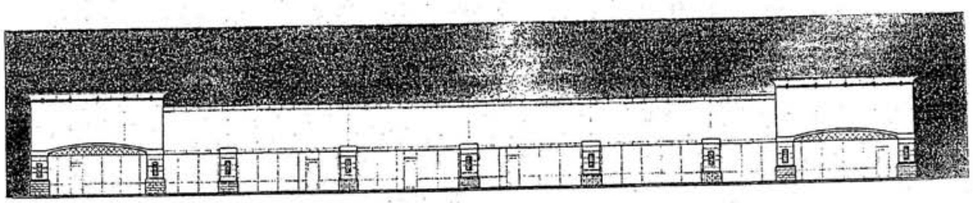


EXHIBIT C

RESOLUTION 4693

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A DEVELOPER'S AGREEMENT WITH A-S 71 SHERMAN-PHASE III, L.P.; 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 Council finds and determines that the attached Developer's Agreement with A-S 71 Sherman-Phase III, L.P., a Texas limited partnership, constitutes an Economic Development Program within the meaning of Section 380.001 of the Texas Local Government Code, that the development of the proposed project in the Sherman Tax Increment Financing Reinvestment Zone Number One will stimulate economic growth in the Sherman area and the State of Texas, that construction of the proposed project is in the best interests of the City of Sherman, and that complete construction of the project will significantly increase the tax base of the City.

SECTION 2. 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 Developer's Agreement with A-S 71 Sherman-Phase III, L.P., a Texas limited partnership, in the same or substantially same form as the contract documents attached hereto and incorporated herein for all purposes.

SECTION 3. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

PASSED AND APPROVED on this the 2nd day of May, 2005.

CITY OF SHERMAN, TEXAS

BY: ______________________
JULIE ELLIS STARR, MAYOR

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM AND CONTENT:

C. W. Rowland
CHARLES W. ROWLAND,
CITY ATTORNEY

CERTIFIED COPY- DOCUMENT
THIS IS CERTIFIED TO BE A TRUE COPY
OF THE PERMANENT RECORD AS FILED IN
THE OFFICE OF THE CITY CLERK.

Linda Ashby
CITY CLERK, SHERMAN, TEXAS

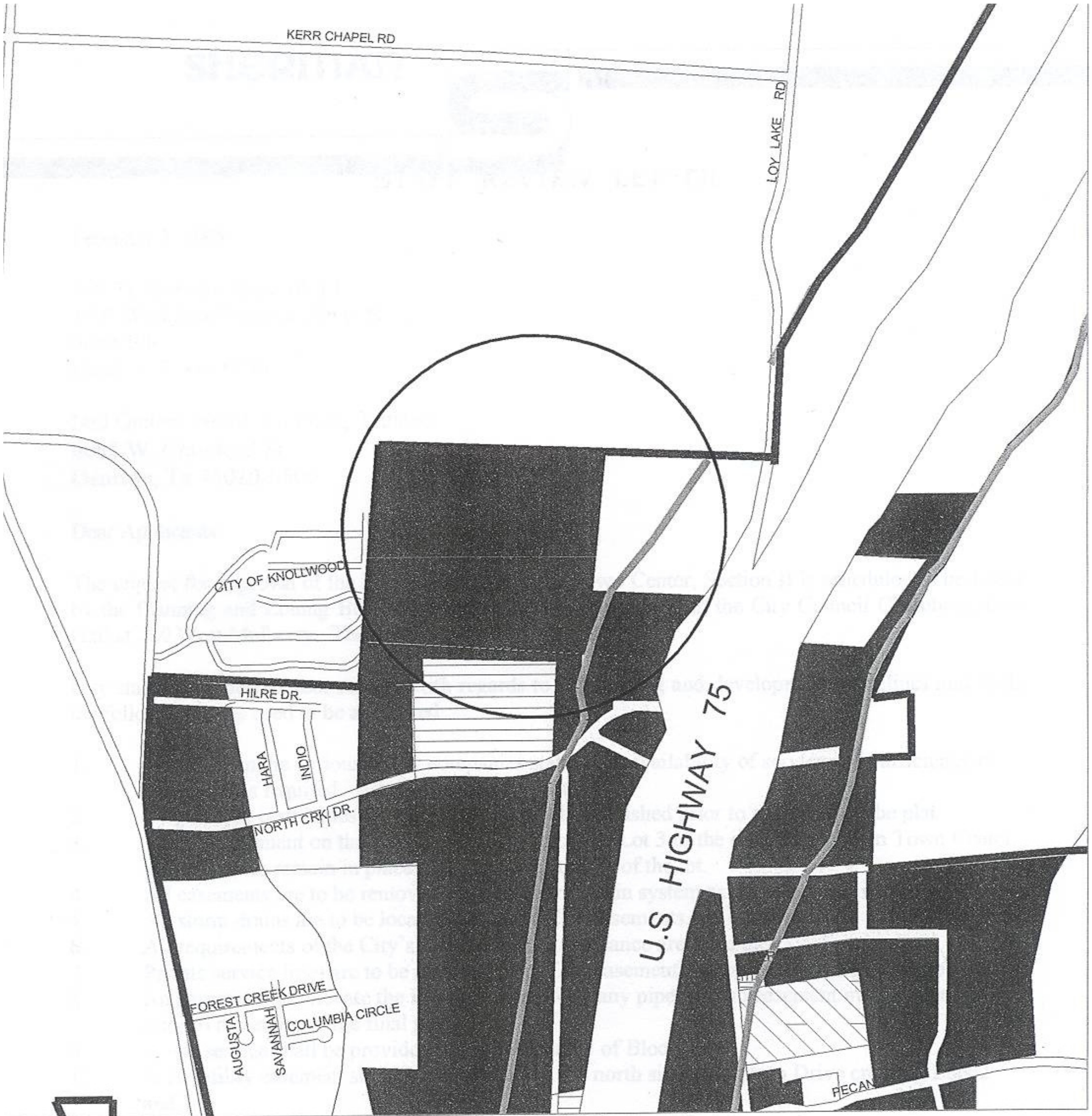
ISSUED: 5/3/05

EXHIBIT D

COSTS OF POTENTIAL INFRASTRUCTURE PURCHASES

Street Paving	$281,340
Roadway Lighting along Center Drive	145,000
Entrances	50,000
Traffic Impact Study	20,000
Land Planning, Arch. and Engineering	125,000
Excavation	457,180
Public Storm Drainage (Limited to within Graham Drive exclusively)	327,813
Public Water System	167,500
Public Sewer System	101,350
Water Sewer & Drainage Engineering (Drainage limited to within Graham Drive exclusively)	55,000
Sidewalks	40,000
[illegible]lic Landscaping	65,000
[illegible]ance Amenities	20,000
Total	$1,855,183

List Provided by NewQuest Properties on April 22, 2005.



LEGEND

R-A	SINGLE FAMILY AGRICULTURAL DISTRICT
SF-1	SINGLE FAMILY RESIDENTIAL DISTRICT
R-1	ONE AND TWO FAMILY RESIDENTIAL DISTRICT
R-2	MULTI-FAMILY RESIDENTIAL DISTRICT
C-1	RETAIL BUSINESS DISTRICT
C-2	GENERAL COMMERCIAL DISTRICT
CO	OFFICE DISTRICT
M-1	LIGHT MANUFACTURING DISTRICT
M-1.5	MEDIUM MANUFACTURING DISTRICT
M-2	HEAVY MANUFACTURING DISTRICT
M H	MANUFACTURED HOUSING DISTRICT
	BLALOCK INDUSTRIAL PARK
O-1	OVERLAY DISTRICT - 75 & 82
O-1.1	OVERLAY DISTRICT - 1417
O-1.2	OVERLAY DISTRICT -SAM RAYBURN FREEWAY
A&C	ARTS & CULTURAL OVERLAY DISTRICT
CBD	CENTRAL BUSINESS DISTRICT
	CITY LIMITS

City of Sherman, Texas

Final Plat
Sherman Town Center, Section 2

Department of Developmental Services

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. D.4

OTHER BUSINESS
Seeking Council Direction on Various Zoning Issues

Issue
Consideration of modifications needed to zoning and development standards

Background
As part of the Comprehensive Plan process, the City's consultants, Kendig Keast, have identified several areas for potential modification of the City's zoning and development ordinances for immediate consideration by the Council and Planning and Zoning Commission. The staff agrees that the issues raised in the memo warrant more immediate consideration than other recommendations that may come out of the Comprehensive Plan process at a later date. The three issues raised in the memo were: 1) bringing in all new annexations as "RA" – residential agriculture, 2) expanding the overlay district regulations to accommodate new commercial development in other areas of the City, and 3) addressing subdivision development through adoption of a subdivision ordinance. The staff feels that the first two of these items are the most crucial items to address immediately. Consideration of the subdivision ordinance can be deferred to be included with implementation of other items arising out of the Comprehensive Plan.

Origination
Kendig Keast, Comprehensive Plan Consultants
City Manager's Office

Financial Consideration
There are no costs associated with this item.

Staff Recommendation
The staff recommends that Council direct the P&Z to study the recommendations for changes to annexation zoning and expanded overlay district regulations.

Alternatives
As may be directed by the Council

Attachments
Memo from Kendig Keast

Prepared by:
Robby Hefton, Assistant City Manager/CFO

Approved by:
George Olson, City Manager

KENDIG KEAST
COLLABORATIVE

514 Brooks Street | Sugar Land, TX 77478
Phone : 281.242.2960 Fax : 281.242.4115

MEMORANDUM

Date: October 14, 2008

To: Rita Gaither – Development Coordinator, City of Sherman

From: Gary Mitchell, AICP – Principal, Kendig Keast Collaborative
Jonathan Grosshans, AICP LEED AP – Associate Planner, Kendig Keast Collaborative

Subject: Immediate Items of Concern in Sherman Development Codes

As we head into the home stretch of the Comprehensive Plan Advisory Committee (CPAC) process these next few months, an upcoming work item for us will be the Development Ordinance Appraisal Memorandum. We prepare this memo separately from the Comprehensive Plan document, but as an important supplement, as plan implementation considerations come to the forefront prior to plan finalization and adoption.

As a preview to this pending memo, and in preparation for our second briefing to City Council (tentatively scheduled for November 17th), I wanted to highlight several code-related items that we believe warrant immediate attention by the City prior to final consideration of the new Comprehensive Plan early in 2009.

(1) **Zoning Upon Annexation.** The City's zoning ordinance currently provides that all newly annexed land will automatically be zoned "SF-1," Single Family Residential (Section 4-5). It is common practice for cities to incorporate new territory with initial zoning set at the lowest intensity district available in the ordinance. In Sherman's case, this is the "R-A" Single-Family Agricultural district rather than SF-1. This is to ensure that any development of a higher intensity than permitted in R-A occurs only after a zone amendment process to another appropriate district to confirm that adequate public services will be available and land use compatibility will be achieved.

Additionally, this ordinance section regarding annexation does not specify, as in many municipal zoning ordinances, that the City and/or the property owner(s) may immediately upon annexation—or in advance of annexation—request that another zoning designation besides the default be applied to the property. Where an annexation involves land that has already developed with a particular use and intensity, an automatic, low intensity zoning designation also would not be appropriate necessarily. The same process as in Section 12, Amendments, should be followed (i.e., application, public notice, public hearing, and Zoning Board and/or City Council action). Simultaneous processing of the annexation action and the zone amendment should be permitted.

(2) **Potential Expansion of Commercial Overlay Zones and/or Standards.** As has been discussed through the CPAC process, it may be in Sherman's best interest to consider a higher level of development standards for nonresidential properties elsewhere in the community than just along the corridors currently designated through the zoning ordinance (highways 75 and 82 in Section 6.8; FM 1417 in Section 6.8.1; and, highway 75 within the Sam Rayburn Overlay district in Section 6.8.2). Concerns have been expressed that nonresidential developments just outside the specified overlay areas (which extend from 200 feet to 500 feet on either side of the highway right-of-way depending on the particular district) are not subject to the standards even though they may be equally visible along these corridors and contribute just as much to overall corridor aesthetics and design quality. Likewise, nonresidential development is proceeding along various other busy, non-highway corridors in Sherman, and the same public purposes would seem to apply in these locations:

> The intent of the ... standards is to ensure that [highway] development occurs in a manner which promotes safety while presenting an attractive appearance and assures compatible land uses according to consistent design guidelines. (Section 6.8-1-b)

The City may choose to designate additional corridors where special nonresidential development standards will apply, similar to the existing overlay areas. Or, it could take the approach of adopting basic standards to apply to all nonresidential development city-wide, supplemented by a graduated level of standards that apply only along the highest-profile corridors as designated by ordinance.

(3) **Updated and Enhanced Subdivision Regulations.** Finally, we think it is imperative that the City focus on updating its subdivision regulations as soon as possible. A comprehensive review and amendment process for this important ordinance has not been completed in some time. Additionally, given the lack of municipal zoning authority outside incorporated areas in Texas, the subdivision ordinance is the City's primary means of influencing development activity and practices in the extraterritorial jurisdiction (ETJ). We consider the City's current ordinance and standards to be inadequate considering the extent of development pressure in fringe areas that Sherman will likely face in the immediate future and over the next several decades. In particular, ordinance upgrades are needed to address rural road capacity, downstream drainage impacts from upstream development, assurance of adequate public facilities to serve new development (including meeting minimum fire flow requirements), and provision for additional parkland dedication as the community grows into its ETJ (with a fee payment option in lieu of direct land dedication).

As the CPAC wraps up its discussions over the next few months, the Planning & Zoning Commission can certainly move forward in the meantime with potential strategies for addressing these priority items. This will allow recommendations to be brought forward sooner for City Council consideration on issues we already know will figure prominently in the City's proposed new Comprehensive Plan.

Please contact us as needed for any clarifications or further discussion of the items outlined in this memo. We appreciate the opportunity to be of service to the City of Sherman regarding its planning and development needs.

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. D.5

CITIZEN REQUESTS

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. D.6

MEDIA QUESTIONS

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. D.7

COUNCIL COMMENTS

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. E.1

EXECUTIVE SESSION

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

Section 551.074 **Personnel Matters:**

(a) Consider the Qualifications, Appointment and Removal of Members to Boards and Commissions:

(i) Planning and Zoning Commission (1)

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. F.1

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

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL

Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. F.2

ADJOURNMENT

The Honorable Bill Magers, Mayor

SHERMAN CITY COUNCIL
Agenda Communication Form

From: The Office of the City Manager **Date:** 10-20-2008

Subject: Agenda Item No. N/A

COUNCIL CALENDAR

2008
CITY COUNCIL MEETINGS

JANUARY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	**7**	8	9	10	11	12
13	14	15	16	17	18	19
20	**21**	**22**	23	24	25	26
27	28	29	30	31		

FEBRUARY

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

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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30	31					

APRIL

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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6	**7**	8	9	10	11	12
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27	28	29	30			

MAY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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11	12	**13**	14	15	16	17
18	**19**	20	21	**22**	23	24
25	26	27	28	**29**	30	31

JUNE

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	**2**	3	4	5	6	7
8	9	**10**	11	12	13	14
15	**16**	17	18	19	20	21
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29	30					

JULY

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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27	28	29	30	31		

AUGUST

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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17	**18**	19	20	21	22	23
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31						

SEPTEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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28	29	30				

OCTOBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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5	**6**	7	8	9	10	11
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19	**20**	21	22	23	24	25
26	27	28	29	30	31	

NOVEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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16	**17**	18	19	20	21	22
23	24	25	26	27	28	29
30						

DECEMBER

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	**15**	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

01/21/08 - M.L.K., Jr. Birthday - Called Council Meeting on 01/22/08
02/29/08 - 12:00 Noon Called Meeting with Chamber Board
05/10/08 - City Council Election
05/13/08 - 12:00 Noon Called Meeting to Canvass Election Results
05/22/08 - 6:00 PM Called Meeting for Comprehensive Plan Community Forum
05/29/08 - 6:00 PM Called Meeting for Comprehensive Plan Community Forum
06/10/08 - 12:00 Noon Budget Planning Meeting in Council Chambers
07/17-18/08 - Budget Workshop in Council Chambers (adjourned on 07/17/08)
09/01/08 - Labor Day - Called Council Meeting on 09/02/08
09/18/08 - 12:00 Noon Joint Meeting with SEDCO Board