

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COMMUNITY ROOM OF THE SHERMAN POLICE DEPARTMENT HEADQUARTERS
2600 WEST TRAVIS ST.
SHERMAN, TEXAS
MONDAY, JANUARY 6, 2025
5:00 PM**

- A.1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A.2. PLEDGE OF ALLEGIANCE AND INVOCATION LED BY MAYOR SHAWN TEAMANN**
- A.3. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF DECEMBER 16, 2024.**

Citizen Comments

B.1. CITIZEN COMMENTS

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

Consent Agenda

C.1. CONSENT AGENDA

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

Public Hearing

D.1. INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6799

Closing and Abandoning Multiple Rights of Way being Established in Volume 5, Page 1; Volume 9, Page 3; and Volume 16, Page 164, Plat Records, Grayson County, Texas and being more Particularly Described in the Attached Exhibits "A," "B," and "C" Attached Hereto and Made a Part Hereof for all Purposes

Close Public Hearing and Consider Adoption of Ordinances

E.1. CLOSE PUBLIC HEARING

Consider Adoption of Ordinance No. 6799

Resolutions

F.1. RESOLUTION NO. 7457

Authorizing the City Manager or His Designee to Execute a Purchase and Sale Agreement and Special Warranty Deed for the Purchase of Lots 6 & 7 of Kessler View Addition known as 112 Kessler Blvd, Sherman, Texas

F.2. * RESOLUTION NO. 7458

Accepting the Contract with Red River Construction Company, Inc. for the Construction of the Post Oak Wastewater Treatment Plant Equalization Basin Improvements as Complete

F.3. * RESOLUTION NO. 7459

Authorizing Execution of Amendment No. 4 to the Professional Services Agreement with Plummer Associates, Inc. for Engineering Services for Design of the Wastewater Treatment and Water Reuse Master Plan Project

F.4. * RESOLUTION NO. 7460

Authorizing Execution of a Professional Services Agreement with Plummer Associates, Inc. for the SWWTP-MBR Solids Thickening Improvements

F.5. * RESOLUTION NO. 7461

Authorizing Execution of a Professional Services Agreement with Plummer Associates, Inc. for the South WWTP Phase II Expansion

F.6. * RESOLUTION NO. 7462

Authorizing Execution of a Professional Services Agreement with Walter P. Moore & Associates, Inc. for the Blanton Drive Drainage Improvements

F.7. * RESOLUTION NO. 7463

Authorizing the Execution of an Encroachment Agreement to Alterrian Capital, LLC for the Encroachment of a Monument Sign within a 15-foot Utility, Landscape & Sidewalk Easement Established in Instrument No. 2024-156, Plat Records, Grayson County, Texas, in the City of Sherman

F.8. * RESOLUTION NO. 7464

Joining with the State of Texas and Political Subdivisions of the State as a Party in the Global Opioid Settlement Agreement Regarding Opioid Use and Distribution in *In Re: Texas Opioid Litigation*, MDL No. 2018-63587, in the 152nd District Court of Harris County, Texas, and Other Litigation; Opting into the Kroger Global Settlement Agreement Dated as of March 22, 2024; Authorizing the City Manager to Execute Settlement Participation Documents and Ratifying the City Manager's Prior Execution of the Same

Other Business

G.1. OTHER BUSINESS

Appoint Acting City Manager

G.2. * OTHER BUSINESS

Emergency Repair of the Shepherd #1 Trinity Well under Emergency Designation

G.3. * OTHER BUSINESS

Authorize Partial Payout of Accumulated Paid Time Off

COUNCIL COMMENTS

EXECUTIVE SESSION

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

I.1. TEX. GOV'T CODE § 551.071

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

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

I.2. TEX. GOV'T CODE § 551.072

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

I.3. TEX. GOV'T CODE § 551.073

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

I.4. TEX. GOV'T CODE § 551.074

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

a) City Manager Position

I.5. TEX. GOV'T CODE § 551.076

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

I.6. TEX. GOV'T CODE § 551.087

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

I.7. TEX. GOV'T CODE § 551.089

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

The Council reconvenes into General Session

COUNCIL CALENDAR

K.1. COUNCIL CALENDAR

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall (317 S. Travis) of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on Wednesday, January 1, 2025 at 4:59 p.m., and said time of posting was 72 hours before said meeting was convened or called to order.

Dated this 1st day of January 2025. City of Sherman, Texas

City Clerk

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

The above agenda schedule represents an estimate of the order for the indicated items and is subject to change at any time. All agenda items are subject to final action by the City Council.

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

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

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

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

Mayor

Shawn C. Teamann

Deputy Mayor

Juston Dobbs

Council Members

Henry Marroquin, Council-At-Large, PL #1

Juston Dobbs, Council-At-Large, PL #2

Clay Barnett, Council – District #1

Josh Stevenson, Council – District #2

Pamela L. Howeth, Council – District #3

Daron Holland, Council – District #4

STATE OF TEXAS §
 December 16, 2024
COUNTY OF GRAYSON §

BE IT REMEMBERED THAT A Regular Meeting of the City Council of the City of Sherman, Grayson County, Texas was begun and held in the Community Room of the Sherman Police Headquarters, 2600 W. Travis Street, on December 16, 2024.

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

MEMBERS ABSENT: NONE.

CALL TO ORDER

Mayor Teamann called the meeting to order at 5:00 p.m. The Pledge of Allegiance and Invocation were led by Council Member Henry Marroquin.

CALL TO ORDER

APPROVE MINUTES

The Council reviewed the Minutes of the Regular City Council Meeting of December 2, 2024 and the Called City Council Meeting of December 9, 2024. Council Member Barnett moved to approve the Minutes, as presented; Second by Council Member Holland; All present voted AYE.
MOTION CARRIED.

APPROVE MINUTES

CITIZEN'S COMMENTS

There were no citizen's comments.

CITIZEN'S COMMENTS

CONSENT AGENDA

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

CONSENT AGENDA

The Council reviewed the Consent Agenda. Council Member Stevenson moved to approve the Consent Agenda, as presented. Second by Council Member Holland. All present voted AYE.

Mayor Teamann introduced Ordinance No. 6790 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 3.126 ACRES BEING PART OF THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 AND BEING ALL OF LOT 4 OF REPLAT OF LOT 2R OF McLAIN ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 2640 BLOCK NORTH TRAVIS STREET, HERETOFORE ZONED MF-30 (MULTI FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-N (NEIGHBORHOOD COMMERCIAL) DISTRICT ZONING CLASSIFICATION, FRESHPOINT OZ BUSINESS, LLC (OWNER), GHADER MIRAK, ARRIS DESIGN-BUILD, INC (REPRESENTATIVE/ARCHITECT) AND

ORD 6790
ZONE CHANGE
(2640 BLOCK
N. TRAVIS ST)

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

Rob Rae, Development Services Director, said this request was for a zone change to extend the Commercial District into the next lot.

The Planning and Zoning Commission and the staff recommend approval of the zone change.

No citizens appeared before the City Council to discuss Ordinance No. 6790.

Mayor Teamann asked that the captions of Ordinance 6791 and 6792 be read together.

ORD 6791
ZONE CHANGE
(2105 TEXOMA PKWY
& 2030 TEXOMA DR)

Mayor Teamann introduced Ordinance No. 6791 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 8.441 ACRES BEING IN THE SMITH McGLOTHIN SURVEY, ABSTRACT NO. 808 AND THE J.B. McANAI SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 2105 TEXOMA PARKWAY AND 2030 TEXOMA DRIVE, HERETOFORE C-2 (GENERAL COMMERCIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-1 (RETAIL BUSINESS) DISTRICT ZONING CLASSIFICATION, GROW SHERMAN REALTY, LLC (OWNER), NILESH GOLAKIA (REPRESENTATIVE) AND BLUESTAR SURVEYING, LLC (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mayor Teamann introduced Ordinance No. 6792 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW A HOTEL OR MOTEL IN A C-1 (RETAIL BUSINESS) DISTRICT, LOCATED AT 2105 TEXOMA PARKWAY AND 2030 TEXOMA DRIVE, CONSISTING OF 8.441 ACRES BEING IN THE SMITH McGLOTHIN SURVEY, ABSTRACT NO. 808 AND THE J.B. McANAI SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS GROW SHERMAN REALTY, LLC (OWNER), NILESH GOLAKIA (REPRESENTATIVE) AND BLUESTAR SURVEYING, LLC (SURVEYOR) PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6792
SUP FOR HOTEL
(2105 TEXOMA PKWY
& 2030 TEX OMA DR)

Mr. Rae said this zone change and Specific Use Permit were combined for a hotel, and will allow the request to meet the requirement for a hotel.

This is an existing hotel that has been problematic for the City for a long time. The City's Community Improvement Group has been working with the property owners to reduce crime and emergency calls to this location.

The property has recently changed ownership, and the City has asked that they bring the property into compliance with the zoning regulations. He said they have seen improvement with the new property owners.

The Planning and Zoning Commission and the staff recommend approval of the zone change and Specific Use Permit.

No citizens appeared before the City Council to discuss Ordinance Nos. 6791 or 6792.

Mayor Teamann introduced Ordinance No. 6793 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING ORDINANCE NO. 6535, AND AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, GRANTING A SPECIFIC USE PERMIT TO ALLOW MINI-WAREHOUSE IN A C-2 (GENERAL COMMERCIAL) DISTRICT LOCATED AT 4312 AND 4316 TEXOMA PARKWAY, CONSISTING OF 12.125 ACRES BEING A PART OF THE W.S. PATTERSON SURVEY, ABSTRACT NO. 969 AND BEING ALL OF LOTS 1R AND 2R IN THE REPLAT OF SIDNEY HEIGHTS ADDITIONS AND LOT 1, REPLAT OF PART OF BLOCK FOUR OF THE REPLAT OF MIDWAY MALL, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS 4312 TEXOMA PARKWAY, LP (OWNER), RODERICK TATCHIO (REPRESENTATIVE) AND PRESTON TRAIL LAND SURVEYING (SURVEYOR), PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6793
SUP FOR MINI
WAREHOUSE
(4312 & 4316
TEXOMA PKWY)

Mr. Rae said this request repeals a previous Specific Use Permit for self-storage, and the owner would like to expand the use to include an additional 10,000 square feet of self-storage.

The Planning and Zoning Commission and the staff recommend approval of the zone change and the Specific Use Permit.

No citizens appeared before the City Council to discuss Ordinance No. 6793.

Mayor Teamann introduced Ordinance No. 6794 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 3.500 ACRES BEING PART OF

ORD 6794
ZONE CHANGE
(2000 BLOCK
S. FIRST ST)

THE GEORGE PILAT SURVEY, ABSTRACT NO. 963 AND THE PRESTON KITCHEN SURVEY, ABSTRACT NO. 667, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 2000 BLOCK SOUTH FIRST STREET, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-TH (TOWNHOME RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, BELACOOP, LLC (OWNER), JAY PESKUSKI (REPRESENTATIVE) AND UNDERWOOD DRAFTING AND SURVEYING (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Mr. Rae said the staff has been working with the property owner to get maximum usage of the property. They would like to rezone the property, in order to fit no more than 27 proposed lots. The request isn't for approval of the Site Plan, and they will be required to file a plat later for approval.

The Planning and Zoning Commission and the staff recommend approval of the zone change.

No citizens appeared before the City Council to discuss Ordinance No. 6794.

Mayor Teamann introduced Ordinance No. 6795 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW AN AUTOMOBILE REPAIR, BODY WORK, OR PAINTING IN A C-2 (GENERAL COMMERCIAL) DISTRICT, LOCATED AT 3100 BLOCK TEXOMA PARKWAY, CONSISTING OF 0.844 ACRES BEING IN THE REUBEN HENDRIX SURVEY, ABSTRACT NO. 504, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS SHERMAN NEC TEXOMA & 82, LP (OWNER), BACA ARCHITECTURE (REPRESENTATIVE) AND COPLEY LAND SURVEYING (SURVEYOR) PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6795
SUP FOR AUTO
REPAIR, BODY
WORK, PAINTING
(3100 BLOCK
TEXOMA PKWY)

Mr. Rae said this Specific Use Permit is for an auto repair facility, and is adjacent to a proposed car wash and the QuikTrip, located at US Hwy 82 and Texoma Parkway. The applicant is proposing construction of a Pit Stop, an auto oil-change facility.

The proposed SUP is limited to the Pit Stop and limited to minor auto repair only.

The Planning and Zoning Commission recommended approval of the Specific Use Permit.

No citizens appeared before the City Council to discuss Ordinance No. 6795.

Mayor Teamann introduced Ordinance No. 6796 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 5.693 ACRES BEING PART OF THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 1909 TEXOMA PARKWAY, HERETOFORE ZONED M-1 (LIGHT MANUFACTURING) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-2 (GENERAL COMMERCIAL) DISTRICT ZONING CLASSIFICATION, GDMR ENTERPRISES JOINT VENTURE (OWNER) AND DEAN GILBERT, JR. (REPRESENTATIVE) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6796
ZONE CHANGE
(1909 TEXOMA PKWY)

Mr. Rae said this was a “zoning clean-up” at the corner of Texoma Parkway and Grand Avenue. A lot of the property in this area is zoned manufacturing, even though it is being operated as a commercial use.

Prior to 2022, commercial uses were permitted in manufacturing zoning districts. Since the ordinance was updated in 2022, this “cleans up” an area that probably shouldn’t be zoned manufacturing.

The Planning and Zoning Commission recommended approval of the zone change.

No citizens appeared before the City Council to discuss Ordinance No. 6796.

Mayor Teamann introduced Ordinance No. 6797 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS; AUTHORIZING THE ISSUANCE OF “CITY OF SHERMAN, TEXAS, LIMITED TAX NOTES, SERIES 2025”; SPECIFYING THE TERMS AND FEATURES OF SUCH NOTES; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX FOR THE PAYMENT OF SUCH NOTES; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO, INCLUDING THE APPROVAL AND EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT AND PROVIDING AN EFFECTIVE DATE.

ORD 6797
TAX NOTES

Mary Lawrence, Chief Financial Officer, said the Council approved the issuance of Tax Notes, as part of the 2025 Budget process. This funding will be used for various facilities, fleet and equipment. The five-year Tax Notes were sold this morning.

Kristin Savant, Partner, Norton Rose Fulbright US LLP, is the City’s Bond Counsel, and Garry Kimball, President, Specialized Public Finance, Inc., is the City’s Financial Advisor. Both were in attendance to answer any questions the Council might have.

Mr. Kimball said they received 11 bids on this offering, which is an extremely strong showing. The winning bid was just under 3%, at a fixed rate for the term of the financing.

They budgeted 4%, making it \$263,000 to the good, verses budget, or about \$43,000 per year. All bidders met the bid specs and all bids were conforming.

Mr. Kimball said they recommended the low bidder of BOK Financial Securities, Inc, at a rate of 2.99%.

No other citizens appeared before the City Council to discuss Ordinance No. 6797.

Mayor Teamann introduced Ordinance No. 6798 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ENLARGING THE BOUNDARIES OF SHERMAN TAX INCREMENT REINVESTMENT ZONE NUMBER FIVE, CITY OF SHERMAN, TEXAS, ESTABLISHED PURSUANT TO CHAPTER 311 OF THE TEXAS TAX CODE, BY ADDING TO THE ZONE APPROXIMATELY 128 ACRES OF LAND; PROVIDING FOR FINDINGS OF FACT; DESCRIBING THE BOUNDARIES OF THE AREA TO BE ADDED TO THE ZONE; PROVIDING SEVERABILITY AND REPEALER CLAUSES AND AN EFFECTIVE DATE.

ORD 6798
TIRZ #5
BOUNDARIES

Ms. Lawrence said this ordinance enlarges Tax Increment Zone #5, also known as Sherman Crossroads. The zone includes the area of the northwest corner of FM 1417 and US Hwy 75.

The enlarged zone will add 96 acres on the west side, known as Sherman Junction, and is the old Johnson & Johnson property. Another 32 acres on the east side of Hwy 75 is also proposed to be added to the zone. This property includes the Circle K and a couple of hotels, basically the commercial property.

The additional areas will be included in an updated Project and Financing Plan, which will be proposed in the first half of 2025.

No citizens appeared before the City Council to discuss Ordinance No. 6798.

The Public Hearing was closed.

Ordinance 6790

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 3.126 ACRES BEING PART OF THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 AND BEING ALL OF LOT 4 OF REPLAT OF LOT 2R OF McLAIN ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 2640 BLOCK NORTH TRAVIS STREET, HERETOFORE ZONED MF-30 (MULTI FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-N (NEIGHBORHOOD COMMERCIAL) DISTRICT ZONING CLASSIFICATION,

ORD 6790
ZONE CHANGE
(2640 BLOCK
N. TRAVIS ST)

FRESHPOINT OZ BUSINESS, LLC (OWNER), GHADER MIRAK, ARRIS DESIGN-BUILD, INC (REPRESENTATIVE/ARCHITECT) AND UNDERWOOD DRAFTING & SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ACTION TAKEN.

Motion by Council Member Barnett to approve Ordinance No. 6790, as presented. Second by Deputy Mayor Dobbs.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6791

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 8.441 ACRES BEING IN THE SMITH McGLOTHIN SURVEY, ABSTRACT NO. 808 AND THE J.B. McANAIR SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 2105 TEXOMA PARKWAY AND 2030 TEXOMA DRIVE, HERETOFORE C-2 (GENERAL COMMERCIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-1 (RETAIL BUSINESS) DISTRICT ZONING CLASSIFICATION, GROW SHERMAN REALTY, LLC (OWNER), NILESH GOLAKIA (REPRESENTATIVE) AND BLUESTAR SURVEYING, LLC (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6791
ZONE CHANGE
(2105 TEXOMA PKWY
& 2030 TEXOMA DR)

Deputy Mayor Dobbs asked how long the new management had been in place. Mr. Rae said this used to be Motel 6, but with the compliance issues they had, the brand was stripped. They created their own "flag" as Lone Star Inn. The new property owners are trying to get the Motel 6 flag back.

The Specific Use Permit would tie them down to a yearly update to make sure everything was done. He verified there was a better relationship with the new management.

Council Member Marroquin asked what type of improvements have been done on the property.

Nilesh Golakia, 3009 Creekside Dr., Sachse, Texas

Mr. Golakia said since they have taken over Lone Star Inn, they have added two groundskeepers and a manager. They have also reduced the police calls and the crime, to almost zero. He said they will continue to work hard to stay in compliance.

Mr. Golakia said they have applied to bring the Motel 6 flag back and the property was inspected last week. He said, improving the rooms and the look of the motel, will bring a different clientele back. They are not renting rooms to persons with criminal backgrounds.

Mayor Teamann asked if they were compliant with the City's regulations. Mr. Rae said the next step is obtaining the Certificate of Occupancy in their name.

He said the biggest challenge with this hotel is the permanent residents that would switch rooms every two or three weeks. Mr. Golakia said guests are not allowed to stay more than three weeks at a time. He said GlobalWafers and Texas Instruments have been asking them to allow their workers to stay longer than three weeks. But at this time, they have not allowed that.

ACTION TAKEN.

Motion by Council Member Howeth to approve Ordinance No. 6791, as presented. Second by Deputy Mayor Dobbs.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6792

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW A HOTEL OR MOTEL IN A C-1 (RETAIL BUSINESS) DISTRICT, LOCATED AT 2105 TEXOMA PARKWAY AND 2030 TEXOMA DRIVE, CONSISTING OF 8.441 ACRES BEING IN THE SMITH McGLOTHIN SURVEY, ABSTRACT NO. 808 AND THE J.B. McANAI SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS GROW SHERMAN REALTY, LLC (OWNER), NILESH GOLAKIA (REPRESENTATIVE) AND BLUESTAR SURVEYING, LLC (SURVEYOR) PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6792
SUP FOR HOTEL
(2105 TEXOMA PKWY
& 2030 TEXOMA DR)

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance No. 6792, as presented. Second by Council Member Howeth.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6793

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, REPEALING ORDINANCE NO. 6535, AND AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, GRANTING A SPECIFIC USE PERMIT TO ALLOW MINI-WAREHOUSE IN A C-2 (GENERAL COMMERCIAL) DISTRICT LOCATED AT 4312 AND 4316 TEXOMA PARKWAY, CONSISTING OF 12.125 ACRES BEING A PART OF THE W.S. PATTERSON SURVEY, ABSTRACT NO. 969 AND BEING ALL OF LOTS 1R AND 2R IN THE REPLAT OF SIDNEY HEIGHTS ADDITIONS AND LOT 1, REPLAT OF PART OF BLOCK FOUR OF

ORD 6793
SUP FOR MINI
WAREHOUSE
(4312 & 4316
TEXOMA PKWY)

THE REPLAT OF MIDWAY MALL, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS 4312 TEXOMA PARKWAY, LP (OWNER), RODERICK TATCHIO (REPRESENTATIVE) AND PRESTON TRAIL LAND SURVEYING (SURVEYOR), PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Council Member Stevenson clarified that an ordinance is being repealed and changed in one agenda item. Mr. Rae said they already have a Specific Use Permit for a mini-warehouse, but it didn't include this additional 10,000 square feet. This would allow them to add this footage to their Site Plan.

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance No. 6793, as presented. Second by Deputy Mayor Dobbs.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6794

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 3.500 ACRES BEING PART OF THE GEORGE PILAT SURVEY, ABSTRACT NO. 963 AND THE PRESTON KITCHEN SURVEY, ABSTRACT NO. 667, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 2000 BLOCK SOUTH FIRST STREET, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-TH (TOWNHOME RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, BELACOOPT, LLC (OWNER), JAY PESKUSKI (REPRESENTATIVE) AND UNDERWOOD DRAFTING AND SURVEYING (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6794
ZONE CHANGE
(2000 BLOCK
S. FIRST ST)

Council Member Howeth expressed concern about the narrow street on which the townhomes are located. She asked if there was a plan to widen the street.

Clint Philpott, Assistant City Manager, said on the Site Plan, they had accounted for on street parking and expansion of the street. There is a paved area between the existing edge of the street.

Mr. Rae said the top, left side of the Site Plan is all front-entry townhomes. The ones facing First Street are front-entry, but rear garages. Council Member Barnett asked if it would be possible to make the townhomes on the north side, rear-entry for garage approaches.

Amit Saha, 6730 Stichter, Dallas, Texas

Mr. Saha said they were unable to add an alley on the back of that section of townhomes. He said those are front-entry garages.

Council Members were concerned about the traffic on First Street, from the townhomes.

ACTION TAKEN.

Motion by Council Member Howeth to approve Ordinance No. 6794, as presented. Second by Council Member Barnett.

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

VOTING NAY: Marroquin.

MOTION CARRIED.

Ordinance 6795

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW AN AUTOMOBILE REPAIR, BODY WORK, OR PAINTING IN A C-2 (GENERAL COMMERCIAL) DISTRICT, LOCATED AT 3100 BLOCK TEXOMA PARKWAY, CONSISTING OF 0.844 ACRES BEING IN THE REUBEN HENDRIX SURVEY, ABSTRACT NO. 504, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS SHERMAN NEC TEXOMA & 82, LP (OWNER), BACA ARCHITECTURE (REPRESENTATIVE) AND COPLEY LAND SURVEYING (SURVEYOR) PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6795
SUP FOR AUTO
REPAIR, BODY
WORK, PAINTING
(3100 BLOCK
TEXOMA PKWY)

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance No. 6795, as presented. Second by Deputy Mayor Dobbs.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6796

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 5.693 ACRES BEING PART OF THE J.B. McANAIR SURVEY, ABSTRACT NO. 763 CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 1909 TEXOMA PARKWAY, HERETOFORE ZONED M-1 (LIGHT MANUFACTURING) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-2 (GENERAL COMMERCIAL) DISTRICT ZONING CLASSIFICATION, GDMR ENTERPRISES JOINT VENTURE (OWNER) AND DEAN GILBERT, JR. (REPRESENTATIVE) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6796
ZONE CHANGE
(1909 TEXOMA PKWY)

ACTION TAKEN.

Motion by Council Member Barnett to approve Ordinance No. 6796, as presented. Second by Council Member Howeth.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6797

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS; AUTHORIZING THE ISSUANCE OF "CITY OF SHERMAN, TEXAS, LIMITED TAX NOTES, SERIES 2025"; SPECIFYING THE TERMS AND FEATURES OF SUCH NOTES; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX FOR THE PAYMENT OF SUCH NOTES; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO, INCLUDING THE APPROVAL AND EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT AND THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT AND PROVIDING AN EFFECTIVE DATE.

ORD 6797
TAX NOTES

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance No. 6797, as presented. Second by Deputy Mayor Dobbs.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6798

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, ENLARGING THE BOUNDARIES OF SHERMAN TAX INCREMENT REINVESTMENT ZONE NUMBER FIVE, CITY OF SHERMAN, TEXAS, ESTABLISHED PURSUANT TO CHAPTER 311 OF THE TEXAS TAX CODE, BY ADDING TO THE ZONE APPROXIMATELY 128 ACRES OF LAND; PROVIDING FOR FINDINGS OF FACT; DESCRIBING THE BOUNDARIES OF THE AREA TO BE ADDED TO THE ZONE; PROVIDING SEVERABILITY AND REPEALER CLAUSES AND AN EFFECTIVE DATE.

ORD 6798
TIRZ #5
BOUNDARIES

Council Member Barnett left the Meeting at 5:35 p.m.

Council Member Stevenson asked if the boundaries were at the Council's discretion, or is permission required from the property owners. Robby Hefton, City Manager, said the City does not need a request from the property owners.

He said the Project and Financing Plan will be presented to the TIRZ Board, and will then come back to the Council separately for consideration.

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance No. 6798, as presented. Second by Deputy Mayor Dobbs.

VOTING AYE: Teamann, Dobbs, Holland, Howeth, Marroquin, Stevenson.
VOTING NAY: None.
NOT VOTING: Barnett.
MOTION CARRIED.

RESOLUTION NO. 7453 -- AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH HUITT-ZOLLARS, INC. FOR DEVELOPMENT PLAN REVIEWS

RES 7453
DEVELOPMENT
PLAN REVIEWS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH HUITT-ZOLLARS, INC. FOR DEVELOPMENT PLAN REVIEWS.

Wayne Lee, Director of Engineering, said this was an amendment to an existing contract for plan review services with Huitt-Zollars, to supplement the City staff in reviewing development plans.

Between the original agreement and amendment one, the contract was almost \$233,000, and this amendment authorizes another \$200,000 to be added to the contract. Currently the Engineering Department is “down” three engineers.

Mr. Lee said they would probably present another contract next quarter to engage another firm to help with the workload.

ACTION TAKEN.

Motion by Council Member Stevenson to approve Resolution No. 7453, as presented. Second by Council Member Howeth.
VOTING AYE: Teamann, Dobbs, Holland, Howeth, Marroquin, Stevenson.

VOTING NAY: None.
NOT VOTING: Barnett.
MOTION CARRIED.

Council Member Barnett returned to the Meeting at 5:36 p.m.

RESOLUTION NO. 7454 -- APPROVING U.S. MOBILE HEALTHCARE TO PROVIDE AMBULANCE SERVICES IN THE CITY OF SHERMAN, TEXAS

RES 7454
AMBULANCE
SERVICES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING U.S. MOBILE HEALTHCARE TO PROVIDE AMBULANCE SERVICES IN THE CITY OF SHERMAN, TEXAS.

CONSENT AGENDA.

RESOLUTION NO. 7455 -- AUTHORIZING THE PURCHASE OF COMPUTER HARDWARE FROM CDWG PURCHASED THROUGH THE TEXAS DIR CONTRACT DIR-CPO-4471 AND DELL HELD TEXAS DIR AGREEMENT DIR-TSO-3763

RES 7455
COMPUTER
HARDWARE

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF DELL COMPUTER HARDWARE FROM CDWG.

CONSENT AGENDA.

RESOLUTION NO. 7456 -- AUTHORIZING EXECUTION OF A SOFTWARE AS A SERVICE AGREEMENT WITH ASSETWORKS, INC. FOR EQUIPMENT SERVICES FLEET MANAGEMENT SYSTEM VIA THE GSA CONTRACT

RES 7456
FLEET MANAGEMENT
SYSTEM

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF CONTRACT WITH ASSETWORKS, INC.
CONSENT AGENDA.

PAYMENT AUTHORIZATION

PAYMENT
AUTHORIZATION
SOFTWARE
MAINTENANCE

AUTHORIZING PAYMENT OF \$152,696 FOR RENEWAL OF TYLER TECHNOLOGIES, INC ANNUAL SOFTWARE MAINTENANCE FOR FINANCE, UTILITY BILLING, COURT, AND HR SYSTEM

The City Council approved the payment of \$152,696 to Tyler Technologies, Inc., for the renewal of the annual software maintenance for programs used by Finance, Utility Billing, Municipal Court, and Human Resources.
CONSENT AGENDA.

OTHER BUSINESS

TXDOT PROJECT
UPDATE

UPDATE FROM NOEL PARAMANTHAM, TXDOT PARIS DISTRICT ENGINEER

Noel Paramantham, Texas Department of Transportation Paris District Engineer, presented an update on the Highway Projects. He discussed the four segments of highway projects that are currently underway or near completion on Highway 75 in Sherman, and gave their projected completion dates.

Mr. Paramantham also updated the Council on the status of the FM 1417 construction project.

Council Member Barnett thanked TxDOT for investing approximately \$600 million in infrastructure in Grayson County. Mr. Paramantham recognized the City for their local funding investment in the projects, which help move them to the top of the list.

SITE PLAN FOR BEL AIR HOA AMENITY LOT, BEING 0.937 ACRES BEING IN THE SHARROD DUNMAN SURVEY, ABSTRACT NO. 329 AND CURRENTLY IN THE BEL-AIR PLANNED DEVELOPMENT; TERRA PERPETUA, LLC AND BEL-AIR VILLAGE SFR, LLC (OWNER), STUDIO 13 DESIGN GROUP, LEONARD REEVES (REPRESENTATIVE) AND KIMLEY-HORN AND ASSOCIATES, INC. (SURVEYOR) (4300 BLOCK BEL AIR BOULEVARD)

SITE PLAN FOR
BEL AIR HOA
AMENITY

The City Council approved the Site Plan for Bel Air HOA Amenity Lot, a 0.937 tract of land currently in the Bel-Air Planned Development. The property is located in the 4300 block of Bel Air Boulevard, between South Highway 75 and Luella Road.

CONSENT AGENDA.

APPROVAL OF THE 2024 AD VALOREM TAX ROLL VALUE AND TAX LEVY

2024 AD VALOREM
TAX ROLL VALUE
& TAX LEVY

The City Council approved the Ad Valorem Tax Roll Value and Tax

Levy for FY 2024-2025. The Grayson County Tax Assessor has set the Tax Roll value of \$8,467,830,151 and related levy at \$41,209,866,.80.

CONSENT AGENDA.

CONSIDER BOARD/COMMISSION APPOINTMENTS

ANIMAL CONTROL ADVISORY COMMITTEE (1)

ACTION TAKEN.

Motion by Council Member Stevenson to appoint Karen Murphy to the Animal Control Advisory Committee, to fill an unexpired term from December 17, 2024 to March 17, 2025. Second by Council Member Marroquin.

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

VOTING NAY: None.

MOTION CARRIED.

ANIMAL CONTROL
ADVISORY COMMITTEE

COUNCIL COMMENTS

- Council Members wished everyone a Merry Christmas and Happy New Year. (Clay Barnett, Henry Marroquin, Daron Holland, Pam Howeth, Juston Dobbs, Josh Stevenson)
- Congratulations to Parks and Recreation on the groundbreaking for Pecan Grove East Park. (Pam Howeth)
- Recognized Sory Elementary School for their recent “Eight Habits” program. He said the children are doing a great job. (Daron Holland)
- Recognized Sarah McRae, Tourism/Main Street Manager, and her team for the Christmas Parade and Snowflake Festival, and said the event was fantastic. (Shawn Teamann)

COUNCIL COMMENTS

ANNOUNCEMENTS

Mayor Teamann announced the following:

- City offices will be closed on December 24 and 25, 2024, and on January 1, 2025 for the holidays. Trash service will run every day, except December 24. Those services will be run on Thursday, December 26.

ANNOUNCEMENTS

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

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

EXECUTIVE SESSION

TEX. GOV'T CODE § 551.071 --

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

TEX. GOV'T CODE § 551.072 --

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

TEX. GOV'T CODE § 551.073 --

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

TEX. GOV'T CODE § 551.074 --

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

A) City Manager

TEX. GOV'T CODE § 551.076 --

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

TEX. GOV'T CODE § 551.087 --

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

TEXAS GOV'T CODE § 551.089 --

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

On Motion duly made and carried, the Open Meeting recessed and reconvened in Executive Session at 5:58 p.m.

On Motion duly made and carried, the Executive Session recessed at 6:45 p.m. and reconvened in Open Meeting.

OPEN MEETING

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

OPEN MEETING

COUNCIL MINUTES – DECEMBER 16, 2024

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 6:47 p.m.

ADJOURNMENT

MAYOR

CITY CLERK

\$6,810,000 Limited Tax Notes, Series 2025

Rank	Firm	Location	Bid Received	True Interest Cost (TIC)
1	BOK Financial Securities, Inc.	Dallas, TX	10:22:26 AM	2.996400%
2	PNC Capital Markets	Philadelphia, PA	10:26:24 AM	3.010585%
3	Robert W. Baird & Co., Inc.	Milwaukee, WI	10:21:08 AM	3.020343%
4	TD Securities	New York, NY	10:09:53 AM	3.026107%
5	HilltopSecurities	Dallas, TX	10:24:02 AM	3.033337%
6	KeyBanc Capital Markets	Cleveland, OH	10:24:38 AM	3.074969%
7	FHN Financial Capital Markets	New York, NY	10:29:14 AM	3.089095%
8	StoneX Financial Inc.	Winter Park, FL	10:29:13 AM	3.119175%
9	Fidelity Capital Markets	Boston, MA	10:20:12 AM	3.198405%
10	Duncan-Williams, Inc.	Memphis, TN	10:28:27 AM	3.336808%
11	The Baker Group	Oklahoma City, OK	10:29:13 AM	3.383107%

- Bids were due on December 16, 2024 at 10:30 AM, CST. All bids were submitted via Parity's online bidding system.
- The spread between the low bid and the high bid is approximately 0.387% (or 38.7 basis points).
- The final TIC equated to 2.996070% based on the resized par amount.



Project Update for the City of Sherman

TxDOT – Connecting You with Texas

December 2024

#EndTheStreakTX



Noel Paramanantham, P.E.

December 2024

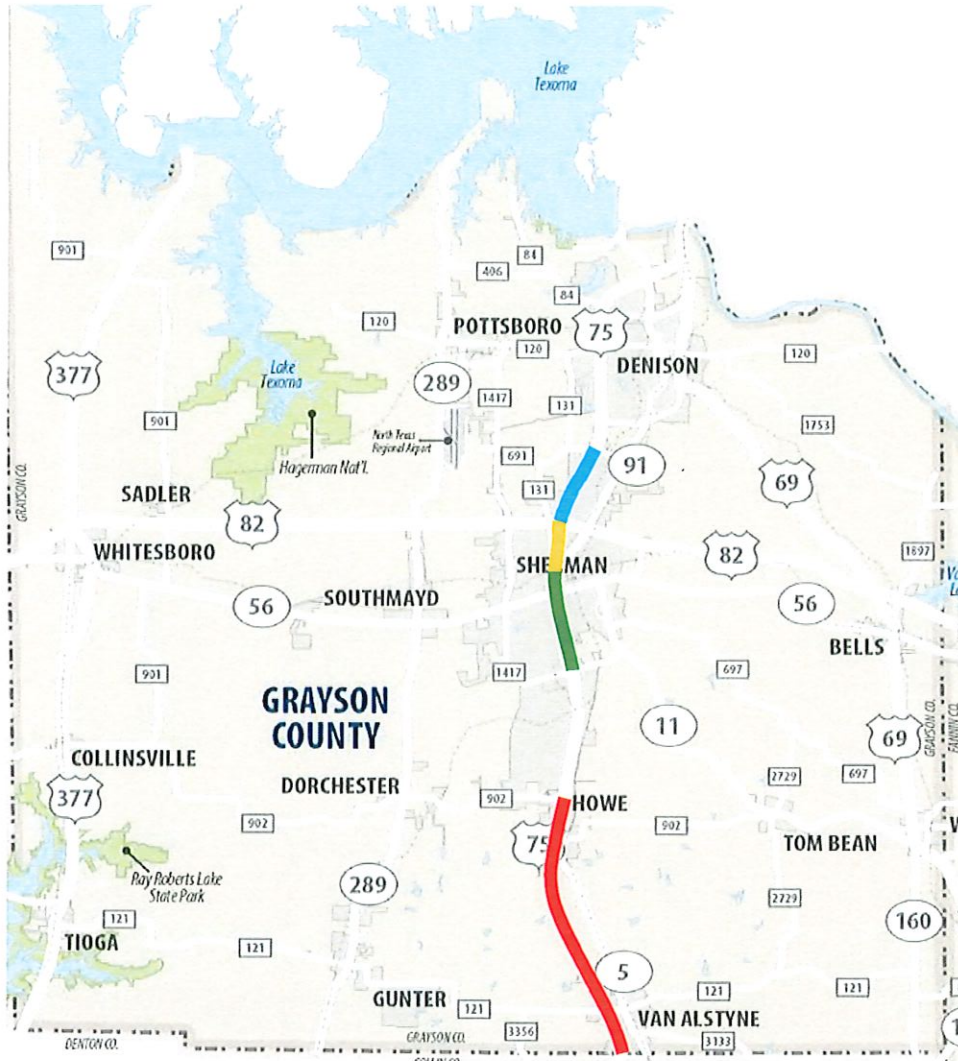
2

DRIVE *like a* TEXAN™

Kind. Courteous. Safe.

Learn more on Crossroads.





- Segment 1
(Collin County line to FM 902)
\$92.5M
Let : November 2024
Projected Completion : Fall 2028
- Segment 3
(FM 1417 to SH 91)
\$167.8M
Let : September 2019
Completion : Fall 2024
- Segment 4
(SH 91 to US 82)
\$145.4M
Let : September 2024
Projected Completion : Fall 2027
- Segment 5
(US 82 to North Loy Lake Road)
\$179.9M
Let : August 2023
Projected Completion : Winter 2028

Contact Information



Noel Paramanantham, P.E.

Paris District Engineer

903.737.9206

Noel.Paramanantham@txdot.gov

Aaron Bloom, P.E.

Sherman Area Engineer

903.868.9251

Aaron.Bloom@txdot.gov

DATE OF MEETING: December 16, 2024 AGENDA ITEM: F1
NAME: Clay Barnett

**CITY OF SHERMAN
AFFIDAVIT ON ABSTENTION FROM VOTING**

STATE OF TEXAS §
COUNTY OF GRAYSON §

I, Clay Barnett, a member of the City Council of the City of Sherman, Texas, submit this Affidavit in accordance with Chapter 171 of the Texas Local Government Code, and hereby on oath state the following (place an "X" by the statement that applies):

A. Business Entity

I and/or one or more persons related to me* have the following substantial interest in a business entity, and action on the agenda item identified above will have a special economic effect on the business entity that is distinguishable from the effect on the public:

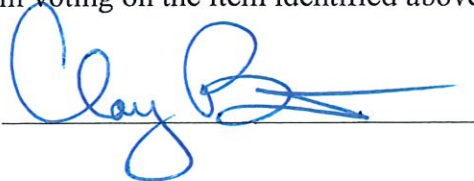
- X Ownership of 10 percent or more of the voting stock or shares of the business entity or ownership of either 10 percent or more or \$15,000 or more of the fair market value of the business entity, and.
- X Funds received from the business entity exceed 10 percent of gross income for the previous year.

B. Real Property

 I and/or one or more persons related to me* have an interest in real property with a fair market value of \$2,500 or more that is involved in the agenda item identified above or located within 200 feet of that property, and it is reasonably foreseeable that action on the item will have a special economic effect on the value of the property, distinguishable from the effect on the public.

**For purposes of Sections A and B of this Affidavit, a "person related to me" refers to a person within the first degree of consanguinity (parent or child, natural or adoptive) or the first degree of affinity (spouse, spouse's child, mother-in-law, father-in-law, daughter-in-law, son-in-law). In cases of divorce or death, if a child is living, the marriage is considered as continuing, even after divorce or death, for purposes of this Affidavit.*

As a result of the interest(s) identified above, I will refrain from participating in discussion and abstain from voting on the item identified above.

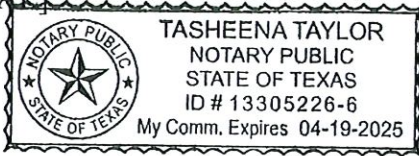
Signature: 

Date: December 16, 2024

BEFORE ME, the undersigned authority, on this day personally appeared Clay Barnett, who on oath stated that the above facts are within his/her personal knowledge and are true and correct.

SWORN TO AND SUBSCRIBED BEFORE ME on this 16 day of December, 2024

[SEAL]



Tasheena Taylor
Notary Public, State of Texas
My Commission Expires: 4-19-2025

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

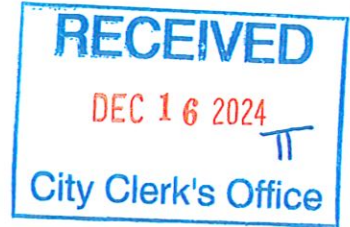
(Instructions for completing and filing this form are provided on the next page.)

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

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received



1 Name of Local Government Officer

Clay Barnett

2 Office Held

Council Member, District 1

3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code

Huitt-Zollars, Inc.

4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.

Clay Barnett is an employee of Huitt-Zollars, Inc.

5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100 during the 12-month period described by Section 176.003(a)(2)(B).

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

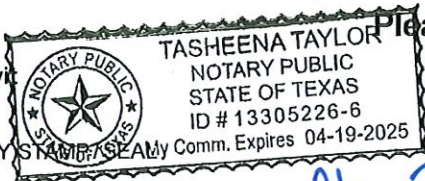
6 SIGNATURE

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government Code.

Signature of Local Government Officer

Please complete either option below:

(1) Affidavit



Sworn to and subscribed before me by Clay Barnett this the 16 day of December,

2024, to certify which, witness my hand and seal of office.

Tasha Taylor

Signature of officer administering oath

Tasheena Taylor

Printed name of officer administering oath

City Clerk Admin Asst

Title of officer administering oath

OR

(2) Unsworn Declaration

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of Local Government Officer (Declarant)



City Council Regular Meeting

Agenda Item No. D.1.

Meeting Date: 1/6/2025

Prepared By: Amber Doan, Engineering Coordinator

Approved By: Robby Hefton, City Manager

Caption:

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE NO. 6799

Closing and Abandoning Multiple Rights of Way being Established in Volume 5, Page 1; Volume 9, Page 3; and Volume 16, Page 164, Plat Records, Grayson County, Texas and being more Particularly Described in the Attached Exhibits "A," "B," and "C" Attached Hereto and Made a Part Hereof for all Purposes

Issue:

To consider approving the closure and abandonment of multiple rights of way being established in Volume 5, Page 1; Volume 9, Page 3; and Volume 16, Page 164, Plat Records, Grayson County, Texas

Background:

Midway Estates Addition, Phase 2; Hilltop 2 Estates, Phase 1; and Hilltop Estates dedicated rights of way for the respective proposed subdivisions. Said subdivisions were never developed. Upon design of Sweetwater Springs, Phase 2, the locations of the rights of way were revised to better meet the current development's needs, no longer requiring the formerly dedicated rights of way. This item abandons the previous rights of way no longer needed.

Origination:

Sweetwater Springs Land, LLC, property owner and Engineering Department

Financial Consideration:

None

Staff Recommendation:

Staff recommends that the City Council approve the Ordinance closing and abandoning the rights of way.

Alternatives:

As may be directed by City Council

Attachments:

1. Ordinance No. 6799
2. Abandonment Request w-Exhibits
3. Location Map

ORDINANCE NO. 6799

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, CLOSING AND ABANDONING MULTIPLE RIGHTS OF WAY IN THE CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, SAID RIGHTS OF WAY BEING ESTABLISHED IN VOLUME 5, PAGE 1; VOLUME 9, PAGE 3; AND VOLUME 16, PAGE 164, PLAT RECORDS, GRAYSON COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED IN THE EXHIBITS "A," "B," AND "C" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the rights of way of in the City of Sherman, Grayson County, Texas, being more particularly described in the Exhibits "A," "B," and "C" attached hereto and made a part hereof for all purposes, said rights of way being established in Volume 5, Page 1; Volume 9, Page 3; and Volume 16, Page 164 of the Plat Records of Grayson County, Texas, shall be closed and abandoned.

SECTION 2. That it is the intent of the City Council that the right and interest in such rights of way herein closed and vacated shall vest to the adjoining property owner by appropriate conveyance of said rights-of-way herein described.

SECTION 3. That it is 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 6th day of January 2025.

ADOPTED on this the 6th day of January 2025.

EFFECTIVE DATE on this the 6th day of January 2025.

CITY OF SHERMAN, TEXAS

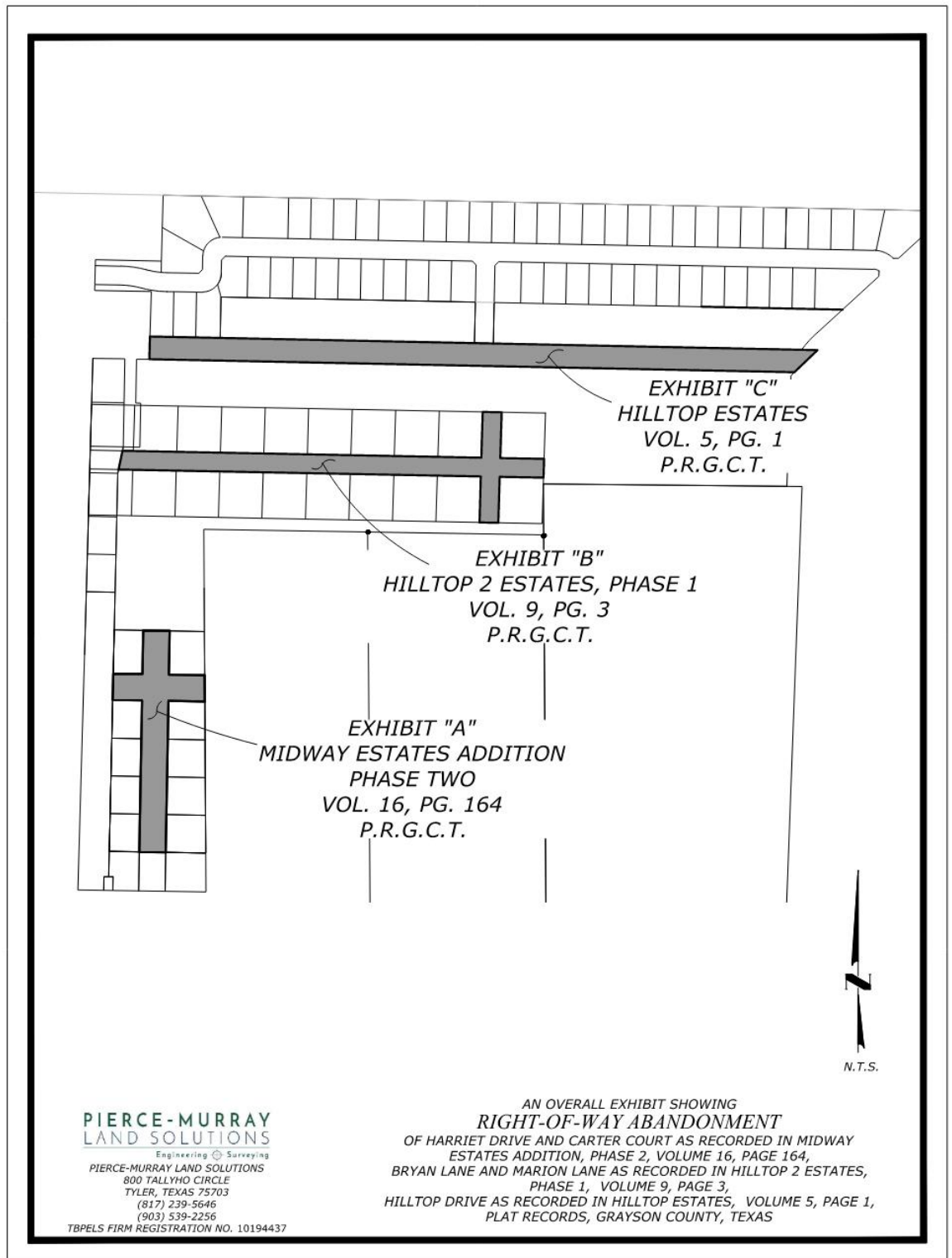
BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY



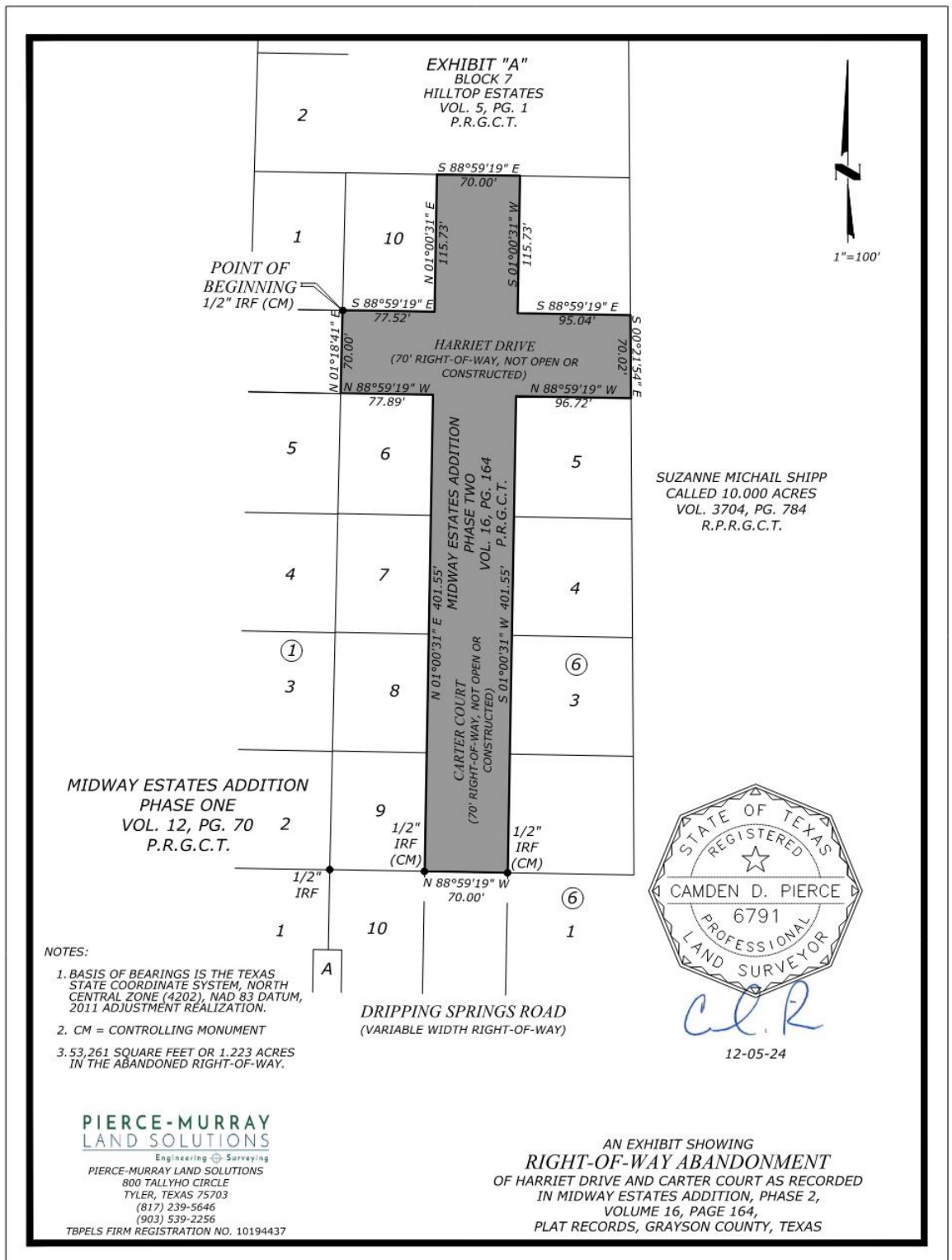


EXHIBIT "A"

RIGHT-OF-WAY ABANDONMENT DESCRIPTION AREA "A"

BEING a tract of land situated in the John Hendrix Survey, Abstract Number 503, City of Sherman, Grayson County, Texas and being all of Harriet Drive (a 70' Public Right-of-Way) and all of Carter Court (a 70' Public Right-of-Way) as shown on the plat of Midway Estates Addition Phase 2, City of Sherman, recorded in Volume 16, Page 164, Plat Records, Grayson County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch iron rod found at the northwest corner of said Harriet Drive as shown on said plat, also being the southwest corner of Lot 10, said Midway Estates Phase 2;

THENCE S 88°59'19" E, a distance of 77.52 feet along the north Right-of-Way line of said Harriet Drive to the intersection with the west line Right-of-Way line of Carter Court, being the southeast corner of said Lot 10;

THENCE N 01°00'31" E, a distance of 115.73 feet along said west Right-of-Way line to the northwest corner of said Carter Court as shown on said plat, also being the northeast corner of said Lot 10;

THENCE S 88°59'19" E, a distance of 70.00 feet along the north terminus of said Carter Court to the east Right-of-Way line of said Carter Court, also being the northwest corner of Lot 1, said Midway Estates Phase 2;

THENCE S 01°00'31" W, a distance of 115.73 feet along said east Right-of-Way line to the intersection with the north Right-of-Way line of said Harriet Drive and being the southwest corner of said Lot 1;

THENCE S 88°59'19" E, a distance of 95.04 feet along said north Right-of-Way line to the northeast corner of said Harriet Drive and being the southeast corner of said Lot 1;

THENCE S 00°21'54" E, a distance of 70.02 feet along the east terminus of said Harriet Drive to the southeast corner of said Harriet Drive and being the northeast corner of Lot 5, said Midway Estates Phase 2;

THENCE N 88°59'19" W, a distance of 96.72 feet along the south Right-of-Way line of said Harriet Drive to the intersection with the east Right-of-Way line of the aforementioned Carter Court;

THENCE S 01°00'31" W, a distance of 401.55 feet along said east Right-of-Way line to a 1/2 inch iron rod found at the southeast corner of said Carter Court as shown on said plat, also being the southwest corner of Lot 2 said Midway Estates Phase 2;

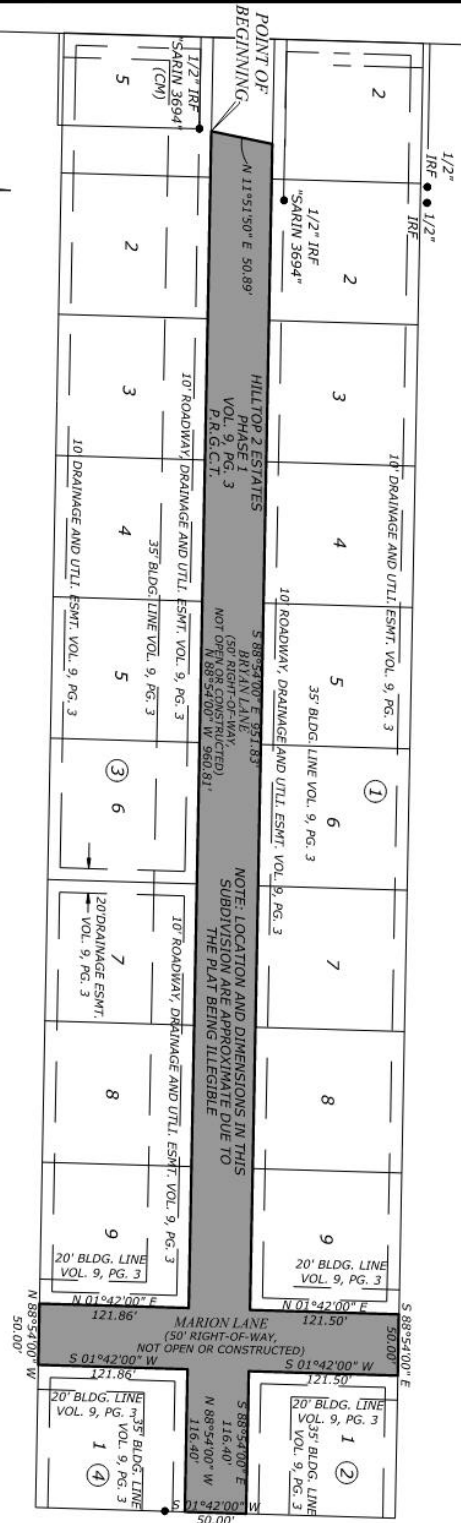
THENCE N 88°59'19" W, a distance of 70.00 feet along the south terminus of said Carter Court to a 1/2 inch iron rod found in the west Right-of-Way line of said Carter Court, also being the southeast corner of Lot 9, said Midway Estates Phase 2;

THENCE N 01°00'31" E, a distance of 401.55 feet along said east Right-of-Way line to the intersection with the south Right-of-Way line of the aforementioned Harriet Drive and being the northeast corner of Lot 6, said Midway Estates Phase 2;

THENCE N 88°59'19" W, a distance of 77.89 feet along said south Right-of-Way line to the southwest corner of said Harriet Drive and being the northwest corner of said Lot 6;

THENCE N 01°18'41" E, a distance of 70.00 feet along the west terminus of said Harriet Drive as shown on said plat, returning to the Point of Beginning and containing 53,261 square feet or 1.223 acres of land, more or less.

EXHIBIT "B"



NOTES:

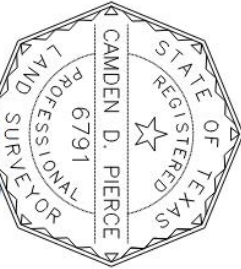
1. BASIS OF BEARINGS IS THE TEXAS STATE COORDINATE SYSTEM, NORTH CENTRAL ZONE (4202), NAD 83 DATUM, 2011 ADJUSTMENT REALIZATION.
2. CM = CONTROLLING MONUMENT
3. 68,301 SQUARE FEET OR 1.568 ACRES IN THE ABANDONED RIGHT-OF-WAY.

1"=120'

**PIERCE-MURRAY
LAND SOLUTIONS**

Engineering & Surveying
PIERCE-MURRAY LAND SOLUTIONS
800 TALLYHO CIRCLE
TYLER, TEXAS 75703
(817) 239-5646
(903) 539-2256

TBPELS FIRM REGISTRATION NO. 10194437



12-05-24

AN EXHIBIT SHOWING
RIGHT-OF-WAY ABANDONMENT
OF BRYAN LANE AND MARION LANE AS RECORDED IN
HILLTOP 2 ESTATES, PHASE 1,
VOLUME 9, PAGE 3,
PLAT RECORDS, GRAYSON COUNTY, TEXAS

EXHIBIT "B"

RIGHT-OF-WAY ABANDONMENT DESCRIPTION AREA "B"

BEING a tract of land situated in the John Hendrix Survey, Abstract Number 503 and the Eustacio Canton Survey, Abstract Number 221, City of Sherman, Grayson County, Texas and being a portion of Bryan Lane (a 50' Public Right-of-Way) and all of Marion Lane (a 50' Public Right-of-Way) as shown on the plat of Phase 1 Hilltop 2 Estates, City of Sherman, recorded in Volume 9, Page 3, Plat Records, Grayson County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a point in the south Right-of-Way line of said Bryan Lane;

THENCE N 11°51'50" E a distance of 50.89 feet to the north Right-of-Way line of said Bryan Lane;

THENCE S 88°54'00" E, a distance of 951.83 feet along said north Right-of-Way line to the intersection with the west Right-of-Way line of said Marion Lane, also being the southeast corner of Lot 9, Block 1, said Phase 1 Hilltop 2 Estates;

THENCE N 01°42'00" E, a distance of 121.50 feet along said west Right-of-Way line to the northwest corner of said Marion Lane as shown on said plat, and being the northeast corner of said Lot 9;

THENCE S 88°54'00" E, a distance of 50.00 feet along the north terminus of said Marion Lane to the east Right-of-Way line of said Marion Lane and being the northwest corner of Lot 1, Block 2, said Phase 1 Hilltop 2 Estates;

THENCE S 01°42'00" W, a distance of 121.50 feet along said east Right-of-Way line to the intersection with the north Right-of-Way of said Bryan Lane;

THENCE S 88°54'00" E, a distance of 116.40 feet along said north Right-of-Way line to northeast corner of said Bryan Lane as shown on said plat and being the southeast corner of said Lot 1, Block 2;

THENCE S 01°42'00" W, a distance of 50.00 feet along the east terminus of said Bryan Lane to southeast corner of said Bryan Lane as shown on said plat and being the northeast corner of Lot 1, Block 4, said Phase 1 Hilltop 2 Estates;

THENCE N 88°54'00" W, a distance of 116.40 feet along the south Right-of-Way line of said Bryan Lane to the intersection with the east Right-of-Way line of the aforementioned Marion Lane and being the northwest corner of said Lot 1, Block 4;

THENCE S 01°42'00" W, a distance of 121.86 feet along the east Right-of-Way line of said Marion Lane to the southeast corner of said Marion Lane as shown on said plat and being the southwest corner of said Lot 1, Block 4;

THENCE N 88°54'00" W, a distance of 50.00 feet along the south terminus of said Marion Lane to the west Right-of-Way Lane of said Marion Lane and the southeast corner of Lot 9, Block 3, Phase 1, Block 3, said Phase 1 Hilltop 2 Estates;

THENCE N 01°42'00" E, a distance of 121.86 feet along said west Right-of-Way line to the intersection with the south Right-of-Way line of the aforementioned Bryan Lane and being the northeast corner of said Lot 9, Block 3;

THENCE N 88°54'00" W, a distance of 960.81 feet along said south Right-of-Way line returning to the Point of Beginning and containing 68,301 square feet or 1.568 acres of land, more or less.

The map shows three main lots and their subdivisions:

- LOT 5, BLOCK 5, HILLTOP ESTATES VOL. 5, PG. 1 P.R.G.C.T.**: This lot contains lots 1 through 14. It is bounded by Hilltop Estates Drive to the north and west, and Sweetwater Springs Subdivision to the east. The area between Hilltop Estates Drive and Sweetwater Springs Subdivision is labeled "SWEETWATER BLVD (50' RIGHT-OF-WAY)".
- LOT 15, BLOCK B SWEETWATER SPRINGS SUBDIVISION DOC. NO. 2017-3993 P.R.G.C.T.**: This lot contains lots 15 through 31. It is bounded by Hilltop Estates Drive to the north and west, and Sweetwater Springs Subdivision to the east. The area between Hilltop Estates Drive and Sweetwater Springs Subdivision is labeled "MARK LANE (50' RIGHT-OF-WAY)".
- LOT 16, BLOCK C SWEETWATER SPRINGS SUBDIVISION DOC. NO. 2017-3993 P.R.G.C.T.**: This lot contains lots 32 through 48. It is bounded by Hilltop Estates Drive to the north and west, and Sweetwater Springs Subdivision to the east. The area between Hilltop Estates Drive and Sweetwater Springs Subdivision is labeled "HILLTOP DRIVE".

The map also shows several streets and boundaries:

- HILLTOP ESTATES DRIVE**: A road running along the top and left side of the map.
- SWEETWATER SPRINGS SUBDIVISION**: A subdivision located to the right of the main lots.
- HILLTOP ESTATES DRIVE**: A road running along the bottom and right side of the map.
- POINT OF BEGINNING**: Located at the intersection of Hilltop Estates Drive and Sweetwater Springs Subdivision.
- APPROXIMATE SURVEY LINE**: Indicated by a dashed line across the middle of the map.

Various survey measurements are provided throughout the map, including bearings (e.g., N 01°50'45"E, S 88°50'23"E, N 88°50'35"W, S 46°18'17"W) and distances (e.g., 60.10', 17.11, 85.07').



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PIERCE-MURRAY LAND SOLUTIONS
800 TALLYHO CIRCLE
TYLER, TEXAS 75703

TBPELS FIRM REGISTRATION NO. 10194437

12-05-24

NOTES:

1. BASIS OF BEARINGS IS THE TEXAS STATE COORDINATE SYSTEM, NORTH CENTRAL ZONE (4202), NAD 83 DATUM, 2011 ADJUSTMENT REALIZATION.
2. CM = CONTROLLING MONUMENT
3. 104.539 SQUARE FEET OR 2.400 ACRES IN THE ABANDONED RIGHT-OF-WAY.

AN EXHIBIT SHOWING
RIGHT-OF-WAY ABANDONMENT
OF HILLTOP DRIVE AS RECORDED IN HILLTOP ESTATES,
VOLUME 5, PAGE 1,
PLAT RECORDS, GRAYSON COUNTY, TEXAS

EXHIBIT "C"

RIGHT-OF-WAY ABANDONMENT DESCRIPTION AREA "C"

BEING a tract of land situated in the John Hendrix Survey, Abstract Number 503 and the Eustacio Canton Survey, Abstract Number 221, City of Sherman, Grayson County, Texas and being a portion of Hilltop Drive (a 60' Public Right-of-Way) as shown on the plat of Hilltop Estates, City of Sherman, recorded in Volume 5, Page 1, Plat Records, Grayson County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch rod found in the north Right-of-Way line of said Hilltop Drive, being at the southeast corner of Lot 5, Block 5, Hilltop Estates as shown on said Hilltop Estates plat;

THENCE S 88°50'23" E a distance of 1770.70 feet along said north Right-of-Way line of said Hilltop Drive to the east terminus of said Hilltop Drive as shown on said plat, being in Dripping Springs Road (a variable width Right-of-Way);

THENCE S 46°18'17" W a distance of 85.07 feet along said east terminus to the southeast corner of said east terminus and the south Right-of-Way line of said Hilltop Drive;

THENCE N 88°50'35" W a distance of 1711.12 feet along said south Right-of-Way line;

THENCE N 01°50'45" E a distance of 60.10 feet crossing said Hilltop Drive and returning to the Point of Beginning and containing 104,539 square feet of 2.400 acres of land, more or less.



Friday, December 6, 2024

Amber Doan

Travis Overturf

City of Sherman, Engineering Department

317 S. Travis Street

Sherman, Tx 75090

RE: Request for Right-of-Way Abandonment (Sweetwater Springs)

City of Sherman Engineering Staff,

Please allow this letter to serve as our formal request to abandon all existing public Right-of-Way (ROW) on the subject property owned by Sweetwater Springs Land, LLC (Landowner). This existing ROW is more clearly depicted in the attached exhibit provided with this letter. Please see attached Overall Exhibit.

Reason for Request: The Landowner has constructed & developed the Sweetwater Springs Phase 2 residential subdivision. This subdivision provides for new ROW and residential lots across the subject property. It is our understanding that per City requirements, all old and undeveloped ROW's that are not planned to be utilized by this development must be formally abandoned prior to the new dedication of ROWs serving the developed residential lots. Sweetwater Springs Land, LLC is the legal owner of all land surrounding the requested ROW abandonment, and evidence of all affected property owner's approval is provided by the signature of acceptance below.

Sincerely,

A handwritten signature in blue ink that reads 'Kyle Bradley'.

Kyle Bradley – Vice President of Land Development; S2 Land Development

Property Owner Information:

Sweetwater Springs Land, LLC, a Texas Limited Liability Company.

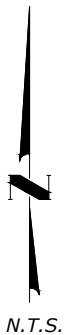
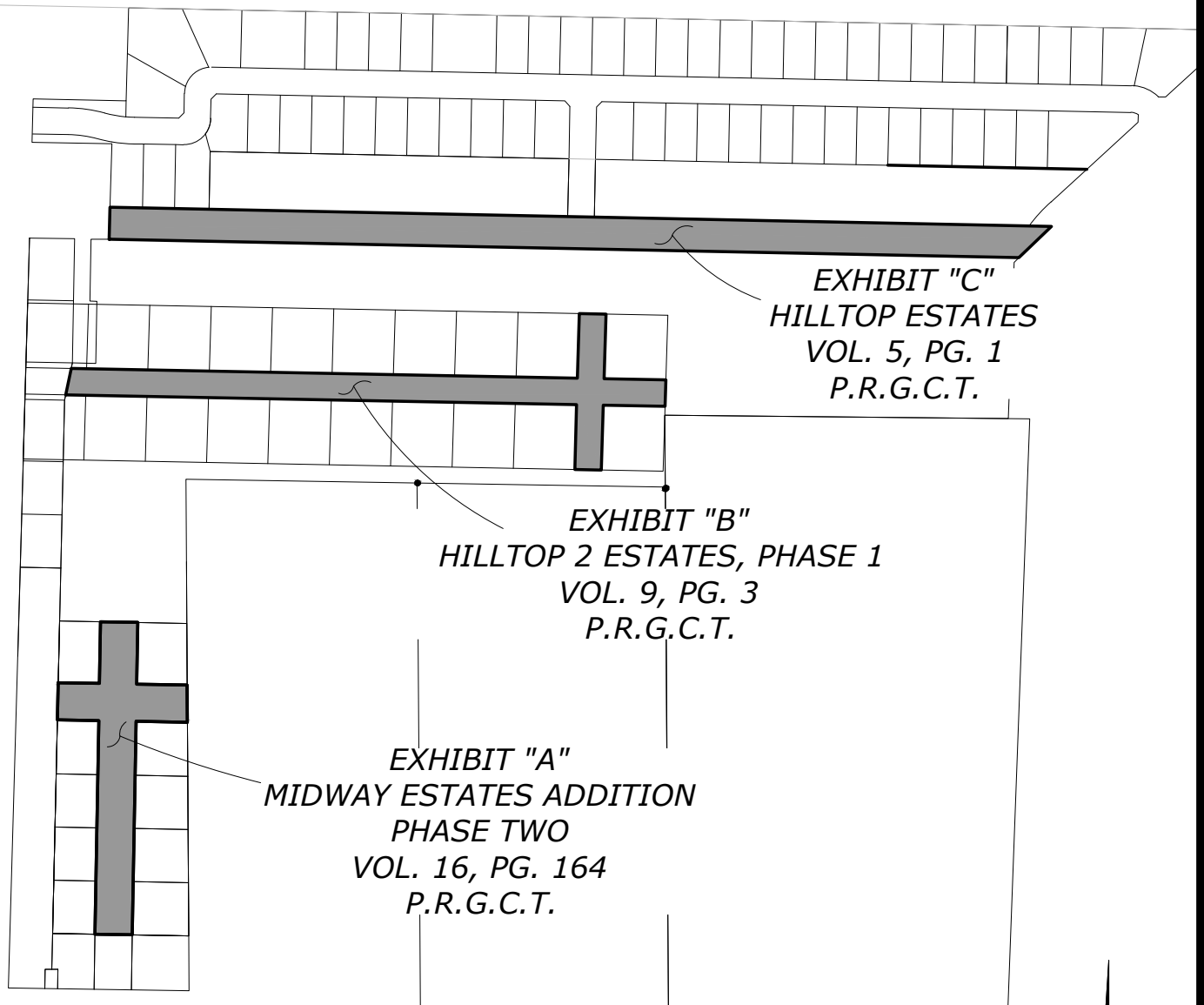
Address: 10003 Technology Blvd. W, Dallas, TX 75220

Property Owner Acceptance of ROW Abandonment:

DocuSigned by:
Signature A handwritten signature in black ink that reads 'Justin Christ'.
A78BBEB14DA8499...

Name: Justin Christ

Title: President

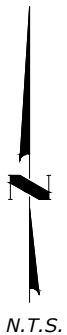
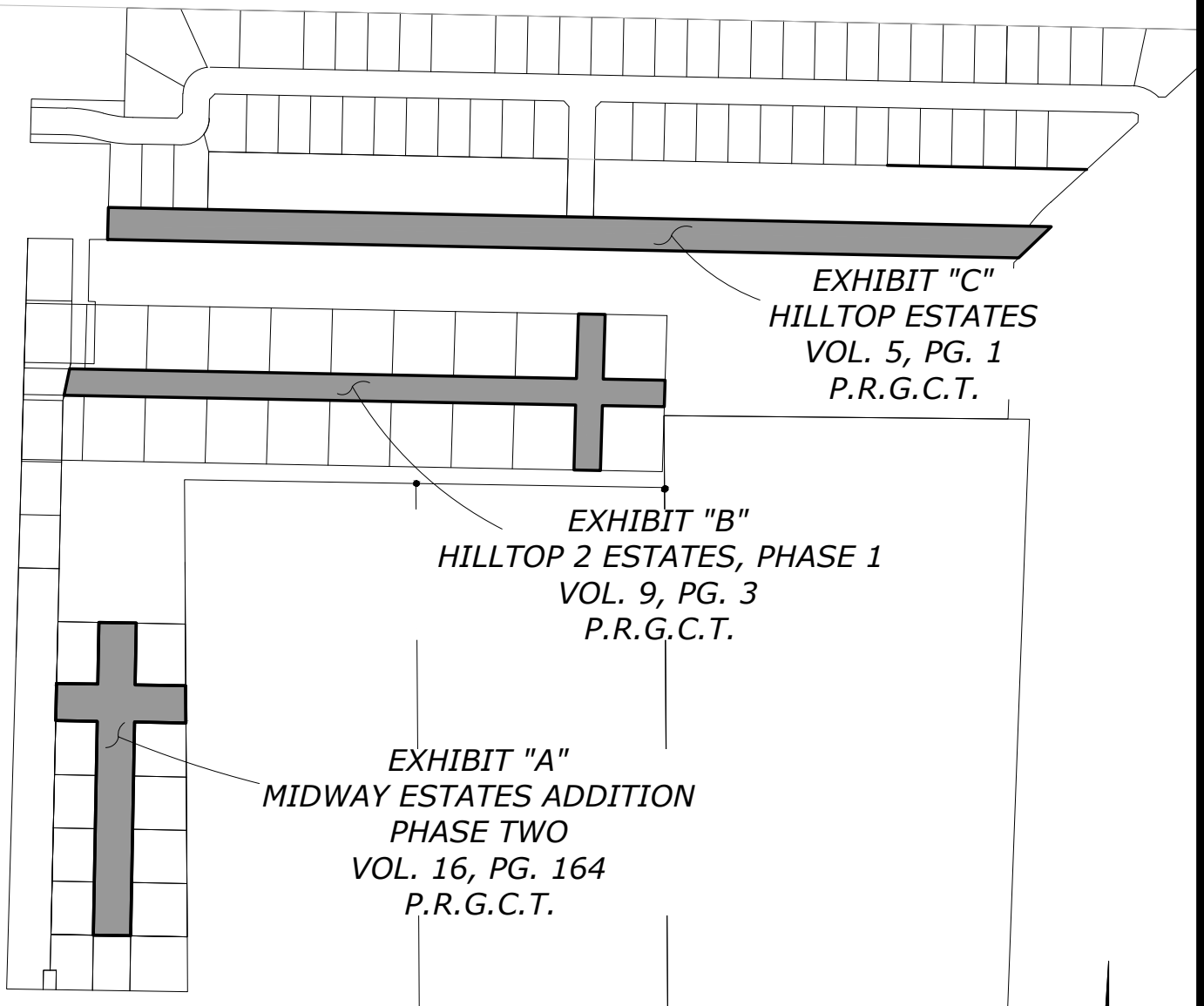


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TBPELS FIRM REGISTRATION NO. 10194437

AN OVERALL EXHIBIT SHOWING
RIGHT-OF-WAY ABANDONMENT
OF HARRIET DRIVE AND CARTER COURT AS RECORDED IN MIDWAY
ESTATES ADDITION, PHASE 2, VOLUME 16, PAGE 164,
BRYAN LANE AND MARION LANE AS RECORDED IN HILLTOP 2 ESTATES,
PHASE 1, VOLUME 9, PAGE 3,
HILLTOP DRIVE AS RECORDED IN HILLTOP ESTATES, VOLUME 5, PAGE 1,
PLAT RECORDS, GRAYSON COUNTY, TEXAS



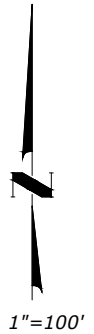
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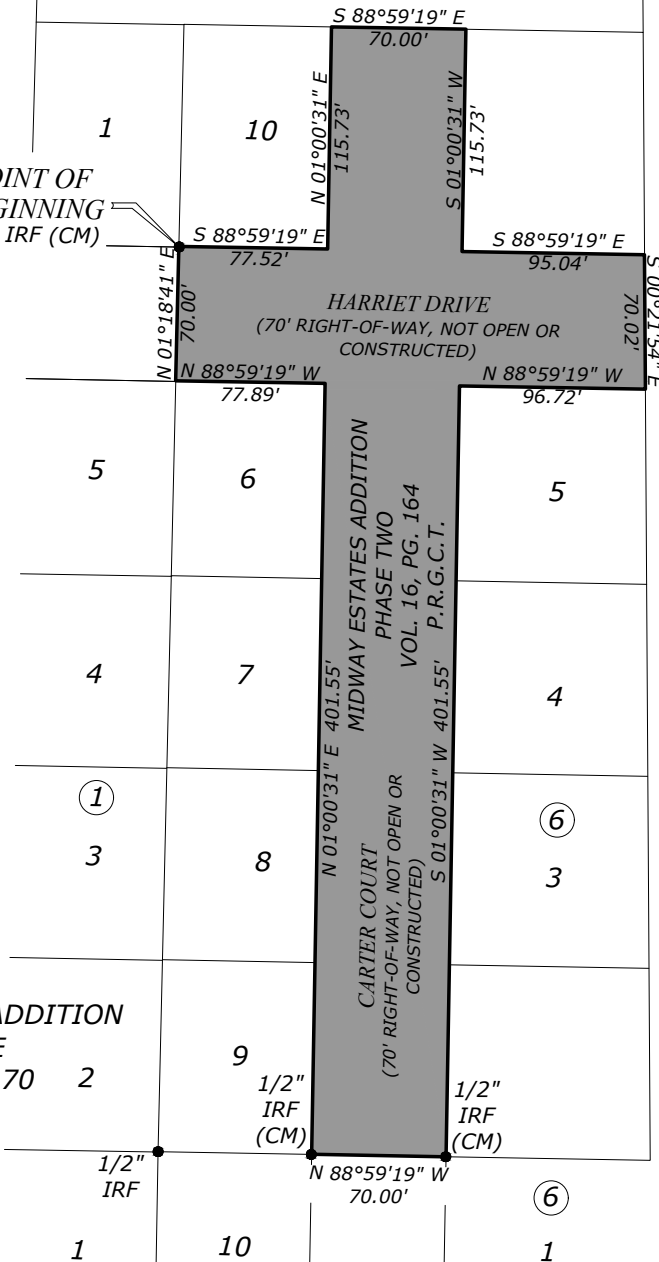
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PLAT RECORDS, GRAYSON COUNTY, TEXAS

EXHIBIT "A"
BLOCK 7
HILLTOP ESTATES
VOL. 5, PG. 1
P.R.G.C.T.

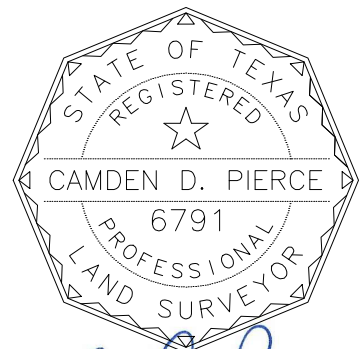


POINT OF
BEGINNING
1/2" IRF (CM)



SUZANNE MICHAEL SHIPP
CALLED 10.000 ACRES
VOL. 3704, PG. 784
R.P.R.G.C.T.

MIDWAY ESTATES ADDITION
PHASE ONE
VOL. 12, PG. 70
P.R.G.C.T.



CLP

12-05-24

NOTES:

1. BASIS OF BEARINGS IS THE TEXAS STATE COORDINATE SYSTEM, NORTH CENTRAL ZONE (4202), NAD 83 DATUM, 2011 ADJUSTMENT REALIZATION.
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DRIPPING SPRINGS ROAD
(VARIABLE WIDTH RIGHT-OF-WAY)

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TBPELS FIRM REGISTRATION NO. 10194437

AN EXHIBIT SHOWING
RIGHT-OF-WAY ABANDONMENT
OF HARRIET DRIVE AND CARTER COURT AS RECORDED
IN MIDWAY ESTATES ADDITION, PHASE 2,
VOLUME 16, PAGE 164,
PLAT RECORDS, GRAYSON COUNTY, TEXAS

EXHIBIT "A"

RIGHT-OF-WAY ABANDONMENT DESCRIPTION AREA "A"

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BEGINNING at a 1/2 inch iron rod found at the northwest corner of said Harriet Drive as shown on said plat, also being the southwest corner of Lot 10, said Midway Estates Phase 2;

THENCE S 88°59'19" E, a distance of 77.52 feet along the north Right-of-Way line of said Harriet Drive to the intersection with the west line Right-of-Way line of Carter Court, being the southeast corner of said Lot 10;

THENCE N 01°00'31" E, a distance of 115.73 feet along said west Right-of-Way line to the northwest corner of said Carter Court as shown on said plat, also being the northeast corner of said Lot 10;

THENCE S 88°59'19" E, a distance of 70.00 feet along the north terminus of said Carter Court to the east Right-of-Way line of said Carter Court, also being the northwest corner of Lot 1, said Midway Estates Phase 2;

THENCE S 01°00'31" W, a distance of 115.73 feet along said east Right-of-Way line to the intersection with the north Right-of-Way line of said Harriet Drive and being the southwest corner of said Lot 1;

THENCE S 88°59'19" E, a distance of 95.04 feet along said north Right-of-Way line to the northeast corner of said Harriet Drive and being the southeast corner of said Lot 1;

THENCE S 00°21'54" E, a distance of 70.02 feet along the east terminus of said Harriet Drive to the southeast corner of said Harriet Drive and being the northeast corner of Lot 5, said Midway Estates Phase 2;

THENCE N 88°59'19" W, a distance of 96.72 feet along the south Right-of-Way line of said Harriet Drive to the intersection with the east Right-of-Way line of the aforementioned Carter Court;

THENCE S 01°00'31" W, a distance of 401.55 feet along said east Right-of-Way line to a 1/2 inch iron rod found at the southeast corner of said Carter Court as shown on said plat, also being the southwest corner of Lot 2 said Midway Estates Phase 2;

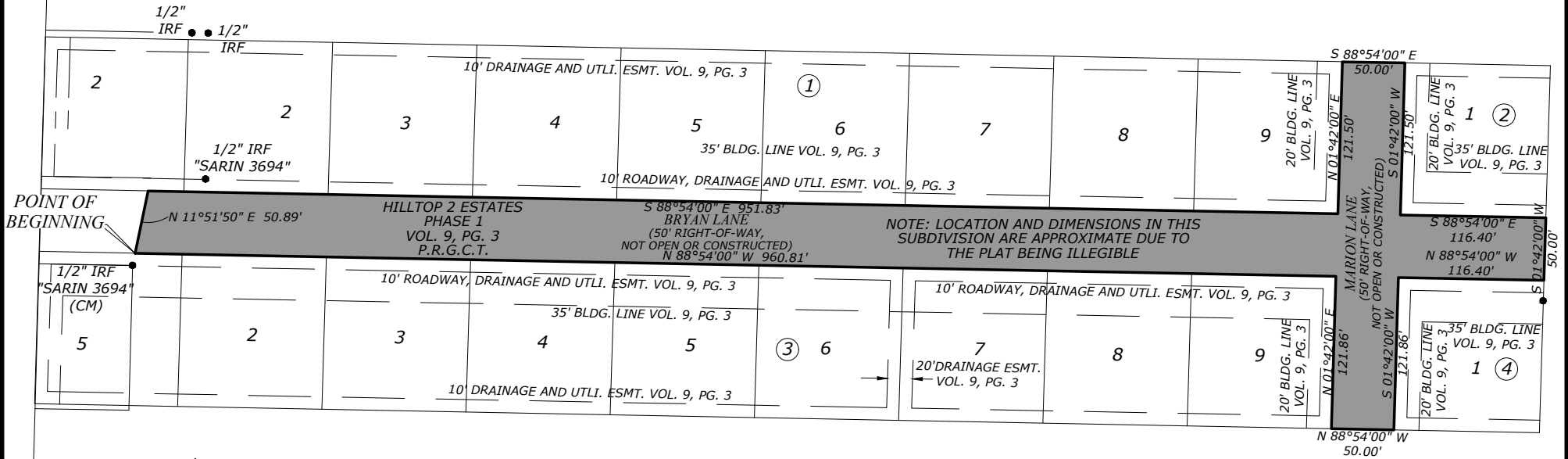
THENCE N 88°59'19" W, a distance of 70.00 feet along the south terminus of said Carter Court to a 1/2 inch iron rod found in the west Right-of-Way line of said Carter Court, also being the southeast corner of Lot 9, said Midway Estates Phase 2;

THENCE N 01°00'31" E, a distance of 401.55 feet along said east Right-of-Way line to the intersection with the south Right-of-Way line of the aforementioned Harriet Drive and being the northeast corner of Lot 6, said Midway Estates Phase 2;

THENCE N 88°59'19" W, a distance of 77.89 feet along said south Right-of-Way line to the southwest corner of said Harriet Drive and being the northwest corner of said Lot 6;

THENCE N 01°18'41" E, a distance of 70.00 feet along the west terminus of said Harriet Drive as shown on said plat, returning to the Point of Beginning and containing 53,261 square feet or 1.223 acres of land, more or less.

EXHIBIT "B"



NOTES:

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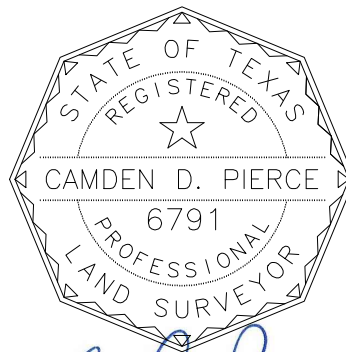
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EXHIBIT "B"

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BEGINNING at a point in the south Right-of-Way line of said Bryan Lane;

THENCE N 11°51'50" E a distance of 50.89 feet to the north Right-of-Way line of said Bryan Lane;

THENCE S 88°54'00" E, a distance of 951.83 feet along said north Right-of-Way line to the intersection with the west Right-of-Way line of said Marion Lane, also being the southeast corner of Lot 9, Block 1, said Phase 1 Hilltop 2 Estates;

THENCE N 01°42'00" E, a distance of 121.50 feet along said west Right-of-Way line to the northwest corner of said Marion Lane as shown on said plat, and being the northeast corner of said Lot 9;

THENCE S 88°54'00" E, a distance of 50.00 feet along the north terminus of said Marion Lane to the east Right-of-Way line of said Marion Lane and being the northwest corner of Lot 1, Block 2, said Phase 1 Hilltop 2 Estates;

THENCE S 01°42'00" W, a distance of 121.50 feet along said east Right-of-Way line to the intersection with the north Right-of-Way of said Bryan Lane;

THENCE S 88°54'00" E, a distance of 116.40 feet along said north Right-of-Way line to northeast corner of said Bryan Lane as shown on said plat and being the southeast corner of said Lot 1, Block 2;

THENCE S 01°42'00" W, a distance of 50.00 feet along the east terminus of said Bryan Lane to southeast corner of said Bryan Lane as shown on said plat and being the northeast corner of Lot 1, Block 4, said Phase 1 Hilltop 2 Estates;

THENCE N 88°54'00" W, a distance of 116.40 feet along the south Right-of-Way line of said Bryan Lane to the intersection with the east Right-of-Way line of the aforementioned Marion Lane and being the northwest corner of said Lot 1, Block 4;

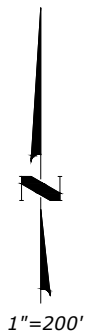
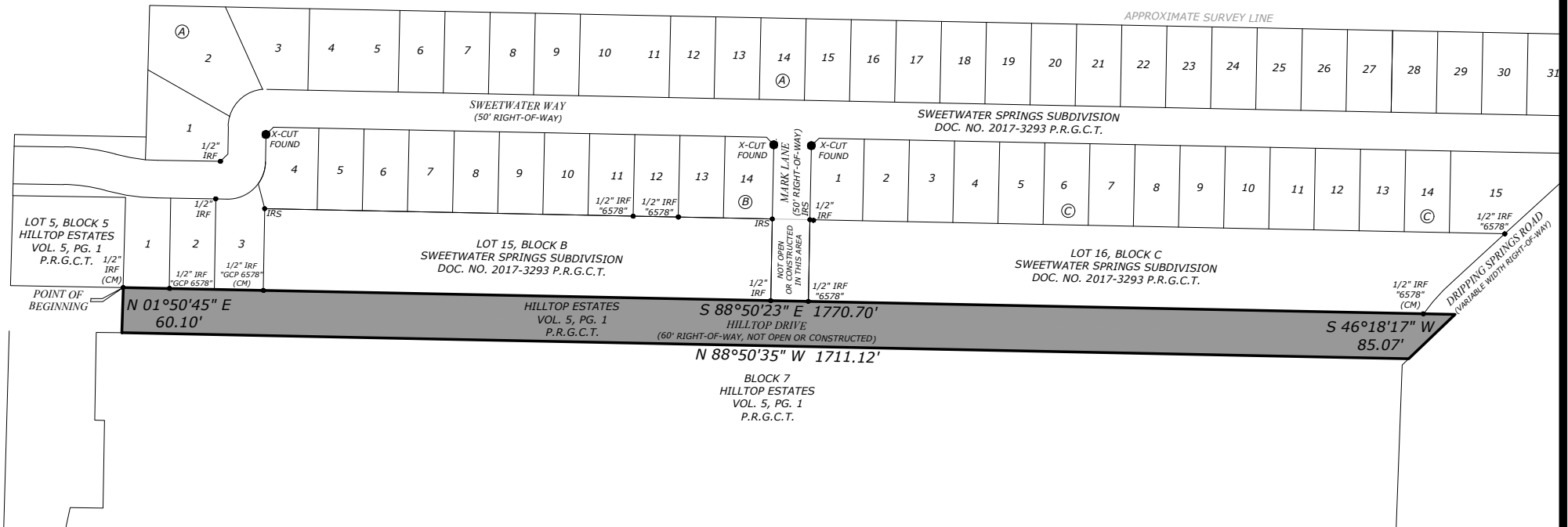
THENCE S 01°42'00" W, a distance of 121.86 feet along the east Right-of-Way line of said Marion Lane to the southeast corner of said Marion Lane as shown on said plat and being the southwest corner of said Lot 1, Block 4;

THENCE N 88°54'00" W, a distance of 50.00 feet along the south terminus of said Marion Lane to the west Right-of-Way Lane of said Marion Lane and the southeast corner of Lot 9, Block 3, Phase 1, Block 3, said Phase 1 Hilltop 2 Estates;

THENCE N 01°42'00" E, a distance of 121.86 feet along said west Right-of-Way line to the intersection with the south Right-of-Way line of the aforementioned Bryan Lane and being the northeast corner of said Lot 9, Block 3;

THENCE N 88°54'00" W, a distance of 960.81 feet along said south Right-of-Way line returning to the Point of Beginning and containing 68,301 square feet or 1.568 acres of land, more or less.

EXHIBIT "C"

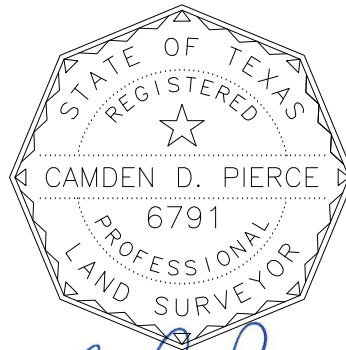


PIERCE-MURRAY
LAND SOLUTIONS

Engineering & Surveying

PIERCE-MURRAY LAND SOLUTIONS
800 TALLYHO CIRCLE
TYLER, TEXAS 75703
(817) 239-5646
(903) 539-2256

TBPELS FIRM REGISTRATION NO. 10194437



CLP

12-05-24

NOTES:

1. BASIS OF BEARINGS IS THE TEXAS STATE COORDINATE SYSTEM, NORTH CENTRAL ZONE (4202), NAD 83 DATUM, 2011 ADJUSTMENT REALIZATION.
2. CM = CONTROLLING MONUMENT
3. 104,539 SQUARE FEET OR 2.400 ACRES IN THE ABANDONED RIGHT-OF-WAY.

AN EXHIBIT SHOWING
RIGHT-OF-WAY ABANDONMENT
OF HILLTOP DRIVE AS RECORDED IN HILLTOP ESTATES,
VOLUME 5, PAGE 1,
PLAT RECORDS, GRAYSON COUNTY, TEXAS

EXHIBIT "C"

RIGHT-OF-WAY ABANDONMENT DESCRIPTION AREA "C"

BEING a tract of land situated in the John Hendrix Survey, Abstract Number 503 and the Eustacio Canton Survey, Abstract Number 221, City of Sherman, Grayson County, Texas and being a portion of Hilltop Drive (a 60' Public Right-of-Way) as shown on the plat of Hilltop Estates, City of Sherman, recorded in Volume 5, Page 1, Plat Records, Grayson County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch rod found in the north Right-of-Way line of said Hilltop Drive, being at the southeast corner of Lot 5, Block 5, Hilltop Estates as shown on said Hilltop Estates plat;

THENCE S 88°50'23" E a distance of 1770.70 feet along said north Right-of-Way line of said Hilltop Drive to the east terminus of said Hilltop Drive as shown on said plat, being in Dripping Springs Road (a variable width Right-of-Way);

THENCE S 46°18'17" W a distance of 85.07 feet along said east terminus to the southeast corner of said east terminus and the south Right-of-Way line of said Hilltop Drive;

THENCE N 88°50'35" W a distance of 1711.12 feet along said south Right-of-Way line;

THENCE N 01°50'45" E a distance of 60.10 feet crossing said Hilltop Drive and returning to the Point of Beginning and containing 104,539 square feet of 2.400 acres of land, more or less.

Right of Way Abandonment



0 200 400 800 Feet





City Council Regular Meeting

Agenda Item No. F.1.

Meeting Date: 1/6/2025

Prepared By: Loren Siems, Right of Way Specialist

Approved By:

Caption:

RESOLUTION NO. 7457

Authorizing the City Manager or His Designee to Execute a Purchase and Sale Agreement and Special Warranty Deed for the Purchase of Lots 6 & 7 of Kessler View Addition known as 112 Kessler Blvd, Sherman, Texas

Issue:

To consider executing a contract between the City of Sherman and Ralph and Jacqueline Courtney for the purchase of real property located at 1122 Kessler Blvd.

Background:

The owner of the real property located at 1122 Kessler Blvd. has approached the City of Sherman about purchasing the property.

Origination:

City of Sherman

Financial Consideration:

\$355,000.00

Staff Recommendation:

City staff has no objections to the proposed purchase. It is recommended that the purchase agreement be executed.

Alternatives:

As may be directed by City Council

Attachments:

1. Resolution No. 7457
2. 1122 Kessler Blvd
3. Purchase and Sale Agreement - 1122 Kessler(4638616.1) (003)

RESOLUTION NO. 7457

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A PURCHASE AND SALE AGREEMENT AND SPECIAL WARRANTY DEED FOR THE PURCHASE OF LOT 6 & 7 OF THE KESSLER VIEW ADDITION KNOWN AS 1122 KESSLER BLVD., SHERMAN, TEXAS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form by the City Attorney, to execute a Purchase and Sale Agreement and Special Warranty Deed for the acquisition of real property owned by Ralph and Jacqueline Courtney and located at 1122 Kessler Blvd, Being Lots 6 and 7 in the Kessler View Addition, City of Sherman, Grayson County, Texas, being more particularly described in Exhibit "A-1," attached hereto and made a part hereof for all purposes, for the amount of three hundred fifty-five thousand dollars and no/100 (\$355,000.00).

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of January 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Exhibit “A-1”

BEING LOTS SIX (6) and SEVEN (7) of the KESSLER VIEW ADDITION to the City of Sherman, Grayson County, Texas, as shown by the Replat of Lots Six (6) through Thirteen (13) of said KESSLER VIEW ADDITION, said Replat being recorded in Volume 3, Page 52 of the Plat Records of Grayson County, Texas.

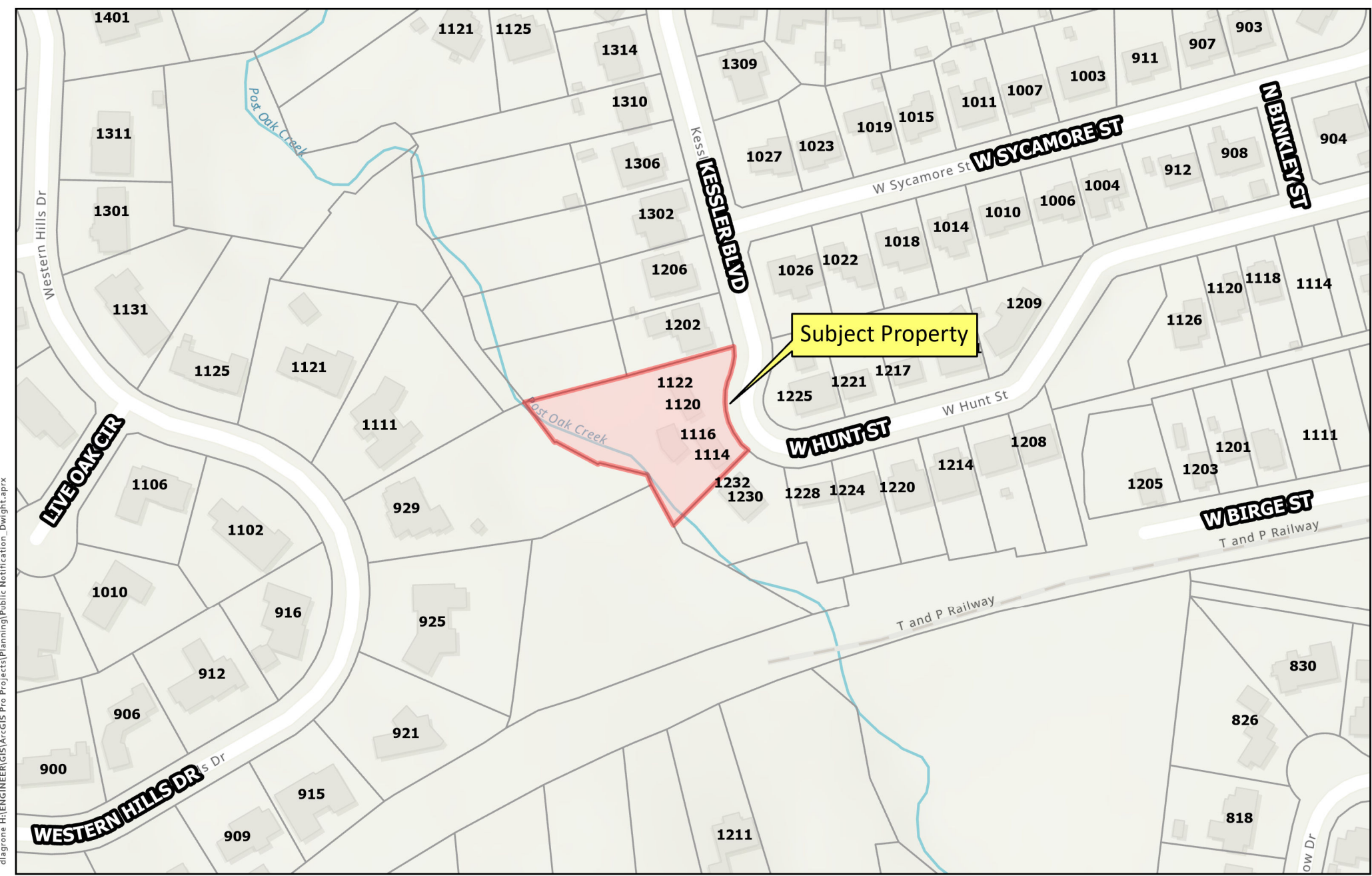


diagram H:\ENGINEER\GIS\ArcGIS Pro Projects\Planning\Public Notification, Dwight.aprx



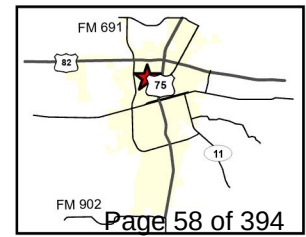
City of Sherman, Texas
Development Services Department

CITY OF SHERMAN

1122 Kessler Blvd



Date: 12/30/2024



PURCHASE AND SALE AGREEMENT

Lots 6 and 7 of the Kessler View Addition, City of Sherman, Grayson County, Texas

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into among **THE CITY OF SHERMAN, TEXAS**, a home-rule municipality (the “Purchaser”) and **RALPH W. COURTNEY JR. and JACQUELINE A. COURTNEY**, Texas residents (collectively, “Seller”).

WHEREAS, defined terms are indicated by initial capital letters. Defined terms shall have the meaning set forth herein, whether or not such terms are used before or after the definitions are set forth.

WHEREAS, Purchaser desires to purchase the Property and Seller desires to sell the Property, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, as well as the sums to be paid by Purchaser to Seller, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and Seller agree as follows:

ARTICLE 1 **BASIC INFORMATION**

Section 1.1 Certain Defined Terms

The following defined terms shall have the meanings set forth below:

- A. Purchaser.** The City of Sherman, Texas.
- B. Closing.** The completion of the transaction described in this Agreement.
- C. Closing Date.** The date that is sixty (60) days after the expiration of the Inspection Period.
- D. Inspection Period.** The period beginning on the Effective Date and ending on the date that is thirty (30) days after the Effective Date.
- E. Cure Period.** The period beginning on the date Seller receives Purchaser’s Objections and ending on the date that is ten (10) days thereafter.
- F. Due Diligence Delivery Date.** The date that is ten (10) days after the Effective Date.
- G. Earnest Money.** FIVE HUNDRED AND 00/100 DOLLARS (\$500.00).
- H. Earnest Money Delivery Date.** The date that is five (5) business days after the fully executed Agreement is delivered to the Title Company.

I. Effective Date. The date on which the fully executed Agreement along with the Earnest Money is received by the Title Company, as shown on the Title Company Acceptance Page.

J. Purchase Price. The sum of THREE HUNDRED FIFTY-FIVE THOUSAND AND 00/100 DOLLARS (\$355,000.00).

K. Purchaser's Broker. N/A.

L. Review Period. The period ending five (5) days after Purchaser's receipt of the later of the (i) initial Title Commitment, (ii) Title Documents, and (iii) the Survey.

M. Seller's Broker. N/A

N. Survey Delivery Date. The date that is ten (10) days after the Effective Date.

O. Title Commitment Delivery Date. The date that is twenty (20) days after the Effective Date.

P. Title Company. Chapin Title Company.

Q. Title Termination Period. The period beginning on the expiration of the Cure Period and ending on the date that is five (5) days after the Cure Period.

Section 1.2 Closing Costs Closing costs shall be allocated and paid as follows:

COST	RESPONSIBLE PARTY
Title Commitment	Purchaser
Premium for standard form Title Policy	Purchaser
Premium for endorsements or additional coverage for the Title Policy	Purchaser
Recording Fees	Purchaser
Financing expenses for Purchaser's loan, if any	Purchaser
Escrow Fee charged by Title Company	Evenly split between Purchaser and Seller
Commission to Seller's Broker	Seller
All other Closing costs, expenses, charges and fees customarily paid by purchasers in Grayson County	Purchaser

All other Closing costs, expenses, charges and fees customarily paid by sellers in Grayson County, including Schedule C Curative Items	Seller
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Section 1.3 Notice Addresses

Purchaser: City of Sherman
 Attn: Robby Hefton, City Manager
 220 Mulberry Street
 Sherman, Texas 75454
 Telephone: 903-819-7452
 Email: robbyh@cityofsherman.com

with copy to: Abernathy, Roeder, Boyd & Hullett, P.C.
 Attn: Ryan D. Pittman
 1700 Redbud Boulevard, Suite 300
 McKinney, Texas 75069
 Telephone: 214-544-4046
 Email: rpittman@abernathy-law.com

Seller: Ralph Courtney
 4422 S. Fannin Ave
 Denison, TX 75021
 Telephone: 903-814-0232
 Email: Ralph@courtneyrentals.com

Title Company: Chapin Title Company
 Attn: Tamara Noyes
 620 N. Travis St,
 Sherman, TX 75090
 Telephone: 903-868-1415
 Email: Tamara.noyes@chapintitle.com

ARTICLE 2 **PROPERTY**

Section 2.1 Property Description

Upon the terms and conditions hereinafter stated, Seller hereby agrees to sell and convey to Purchaser the following (collectively, the “Property”):

A. Land. Good and indefeasible title to Lots 6 and 7, of the Kessler View Addition (replat), an addition to the City of Sherman, Grayson County, Texas, according to the plat thereof, recorded under Volume 3, Page 52, in the Plat Records of Grayson County, Texas (the “Land”),

together with all benefits, privileges, easements, tenements, hereditaments, rights and appurtenances thereon or pertaining to such Land.

B. Improvements. All buildings, structures, fixtures, and improvements situated on, in, or under the Land, if any (“Improvements”); all benefits, privileges, tenements, hereditaments, rights and appurtenances thereon or pertaining to the Improvements and all easements owned by Seller, if any, which are used or needed in connection with the operation or development of the Land (the Land and the Improvements are herein referenced as the “Real Property”). **Personal Property.** All of Seller’s right, title, and interest in any personal property owned by Seller, if any, as of the Closing Date that is attached to or located on and used exclusively in connection with the operation, repair, or maintenance of the Real Property, including but not limited to all fixtures, fittings, appliances, apparatuses, equipment, tools, machinery, heating, ventilating, air-conditioning, lighting, plumbing, and electrical fixtures, hot-water heaters, furnaces, heating controls, Agreement rights, claims, systems, and other items of tangible and intangible personal property and replacements, affixed or attached to, situated on, or used exclusively in connection with the Real Property (collectively, “Personal Property”).

D. Licenses and Permits. To the extent assignable by Seller to Purchaser, and to the extent any of the following exist and run with the Land, all of Seller’s right, title, and interest in and to (i) licenses, permits, certificates of occupancy, or similar documents relating to the Land; (ii) all permits, approvals, licenses, water and sewer capacity commitments, all engineering and architectural plans; and (iii) all plans, drawings, specifications, surveys, engineering reports, and other technical descriptions of the Land (collectively, “Licenses and Permits”).

Section 2.2 Legal Description

The legal description of the Land set forth in the final Survey certified to the Purchaser and Title Company shall be substituted for **Exhibit 1** at a later date as the description of the Property to be conveyed hereunder and shall become part of this Agreement.

ARTICLE 3 PURCHASE PRICE

Purchaser agrees to purchase the Property at the Purchase Price and upon the terms set forth herein. At Closing, Purchaser shall deliver to Seller the Purchase Price in cash or other immediate funds. The parties acknowledge and agree that the Purchase Price includes payment in full to Seller for all relocation benefits and/or assistance under the Texas Property Code and the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, *et seq.*, including but limited to any payments available for expenses actually incurred in relocating and reestablishing a residence at a replacement site, actual moving and related expenses, and costs involved in investigating potential replacement sites and the time of the residence owner, based on salary or earnings, required to apply for licenses or permits, zoning changes, and attendance at zoning hearings, necessary attorney fees required to obtain such licenses or permits, and time spent in negotiating the purchase of a replacement residence site.

ARTICLE 4

EARNEST MONEY

On or before the Earnest Money Delivery Date, Purchaser shall deposit the Earnest Money in the form of a check or wire transfer with the Title Company in its capacity as escrow agent, to be held in escrow pursuant to the terms of this Agreement. If Purchaser fails to timely deposit the Earnest Money, Seller may terminate this Agreement at any time before Purchaser deposits the Earnest Money with the Title Company, and upon such election, this Agreement shall terminate. Purchaser agrees that One Hundred and No/100 Dollars (\$100.00) of the Earnest Money is given as consideration for this Agreement (the “Independent Consideration”), which Independent Consideration shall be applied to the Purchase Price at Closing, but shall not be returned to Purchaser in the event the Earnest Money is otherwise returned to the Purchaser pursuant to the terms of this Agreement. The Earnest Money shall be credited to the Purchase Price at Closing.

ARTICLE 5

DUE DILIGENCE AND CONTINGENCIES

Section 5.1 Survey and Title Review

A. Survey. If there is an existing survey of the Property, Seller, at its sole cost and expense, shall deliver to Purchaser a copy of such survey (the “Survey”) on or before the Survey Delivery Date. If a new or updated survey of the Property is required, then such new or updated survey shall be obtained by Purchaser at Purchaser’s expense and shall be prepared by a registered land surveyor in conformity with the “Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys” jointly established and adopted by ALTA and NSPS in 2011 (or such local equivalent as may exist with respect to the Property), in conformity with such standards as are required by the Title Company as a condition to the removal of the survey exception from the Title Commitment, and certified to Purchaser, the Title Company and such other parties as Purchaser shall designate by written notice to Seller. Purchaser must review and approve any Survey prepared by or for Purchaser as a condition of Purchaser’s obligations at Closing.

B. Title Commitment. On or before the Title Commitment Delivery Date, Seller shall deliver or cause to be delivered to Purchaser (i) a title commitment (the “Title Commitment”) covering the Property binding the Title Company to issue a Texas Owner Policy of Title Insurance (the “Title Policy”) on the standard form prescribed by the Texas State Board of Insurance at the Closing, in the full amount of the Purchase Price, insuring Purchaser’s fee simple title to the Property to be good and indefeasible, subject only to the Permitted Exceptions as defined below, and (ii) the following documents (collectively, the “Title Documents”): (1) true and legible copies of all recorded instruments affecting the Property and recited as exceptions in the Title Commitment, and (2) a current tax certificate.

C. Special Assessment Districts. If the Property is situated within a utility district or flood control district subject to the provisions of Section 50.301, Texas Water Code, then Seller shall give to Purchaser as part of the Title Documents the required written notice and Purchaser agrees to acknowledge receipt of the notice in writing. The notice must set forth the current tax rate, the current bonded indebtedness and the authorized indebtedness of the district, and must comply with all other applicable requirements of the Texas Water Code. If the Property is subject

to mandatory membership in a property owner's association, Seller shall notify Purchaser of the current annual budget of the property owners' association, and the current authorized fees, dues and/or assessments relating to the Property.

D. Review and Cure Period. During the Review Period, Purchaser shall have the opportunity to review the Survey, the Title Commitment, and the Title Documents. If Purchaser has any objections to the Survey, Title Commitment or Title Documents, Purchaser may deliver such objections to Seller in writing within the Review Period (collectively, "Objections"). Purchaser's failure to provide Objections to Seller prior to the expiration of the Review Period shall be a waiver of Purchaser's right to object, and any item to which Purchaser does not include in its Objections on or before to the expiration of the Review Period shall also be deemed a "Permitted Exception." Items that the Title Company identifies as to be released at Closing will be deemed Objections by Purchaser and shall not be Permitted Exceptions. If Purchaser provides Seller with any Objections, Seller may, but is not obligated to attempt to satisfy the Objections within the Cure Period.

E. Failure or Refusal to Cure. If Seller cannot satisfy or chooses not to satisfy Purchaser's Objections within the Cure Period, then Purchaser may terminate this Agreement by delivering a written notice to Seller within the Title Termination Period. If Purchaser terminates this Agreement, the Earnest Money shall be immediately returned to Purchaser and thereafter neither party shall have any rights or obligations under this Agreement (except for those which may expressly survive the termination of this Agreement). If Purchaser does not terminate this Agreement, then Purchaser shall be deemed to have waived any uncured Objections, except for those Objections Seller has agreed to cure, and must accept such title as Seller is able to convey as of Closing, subject to the other terms and provisions of this Agreement. Notwithstanding the foregoing, at or prior to Closing, Seller shall discharge or cause to be discharged all: (i) matters set forth on Schedule C of the Title Commitment; (ii) exceptions to title created after the Effective Date without the written consent of Purchaser; and (iii) judgments, liens and mortgages affecting the Property, and same shall not constitute Permitted Exceptions.

Section 5.2 Due Diligence

On or prior to the Due Diligence Delivery Date, Seller shall deliver to Purchaser copies of all engineering investigations, soils reports, feasibility reports, tests, environmental studies, license agreements, management agreements, and other information related to the Property in Seller's possession or control. Notwithstanding Seller's delivery of the above described studies, tests and other due diligence material, if any, Purchaser acknowledges that any information of any type which Purchaser has received or may receive from Seller, or its agents, is furnished to Purchaser as a courtesy only and on the express condition that Purchaser shall make an independent verification of the accuracy of such information, and that all such information is being furnished without any representation or warranty by Seller as to the truth, accuracy, or completeness of such information; provided, however, that Seller confirms that Seller has no current actual knowledge of any material inaccuracies or errors in any such due diligence materials. Further, as a condition to Seller's delivery of any due diligence materials to Purchaser, Purchaser expressly acknowledges the foregoing in its acceptance of such due diligence items from Seller, and agrees to waive any and all claims against Seller for any cause of action arising from Purchaser's reliance on such Seller furnished due diligence materials.

Section 5.3 Inspection Period

A. Purchaser's Right to Inspect the Property. Prior to the expiration of the Inspection Period, Purchaser shall have the right to inspect the Property and determine if the same is suitable for Purchaser's intended use. If Purchaser notifies Seller in writing on or before 11:59 p.m. on the last day of the Inspection Period that Purchaser disapproves or is dissatisfied in any way with the Property, such determination to be made in Purchaser's sole and absolute discretion, then this Agreement shall terminate and the Earnest Money heretofore delivered by Purchaser to Title Company shall be returned to Purchaser; provided, however, the Independent Consideration shall not be returned to Purchaser. If Purchaser fails to so notify Seller in writing prior to the expiration of the Inspection Period of Purchaser's election to terminate this Agreement, this Agreement shall continue in full force and effect. Seller hereby grants to Purchaser during the Inspection Period the right to enter upon the Property and conduct such tests as Purchaser deems necessary.

B. Indemnification for Inspection. To the extent permitted by law, Purchaser shall indemnify, defend, and hold harmless Seller from all claims, actions or causes of action which might occur by virtue of the entry upon or testing of the Property and provided further that in the event Purchaser does not return the Property to its condition prior to Purchaser's activities, Purchaser shall be responsible for all damages occasioned to the Property arising out of the entry upon or testing of the Property, and this indemnity and covenant will survive the Closing or termination of this Agreement for a period of twelve (12) months. Notwithstanding the foregoing or anything contained herein to the contrary, Purchaser shall have no obligation to indemnify Seller for any claim, action or cause of action which is caused, in whole or in part, by Seller's grossly negligent act or omission or to the extent caused by the willful misconduct of Seller, nor shall Purchaser be required to indemnify Seller with respect to Purchaser's discovery or disturbance of any preexisting matter on or with respect to the Property existing prior to entry on the Property by Purchaser or Purchaser's agents, independent contractors, servants, or employees, including, but not limited to, any hazardous material or dangerous condition.

ARTICLE 6 **REPRESENTATIONS AND WARRANTIES**

Section 6.1 Seller's Representation and Warranties

Seller represents and warrants to Purchaser as of the Effective Date and as of the Closing as follows:

A. Title. Seller has the right to convey and will convey to Purchaser good and indefeasible fee simple title to the Property free and clear of any and all liens, assessments, unrecorded easements, security interests and other encumbrances except only to the Permitted Exceptions.

B. Licenses. There are no parties in possession of any portion of the Property as licensees, tenants at sufferance or trespassers except for those disclosed, and delivered to Seller as part of the due diligence materials.

C. Negative Covenants. Seller shall not further encumber any of the Property or allow an encumbrance upon the title to any of the Property without the written consent of Purchaser.

D. Liens and Debts. There are no mechanic's liens, Uniform Commercial Code liens or unrecorded liens against the Property, and Seller shall not allow any such liens to attach to the Property prior to Closing, which will not be satisfied out of the Closing proceeds. All obligations of Seller arising from the ownership and operation of the Property and any business operated on the Property, if any, including, but not limited to, taxes, leasing commissions, salaries, and similar agreements, have been paid or will be paid prior to Closing. Except for obligations for which provisions are made in this Agreement for prorating at Closing, there will be no obligations of Seller with respect to the Property outstanding as of Closing.

E. Litigation. To Seller's knowledge, there is no pending or threatened litigation, condemnation, or assessment affecting any of the Property. Seller shall promptly advise Purchaser of any litigation, condemnation or assessment affecting any of Property which is threatened or instituted after the Effective Date.

F. Operation of the Property. After the Effective Date through the Closing Date, Seller shall maintain the Property in the same condition and in the same manner as existed on the Effective Date, except for ordinary wear and tear and any casualty loss.

G. Patriot Act. To the extent applicable to Seller, Seller has complied in all material respects with the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, which comprises Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act") and the regulations promulgated thereunder, and the rules and regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), to the extent such laws are applicable to Seller. To the best of Seller's knowledge, Seller is not included on the List of Specially Designated Nationals and Blocked Persons maintained by the OFAC, or is a resident in, or organized or chartered under the laws of, (i) a jurisdiction that has been designated by the U.S. Secretary of the Treasury under Section 311 or 312 of the Patriot Act as warranting special measures due to money laundering concerns or (ii) any foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur.

H. Organization and Authority. The execution and delivery of this Agreement by those executing this Agreement on Seller's behalf and Seller's performance of this Agreement has been duly authorized by Seller, and this Agreement is binding on Seller and enforceable against Seller in accordance with its terms. The execution of this Agreement and the consummation of the transaction contemplated herein will not violate any restriction, court order or agreement to which Seller or the Property is subject.

I. No Prohibitions. Neither Seller, nor any employee executing this Agreement on behalf of Seller is prohibited from (i) executing or delivering this Agreement; (ii) complying with

the terms of this Agreement or (iii) consummating the transactions contemplated by this Agreement by any applicable governmental requirement, agreement, instrument, restriction, or by a judgment, order or decree of any governmental authority having jurisdiction over Seller or the Property.

J. Compliance with Laws. To the best of Seller's current actual knowledge, neither the Property, nor Seller are currently subject to (i) any existing, pending or threatened investigation or inquiry by any governmental authority or (ii) any remedial obligations, under any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction or zoning ordinance or classification affecting the Property, including, without limitation, all applicable building codes, fire codes, health codes, water codes, flood disaster laws and health and Environmental Laws and regulations (hereinafter sometimes collectively called the "Applicable Laws"). Seller has received no notice from any municipal, state, federal or other governmental authority of any violation of any Applicable Laws issued in respect of the Property which has not been heretofore corrected, and no such violation exists.

K. "AS IS". EXCEPT AS EXPRESSLY PROVIDED HEREIN, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE SET FORTH IN THE DEED TO BE DELIVERED AT CLOSING), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION, ABSENCE OF LATENT DEFECTS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY. EXCEPT AS EXPRESSLY PROVIDED HEREIN, PURCHASER AGREES THAT WITH RESPECT TO THE PROPERTY, PURCHASER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR SELLER'S REPRESENTATIVES. PURCHASER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND RELY UPON SAME, AND, UPON CLOSING, SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, LATENT DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INSPECTIONS AND INVESTIGATIONS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, PURCHASER AGREES TO TAKE WHATEVER ACTION AND PERFORM WHATEVER INVESTIGATIONS AND STUDIES PURCHASER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OF, OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO, ANY HAZARDOUS AND/OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS", WITH ALL FAULTS AND THERE ARE NO

ORAL OR WRITTEN AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER OR ANY THIRD PARTY. FURTHER, PURCHASER HEREBY ACKNOWLEDGES TO SELLER THAT PURCHASER AND SELLER ARE NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL EXPRESSLY SURVIVE THE CLOSING AND SHALL NOT BE MERGED THEREIN.

Section 6.2 Purchaser's Representations and Warranties

Purchaser represents and warrants to Seller as of the Effective Date and as of the Closing as follows:

A. Organization and Authority. Purchaser is a home-rule municipality validly existing under the laws of the State of Texas. The execution and delivery of this Agreement by those executing this Agreement on Purchaser's behalf and Purchaser's performance of this Agreement has been duly authorized by Purchaser, and this Agreement is binding on Purchaser and enforceable against Purchaser in accordance with its terms. The execution of this Agreement and the consummation of the transaction contemplated herein will not violate any restriction, court order or agreement to which Purchaser is subject. If Purchaser assigns this Agreement to an allowed third party, such entity shall be duly organized, validly existing and in good standing under the laws of the State of Texas and have all the requisite power and authority to enter into, deliver and perform this Agreement.

B. Litigation. To Purchaser's knowledge, there is no pending or threatened litigation affecting Purchaser that would materially impact the transaction described in this Agreement. Purchaser shall promptly advise Seller of any litigation affecting Purchaser and its ability to consummate the transaction contemplated herein which is threatened or instituted after the Effective Date.

C. Patriot Act. To the extent applicable to Purchaser, Purchaser has complied in all material respects with the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, which comprises Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act") and the regulations promulgated thereunder, and the rules and regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), to the extent such laws are applicable to Purchaser. To the best of Purchaser's knowledge, Purchaser is not included on the List of Specially Designated Nationals and Blocked Persons maintained by the OFAC, or is a resident in, or organized or chartered under the laws of, (i) a jurisdiction that has been designated by the U.S. Secretary of the Treasury under Section 311 or 312 of the Patriot Act as warranting special measures due to money laundering concerns or (ii) any foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur.

D. No Prohibitions. Neither Purchaser, nor any employee executing this Agreement on behalf of Purchaser is prohibited from (i) executing or delivering this Agreement; (ii) complying with the terms of this Agreement or (iii) consummating the transactions contemplated by this Agreement by any applicable governmental requirement, agreement, instrument, restriction, or by a judgment, order or decree of any governmental authority having jurisdiction over Purchaser.

Section 6.3 Knowledge

A. Seller's Knowledge. For purposes of this Agreement and any closing document, whenever the phrase "to Seller's actual knowledge," "to Seller's knowledge," "the knowledge of Seller," or "to the best of Seller's knowledge" or similar words of similar import are used, they shall be deemed to refer to facts within the actual knowledge of Ralph W. Courtney Jr. and Jacqueline A. Courtney, at the times indicated only, without independent inquiry, without any actual or implied duty of inquiry whatsoever and without imputation to such person of the knowledge of any other person. The named individuals are acting for and on behalf of Seller and in a capacity as an officer or representative of Seller and is in no manner expressly or impliedly making any representations or warranties in an individual capacity. Purchaser waives any right to sue or seek any personal judgment or claim against such individuals.

B. Purchaser's Knowledge. For purposes of this Agreement and any closing document, whenever the phrase "to Purchaser's actual knowledge," "to Purchaser's knowledge," "the knowledge of Purchaser," or "to the best of Purchaser's knowledge" or similar words of similar import are used, they shall be deemed to refer to facts within the actual knowledge of Robby Hefton, at the times indicated only, without independent inquiry, without any actual or implied duty of inquiry whatsoever and without imputation to such person of the knowledge of any other person. The named individuals are acting for and on behalf of Purchaser and in a capacity as an officer or representative of Purchaser and is in no manner expressly or impliedly making any representations or warranties in an individual capacity. Seller waives any right to sue or seek any personal judgment or claim against such individuals.

Section 6.4 Remedies

If either party discovers prior to Closing that any of the other party's representations or warranties have been misrepresented or are inaccurate, such discovering party may notify the party with deficient representations and/or warranties in writing, and the deficient party may attempt to correct or remedy the misrepresentation or inaccuracy. If the misrepresentation or inaccuracy is not remedied prior to Closing, upon written notice to the deficient party, the discovering party may: (i) proceed to Closing without waiving any claim for breach of warranty or misrepresentation; (ii) delay Closing until ten (10) days after the misrepresentation or inaccuracy is remedied; or (iii) exercise any remedies available for default by the deficient party under this Agreement.

Section 6.5 Non-Conformance

Purchaser has or will independently investigate and verify to Purchaser's satisfaction the extent of any limitations or permitted uses of the Property. Purchaser acknowledges that the current use of the Property or any improvements located on the Property (or both) may not conform

to applicable Federal, State or municipal laws, ordinances, codes or regulations. Zoning, permitted uses, height limitations, setback requirements, minimum parking requirements, limitations on coverage of improvements to total area of land, requirements of the Americans with Disabilities Act, wetlands restrictions and other matters may have a significant economic impact upon Purchaser's intended use of the Property. Purchaser is not relying upon any warranties or representations of Seller concerning the permitted uses of the Property or with respect to any nonconformance of the Property.

ARTICLE 7 **CLOSING**

Section 7.1 Closing Date

The Closing shall occur on or before the Closing Date. Seller shall deliver possession of the Property at Closing.

Section 7.2 Seller's Closing Documents

At the Closing, Seller shall deliver the following to Purchaser:

A. A duly executed Special Warranty Deed (the "Deed"), in the form attached hereto as **Exhibit A**, conveying the Property to Purchaser in fee simple, subject only to the Permitted Exceptions;

B. The Title Policy issued by the underwriter for the Title Company pursuant to the Title Commitment, subject only to the Permitted Exceptions, in the full amount of the Purchase Price, dated as of the date of Closing, and with the survey exception deleted except as to "shortages in area;"

C. A FIRPTA certificate, duly executed and acknowledged by Seller;

D. A general assignment assigning to Purchaser all of Seller's interest in any Licenses and Permits;

E. An assignment to Purchaser of Seller's interest in any Leases;

F. Evidence of Seller's authority and capacity to close this transaction;

G. Evidence acceptable to Purchaser that all tenants and other occupants of the Property have permanently vacated the Property and that all leases have terminated or expired on or before the Closing. Notwithstanding any statement to the contrary herein, if Purchaser is not satisfied that Seller has presented sufficient evidence demonstrating the above conditions have been met, Purchaser may either terminate this Agreement by delivering a written termination notice to Seller and receive the Earnest Money or elect to close; and

H. All other documents reasonably required by the Title Company from Seller to close this transaction.

Section 7.3 Purchaser's Closing Documents

At the Closing, Purchaser shall deliver the following to Seller:

- A. The Purchase Price;
- B. Evidence of Purchaser's authority and capacity to close this transaction;
- C. All other documents reasonably required by the Title Company from Purchaser to close this transaction.

Section 7.4 Closing Costs

Each party shall pay its respective costs associated with the Closing in accordance with Section 1.2 above.

Section 7.5 Ad Valorem Taxes

All state, county, and municipal taxes for the then current year relating to the Property shall be prorated as of the Closing Date and, in accordance with the provisions of Section 26.11 of the Texas Tax Code, the Title Company shall collect from Seller its portion of such taxes and remit the same to the appropriate taxing jurisdictions. This provision shall survive the Closing.

NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES. If for the current ad valorem tax year the taxable value of the Property that is the subject of this Agreement is determined by a special appraisal method that allows for appraisal of the Property at less than its market value, the person to whom the Property is transferred may not be allowed to qualify the Property for that special appraisal in a subsequent tax year and the Property may then be appraised at its full market value. In addition, the transfer of the Property or a subsequent change in the use of the Property may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the Property. The taxable value of the Property and the applicable method of appraisal is public information and may be obtained from the tax appraisal district established for the county in which the land is located.

ARTICLE 8 CASUALTY LOSS; CONDEMNATION.

All risk of loss to the Property shall remain upon Seller prior to the Closing. If, prior to the Closing, any portion of the Property is damaged or destroyed by fire or other casualty, or subject to a condemnation or taking or the threat of a condemnation or taking, Purchaser may either terminate this Agreement by delivering a written termination notice to Seller or elect to close. If the transaction is to proceed to Closing, there shall be no reduction in the Purchase Price, but Seller shall assign to Purchaser all of Seller's right and interest in any insurance proceeds and/or condemnation awards, as applicable, plus an amount equal to any insurance deductible.

ARTICLE 9 DEFAULT

Section 9.1 Purchaser's Remedies

If Seller fails to perform its obligations under this Agreement for any reason except Purchaser's default, which continues for more than ten (10) days following delivery of written notice of such default from Purchaser to Seller, then Seller shall be in default and Purchaser may elect to (i) terminate this Agreement and receive the Earnest Money, or (ii) pursue the remedy of specific performance.

Section 9.2 Seller's Remedies

If Purchaser fails to perform its obligations under this Agreement for any reason except Seller's default, which continues for more than ten (10) days following delivery of written notice of such default from Seller to Purchaser, then Purchaser shall be in default, and Seller may terminate this Agreement and receive the Earnest Money, as Seller's sole and exclusive remedies.

ARTICLE 10 REAL ESTATE COMMISSIONS

If and only if, as and when this transaction is closed, Seller shall pay a commission to Seller's Broker in an amount set forth in a separate agreement between Seller and Seller's Broker (the "Commission"). The Commission shall be payable at Closing, if, as and when Closing occurs and the transaction is funded. It is expressly understood, acknowledged and agreed that Seller's Broker's right to such Commission shall vest only upon the actual Closing and funding of this Agreement and no Commission shall be earned, due or owing in the event the purchase and sale transaction contemplated herein shall fail to close for any reason whatsoever including, but not limited to, the default of either Seller or Purchaser. In no event whatsoever shall any Seller's Broker be entitled to receive any portion of the Earnest Money. Each party hereto represents to the other that, except as set forth above with respect to Seller's Broker, it has not authorized any other broker or finder to act on its behalf in connection with the sale and purchase transaction contemplated hereby and that it has not dealt with any broker or finder purporting to act for any other party. Each party hereto agrees, to the extent permitted by law, to indemnify and hold harmless the other party from and against any and all liabilities, costs, damages and expenses of any kind or character arising from any claims for brokerage or finder's fees, commissions or other similar fees in connection with the transactions covered by this Agreement insofar as such claims shall be based upon alleged arrangements or agreements made by such party or on its behalf, which indemnity shall expressly survive any termination or Closing of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

Section 11.1 Notices

All notices and other communications required or permitted under this Agreement must be in writing and shall be deemed delivered on the earlier of: (i) actual receipt, if delivered in person or by messenger with evidence of delivery; (ii) the date and time of transmission if delivered by email; or (iii) three (3) business days after deposit in the United States Mail as required below. Notices delivered by mail must be deposited with the U.S. Postal Service and sent by certified mail return receipt requested with postage prepaid, and properly addressed to the intended recipient at the address set forth below. Any party may change its address for notice purposes by delivering written notice of its new address to all other parties in the manner set forth above.

Section 11.2 Forms and Construction

This Agreement is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Seller and Purchaser hereby waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same.

Section 11.3 Attorney's Fees

The prevailing party in any legal proceeding brought in relation to this Agreement or transaction shall be entitled to recover from the non-prevailing party's court costs, reasonable attorneys' fees and all other reasonable litigation expenses.

Section 11.4 Assignment

Purchaser may not assign this Agreement without the prior written consent of Seller. Notwithstanding the foregoing, Purchaser may assign its rights under this Agreement to any affiliated entity which directly or indirectly controls, is controlled by or is under common control with Purchaser without the consent of Seller, on the condition that the assignee expressly assumes all of the obligations of Purchaser hereunder in a written agreement, and such written agreement is delivered to Seller prior to the Closing Date. This Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties.

Section 11.5 Integration

This Agreement contains the complete agreement between the parties with respect to the Property and cannot be varied except by written agreement of the parties hereto. The parties agree that there are no oral or signed agreements, understandings, representations or warranties made by the parties which are not expressly set forth herein.

Section 11.6 Survival

Any warranty, representation, covenant, condition or obligation contained in this Agreement not otherwise consummated at the Closing will survive the Closing of this transaction for a period of one (1) year.

Section 11.7 Binding Effect

This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective heirs, legal representatives, successors and assigns.

Section 11.8 Time for Performance

Time is of the essence under each provision of this Agreement. If any date of performance hereunder falls upon a Saturday, Sunday or recognized holiday, such date will be deemed moved forward to the next day which is not a Saturday, Sunday or recognized holiday.

Section 11.9 Business Day

The term “business day” shall mean days elapsed exclusive of Saturday, Sunday or recognized holidays.

Section 11.10 Governing Law

This Agreement shall be construed under and governed by the laws of the State of Texas, and unless otherwise provided herein, all obligations of the parties created under this Agreement are to be performed in the county where the Property is located.

Section 11.11 Severability

If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the invalid, illegal or unenforceable provision shall not affect any other provisions, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision is severed and deleted from this Agreement.

Section 11.12 Counterparts

This Agreement may be executed in a number of identical counterparts. Each counterpart is deemed an original and all counterparts shall, collectively, constitute one agreement. Executed documents transmitted electronically shall be considered originals.

Section 11.13 Gender; Number

Unless the context requires otherwise, all pronouns used in this Agreement shall be construed to include the other genders, whether used in the masculine, feminine or neuter gender. Words in the singular number shall be construed to include the plural, and words in the plural shall be construed to include the singular.

Section 11.14 Immunity

It is expressly understood and agreed that, in the execution and performance of this Agreement, Purchaser has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

Section 11.15 Further Assurances

The parties each agree that at any time, or from time to time, after the execution of this Agreement each party will, upon the request of the other party hereto, execute and deliver such

further documents and do such further acts and things as such other party may reasonably request in order to effect fully the purposes of this Agreement

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

EXECUTED on the dates stated below, but to be **EFFECTIVE** on the Effective Date defined herein.

Date: _____

PURCHASER:
CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager

SELLER:

Date: _____

RALPH W. COURTNEY, JR.,
a Texas resident

By: _____
Ralph W. Courtney, Jr.

Date: _____

JACQUELINE A. COURTNEY,
a Texas resident

By: _____
Jacqueline A. Courtney

TITLE COMPANY ACCEPTANCE

The Title Company acknowledges receipt of the executed Agreement and Earnest Money on _____, 2025, at _____(a.m./p.m.) and has accepted the Earnest Money subject to the terms and conditions set forth in this Agreement.

TITLE COMPANY:

CHAPIN TITLE COMPANY

By: _____

Name: _____

Title: _____

EXHIBIT "A"
FORM OF SPECIAL WARRANTY DEED

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.

SPECIAL WARRANTY DEED

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF GRAYSON §

THAT _____ (collectively, "Grantor"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor in hand paid by the CITY OF SHERMAN, TEXAS, a home-rule municipality ("Grantee"), the receipt and sufficiency of which is hereby acknowledged by Grantor, has GRANTED, SOLD AND CONVEYED, and by these presents does hereby GRANT, SELL AND CONVEY unto Grantee that certain real property more particularly described on Exhibit 1 attached hereto and incorporated herein (the "Land"), together with all and singular, the rights and appurtenances pertaining to the Land, including any right, title and interest of Grantor in and to adjacent streets, alleys or rights-of-way, and including all of Grantor's rights to all oil, gas and other minerals in and under the Land, if any, but specifically excluding any improvements, fixtures, and personal property situated on and attached to the Land (collectively, the "Property").

This conveyance is made and accepted subject to all those certain easements, covenants, restrictions and other matters more particularly described in Exhibit 2 attached hereto and incorporated herein by this reference for all purposes, to the extent that same are valid and subsisting and affect the Property (the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND, all and singular the title to the Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise, subject only, however, to the Permitted Exceptions.

[Signature pages follow.]

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed to be effective as of the _____ day of _____, 2025.

GRANTOR:

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared _____, an individual.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this ____ day of _____, 2025.

Notary Public in and for the State of Texas
My Commission Expires: _____

After Recording Return to:
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069
Attention: Ryan D. Pittman

EXHIBIT 1
Legal Description of the Property

BEING LOTS SIX (6) and SEVEN (7) of the KESSLER VIEW ADDITION to the City of Sherman, Grayson County, Texas, as shown by the Replat of Lots Six (6) through Thirteen (13) of said KESSLER VIEW ADDITION, said Replat being recorded in Volume 3, Page 52 of the Plat Records of Grayson County, Texas.

EXHIBIT 2
The Permitted Exceptions



City Council Regular Meeting

Agenda Item No. F.2.

Meeting Date: 1/6/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By:

Caption:

*** RESOLUTION NO. 7458**

Accepting the Contract with Red River Construction Company, Inc. for the Construction of the Post Oak Wastewater Treatment Plant Equalization Basin Improvements as Complete

Issue:

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

Background:

Construction activities for the Post Oak Wastewater Treatment Plant Equalization Basin have been concluded and are accepted as completed. The Texas Water Development Board (TWDB) requires the City to accept the project as a matter of closeout document. The project was accepted as completed by the GTUA and with this Resolution the City will also accept the work as complete. Work entailed was primarily the removal and replacement of concrete panels and sealing of joints within the basin.

Origination:

Engineering Department

Financial Consideration:

This construction contract with Red River Construction Company, Inc. was completed in the amount of \$787,874.85 for the construction of the Post Oak Wastewater Treatment Plant Equalization Basin Improvements as complete. The project was completed \$49,625.15 (5.9%) under the original award and 33 days early.

Staff Recommendation:

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

Alternatives:

As may be directed by the City Council

Attachments:

1. Resolution No. 7458
2. Final Acceptance Letter
3. Change Order 1 (Final)
4. Location Map
5. Res No. 6927

RESOLUTION NO. 7458

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

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

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

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

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

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

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of January 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY:

LINDA ASHBY, CITY CLERK

APPROVED AS TO FORM:

**THE LAW FIRM OF ABERNATHY,
ROEDER, BOYD & HULLETT, P.C.**

BY:

RYAN D. PITTMAN, CITY ATTORNEY

December 11, 2024

Red River Construction Co.
ATTN: Dean Porter
2804 Capital St.
Wylie, Texas 75098

Re: Final Acceptance Letter
Equalization Basin Improvements, COS-# 1445-U

Mr. Porter

The City of Sherman Engineering Department completed the final inspection of the improvements for the above mentioned development on January 12, 2024. This development appears to be in substantial compliance with the issued construction documents and compliance with City of Sherman requirements. The City accepts the infrastructure portion of the project.

This is an acceptance of the physical work and in no event shall this inspection or acceptance be deemed as a waiver by the City of Sherman, in any respect or degree, of any of the terms and provisions of the governing contract or any of the right under the contract in the event that you have failed to comply strictly with the terms and provisions thereof.

If you have any questions, please feel free to contact me at your convenience.

Sincerely,
City of Sherman



Project Manager
Utility Engineer

Cc Dwight LaGrone, GIS Manager
Jerry Pace, GIS Technician II
Kristi Jenkins, Engineering Coordinator
File

Change Order

Date of Issuance: 9/27/2023

No. 1

Project: Post Oak WWTP Equalization Basin Project	Project No.: 359
Owner: Greater Texoma Utility Authority for City of Sherman	Date of Contract: February 28, 2023
Contractor: RED RIVER CONSTRUCTION CO.	

The Contract Documents are modified as follows upon execution of this Change Order:

Description: As per our conversation at the jobsite on August 9th, it was decided that not all of the slabs needed to be removed and replaced, but all of the joint materials on the basin need to be repaired/replaced. There will be an additional 822 lf of joints that will be required under bid item #10 and 628 sy less of slab removal and replacement. The expansion joints at the top of the sloped slabs will have to be cleaned out and replaced. They are up to 2" wide and we plan to use MasterSeal SL2 in those since it is self-leveling and good for emersion. We also found about 200 lf of cracks which will be cut to 1/2" deep and about 1" wide. This will be fill with MasterSeal NP1.

Justification: Replacement of slabs will not solve water issues that undermine the slabs. The subgrade will continue to be saturated and cause movement in the slabs. Sealing them will minimize the situation.

CHANGE IN CONTRACT PRICE:

Original Contract Price:

\$ 837,500.00

[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____:

\$ 0.00

Contract Price prior to this Change Order:

\$ 837,500.00

~~NO CHANGE~~ [Decrease] of this Change Order:

\$ 49,625.15

Contract Price incorporating this Change Order:

\$ 787,874.85

CHANGE IN CONTRACT TIMES:

Original Contract Times:

Substantial completion days: 245

Substantial completion date: October 31, 2023

[Increase] [Decrease] from previously Change Orders No. _____ to No. _____:

Substantial completion days: 245

Substantial completion date: October 31, 2023

Contract Times prior to this Change Order:

Substantial completion days: 245

Substantial completion date: October 31, 2023

[Increase] [Decrease] of this Change Order:

Substantial completion days: 245

Substantial completion date: October 31, 2023

Contract Times with all approved Change Orders:

Substantial completion days: 245

Substantial completion date: October 31, 2023

RECOMMENDED

By: 
Engineer (Authorized Signature)

Date: 9/28/2023

ACCEPTED:

By: _____
Owner (Authorized Signature)

Date: _____

ACCEPTED:

By: 
Contractor (Authorized Signature)

Date: 9/27/23



Sherman
CLASSIC TOWN. BROAD HORIZON.

RESOLUTION NO. 6927

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, APPROVING THE GREATER TEXOMA UTILITY AUTHORITY'S INTENTION TO CONTRACT WITH RED RIVER CONSTRUCTION CO. FOR CONSTRUCTION OF THE POST OAK WASTEWATER TREATMENT PLANT EQUALIZATION BASIN IMPROVEMENTS PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City of Sherman hereby approves the Greater Texoma Utility Authority's intention to enter into a contract with Red River Construction Co. in the total amount of Eight Hundred Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$837,500.00) for construction of the Post Oak Wastewater Treatment Plant Equalization Basin Improvements Project.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 18th day of July.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

BY: David Myler
DAVID MYLER, MAYOR

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

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



6001 Interstate 20 West
Suite 219
Arlington, TX 76017
Office: 817-719-0372
Fax: 817-719-0372
www.meadhunt.com

July 8, 2022

Drew Satterwhite, P.E.
General Manager
Greater Texoma Utility Authority
5100 Airport Drive
Denison, Texas 75020

RE: Post Oak Wastewater Treatment Plant
Equalization Basin Improvements
Recommendation of Award

Dear Mr. Satterwhite,

Two bids were publicly opened and read aloud for the above referenced project on June 29, 2022 at 3:00 pm. We recommend award to the lowest responsive bidder, Red River Construction Co., in the amount of \$837,500.00.

We have worked with Red River Construction Co. on several successful projects, including a previous project at the Post Oak plant. We believe Red River Construction Co. is capable of performing well on this project.

A complete tabulation of bids received is attached.

Please contact me if you have any questions.

Sincerely,

Justin A. Angel, P.E.
TX PE 129386; TBPE Firm No. 8699

cc: Mr. Tom Pruitt, P.E., City of Sherman

Bid Tabulation									
Item No.	Description	Unit	Est. Quantity	Red River Construction Co.		Archer Western Construction LLC			
				Unit Price	Extended Amount	Unit Price	Extended Amount		
1	Provide project mobilization, bonds and insurance for the overall project.	LS	1	\$ 42,000.00	\$ 42,000.00	\$ 20,000.00	\$ 20,000.00		
2	Provide demobilization and cleanup for the overall project.	LS	1	\$ 13,000.00	\$ 13,000.00	\$ 2,000.00	\$ 2,000.00		
3	Furnish and install three (3) electrically actuated slide gates at Fine Screens structure including manufacturer's startup services and warranty, demolition and removal of existing gates, concrete repair, and grating repair	LS	1	\$148,000.00	\$ 148,000.00	\$ 296,000.00	\$ 296,000.00		
4	Furnish and Install one (1) electrical actuator at the existing slide gate at the Aeration Basin including all materials and labor for all required electrical, instrumentation and controls work included/required for fully operational equipment	LS	1	\$ 15,500.00	\$ 15,500.00	\$ 120,100.00	\$ 120,100.00		
5	Furnish and Install three (3) electric actuators for existing telescoping valves and three (3) electric acutators for existing slide gates at Clarifier Control Station including all materials and labor for all required electrical, instrumentation and controls work included/required for fully operational equipment	LS	1	\$117,000.00	\$ 117,000.00	\$ 303,000.00	\$ 303,000.00		
7	Demolition of concrete slabs at Equalization Basin including removal and disposal of debris	SQ YDS	750	\$ 55.00	\$ 41,250.00	\$ 35.00	\$ 26,250.00		
9	Replacement of concrete slabs at Equalization Basin	SQ YDS	750	\$ 165.00	\$ 123,750.00	\$ 109.00	\$ 81,750.00		
10	Preparation and application of Equalization Basin joint replacement sealant including existing joint removal and cleaning	LF	2000	\$ 10.00	\$ 20,000.00	\$ 24.00	\$ 48,000.00		
11	Remove accumulated debris in the Equalization Basin and place in City provided dumpsters. (City to provide dumpsters and disposal of material)	CU YDS	400	\$ 45.00	\$ 18,000.00	\$ 7.00	\$ 2,800.00		
12	Furnish and install all materials and labor for all other parts of the project, as shown on the plans and specified, including structural demolition and construction or any other work required for a complete and functional system but not specifically addressed in other bid items.	LS	1	\$299,000.00	\$ 299,000.00	\$ -	\$ -		
TOTAL AMOUNT BID (ITEMS 1-12)					\$ 837,500.00		\$ 899,900.00		

Bid Form

Justin A. Angel, TXPE 129386
Perkins Engineering Consultants, Inc.
A Mead Hunt Company
Firm No. 8699

00 42 23-07





City Council Regular Meeting

Agenda Item No. F.3.

Meeting Date: 1/6/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 7459**

Authorizing Execution of Amendment No. 4 to the Professional Services Agreement with Plummer Associates, Inc. for Engineering Services for Design of the Wastewater Treatment and Water Reuse Master Plan Project

Issue:

To consider an amendment to the contract for Professional Services with Plummer Associates, Inc. for engineering services for the design of the Wastewater Treatment and Water Reuse Master Plan

Background:

This Amendment No. 4 to the Plummer contract will provide funds necessary for services to add to existing engineering fees as required to extend construction management and construction inspection services for an additional 12-months for the construction of the new MBR Wastewater Treatment Plant currently under construction.

Origination:

Engineering Department

Financial Consideration:

The total funding needed for Amendment No. 4 is \$1,456,727.00 and is available in the 2024 GTUA OM Bonds.

Staff Recommendation:

It is recommended that the Council approves the additional design services in the aforementioned amount to Plummer Associates, Inc.

Alternatives:

As may be directed by the City Council

Attachments:

1. Resolution No. 7459
2. Amendment No 4 Unsigned
3. WWTP Map
4. Res No. 6902 Original Contract
5. Res No. 7065 Amendment 1
6. Res No. 7244 Amendment 2
7. Res No. 7306 Amendment 3

RESOLUTION NO. 7459

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 4 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR DESIGN OF THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute Amendment No. 4 to the Professional Services Agreement with Plummer Associates, Inc. for engineering services for the design of the Wastewater Treatment and Water Reuse Master Plan Project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of January 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

AMENDMENT NO. 4

TO THE PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES BETWEEN
THE CITY OF SHERMAN ("OWNER") AND PLUMMER ASSOCIATES, INC. ("CONSULTANT")
FOR THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN PROJECT

Dated June 6, 2022 ("Original Agreement")

This Amendment No. 4 serves to increase the original contract fees under the Original Agreement (\$2,073,011), Amendment No. 1 (\$11,369,931), Amendment No. 2 (\$ 8,474,247), and Amendment No. 3 (\$550,000) based on the following **changes** to the project scope as detailed in the attached Exhibit A4: "Amendment 4 - Scope of Services." The new total professional services shall now be \$ 23,923,916.

The contract amount under the Original Agreement, Amendment No. 1, Amendment No. 2, and Amendment No. 3 shall be increased by a fee not to exceed \$ 1,456,727 as presented in the attached Exhibit B4: "Amendment No. 4 – Project Design Budget Summary."

I. Special Services (Time & Materials)

	Scope Item – South WWTP MBR Design & Construction Services	Fee
A	Construction Management and Resident Project Representative Services (through second 12 months of construction)	\$ 1, 846,727
B	Master Plan Deduct	(\$ 390,000)
Total Special Services Amendment No. 4:		\$ 1, 456,727
TOTAL AMENDMENT NO. 4 NOT TO EXCEED		\$ 1, 456,727

This Amendment No. 4 shall be effective on the date it is executed by the last party to execute it. The OWNER and CONSULTANT hereby agree to amend the Proposed Fees section of this Original Agreement to read as follows:

Proposed Fees

Consultant shall be compensated on the following lump sum basis. Special and Additional Services shall be performed based on the rate schedule included in the Original Agreement.

Basic Services	Fee
Wastewater Treatment and Water Reuse Master Plan	\$ 1,488,011
Amendment 1 - Post Oak WWTP Improvements	\$ 7,156,818
Amendment 2 - South WWTP–MBR	\$ 5,225,340
Amendment 3 – Configuration Services	\$ 550,000
Amendment 4 – South WWTP–MBR Construction Svcs	\$ 0
Total Basic Services:	\$ 14,420,169
Special Services	Fee
Wastewater Treatment and Water Reuse Master Plan	\$ 585,000
Master Plan Deduct	(\$ 390,000)
Amendment 1 – Post Oak WWTP Improvements	\$ 4,213,113
Amendment 2 – South WWTP–MBR	\$ 3,248,907
Amendment 3 – Configuration Services	\$ 0
Amendment 4 – South WWTP–MBR Construction Svcs	\$ 1,846,727
Total Special Services:	\$ 9,503,747
TOTAL NOT TO EXCEED (LUMP SUM)	\$ 23,923,916

The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and acknowledge and agree that the Original Agreement remains in full force and effect, except as amended in this Amendment No. 1 Amendment No. 2, Amendment No. 3, and Amendment No. 4. To the extent that any provision contained herein conflicts with the Original Agreement, the provision contained herein shall supersede such conflicting provision contained in the Original Agreement, Amendment No. 1, Amendment No. 2, and Amendment No. 3. This Amendment No. 4, the Original Agreement, Amendment No. 1, Amendment No. 2, and Amendment No. 3 contain the entire agreement of the parties with respect to the matters contained herein. This Amendment No. 4 may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

EXECUTED in three (3) counterparts (each of which is an original) on behalf of CONSULTANT shown below, and on behalf of the OWNER by its City Manager (thereunto duly authorized) this _____ day of _____, 2024.

OWNER:
CITY OF SHERMAN, TEXAS

CONSULTANT:
PLUMMER ASSOCIATES, INC

Robby Hefton, City Manager

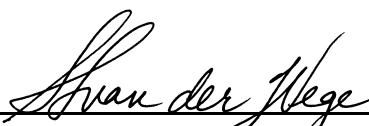


Alan E. Davis, P.E., Principal

ATTEST:

ATTEST:

Linda Ashby
City Clerk



Sherri van der Wege, P.E., Sr. Project Manager

APPROVAL RECOMMENDED:

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

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

BY: _____

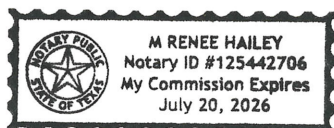
NAME: _____
CITY ATTORNEY

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF Tarrant §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 11th day of
December, 2024.



M R Hailey
Notary Public In and For Tarrant County, Texas

My Commission Expires:

July 20, 2026

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

PROJECT DESCRIPTION

The City has selected Plummer Associates, Inc. (Plummer) to provide engineering consulting services for planning, design and construction administration associated with the wastewater treatment and water reuse facilities needed to support continued growth of the industrial and domestic wastewater system in the City. Construction of Phase 1 of this effort is ongoing . It is anticipated that the increases in industrial wastewater flows and loads, in conjunction with projected increases in domestic wastewater flows, may exceed the capacity of the Post Oak WWTP as early as 2025.

Amendment No. 4 includes Construction Management and Resident Project Representation for an additional twelve (12) months. The fee shown for Amendment No. 4 is in addition to the approved fee for Amendment No. 1, Amendment No. 2, and Amendment No. 3.

I. ASSUMPTIONS

- A.** Construction activities are anticipated to continue through November 2025.
- B.** Construction personnel will be scaled back once startup and commissioning of the South WWTP – MBR begins.
- C.** Master Plan Deduct line item includes Items B (\$340,000) and E (\$50,000) as noted in the Special Services of the Master Plan Contract Documents.

II. TASK SUMMARY, SPECIAL SERVICES

A. TASK I: CONSTRUCTION MANAGEMENT AND RESIDENT PROJECT REPRESENTATIVE SERVICES

- a. General services:
 - i. Represent the City’s interests in administering a CMAR contract with both overall construction oversight and daily on-site representation for the CMAR contractor’s construction activity. The requested services include documentation and reporting to the City and Program Manager the issues and status relating to the CMAR contractor’s work.
 - ii. Provide the staff necessary to perform the construction management and on-site representation as outlined below and for the Project. Construction Manager and subconsultants will provide these services for an anticipated period of 24 months. Services assumed to begin December 2023 and end in December 2025. Initial planning level assumption is for the following contract positions:

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

- a. Senior Construction Manager (CM) – Overall oversight and representative of the Construction Management firm in contractual and performance issues. Responsible in charge of day-to-day inspection, schedule review, and coordinating quality assurance testing of contractor, and construction activity. Detailed task coordination with CMAR contractor, the City's project manager, the Program Manager (PM), construction observation staff, and the Construction Materials Testing (CMT) firm.
- b. Assistant CM and Document Support – Work directly under the CM and assist with CM duties as required on the project and administer movement and proper filing of project documents handled by Construction Manager.
- c. On-site representatives – Work directly under the CM, and in coordination with City's Project Manager and Program Manager, observe and document construction performance in accordance with the Contract Documents. Also provide comments and advice to the City and Program Manager on the CMAR contractor's performance with regard to industry standard practices. This scope includes up to 6 full-time inspectors across the following disciplines: civil, mechanical, electrical, and instrumentation and controls.
- d. Construction Materials Testing (CMT) – The CMT will not be subcontracted to the CM, but the CM will coordinate with the CMT, city Project Manager, Program Manager and CMAR to provide quality assurance testing in accordance with the Contract Documents.
- iii. Manage the Construction Management Team.
- iv. Maintain a Construction Management Plan.
- v. Store all project related records in the CMAR Project Management Information System (PMIS), for required document retention purposes.
- vi. Quality Assurance and Quality Control:
 - a. Disseminate pertinent project information internally and externally, implement Quality Assurance (QA) and Quality Control (QC) measures, and submit deliverables as required per the agreed-upon project schedule.
- vii. Communication:
 - a. Continue utilizing developed communication procedures and protocol with the City, Contractor, Inspectors, Engineer of Record (EOR), and CMT.
 - b. Conduct monthly construction progress meetings with City, CM, Contractor to exchange information regarding progress of construction, safety or quality concerns, status of submittals, status of modifications, and to address any project related issues. Prepare agenda and minutes related to these meetings. One of the weekly construction progress

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

meetings will serve as the monthly project meetings with City, EOR, Contractors, and CM Team for the benefit of the City Staff to provide overview of progress of construction and to discuss any major project issues. Intent of this meeting is for additional City and other staff to attend as desired without having to be involved in the bi-weekly meetings where specific project details are discussed.

- c. Develop and distribute meeting agendas, workshop planning information and handouts, and other applicable information pertaining to each specific meeting or workshop.
- d. Record meeting minutes, send a draft to meeting attendees for review, and distribute final meeting minutes after incorporating changes and comments.
- e. Provide weekly emails to City and EOR summarizing the work completed for the week including photos as appropriate and outlining work to be completed the following week.

viii. Cost Management:

- a. Review proposed schedule of values and payment requests prepared by CMAR Contractor. CM will review pay requests monthly and recommend payments at the intervals required by the Program Manager.
- b. Coordinate with City, Program Manager, and CMAR Contractor to establish a basis and procedure for review of monthly quantities of work in place and payment requests.

ix. Schedule Management:

- a. Review approved baseline schedules, "look-ahead" schedules, and monthly construction progress schedules prepared by the CMAR Contractor.
- b. Monitor progress of actual work completed relative to planned progress and address any identified schedule slippage or other anomalies with Contractor. Collaborate with the Contractor to develop a recovery schedule if tasks on the critical path continue to slip.
- c. Review each monthly schedule submittal and provide comments related to the requirements of the Contract Documents. Analyze each schedule to identify changes over the previous month's schedule, including tasks that are behind schedule, tasks that have not yet started, changes in float, critical path, and task relationships.
- d. Develop a monthly Schedule Review Memo that identifies any significant changes to the schedule (critical path, float, reporting relationships, etc.), tasks that are behind schedule, and tasks that are at risk of falling behind

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

- schedule. The memo will be transmitted to the Contractor followed by a discussion with the Contractor during the monthly coordination meetings.
- e. The memo will be transmitted electronically to the City and saved to the program PMIS site.
- x. Project Status Reports and Invoicing:
- a. Provide written project status reports to the City once per month throughout the duration of the project. Project status reports will include, at a minimum, a summary description of activities completed, description of activities planned for the next 30 days, financial status of the project, status of schedule for the project, and identification of any technical or other issues which may have an impact on the overall project budget and/or schedule. Project status reports will be provided to the City with each invoice.
 - b. Submit invoices monthly along with the project status report referenced above.
- xi. Issues Management:
- a. Provide initial interpretation of the drawings and specifications and coordinate with EOR to develop official interpretation for City and CMAR Contractor. Track and coordinate the resolution of all project and program related issues. An Issues Log will be saved to the Program PMIS site.
- xii. Change Management:
- a. Establish procedures for administering constructive changes to the construction contracts, which will be documented in the Construction Management Plan.
 - b. Prepare documentation for contract modifications required to implement modifications in the design of the project, including the summary memo. Coordinate with the EOR for technical review and approval of any design modifications, and all design modifications will have the EOR seal affixed.
 - c. Process contract modifications and negotiate with the Contractor in conjunction with and on behalf of the City to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the City.
 - d. Receive and evaluate notices of Contractor claims and make recommendations to the City on the merit and value of the claim on the basis of information submitted by the Contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor in conjunction with and on behalf of the City.
- xiii. Project Completion:

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

- a. When Contractor requests that substantial completion be granted for the Project (or applicable portions thereof), the Construction Manager will conduct, in company with City's representative, a review of the Project for conformance with the design concept of the Project and general compliance with the construction contract documents. Coordinate with EOR as appropriate regarding any reviews of the work that are deemed necessary. Support the EOR in the development of a list of deficiencies to be corrected by the Contractor before recommending Substantial Completion be granted and/or any partial release or reduction of retainage is made.
- b. Support the EOR in conducting a final review of the Project for conformance with the design concept of the Projects and general compliance with the construction contract documents.
- c. Support the EOR in obtaining legal releases, permits, warranties, spare parts, O&M manuals, as-built drawings, and keys from the Contractor. Review closeout submittals and other documents and make recommendation for final payment to Contractor when appropriate.

xiv. Record Documents

- a. Receive and review record drawings from Contractor. Transmit drawings and other documents as needed to EOR for preparation of "Record Drawings," indicating locations of project elements and final built conditions of project components. Drawings prepared by incorporating notes, Contractor field notes and City field notes taken at the project during the construction process.

b. Construction Management Roles

i. Construction Manager / Assistant Construction Manager:

- a. Construction Managers will manage and administer the day-to-day requirements of the Projects and coordinate regularly with the City's Program Manager.
- b. CM will serve as the liaison between the City, the CMAR/Contractor, and the EOR. The CM provide leadership to the assigned Inspectors in the performance of their inspection duties.
- c. Primary responsibilities of CM include the following:
 - 1) Serve as the primary point of contact, with primary responsibility for construction contract administration and quality assurance.
 - 2) Provide direction and manage the efforts of Inspectors. Manage Inspectors as a resource across construction tasks.

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

- 3) Manage the quality of services provided by Inspectors to determine that their duties are performed in a timely manner.
- 4) Work with City staff when needed to coordinate construction activities that may impact the City's ongoing operations. Coordinate upcoming shut-downs at the plant site and coordinate with the City's Project Manager to prepare a Shut-Down Request Form following the City's policies and procedures.
- 5) Attend progress meetings and report on project progress.
- 6) Review daily construction reports prepared by the Inspectors and discuss any issues noted with the Inspector and other parties as required.
- 7) Monitor overall construction of the project and determine that construction is in conformance with Contract Documents. Recognize when an issue might impact or improve scheduling or construction operation on another known efforts and bring this to the attention of the City's Project Manager.
- 8) Coordinate with Contractor to resolve any issues or disputes related to construction. Support the City's Project Manager in the resolution of any disputes or claims that cannot be resolved at the field level.
- 9) Support administration and negotiations of claims with Contractor with support from the EOR.
- 10) Recognize risk elements of the risk management plan and initiate countermeasures as directed.
- 11) Provide progress reports to the City Project Manager for updating and presentation purposes to City upper management and the Board.
- 12) Manage the efforts of the construction materials testing laboratories and technicians.
- 13) Coordinate with document management staff to verify that all documentation is filed properly in both digital and hard copy files as required.
- 14) Verify that the inspectors have reviewed the quantities of work in place, review the payment requests and supporting documentation, and recommend the amount the CMAR/Contractor be paid on monthly and final payment requests.
- 15) Administer Construction Contracts: Prepare project documentation in accordance with the contract documents.

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

- 16) Manage the receipt, logging, control, tracking, and timely processing of all Project documents using the CMAR's Project Management Information System (PMIS).
- 17) Schedule and conduct construction progress meetings with CMAR/Contractor, City, EOR, and other staff.
- 18) Attend other on-site project related construction meetings, as needed.
- 19) Review Shop Drawings received from the Contractor for conformance with the Contract Documents' submittal requirements and administrative completeness. Distribute shop drawings to the appropriate EOR staff and monitor the responsiveness of the EOR during the review process.
- 20) Work directly with the EOR to see that documentation and submittals provided for review are returned with adequate and timely written review comments. Determine that design issues related to requests for information on construction documents, Shop Drawing reviews, and proposed contract modifications are adequately addressed.
- 21) Consolidate written comments on Shop Drawings and other submittals by the EOR and return to the Contractor.
- 22) Review Contractor Requests for Information. Distribute requests to inspectors, City PM, other appropriate staff, and EOR when applicable and coordinate timely response. Review answers and prepare formal response to Contractor pursuant to contract documents.
- 23) Prepare notices of defective work. Coordinate the resolution of non-compliant work with the Contractor, and the City. Document and follow up on non-conforming work to determine that acceptable correction of defects is accomplished.
- 24) Initiate and review field orders. Record the changes in the record contract documents.
- 25) Coordinate evaluation of product substitution requests with City staff, and the EOR.
- 26) Administer and manage resolution of day-to-day construction issues. Coordinate with the CITY PM, EOR, and Contractor on technical issues and concerns working to resolve disputes at the Project level and keep Construction Manager informed of issues.
- 27) Review schedules presented in accordance with the Contract Documents. Coordinate with a P6 schedule analyst monthly to review and report on the contractor's P6 schedule.

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

- 28) Review and coordinate approval of a Schedule of Values. Conduct monthly schedule and progress payment meetings with the Contractor. Work with the Contractor to have pay requests ready for City processing in accordance with the Contract Documents. Determine that documentation required for measurement for payment of work is in place and that the materials on hand are accurate.
- 29) Implement the Change Management process in accordance with the Contract Documents. Prepare Requests for a Change Proposals for City initiated changes to the work. Respond to Contractor's Change Proposals. Prepare written justification statements and include cost estimates for each Change Proposal. Include a description of the background explaining the reason for the change, resolution alternatives, and resolution recommendation for action by the City. Prepare and submit Change Request Form and the justification memo with all of the appropriate back-up information in accordance with the Contract Documents and City Policy. Change Orders and Contract Amendments require approval from the City.
- 30) Maintain a working set of record documents. Determine that measurements required for record documents are taken before work is covered.
- 31) Take photographs to document differing site conditions, change order and claim items, and any special or unique conditions as they arise.
- 32) Manage Project completion activities as required by the Contract Documents.
- 33) Manage the process of closing out the construction contract.
- 34) Recommend acceptance of the work in writing in preparation of issuance of the Certificate of Substantial Completion, recommendation to the Board, Notice of Completion, and the City's Internal Notice of Completion.
- 35) Prepare final Change Orders as required. Classify and summarize the change orders and include in the final construction summary report.
- 36) Prepare an Internal Notice of Completion addressed to the City's Operations and Maintenance Department.
- 37) Coordinate with the City's Project Manager to assist with the development of a list of deficiencies to be corrected by the Contractor before recommendation of final payment.

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

- 38) Coordinate with the Contractor to provide O&M Manuals to the City and training is developed and delivered to City Staff in a timely manner.
- ii. On-Site Representatives:
- a. Provide Civil, Structural, Electrical, and Instrumentation & Controls inspection services.
 - b. Primary responsibilities of Inspectors include the following:
 - 1) Serve as point of contact for the CM, with primary responsibility for construction quality assurance.
 - 2) Observe construction work daily to determine that construction is in conformance with Construction Contract Documents. In this effort the On-Site Representatives will endeavor to protect the City against defects and deficiencies in the work of contractor.
 - 3) Prepare Daily Construction Reports (DCRs) documenting daily construction activities in PMIS, number of construction staff on site, equipment staged and/or operating on site, visitors to the site, discussions of any field issues with any parties, and any other information pertinent to or potentially impacting the Project.
 - 4) Assist the CM and the CITY staff when needed to coordinate construction activities that may impact the CITY's ongoing operations.
 - 5) Coordinate the efforts of CMT laboratories and technicians.
 - 6) Verify quantities of work in place and assist CM in the review of the payment requests and supporting documentation.
 - 7) Attend periodic project coordination meetings (semi-monthly or monthly) when requested by the CM to provide updates and inputs on construction progress and issues as appropriate.
 - 8) Attend other project related construction meetings as needed.
 - 9) Assist CM in preparation of notices of defective work. Assist in coordinating the resolution of non-compliant work with the contractor. Document and follow up on non-conforming work to determine that acceptable correction of defects is accomplished.
 - 10) Maintain a working set of record documents. Determine that measurements required for record documents are taken before work is covered.
 - 11) Take photographs to document differing site conditions, change order and claim items, and any special or unique conditions as they arise.
- iii. Administrative Assistant (AA):

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

- a. The Administrative Assistant will provide administrative support for the Construction Manager and On-site Project Representatives.
- b. Edits, formats, and finalizes project-related documents, including outsourcing where necessary for binding and/or copying services.
- c. Assist CM with on-boarding new on-site representatives.
- d. Helps maintain inventory of office supplies.
- e. Primary responsibilities of AA include the following:
 - 1) Assist CM with scheduling and coordinating meetings and video calls. Attend progress meetings and other on-site meetings in support of the CM to assist with the development of agendas and the preparation and distribution of meeting notes.
 - 2) Assist in the preparation of daily reports. Review reports and correct for formatting and work with RPRs and CMs to provide missing information as necessary.
 - 3) Assist CM with development of progress reports.
 - 4) Assist CM with contacting and coordinating CMT services.
 - 5) Assist document management staff to verify that all documentation is filed properly in both digital and hard copy files as required at the project level and the program level (SharePoint).
 - 6) Assist CM with the receipt, logging, control, tracking, and timely processing of all Project documents using the CMAR's PMIS at the project level and the Program Manager at the program level (SharePoint).
 - 7) Assist CM with collecting submittal review comments from reviewers.
 - 8) Assist CM in preparation of notices of defective work.
- c. Limitations of Authority of Construction Management:
 - i. The CM will not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by City and EOR via Change Order, Field Order, or other written authorization for or-equal items.
 - ii. The CM will not exceed the authority as set forth in Agreement or the Contract Documents.
 - iii. The CM will not undertake any of the responsibilities of CMAR Contractor, Subcontractor, Suppliers, or CMAR Contractor's superintendent.
 - iv. On site representative services do not relieve the CMAR Contractor of its contractual responsibility for construction quality.
 - v. The CM will not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences, or procedures of

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

construction unless such advice or directions are specifically required by the Contract Documents.

- vi. The CM will not advise on; issue directions regarding or assume control over safety precautions and programs in connection with the Work or any activities or operations of City or Contractor.
- d. Schedule:
 - i. Refer to the enclosed schedule for the assumed "Construction Management On-Site Personnel". The following list is a summary of the enclosed schedule.

Position	Budgeted Hours this Amendment*
Construction Manager/Lead Inspector	2220
Assistant CM	2400
On-Site Representative 1	2050
On-Site Representative 2	1850
On-Site Representative 3	1300
On-Site Representative 4 (EI&C)	1300
On-Site Engineer – Part Time	480
On-Site Administrative Assistant	1040

*Assumes a work schedule of 5 days per week, 10 hours per day, and 12 months of the construction period and does not include additional seasonal shift work during the summer.

CM will include a summary of hours worked in each monthly report. The CM will notify the City and Program Manager if longer or additional shifts are required causing the actual work hours to exceed the total estimated hours in this proposal. CM will prepare an amendment to the contract for compensation for additional hours.

- e. Deliverables:
 - i. Construction Management Plan (saved electronically and/or the Program PMIS site).
 - ii. Documentation and Summary Memos for Allowance, Contingency, and Change Order Requests.
 - iii. Monthly Schedule Review Memos (submitted electrically by email and saved to PMIS and/or the Program PMIS site).
 - iv. Monthly invoices and Project Status Reports (submitted electrically by email and saved to PMIS and/or the Program PMIS site).
 - v. Meeting Agendas and Meeting Minutes.
 - vi. Daily Construction Reports, including photos, will be loaded into PMIS.

EXHIBIT A4
AMENDMENT NO. 4 - SCOPE OF SERVICES

- f. Recurring Meetings:
 - i. Bi-weekly construction progress meetings with City, CM, Contractor to discuss construction specific topics.
 - ii. Monthly project meetings with City, Contractor, EOR, and CM Team for the benefit of the City Staff to provide overview of progress of construction and to discuss any major project issues.

EXHIBIT B4
AMENDMENT NO. 4 - PROJECT DESIGN BUDGET SUMMARY

I. Special Services (Time & Materials)

Scope Item – South WWTP MBR		Fee
A	Construction Management and Resident Project Representative Services (through second 12 months of construction)	\$ 1,846,727
B	Master Plan Deduct	(\$ 390,000)
Total Special Services Amendment No. 4:		\$ 1, 456,727
TOTAL AMENDMENT NO. 4 NOT TO EXCEED		\$ 1, 456,727



RESOLUTION NO. 6902

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR DESIGN OF THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Plummer Associates, Inc. for engineering services for the design of the Wastewater Treatment and Water Reuse Master Plan Project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

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

CITY OF SHERMAN, TEXAS

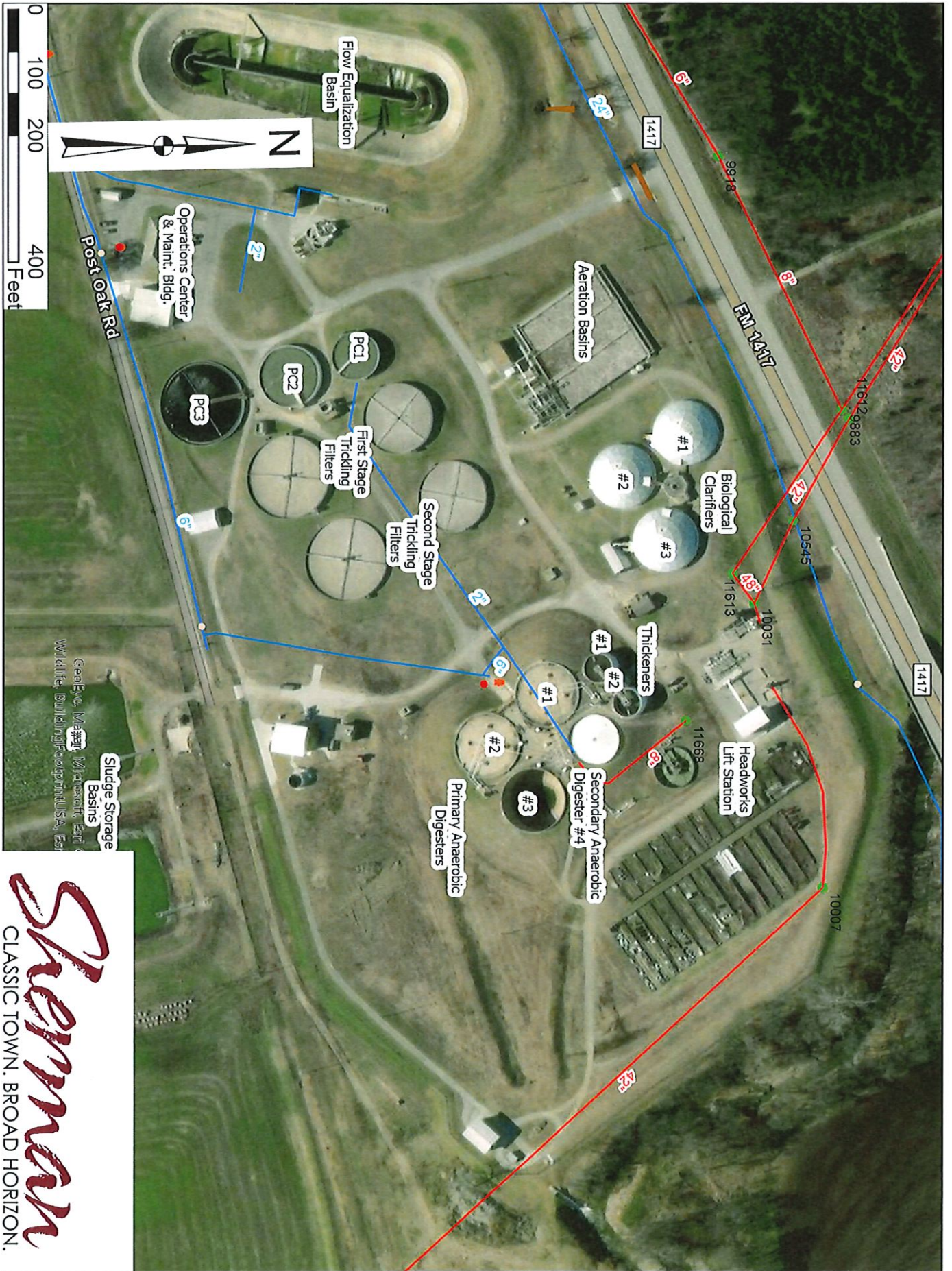
ATTEST:

BY: 
LINDA ASHBY, CITY CLERK

BY: 
DAVID PLYLER, MAYOR

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

BY: 
RYAN D. PITTMAN, CITY ATTORNEY



Sherman
CLASSIC TOWN. BROAD HORIZON.

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
PLUMMER ASSOCIATES, INC.
FOR
PROFESSIONAL SERVICES

Made as of the 6th day of June, 2022:

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

and Consultant: **Plummer Associates, Inc.**
1320 South University Dr. Suite 300
Fort Worth, TX 76182
Telephone: 817.806.1700

for the following Project: **Wastewater Treatment and Water Reuse Master Plan**

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

WHEREAS, City desires to engage Consultant to provide professional civil engineering services for the Wastewater Treatment and Water Reuse Master Plan Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a lump sum basis in an amount not to exceed one million four hundred eighty-eight thousand eleven dollars (**\$1,488,011.00**); (b) for Special Services, on a cost-plus basis in an amount not to exceed five hundred eighty-five thousand dollars (**\$585,000.00**) (collectively, "Consultant's Fee"); and (c) paid in accordance with this Article 3 and the Project Design Budget Summary as set forth in Exhibit B.
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in Exhibit C, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a

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

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

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

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

- 33.1 Additional meetings, hearings, work-sessions or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit A.
- 33.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit A.
- 33.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit A.
- 33.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit A.
- 33.5 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on direct billable labor rates and expenses.
- 33.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.

Hourly Billable Rates by Position

Staff Description	Range of Billing Rates
Admin Staff	\$ 85.00 - \$ 105.00
Senior Admin Staff	\$ 90.00 - \$ 130.00
Designer/Technician	\$ 75.00 - \$ 115.00
Designer/Technician III	\$ 100.00 - \$ 130.00
Senior Designer/Technician	\$ 125.00 - \$ 160.00
Engineer/Scientist Intern	\$ 50.00 - \$ 95.00
Engineer-in-Training/Scientist-in-Training	\$ 95.00 - \$ 130.00
Engineer-in-Training/Scientist-in-Training III	\$ 115.00 - \$ 145.00
Project Engineer/Scientist	\$ 120.00 - \$ 155.00
Senior Project Engineer/Scientist	\$ 135.00 - \$ 195.00
Project Manager	\$ 180.00 - \$ 250.00
Senior Project Manager	\$ 225.00 - \$ 295.00
Principal I	\$ 250.00 - \$ 330.00
Principal II	\$ 290.00 - \$ 400.00
Electrical Engineer in Training I	\$ 85.00 - \$ 110.00
Electrical Engineer in Training II	\$ 100.00 - \$ 115.00
Electrical Engineer in Training III	\$ 120.00 - \$ 150.00
Electrical Specialist	\$ 130.00 - \$ 165.00
Programmer	\$ 135.00 - \$ 170.00
Programmer II	\$ 140.00 - \$ 175.00
Senior Electrical Engineer	\$ 260.00 - \$ 295.00

- 3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task listed in **Exhibit B**. On all submitted invoices for Services rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.

- 3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5 of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.
- 3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter “D” of the TEX. GOV’T CODE. City shall not be required to pay any invoice submitted by Consultant if Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project (“Scope of the Project”) or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant’s compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or

unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

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

ARTICLE 5
CONSULTANT'S INSURANCE REQUIREMENTS

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

City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

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

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

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

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

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

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

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

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

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

ARTICLE 10 INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY") FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY

DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY

GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

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

ARTICLE 11 NOTICES

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:

Alan E. Davis
Principal
Plummer Associates, Inc
1320 South University Dr.
Fort Worth, TX 76182
Telephone: 817.806.1700
Email: adavis@plummer.com

ARTICLE 12 MISCELLANEOUS

- 12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled "A" through "F," all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof

and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

- 12.1.1 Exhibit A, Scope of Services.
- 12.1.2 Exhibit B, Project Engineering Budget Summary.
- 12.1.3 Exhibit C, Guidelines for Computer Aided Design and Drafting (CADD).
- 12.1.4 Exhibit D, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.
- 12.1.5 Exhibit E, Contractor Insurance Guidelines.
- 12.1.6 Exhibit F, Conflict of Interest Questionnaire, Form CIQ.

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

- 122 Assignment and Subletting – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 123 Attorney's Fees – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 124 Successors and Assigns – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 125 Savings/Severability – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as

if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.

- 12.6 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 12.7 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.8 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.9 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.10 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.11 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.
- 12.13 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are

incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.

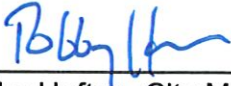
- 12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.16 **No Third Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.
- 12.20 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.

- 12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's 2021-2022 fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2021-2022 fiscal year unless and until such funds are budgeted.
- 12.23 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.
- 12.24 **Reference to City** – When referring to "City," this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

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

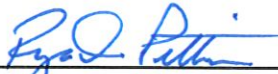
CITY:
City of Sherman, Texas,
a Texas home-rule municipality

CONSULTANT:
Plummer Associates, Inc.
a Texas corporation

By: 
Robby Hefton, City Manager

By: 
Alan Davis, Principal

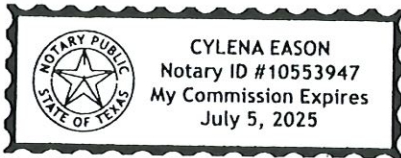
APPROVED AS TO FORM:


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

STATE OF TEXAS §
 §
COUNTY OF Tarrant §

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

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



Cylena Eason
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: July 5, 2025

EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

With the recent announcement of a new \$30 Billion Texas Instruments (TI) semiconductor chip manufacturing campus to be located in the City of Sherman (City), the City is developing a comprehensive infrastructure plan to serve the facility and the associated growth. The City has selected Plummer Associates, Inc. (Plummer) to provide engineering consulting services for planning, design and construction administration associated with the wastewater treatment and water reuse facilities needed to support the TI facility and continued growth. It is anticipated that these services will be performed in phases. The first phase will include the initial data/information gathering and master planning that will provide a road map for subsequent design and construction phases. The remainder of this document defines the scope of work for the Phase 1 master planning services.

II. GENERAL REQUIREMENTS

- A. Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.
- B. Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which has facilities within or adjacent to the Project.
- C. Each time the Consultant submits plans and/or specifications to City, two (2) copies (as well as PDF versions) of each shall be submitted, unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.
- D. The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.
- E. Communications and Reporting:
 - i Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.

EXHIBIT A SCOPE OF SERVICES

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

III. TASK SUMMARY, BASIC SERVICES

A. Task A: Information Gathering and Review

- a. Kickoff Meeting: Prepare for and facilitate an in-person kickoff meeting in Sherman to review the scope and schedule; identify critical success factors and potential risks; and discuss data/information that will be used in the planning process. Data currently available to Plummer will be identified.
- b. Information Request: Prepare and submit to City a request for information. The City will provide available requested information, and any other related information City is aware of that may benefit the project team. Information to be provided may include, but not be limited to: customer water usage data; historical flow and water quality data, previous design and master plan reports; development and planning information, population and flow projection information, water supply cost and rate information, GIS data layers, existing TPDES permits, and water rights information. A separate information request will also be provided summarizing desired information and data to be obtained from TI. Data to be requested will include information from existing TI facilities with similarities to the one to be constructed in Sherman. In addition, information on the quality of the existing TI discharges and timing of the planned phase-out of the existing TI facility will be requested. Information related to individual process streams and the opportunities for reuse at the TI facility will be requested, such as water quality requirements, potential uses, and reuse water quantity. It is assumed that all data and information will be provided in electronic format. If data from existing TI facilities are not available, special sampling may be required and is included as a special service.

EXHIBIT A SCOPE OF SERVICES

- c. Tour of Existing TI Facilities: Plummer (up to 3 team members) will accompany City of Sherman staff on up to two site visits to facilities that are similar to the facility to be constructed in Sherman. The budget allocated to this task only covers time and travel expenses for Plummer team staff. City staff expenses are not included. Plummer will document information obtained from the site visits. Plummer will contact the municipalities where these facilities are located to schedule a meeting with wastewater and pretreatment staff before each site visit. Plummer will request a copy of the technically based local limits from these municipalities.
- d. Information Review: Review and summarize the information provided by Sherman and TI.
- e. Information Gathering/Review Meetings:
 - i. Coordinate with the City to meet with representatives of TI to obtain additional information and insight into plans for design and operation of the TI facility.
 - ii. Meet with the City to discuss questions related to information provided and any outstanding information needed for completion of the Master Plan.

Deliverables: Summaries to be included in final report, as appropriate; meeting notes.

B. Capacity and Treatability Study

- a. Task B: Wastewater Flow Projections and Quality Characteristics
 - i. Evaluate/Confirm Wastewater Flow Projections: Evaluate flow projections provided in Task A. Modify and augment as appropriate based on information obtained from discussions with TI and any other updated information provided by the City. Flows to be developed include annual average daily; maximum month; peak two-hour; average daily minimum; and extended wet weather influent. Variability in TI flows will be evaluated and documented, including the timing of phasing out the existing TI facility. If required by individual treatment processes, maximum and minimum weekly flows shall also be included. Flow peaking factors (peak two-hour, maximum month, etc.) will be established using available data. The evaluation period for the flow projections will be consistent with the period used in the City's most recent Wastewater Master Plan.
 - ii. Wastewater Characteristics (Quality and Quantity):
 - a. Review five years of historical quality data for biochemical oxygen demand (BOD), ammonia (NH₃), total suspended solids (TSS) and

EXHIBIT A SCOPE OF SERVICES

- potential of hydrogen (pH) from the Post Oak WWTP. This will include all recorded data and sampling locations at the plant.
- b. Predict wastewater characteristics received at Post Oak WWTP after the water purification facility ceases discharging to the collection system.
 - c. Identify potential pollutants of concern that are typically regulated/monitored in facilities with processes similar to the proposed TI facility. Obtain historical water quality and flow data from similar operational TI facilities and summarize water quality characteristics.
 - d. Evaluate water quality from the existing TI facility in Sherman and based on information provided by TI, evaluate the impact of phasing out this facility on the water quality characteristics.
 - e. Based on the evaluation above and other information provided by TI, estimate projected water quality characteristics and quantity for the pollutants of concern for each internal waste stream and the final wastewater discharges from the new TI facility; identify water quality characteristics associated with the new TI discharge that may impact treatment processes and discharge permitting (e.g. biocides, nitrification inhibitors, dissolved solids, potentially hazardous wastes, etc.).
 - f. Identify types of new industries that may come to the City to support TI. Determine if any of the new industries could have significant flows or discharge pollutants of concern at levels that could be problematic.
 - g. Identify direct and indirect industrial users that are located in the vicinity of the new TI facility. Review five years of historical discharge data obtained through the City's pretreatment program or available through EPA Enforcement and Compliance History Online for the industries. Obtain information related to changes that have occurred in the past five years or changes that are proposed for the industrial user's facilities that have or may cause an impact to the characteristics of the discharges to the City's treatment works. The impacts of COVID on the industrial user discharges will be considered in the review.
 - h. Review wastewater quality data with respect to the potable water source (groundwater or surface water). The typical wastewater characteristics for domestic and commercial sources that receive potable water from each source will be reviewed. Any other available relevant water quality data for the Post Oak WWTP will be reviewed.

EXHIBIT A SCOPE OF SERVICES

- i. Define concentrations and loads to be used in projecting future wastewater quality. Loads will include annual average daily; maximum month average daily; peak two-hour; and average daily minimum. If required by the individual treatment processes, maximum and minimum weekly loads shall also be included.
- j. Separately characterize wastewater quality for the following scenarios:
 - Post Oak WWTP commingled with wastewater from the TI facility
 - Post Oak WWTP without wastewater from the TI facility
 - TI facility + nearby industrial dischargers (for potential treatment at a separate industrial treatment facility)
 - Post Oak WWTP without TI facility and without nearby industrial dischargers
- iii. Task B Meetings: The following meetings are anticipated to support Task B activities:
 - a. Prepare for and facilitate one in-person meeting with the City in Sherman to review the results of the Task B evaluation. A PowerPoint summary of results will be provided at the meeting and will serve as the intermediate documentation of the Task B results.
 - b. Prepare for and facilitate up to 3 virtual meetings (with the City and/or TI) to review task progress or obtain additional input/information.

Deliverable: PowerPoint slides summarizing flow projections and water quality characterization; meeting notes.

- b. Task C: Treatment Alternatives Screening Evaluation (Note: This task will be coordinated with and conducted concurrently with Tasks D and E.)
 - i. Treatment Alternative Development: Develop conceptual planning-level treatment scenarios for up to 5 treatment alternatives. Perform a process evaluation and assessment for each alternative. Prepare treatment process diagrams and descriptions for each alternative. Alternatives to be included will be finalized following completion of Task B but may include:
 - a. All flow is commingled and treated at the existing Post Oak WWTP site for the entire planning period.
 - b. Flow is initially commingled and treated at the Post Oak WWTP until capacity of the existing WWTP is reached; A separate industrial

EXHIBIT A SCOPE OF SERVICES

treatment train will be constructed at the Post Oak WWTP site to treat flows from TI (and potentially other nearby industries).

- c. Flow is initially commingled and treated at the Post Oak WWTP until capacity of the existing WWTP is reached; A separate industrial treatment plant will be constructed at a new site located near TI to treat flows from TI (and potentially other nearby industries).
 - d. TI flows are not commingled at the Post Oak WWTP. A separate industrial treatment plant will be constructed at a new site located near TI to treat flows from TI (and potentially other nearby industries) and will be operational when the TI facility comes online.
- ii. Permitting: Identify the type(s) of permits required and the regulations that apply to the discharge/waste streams generated by each alternative. The difficulty of and anticipated schedule for obtaining each authorization will be identified.
 - iii. Discharge Locations and Permit Limits: Perform a desktop evaluation of potential discharge location(s) for each alternative. Using default QUAL-TX model assumptions (for dissolved oxygen), TCEQ screening procedures, and applicable federal industrial regulations, the potential Texas Pollutant Discharge Elimination System (TPDES) permit limits for each alternative will be predicted.
 - iv. Residuals Disposal: If reverse osmosis treatment is required to manage dissolved solids, perform a desktop evaluation of residual disposal options and identification of potential waste stream segregation needs. Options to be considered will include surface water discharge, deep well injection, and up to two other options that may include high recovery options to minimize the amount of liquid waste or emerging technologies. Coordinate with the City's consultant evaluating water treatment plant improvements to determine whether a combined residuals disposal option for water and wastewater treatment is viable.
 - v. Conveyance Evaluation: Determine conveyance improvements required for each treatment alternative
 - a. Coordinate with City's conveyance consultant to define collection system improvements needed for each alternative.
 - b. Define conveyance system improvements required for discharge of treated effluent and residuals disposal for each alternative.

EXHIBIT A SCOPE OF SERVICES

- vi. Planning-Level Costs: Develop planning-level opinions of probable construction cost (OPCCs), operation and maintenance (O&M), and life cycle costs for each alternative. Costs will be developed for the following elements:
 - a. Wastewater collection system and treated effluent conveyance. Conveyance costs will be based on planning level (AACE Level 5) unit cost factors (e.g. \$/linear foot for pipelines or \$/MGD for lift stations) and will be coordinated with the unit cost factors used by the City's conveyance consultant. For operating costs, unit cost factors will be based on linear feet of pipe and pipe type (gravity vs. force main), and \$/HP for lift stations.
 - b. Treatment facility improvements. Facility improvement costs will be based on planning-level unit cost factors (e.g. \$/MGD) for each treatment process category (e.g. conventional treatment, advanced treatment, biosolids treatment, odor control, etc.). For operational costs, unit cost factors generally will be based on gallons of wastewater treated.
- vii. Non-Cost Factors: Define non-cost considerations associated with each alternative. The review of non-cost factors will include legal, regulatory, environmental, social, institutional and public acceptance issues.
- viii. Pretreatment Program: Identify the impacts to the established Pretreatment Program that implementing each alternative will have. This evaluation may involve comparing the predicted loadings discharged to Post Oak WWTP to the allowable headworks loadings and allowable industrial loadings developed for the City's approved and/or proposed pretreatment program. The objective of the evaluation is to determine if and what type of modifications to the program will be required.
- ix. Develop Evaluation Criteria and Matrix: Develop proposed evaluation criteria and scoring matrix to be used to evaluate alternatives. Populate draft scoring matrix.
- x. Task C Meetings: The following meetings are anticipated to support Task C activities:
 - a. Prepare for and facilitate an in-person alternative screening workshop with the City in Sherman. Summary descriptions of each alternative will be provided prior to the workshop. At the workshop, evaluation criteria, weights and scoring will be reviewed and confirmed with the City. The scoring matrix will then be used to rank the alternatives and

EXHIBIT A SCOPE OF SERVICES

select which alternative(s) will move forward with a more detailed evaluation.

- b. Prepare for and facilitate up to 3 virtual meetings (with the City and/or TI) to review task progress or obtain additional input/information.

Deliverables: Summary descriptions of each alternative; final screening scoring matrix; meeting notes.

C. Task D: Water Reuse Alternatives Screening Evaluation

- a. Existing Customer Identification: Identify potential customers for non-potable reclaimed water in the vicinity of the new TI facility and in the vicinity of the Post Oak WWTP.
 - i. Analyze monthly metered water usage data to be provided by the City, to include any separate irrigation meters. For customers with no irrigation meter, seasonal water usage will be used to estimate potential irrigation usage. Rank customers in order of largest likely non-potable water usage. Cross-check with desktop review of aerial imagery to confirm likely irrigated areas.
 - ii. Prepare for and facilitate a meeting with the City to review ranked list of potential largest nonpotable water users and obtain input and feedback.
 - iii. Prepare for and attend up to 5 meetings with potential customers to evaluate interest in using reclaimed water and determine any special water quality or pressure/delivery requirements. If desired by the City, one meeting could be coordinated with pretreatment program customers.
- b. Future Customer Identification: Using available planning and development information, together with other information available from the City, identify potential future development areas that may be candidates for receiving reclaimed water. Estimates of potential demands for future development will be based on available information and are likely to be very approximate.
- c. Reclaimed Water Supply and Water Quality: Summarize reclaimed water supply and water quality requirements.
 - i. Using historical flow data and projections from Task B and in coordination with Task C, document existing and future reclaimed water supply, both from the Post Oak WWTP and a potential future industrial WWTP, as appropriate.
 - ii. Prepare a summary of existing treated effluent quality from the Post Oak WWTP and expected water quality requirements to serve potential reclaimed water customers. Treatment process improvements needed to meet

EXHIBIT A SCOPE OF SERVICES

expected quality requirements will be included in the treatment alternatives for Task C.

- d. Evaluate Reclaimed Water Delivery Options for Nonpotable Reuse: In coordination with Task C, evaluate delivery options for nonpotable reuse for each treatment alternative.
 - i. A hydraulic model will be developed for each alternative. Planning- level demands will be estimated from the information developed in Tasks D.a. and D.b. The model will be used to evaluate pipeline sizing and pumping/storage requirements.
 - ii. GIS maps will be prepared for presentation of each alternative.
 - iii. OPCCs, together with estimated O&M and life cycle costs, will be developed for each alternative.
 - iv. Non-cost considerations, such as regulatory or institutional issues, permitting requirements, barriers to implementation or other similar issues will be summarized.
- e. Summarize Reclaimed Water Delivery Alternatives: In coordination with Task C, prepare a summary of each reclaimed water delivery alternative. Summaries will be incorporated into treatment alternative summaries and included as part of the Task C screening workshop.

Deliverables: Prioritized list of potential customers; hydraulic model of each alternative; summary of reclaimed water delivery alternatives; meeting notes.

D. Task E: Indirect Potable Reuse Alternatives Screening Evaluation

- a. Screening of Potential Discharge Locations:
 - i. In coordination with previous tasks, estimate the quantity of water that may be available for discharge to the Lake Texoma, Lake Ray Roberts, Lake Lewisville, or Lake Lavon watersheds for subsequent indirect reuse.
 - ii. Perform a desktop evaluation of potential discharge locations to evaluate the viability of discharging to other watersheds. Using default QUAL-TX model assumptions (for dissolved oxygen) and TCEQ screening procedures, estimate projected TPDES permit limits for each potential location.
- b. Water Provider Meetings: Working with the City, prepare for and facilitate up to 3 meetings with regional water providers to discuss their interest in purchasing and/or trading return flows from the City. It is anticipated that meetings would be with some or all of North Texas Municipal Water District (NTMWD), Greater Texoma Utility Authority (GTUA), and Dallas Water Utilities (DWU).

EXHIBIT A SCOPE OF SERVICES

- c. Evaluate Indirect Potable Reuse (IPR) Alternatives: Based on input received from meetings in Task E2, develop up to 3 IPR alternatives.
 - i. Develop conceptual plans of required conveyance infrastructure and display on a GIS map.
 - ii. Develop OPCCs together with estimated O&M and life cycle costs for each alternative.
 - iii. Summarize non-cost considerations, such as regulatory or institutional issues, permitting requirements, barriers to implementation or other similar issues.
- d. Summarize IPR Alternatives: In coordination with Task C, prepare a summary of each IPR alternative. Summaries will be incorporated into treatment alternative summaries and included as part of the Task C screening workshop.

Deliverables: Summary of IPR alternatives including maps, costs and review of non-cost factors; meeting notes.

E. Task F: Alternative Evaluation

- a. Alternative Development: Based on the results of the Task C Screening Workshop, evaluate one alternative, including items to address Post Oak WWTP condition assessment needs, treatment alternatives for the TI project, and infrastructure needs associated with water reuse. Evaluation of a second alternative is included as a Special Service.
 - i. Perform treatment process modeling for the alternative.
 - ii. For each proposed discharge location (including discharge of RO concentrate, as appropriate), develop a refined water quality model and assessment of potential TPDES permit limits.
 - iii. Prepare conceptual design:
 - a. Prepare design concept memorandum defining raw wastewater flow and quality characteristics, effluent discharge flow and quality characteristics, odor control concepts, biosolids and residual handling concepts. Develop a conceptual process design drawing including all treatment process units with flow rates.
 - b. Prepare desktop evaluation of potential new WWTP sites near the TI facility. A detail selection of a site would occur in a subsequent project. The desktop evaluation would include up to three sites and criteria such as property size, ownership, and current use, known geology,

EXHIBIT A SCOPE OF SERVICES

- proximity to power, vehicle access, proximity to the TI facility, and proximity to discharge locations.
 - c. Develop conceptual electrical loads for the plant. Coordinate with power company for electrical service for new sites.
 - d. Update conceptual conveyance infrastructure plan based on the selected alternative and selected treatment site and display on a GIS map.
 - e. Identify conceptual communication strategy to other city facilities and plant security requirements.
- b. Alternative Conceptual Costs: Develop OPCCs, O&M, and life cycle costs for each alternative.
 - c. Task F Meetings: The following meetings are anticipated to support Task F activities:
 - i. Prepare for and facilitate an in-person alternative review meeting with the City in Sherman. If more than one alternative has been evaluated, a similar scoring exercise as performed in Task C will be used to rank the alternatives and select the preferred option.
 - ii. Prepare for and facilitate up to 3 virtual meetings to review task progress or obtain additional input/information.
 - d. Finalize Conceptual Alternatives: Incorporate feedback received from City from Task F alternative review meeting and finalize alternative(s) and cost(s).

Deliverables: Conceptual design memorandum and opinions of cost; meeting notes.

F. Task G: Implementation Plan

- a. Document CIP Projects: Document and summarize CIP projects associated with the recommended alternative. Projects will also include the improvements identified during the Post Oak WWTP condition assessment project.
- b. Prepare Implementation Plan: Implementation steps for the recommended alternative identified in Task F will be documented, together with a proposed schedule for implementation.

Deliverables: CIP projects and implementation plan for the recommended alternative.

EXHIBIT A SCOPE OF SERVICES

G. Task H: Report

- a. Draft Report: Document the results of the previous tasks in a draft report. One electronic copy of the report will be provided to the City for review.
- b. Final Report: Prepare a final report that incorporates comments received from City. An electronic (pdf) copy of the final report, together with 3 hard copies, will be provided to City.

Deliverables: Draft and final report.

H. Task I: Project Administration and Additional Meetings

- a. Project Administration: Project administration will include but not be limited to developing and implementing a project management plan; tracking and managing internal schedules of work; monitoring and addressing issues related to the scope of work, budget and deliverables; preparing and processing monthly billings; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to the City on a regular basis. A standard monthly invoice and progress reports will be prepared for all services.

Deliverables: Monthly progress reports and invoices

I. Task J: Additional Meetings:

- a. Prepare for and attend up to 2 additional in-person meetings (not included in other tasks) with City staff, TI, City Council or other stakeholders. For budgeting purposes, each meeting will be 4 hours and include 10 people from the consultant team plus meeting preparation, meeting documentation, and travel.

Deliverables: Meeting notes for each meeting.

J. Special Services

- a. Various services incidental to the project, but not within the scope of the Basic Engineering Services covered by basic services, which may be performed or arranged for separately by City, or may be added to the Consultant's responsibilities by mutual agreement and written authorization include but are not necessarily limited to the following items. The scope and compensation for these services will be further defined and agreed to prior to authorization:
 - i. Additional Sampling: Additional sampling at the City's Post Oak WWTP, or an existing TI facility to obtain additional water quality data to support the evaluation.

EXHIBIT A SCOPE OF SERVICES

- ii. Additional alternative evaluation: In accordance with scope Task F: Alternative Evaluation, perform a alternative evaluation, including conceptual design tasks and costs for a second alternative.
- iii. Additional data collection or analysis not included in Basic Services.
- iv. Additional model development or evaluations not included in Basic Services.
- v. Additional meetings not included in Basic Services.
- vi. Design surveying and utility locations:
 - a. Perform preliminary surveying for the wastewater treatment plant sites. These services are based upon survey of the City's Post Oak WWTP and a new plant site. A detailed scope of work will be provided prior to authorization by the City. Perform subsurface utility engineering (SUE) Quality Level A or B services at critical locations.
- vii. Geotechnical Investigation & Report: These services are based upon geotechnical engineering at the City's Post Oak WWTP and a new WWTP site. A detailed scope of work will be provided prior to authorization by the.
 - a. Perform soil borings and install piezometers at select locations on plant site(s)
- viii. Preparation of site visits, report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations. A detailed scope of work will be provided prior to authorization by the City once the pipeline routes and plant site have been established.

EXHIBIT B
PROJECT DESIGN BUDGET SUMMARY

I. Basic Services

A. Information Gathering and Review	\$ 117,221
B. Capacity and Treatability Study	\$ 190,251
C. Treatment Alternatives Screening Evaluation	\$ 339,260
D. Water Reuse Alternatives Screening Evaluation	\$ 102,919
E. Indirect Potable Reuse Alternatives Screening Evaluation	\$ 55,212
F. Detailed Alternative Evaluation	\$ 337,909
G. Implementation Plan	\$ 37,341
H. Report	\$ 117,765
I. Project Administration	\$ 154,053
J. Additional Meetings	\$ 36,080

<i>Total Basic Services (Lump Sum)</i>	<u>\$ 1,488,011</u>
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II. Special Services

A. Additional Sampling	\$ 20,000
B. Additional Detailed Alternative Evaluation	\$ 340,000
C. Additional Data Collection and Analysis	\$ 30,000
D. Additional Model Development & Screening	\$ 50,000
E. Additional Meetings	\$ 50,000
F. Surveying, Easement Preparation, and SUE	\$ 50,000
G. Geotechnical Engineering	\$ 25,000
H. Environmental and Architectural Investigation Services	\$ 20,000

<i>Total Authorized Special Services</i>	<u>\$ 585,000</u>
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<i>Project Budget, Grand Total (Not-To-Exceed)</i>	<u>\$ 2,073,011</u>
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EXHIBIT C
GUIDELINES FOR COMPUTER AIDED DESIGN AND DRAFTING (CADD)

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

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

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

II. **GUIDELINES FOR DIRECT EXPENSES.**

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

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

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

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

**EXHIBIT F
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ**

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY	
1 Name of vendor who has a business relationship with local governmental entity.		
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed. <u>N/A</u> Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☒ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☒ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 Signature of vendor doing business with the governmental entity <i>[Signature]</i> <u>5-30-2022</u> Date		

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 1/1/2021

City of Sherman, Texas – Professional Services Agreement
Wastewater Treatment and Water Reuse Master Plan
 3722815

Page 41 of 41

RESOLUTION NO. 7065

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR DESIGN OF THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute Amendment No. 1 to the Professional Services Agreement with Plummer Associates, Inc. for engineering services for the design of the Wastewater Treatment and Water Reuse Master Plan Project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 1st day of May 2023.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: Linda Ashby
LINDA ASHBY, CITY CLERK

BY: David Plyler
DAVID PLYLER, MAYOR

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

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

AMENDMENT NO. 1

TO THE PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES BETWEEN
THE CITY OF SHERMAN (OWNER) AND PLUMMER ASSOCIATES, INC. (ENGINEER)
FOR THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN PROJECT

Dated June 6, 2022 ("Original Agreement")

This Amendment No. 1 serves to increase the original contract fees under the Original \$2,073,011 Agreement based on the following **additional** work to the project scope as detailed in the attached Exhibit A1: "Amendment 1 - Scope of Services." The new total professional services shall now be \$13,442,942.

The contract amount under the Original Agreement shall be increased by a fee not to exceed \$11,369,931 as presented in the attached Exhibit B1: "Amendment 1 – Project Design Budget Summary."

I. Basic Services

	Scope Item – Post Oak WWTP Improvements	Fee
A	Preliminary Design	\$ 1,083,059
B	Equipment Preselection	\$ 346,557
C	CMAR Coordination	\$ 337,530
D	Final Design	\$ 4,143,375
E	PM & Meetings	\$ 1,109,023
F	Regulatory & Permitting	\$ 137,274
Total Basic Services Amendment No. 1:		\$ 7,156,818

II. Special Services

	Scope Item – Post Oak WWTP Improvements	Fee
G	Construction Administration	\$ 4,000,000
H	Support Services - Geotech, Survey, SUE	\$ 213,113
Total Special Services Amendment No. 1:		\$ 4,213,113

TOTAL AMENDMENT NO. 1 NOT TO EXCEED (LUMP SUM)	\$ 11,369,931
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The contract completion date shall be extended to March 31, 2026.

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This Amendment No. 1 shall be effective on the date it is executed by the last party to execute it. The OWNER and ENGINEER hereby agree to amend the Proposed Fees section of this Original Agreement to read as follows:

Proposed Fees

Engineer shall be compensated on the following lump sum basis. Additional Services shall be performed based on the attached 2023 rate schedule.

Basic Services	Fee
Wastewater Treatment and Water Reuse Master Plan	\$ 1,488,011
Amendment 1 -Post Oak WWTP Improvements	\$ 7,156,818
Total Basic Services:	\$ 8,644,829
Special Services	Fee
Wastewater Treatment and Water Reuse Master Plan	\$ 585,000
Amendment 1 – Post Oak WWTP Improvements	\$ 4,213,113
Total Special Services:	\$ 4,798,113
TOTAL NOT TO EXCEED (LUMP SUM)	\$ 13,442,942

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

[Rest of page left intentionally blank]

EXECUTED in three (3) counterparts (each of which is an original) on behalf of ENGINEER shown below, and on behalf of the OWNER by its City Manager (thereunto duly authorized) this 12 day of May, 2023.

OWNER:
CITY OF SHERMAN, TEXAS

ENGINEER:
PLUMMER ASSOCIATES, INC



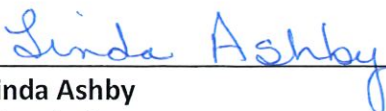
Robby Hefton, City Manager



Ellen McDonald, Principal

ATTEST:

ATTEST:



Linda Ashby
City Clerk



APPROVAL RECOMMENDED:



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

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

BY: 
NAME: 

CITY ATTORNEY

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30 day of March, A.D. 2023.

Cylena Eason
Notary Public In and For Tarrant County, Texas

My Commission Expires:

July 5, 2025

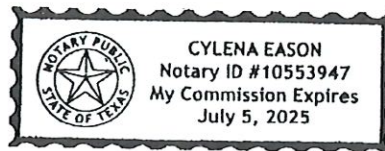


EXHIBIT A1
AMENDMENT NO. 1 - SCOPE OF SERVICES

PROJECT DESCRIPTION

The City has selected Plummer Associates, Inc. (Plummer) to provide engineering consulting services for planning, design and construction administration associated with the wastewater treatment and water reuse facilities needed to support the Texas Instruments (TI) semiconductor chip manufacturing facility expansion and continued growth of the industrial and domestic wastewater system in the City. Phase 1 of this effort, master planning services, is ongoing and includes data analysis and wastewater process modeling. Results from preliminary modeling indicate that the increases in industrial wastewater (from the TI facility and the GlobalWafer facility) flows and loads, in conjunction with projected increases in domestic wastewater flows, may exceed the capacity of the Post Oak WWTP as early as 2025. To complete an expansion of the Post Oak facilities in 2025, the initial design, acquisition of long-lead equipment, and procurement of a construction manager at risk (CMAR) need to begin and proceed concurrently with the completion of the master plan project. This Phase 2 scope of services includes the following tasks specifically associated with the Post Oak WWTP expansion:

- Preliminary Design
- Equipment Preselection
- Construction Manager at Risk (CMAR) Coordination
- Final Design
- Meetings, Workshops, and Project Management
- Regulatory & Permitting
- Construction Administration
- Support Services (e.g. Survey, Geotech, Subsurface Utility Engineering)

I. ASSUMPTIONS

- A.** Size facilities at Post Oak for 2025 flows and loads (less than 16 mgd).
- B.** Beyond 2025 flows and loads (by 2026) additional facilities will be brought online, likely as a dedicated Industrial Wastewater Treatment Plant with location to be determined.
- C.** CMAR approach will be utilized for both facilities.
- D.** This amendment is for design and construction phase services of the Post Oak WWTP and does not include the Industrial Treatment Plant facilities.
- E.** A separate amendment will be developed for the Industrial Treatment Plant discharge permit efforts. The permit could be associated with a new location or an amendment to existing permit.
- F.** The Post Oak facilities will be designed to treat wastewater flows and loads through 16 MGD of projected industrial and municipal contributions to meet the current discharge permit requirements.

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- G.** Solids disposal is assumed to be via landfill.
- H.** The Post Oak facility design will consider 210 reuse potential, cooling water reuse, and reuse via discharge that flows to a downstream reservoir, but it will not reflect or include any advanced treatment (TDS treatment, advanced oxidations, adsorption, etc).
- I.** Major equipment will have early procurement packages based on equipment pre-selection. Front end documents for pre-selection to be coordinated with CMAR.
- J.** Initial Conceptual Opinion of Probable Construction Cost (OPCC) will be developed by the Design Engineer for the Post Oak facility improvements. A cost model will be prepared by the Construction Manager at Risk (CMAR). Engineer will provide an updated OPCC at the 60% and 90% design milestones.
- K.** The construction of the electrical upgrades currently under design under a separate contract for the Post Oak WWTP will be included in the work performed for this project:

II. TASK SUMMARY, BASIC SERVICES

A. TASK A: PRELIMINARY DESIGN

- a.** Evaluate and select an approach for the additional facilities by considering the following three alternatives:
 - i.** Conventional treatment within the footprint of the existing process facilities (i.e. adding new basins adjacent to the existing basins).
 - ii.** Conventional treatment train located south of Post Oak Rd. that could be incorporated into the process train of a future industrial facility.
 - iii.** Conversion of the existing process to an integrated fixed film activated sludge (IFAS) - or other similar technology. If this alternative is selected as the preferred approach, new basins for primary clarifiers, aeration basins, and final clarifiers may not be required for treating the flows and loads in 2025.
- b.** Perform Post Oak Wastewater Treatment Plant preliminary and process design for the following facilities:
 - i.** Primary Clarifiers (PC) – rehab existing PC3 and design new PC4. Evaluate chemical addition to support silica removal. Provide odor control for the primary clarifier weir areas. PC4 may not be required for IFAS alternative.
 - ii.** Daily Flow Equalization Basin – new basin with mixing. Assumes the existing basin is reserved for wet weather – peak flow storage.
 - iii.** Equalization Basin Blower Building – rehab existing blower building and mixing for the existing EQ/Peak Storage basin.
 - iv.** Anaerobic/Anoxic Basins – Demolish Trickling Filters and construct new basins at that location for the purpose of improving biological system performance.

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- v. Aeration Basins (AB) – new ABs or modified ABs for IFAS. Evaluate increasing air supply to existing ABs.
 - vi. Blowers for new AB – Evaluate increasing air to existing ABs and air to new AB.
 - vii. Biological Clarifier – new Biological Clarifier if required.
 - viii. RAS for anoxic zone/WAS for new Biological Clarifier and Primary sludge for new Primary Clarifier if required. Evaluate new sludge pump station for PC3 & PC4 if required.
 - ix. Disc Filters – new filters for 16 MGD design flow and the associated peak flowrate, design will include considerations Biological Clarifier loadings, reuse potential, and silica removal.
 - x. Grit Building – NFPA improvements per Condition Assessment.
 - xi. UV and Headworks Lift Station (HLS) – No improvements are identified for this project. The capacity of the system will be evaluated during preliminary design.
 - xii. WAS Thickening – Add thickener w/polymer system, feed pump and thickened sludge pump.
 - xiii. Anaerobic Digester (AD) – Rehabilitate two (2) ADs per Condition Assessment with mixing system and auxiliary facilities. Evaluate the capacity of the dewatering system. No improvements to the solids dewatering capacity are assumed for this phase of the project.
 - xiv. Raw Wastewater Pump Station, Bar Screens, Fine Screens and Grit Removal Units, and dewatering equipment – No capacity improvements are identified for these facilities. The capacity of the existing facilities will be evaluated during preliminary design.
- c. Develop liquids and solids process drawings based on above scope. Include process design information. Develop liquids and solids mass balance and incorporate recycle streams into liquids process. Utilize biological model results developed in the master plan project.
 - d. Develop P&ID's, Operating and Control descriptions, and equipment lists for above facilities. Up to 25 P&ID's are estimated.
 - e. Develop equipment list with electrical loads. Coordinate electrical loads with the ongoing electrical rehabilitation project.
 - f. Develop preliminary sizing and layouts for facilities in above list. Determine new buildings needed for mechanical equipment and electrical equipment. The City will provide input on building space criteria for operations and maintenance.
 - g. Develop Piping Schedule with pipe sizes and materials for all piping systems based on process and peak flow capacities.
 - h. Develop Site Plan based on above facilities with roads, parking areas, and drainage concepts.

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- i. Perform hydraulic modeling for the plant and develop a hydraulic profile drawing. Assess flow splitting for new facilities. Develop system head curves for each modified pump station and perform pump selections. Determine piping sizes and materials. Develop plant drain and plant water schematics.
- j. Perform alternative evaluations for the following items – other facility’s equipment will be designed to match existing facilities.
 - i. Blowers for Aeration Basins (Turbo vs Multi-stage vs Single stage)
 - ii. Cloth Disc Filters (Four manufacturers)
 - iii. Anaerobic Digester – mixing system, gas utilization
- k. Prepare Preliminary Design Report
 - i. Include wastewater flow, concentration, and load analysis from Master Plan.
 - ii. Include biological model inputs, results, and assumptions from Master Plan.
 - iii. Incorporate other selected Immediate and Near-term improvements recommended in the Condition Assessment.
 - iv. Assist City with the phasing of improvements in coordination with the funding available for improvements.
- l. Prepare Basis of Design Memorandum.

Deliverables: *Draft and Final Preliminary Design Report*

B. TASK B: EQUIPMENT PRESELECTION

- a. In conjunction with Task C below, develop up to four equipment preselection or early procurement front-end document packages in coordination with City and CMAR to assist in obtaining equipment proposals for up to 13 equipment packages, including the following equipment. Additional packages may be added to the list based on input from the CMAR relative to market conditions at the time of design.
 - i. Preselection Package:
 - a. Primary clarifier mechanisms
 - b. Precast Wire Wound Prestressed Concrete Tanks
 - c. Aeration Blowers
 - d. Electrical Switchgear
 - e. Variable Speed Drives
 - f. Mixing system for EQ Basin
 - g. Mixing system for Anoxic Basins
 - h. Mixing system for Sludge Storage Tanks
 - i. Sludge Pumps (Centrifugal)
 - j. Sludge Pumps (Positive Displacement)
 - k. Mixing system for Digesters.

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- I. Programmable Logic Controller (PLC) Panels
- b. Develop equipment specifications for above equipment items. Develop performance requirements and information necessary for evaluation of proposals.
- c. Assist the City and CMAR during advertisement of equipment proposals. Respond to requests for information and prepare addendum items.
- d. Attend prebid meeting and proposal evaluation meeting with the City.
- e. Perform proposal reviews for conformance with the specifications and contract documents.
- f. Prepare proposal review summary and selection recommendation letters for each equipment item.
- g. Prepare notice of award letters and notice to proceed for shop drawing preparation and coordinate award with the CMAR.
- h. Incorporate preselected equipment in the plans and specifications for the expansion.

Deliverables: *Preprocurement Packages, RFI Response Documents, Proposal Review Summaries, Vendor Recommendation Letters, Notice of Award/Notice to Proceed Letters, Meeting Minutes, Decision Logs.*

C. TASK C: CMAR COORDINATION, EARLY OUT PACKAGES/SEQUENCING

- a. It is the City's intent based on Engineer's recommendation to deliver the Project using the CMAR delivery method. The CMAR will be initially contracted to provide pre-construction phase [Design Phase] services, including but not necessarily limited to the following efforts:
 - i. CMAR will develop and progressively update a detailed "open book" cost model based on current market conditions to confirm budgets and help guide design decisions.
 - ii. CMAR will develop a construction management plan and schedule in advance of construction.
 - iii. CMAR will perform evaluations of cost, constructability, schedule, materials availability, etc. to be included in alternative system evaluations and provide constructability reviews.
 - iv. CMAR will develop long-lead procurement strategies, including the pre-selected equipment, and initiate early procurement of these long-lead items in conjunction with Task B above).
 - v. CMAR will provide any potholing or laser scanning activities required to support development of accurate design information, as identified by the Engineer.

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- vi. CMAR will assist in the design and construction phase permitting processes, as required.
- vii. CMAR will provide procurement services for selection of key subcontractors and suppliers.
- viii. CMAR will develop a guaranteed maximum price (GMP) for construction for City review and consideration.
- b. Assuming City acceptance of the GMP, the CMAR will then provide all services required of a general contractor, including self-performance and subcontractor procurement and management, during subsequent construction and post-construction phases of the Project.
- c. The relationship between the CMAR and Engineer is intended to be collaborative and proactive, with both participating as advisors to the City during the pre-construction phase [Design Phase]. It is the City's desire and Engineer's recommendation to incorporate a contractor's perspective and input into the Project planning and design decisions, and to leverage the ability for early procurement and phased construction prior to full completion of design.
- d. CMAR Design Phase – The following tasks define the specific efforts to be performed and completed by the Engineer during the pre-construction phase [Design Phase] of the Project.
 - i. Cost Model and GMP Review.
 - a. Coordinate with CMAR, Program Manager, and City to provide input and information on materials, appurtenances and other major capital cost items throughout design phase. Review and comment on the initial cost model and subsequent cost model updates (based on 60% and 90% design submittals) developed by CMAR. Cost review activities will include a review of direct and indirect costs, CMAR fee and CMAR contingency; review supplier and subcontractor quotes and request supplemental quotes, as necessary; compare costs with other applicable projects; and perform review of risk analysis model and/or cost contingencies developed by the CMAR. Indirect costs included in the CMAR cost model will include applicable general conditions and general requirements, bonds, insurance and sales tax. Using the cost models and GMP(s) as the basis for the total construction cost(s), coordinate with the City and program manager regarding additional City administrative costs, engineering fees,

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- construction administration and inspection fees, and (if applicable) City contingency to develop a Total Construction Cost Estimate (TCCE).
- b. A parallel opinion of probable construction cost will be prepared by the Engineer at the 60% and 90% design milestones. Written recommendation(s) to City regarding opinion of GMP(s) acceptance (Electronic format only) will be provided by the Engineer.
 - e. Early Procurement Activities: Coordinate with CMAR and City to develop an equipment and materials procurement plan, including identification of items to be selected and/or procured early based on “best value” or low-bid strategies, and define the parameters associated with “best value” selection as applicable. For those items selected for early procurement, specify the acceptable manufacturers, and identify associated Bid Document requirements and incorporate into the preselected equipment packages.
 - i. Coordinate with CMAR to develop the preselection equipment packages and supporting design drawings for early procurement of major long-lead equipment items with the specific acceptable manufacturers. Coordinate with CMAR as part of the bidding process and prepare any addenda as required. Assist the City and CMAR with the review of the supplier proposals and bid packages and the subsequent selection process.
 - ii. CMAR shall be responsible for the packaging of front-end documents, technical specifications and applicable design drawings developed by Engineer; submittal of packages to applicable manufacturers and/or vendors; coordination of vendor proposals; pre- selection of equipment and appurtenances (with City and Engineer input); delivery of detailed design criteria and documents of selected equipment to Engineer for further use and incorporation into detailed design documents; and coordination of delivery, storage, and payment of procured items accordingly.
 - iii. Early Procurement Design Document Packages (Electronic “PDF” format only) will be provided by the Engineer. Eight “early-out” packages are included in this scope of service.
 - f. General CMAR Coordination: In addition to efforts above, general coordination with CMAR during the pre-construction phase [Design Phase] will include, but not necessarily be limited to:

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- i. Coordination with City and Program Manager regarding development of the CMAR Construction and/or Post- Construction Phase contract and applicable City front-end documents and Engineer's Division 1 specifications.
- ii. Soliciting input from CMAR during design development as appropriate.
- iii. Coordinating any potholing or laser scanning activities by the CMAR required to support accurate development of design documents.
- iv. Providing input to construction management plan and schedule development.
- v. Evaluating alternative systems and materials proposed or suggested by CMAR.
- vi. Responding to constructability review comments.
- vii. Providing input to Maintenance of Plant Operations (MOPO) plan and schedule; and
- viii. Attending subcontractor pre-selection meetings conducted by CMAR as appropriate.
- ix. *NOTE: Should the City be unable or unwilling to accept the CMAR GMP and instead decide to procure and deliver the Project using a traditional "design-bid-build" delivery method, subsequent modifications to the front-end documents, technical specifications, and associated design drawings specifically applicable to the City delivery method will be handled under Additional Services, if desired by the City. Additional services for bidding, including preparation of Bid Document sets, participation on a pre-bid conference, responding to Bidder questions, preparing applicable addenda, attendance at the Bid opening, assistance in evaluation of Bids, and participation in a pre-construction conference with the selected General Contractor will also be handled under Additional Services, if desired by the City.*
- g. CMAR Advertisement/Selection Phase: Provide assistance and support City and Program Manager in selecting a CMAR.
 - i. Request for Qualifications: The Engineer shall review the CMAR Request for Qualifications (RFQ) document as part one of the two-step CMAR procurement process. This task includes one (1) coordination meeting with City to finalize the documents and establish minimum contractor qualifications.
 - ii. Request For Proposals: The Engineer shall review the CMAR Request For Proposals (RFP) document and scoring rubric as part two of the two-step CMAR procurement process. This task includes one (1) coordination meeting with City to

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finalize the documents and establish selection criteria by which to evaluate the submitted CMAR proposals.

- iii. Selection Assistance: The Engineer shall provide City technical assistance for the two-step CMAR procurement process to support City in the review and selection of the CMAR. This task includes one (1) coordination meeting with City to review the scoring of submittals.
- iv. Contract Development: The Engineer shall review the CMAR contract document using the Engineers Joint Contract Documents Committee (EJCDC) contract template as a basis. This task includes one (1) coordination meeting with City to review the documents. City will provide legal review of the contract documents and provide the Engineer with any applicable legal opinions needed during the contract development process.
- v. Negotiation Assistance: The Engineer shall provide assistance in negotiations for the initial CMAR contract. This task includes one (1) negotiation meeting with the City and CMAR.

D. TASK D: FINAL DESIGN

- a. Based on the Preliminary Design, Equipment Preselection, and Coordination with the CMAR, the Engineer shall prepare for approval by the City Drawings and Specifications that set forth in detail the requirements for the construction of the Project and comply with applicable laws, statutes, ordinances, codes, and regulations.
- b. Contract Documents: The Engineer shall assist the City and CMAR in preparation of necessary bidding information, bidding forms, the conditions of the contract, and the form of agreement between the City and general contractor. Engineer will use the City's "front-end" documents for the Project. Engineer will use the Engineer's technical specifications.
- c. Opinion of Probable Construction Cost: The Engineer shall provide updates to the opinions of cost prepared during preliminary design and compare it with the opinion of cost prepared by the CMAR prior to early out packages and at the 60-percent and 90-percent phases.
- d. Submit plans, specifications, and contract documents to the applicable federal and state agency(s) for approval, where required.

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- e. Coordinate with utility companies and furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.

Deliverables: 60%, 90% and 100% (Issued for Construction/IFC) documents, Engineer review comments on CMAR cost estimates, meeting minutes, decision logs.

E. TASK E: MEETINGS AND WORKSHOPS AND PROJECT MANAGEMENT

a. Meetings and Workshops:

- i. Schedule and direct regular coordination meetings with the design team to coordinate project task assignments, action items, and to prepare for progress meetings with the City. Engineer will maintain an Action Item Log and Decision Log to monitor project activity. Coordinate with subconsultants to confirm all project elements are compatible, integrated, and meet City performance requirements.
- ii. Schedule and direct progress weekly meetings with the City, Program Manager, and design team to review and discuss design development progress with plant operations staff, discuss deliverable status, schedule, outstanding action items, and decisions made. Coordinate with the selected CMAR contractor during progress meetings. Engineer will prepare draft meeting minutes to include action lists and decision lists.
- iii. QC Review Meetings: plan and participate in two internal QC meetings with the design team. The meetings will be held at approximately the 60 percent and 90 percent project completion stages. Review Workshops: Plan and participate in two (2) review workshops with the design team, Program Manager, and City to review the 60 percent and 90 percent deliverables.

b. Project Management:

- i. Project administration will include but not be limited to developing and implementing a project management plan; tracking and managing internal schedules of work; monitoring and addressing issues related to the scope of work, budget and deliverables; preparing and processing monthly billings; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to the City on a regular basis. A standard monthly invoice and progress reports will be prepared for all services.

F. TASK F: REGULATORY & PERMITTING

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- a. Coordinate with ongoing permitting projects and comply with any applicable state and local limits.
- b. Coordinate with the City, CMAR, Program Manager and the TCEQ to expedite review and approval of design packages. This coordination will require both formal and informal meetings, by phone, virtual “MSTEAMS” meetings or in-person meetings. This activity includes the following tasks:
- c. Coordination with City and Program Manager
 - i. Meet with the City and Program Manager at the initiation of the project and, at the discretion of the City and Program Manager, periodically during the duration of the project. The purpose of the initial meeting is to present the regulatory approach for coordinating with the TCEQ and obtaining approval of the plans and specifications. Subsequent meetings will be conducted to discuss status of approvals and to prepare for meetings with the TCEQ. Meetings may be convened either by phone, MS, Teams or in-person. In-person meetings will occur at the City’s offices.
- d. Coordination with TCEQ
 - i. Prepare for and attend one review meeting with the TCEQ's Plan Review Team in Austin. The TCEQ review meeting will be held when the process design for the new facilities is approximately 90% complete and will include a review of the project design criteria, projected wastewater flow and load increases, and potential variances to TCEQ design criteria for wastewater treatment plants. The purpose of the meeting will be to inform TCEQ of the treatment plant improvement scope and schedule, and prepare the TCEQ for an unconventional project delivery method (CMAR) of the facilities.
 - ii. The scope of work also includes up to four (4) additional coordination meetings with the TCEQ during the design and construction phases corresponding with the CMAR’s phases of construction (e.g. facilities requiring early completion, facilities requiring normal completion, and the remaining facilities). The purpose of the review meetings is to coordinate and answer questions related to the design packages and the overall schedule of the construction project. Meetings will be convened either by phone, MS Teams, or in person. In-person meetings will be convened at the TCEQ offices in Austin.
- e. Coordination with the CMAR

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- i. Prepare for and attend periodic meetings with the CMAR to coordinate regulatory approval for construction. Meetings will be convened either by phone, MS Teams, or in-person. Coordinate meetings with the City and Program Manager.

Deliverables: *Meeting agendas, draft meeting notes, revised meeting notes.*

III. TASK SUMMARY, ADDITIONAL SERVICES

G. TASK G: CONSTRUCTION ADMINISTRATION

- a. General Construction Administration Phase services
 - i. The scope of Construction Administration Services is based on a construction timeframe of twenty-four (24) months from construction Notice to Proceed to construction substantial completion and thirty (30) months from construction Notice to Proceed to construction final completion.
 - ii. Construction Phase duties, responsibilities, and limitations of the ENGINEER shall not be restricted, modified, or extended without agreement of the City and Engineer in writing.
 - iii. The City's approval, acceptance, use of, or payments for all or any part of Engineer's services hereunder or the Project itself shall in no way alter the Engineer's obligations to the City's rights herein.
 - iv. The Engineer shall be a representative of and shall advise and consult the City during construction. The Engineer shall have the authority to act on behalf of the City only to the extent provided in this Agreement, unless otherwise modified by written instrument.
- b. Engineer's Personnel at the Construction Site
 - i. The presence and duties of Engineer's personnel at a construction site, whether as onsite representative or otherwise, do not make the Engineer or its personnel in any way responsible for those duties that belong to the City and/or construction contractors or other entities, and do not relieve the construction contractors or any other entity from their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the contract documents and any health and/or safety precautions related to such construction work.

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- ii. Engineer and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health and/or safety precautions related to such work and have no duty for inspecting, noting, observing, correcting, or reporting on health and/or safety deficiencies of the construction contractors or other persons at the site except Engineer 's own personnel.
 - iii. The presence of the Engineer 's personnel at a construction site is for the purpose of providing the Engineer and the City a greater degree of confidence that the completed work will conform generally to the contract documents and that the integrity of the design concept, as reflected in the contract documents, has been implemented and preserved. The Engineer neither guarantees the performance of any construction contractor nor assumes responsibility for contractor's failure to perform the work in accordance with the contract documents.
- c. Internet-based Construction Management
- i. The Engineer will provide, for use by the City and the selected contractor, an internet-based construction management system, including the following items:
 - ii. Establish and maintain the project construction management system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process.
 - iii. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
- d. Pre-Construction Conference
- i. The Engineer shall conduct a pre-construction conference for the Project. Meeting shall be conducted with the City and contractor at the City's facility. At a minimum, the following items will be discussed at the pre- construction conference:
 - a. The construction schedules prepared by the contractor;
 - b. Schedule of values and payment procedures and schedules;
 - c. Designation of key personnel and their duties; and

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- d. Procedures for the construction administration of the Project.
- e. Construction Progress Meetings
 - i. The Engineer 's project manager and project engineer will participate in monthly construction progress meetings for the Project.
 - ii. The Engineer will prepare and distribute agendas and meetings notes for each meeting.
 - iii. Additional site visits beyond those listed will be a Special Service and the Engineer shall be entitled to additional compensation.
- f. Shop Drawings and Submittal Review
 - i. The Engineer will review samples; catalog data; schedules; shop drawings; laboratory, shop, and mill tests of materials and equipment; and other data pursuant to the general conditions of the construction contract. Review quality related documents provided by the contractor such as test reports, equipment installation reports, or other documentation required by the construction contract documents. This review is for the benefit of the City and covers only general compliance with the information given by the construction contract documents. This review does not relieve the contractor of any responsibilities such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect the workers and the public, or the necessary to construct and complete a workable facility in accordance with the construction contract documents.
 - ii. The fee is based on review of up to five hundred (500) submittals.
 - iii. Additional submittal reviews beyond those listed will be a Special Service and the Engineer shall be entitled to additional compensation.
- g. Requests for Information
 - i. The Engineer will interpret the intent of the plans and specifications and respond to requests for information (RFIs) for the City and contractors.
 - ii. The fee is based on processing up to four hundred (400) RFIs.
 - iii. Additional RFI responses beyond those listed will be a Special service and the Engineer shall be entitled to additional compensation.
- h. Contract Modifications

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- i. The Engineer will review contract modification request (CMRs) and prepare proposed contract modifications (PCMs) for items identified during construction that are necessary or requested by the City or contractor but are not in accordance with the construction documents.
 - ii. The Engineer will prepare documentation for construction modifications required to implement modifications in the design of the Project.
 - iii. The fee is based on processing up to a total of one hundred twenty (120) CMRs, PCMs, and field/change orders.
 - iv. Additional contract modifications beyond those listed will be a Special service and the Engineer shall be entitled to additional compensation.
 - v. Investigations, analyses, studies, or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the City are a Special Service. Substitutions of materials or equipment or design modifications requested by the City are a Special Service and the Engineer shall be entitled to additional compensation.
- i. Pay Estimates
- i. The Engineer will review and comment on a maximum of thirty (30) estimates for payment to contractor, pursuant to the general conditions of the construction contract. Recommendations by the Engineer to the City for periodic construction progress payments to the construction contractor will be based on the Engineer's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent: that continuous or detailed examinations have been made by the Engineer to ascertain that the construction contractor has completed the work in exact accordance with the contract documents; that the final work will be acceptable in all aspects; that the Engineer has made an examination to ascertain how or for what purpose the construction contractor has used the monies paid; that title to any of the work, materials, or equipment passed to the City free and clear of liens, claims, security interested, or encumbrances; or that there are no other matters at issue between the City and the construction contractor that affect the amount that should be paid.
- j. Substantial and Final Review

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- i. The Engineer will conduct, in the company of the City's representative, a substantial completion review for the project for conformance with the design concept of the project and general compliance with the contract documents and provide a list of deficiencies to the contractor. Three (3) interim phase and one overall substantial review site visits are anticipated.
 - ii. The Engineer will conduct, in the company of the City's representative, a final review for the project for conformance with the design concept of the project and general compliance with the contract documents, verify that items identified on the deficiency list from the substantial completion review have been completed, and make recommendation for final payment to the contractor. Three (3) interim phase and one overall final review site visits are anticipated.
- k. Record ("As-Built") Drawings
 - i. The contractor will provide to the Engineer red-line drawings for use in the development of the record drawings. In the event that the contractor does not provide adequate red-line drawings and the Engineer must develop the record drawings based on in-depth investigation and research will be considered a Special Service.
 - ii. The Engineer will revise the construction drawings in accordance with the information furnished by the contractor reflecting changes to the project made during construction. Record drawings are defined as the drawings produced by the Engineer's modifications to the original design drawings to reflect the changes during the construction.
 - iii. The Engineer prepare record drawings, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the project was finally constructed.
 - iv. The Engineer is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.
 - v. Record drawings for the project will be issued by the ENGINEER within sixty (60) days after the comments and markups are provided by the contractor, and the City.
 - vi. The Engineer will provide the City with digital copies in Adobe PDF on compact disc five (5) half-sized (11" x 17") sets of plans (bound, bond), and two (2) full-

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sized (22" x 34") sets of plans (bound, bond) to the City. No technical specification books will be provided.

H. TASK H: SUPPORT SERVICES – SURVEY, SUE, AND GEOTECH (IF NEEDED FOR EXISTING SITE)

- a. Surveying Services: Engineer with coordinate surveying services for the following:
 - i. Engineer will provide and coordinate land survey at location for the WWTP sites as required to perform the design.
 - ii. The survey will base horizontal and vertical control on the treatment plant benchmark coordinates and datum. Survey measurements will be based on NAD 83 state plane coordinates.
 - iii. Survey will produce a topographical survey of project area to map utilities and existing structures. The survey will include contours shown at one-foot intervals, plotted locations of structures, paving, visible improvements, and utility information based on surface evidence.
 - iv. CCTV inspection of the biological clarifier effluent piping.
- b. Geotechnical Engineering: Engineer will coordinate and subcontract Geotechnical services for the collection and analysis of up to twelve (12) locations and provide a geotechnical report for foundation design recommendations.
- c. Subsurface Utility Engineering
 - i. Engineer will perform up to twenty (15) nondestructive SUE Quality Level A "locates" of up to 15 feet deep for use within the project construction limits.

EXHIBIT B1
AMENDMENT NO. 1 - PROJECT DESIGN BUDGET SUMMARY

I. Basic Services

	Scope Item	Fee (Lump Sum)
A	Preliminary Design	\$ 1,083,059
B	Equipment Preselection	\$ 346,557
C	CMAR Coordination	\$ 337,530
D	Final Design	\$ 4,143,375
E	PM & Meetings	\$ 1,109,023
F	Regulatory & Permitting	\$ 137,274
Total Basic Services Amendment No. 1:		\$ 7,156,818

II. Special Services

	Scope Item	Fee
G	Construction Administration	\$ 4,000,000
H	Support Services - Geotech, Survey, SUE	\$ 213,113
Total Special Services Amendment No. 1:		\$ 4,213,113

TOTAL AMENDMENT NO. 1 NOT TO EXCEED (LUMP SUM)	\$ 11,369,931
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**EXHIBIT B1
PLUMMER ASSOCIATES, INC.
HOURLY FEE SCHEDULE
2023**

Staff Description	Staff Code	Range of Billing Rates
Admin Staff	A1-A3	\$ 85.00 - \$ 115.00
Senior Admin Staff	A4	\$ 100.00 - \$ 125.00
Designer/Technician	C1-C2	\$ 80.00 - \$ 120.00
Designer/Technician III	C3	\$ 110.00 - \$ 140.00
Senior Designer/Technician	C4	\$ 130.00 - \$ 180.00
Engineer/Scientist Intern	ES0	\$ 50.00 - \$ 95.00
Engineer-in-Training/Scientist-in-Training	ES1-ES2	\$ 95.00 - \$ 150.00
Engineer-in-Training/Scientist-in-Training III	ES3	\$ 100.00 - \$ 170.00
Project Engineer/Scientist	ES4	\$ 120.00 - \$ 190.00
Senior Project Engineer/Scientist	ES5	\$ 135.00 - \$ 210.00
Project Manager	ES6	\$ 180.00 - \$ 290.00
Senior Project Manager	ES7	\$ 220.00 - \$ 300.00
Principal I	ES8	\$ 275.00 - \$ 350.00
Principal II	ES9	\$ 325.00 - \$ 430.00
Electrical Engineer in Training I	EE1	\$ 95.00 - \$ 130.00
Electrical Engineer in Training II	EE2	\$ 110.00 - \$ 150.00
Electrical Engineer in Training III	EE3	\$ 130.00 - \$ 180.00
Electrical Specialist	EE4	\$ 150.00 - \$ 210.00
Programmer	EE5	\$ 165.00 - \$ 240.00
Programmer II	EE6	\$ 170.00 - \$ 260.00
Senior Electrical Engineer	EE7	\$ 260.00 - \$ 330.00

RESOLUTION NO. 7244

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR DESIGN OF THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

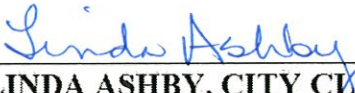
SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute Amendment No. 2 to the Professional Services Agreement with Plummer Associates, Inc. for engineering services for the design of the Wastewater Treatment and Water Reuse Master Plan Project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 16th day of January 2024.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: 
LINDA ASHBY, CITY CLERK

BY: 
DAVID PLYLER, MAYOR

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

BY: 
RYAN D. PITTMAN, CITY ATTORNEY

AMENDMENT NO. 2

TO THE PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES BETWEEN
THE CITY OF SHERMAN ("OWNER") AND PLUMMER ASSOCIATES, INC. ("CONSULTANT")
FOR THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN PROJECT

Dated June 6, 2022 ("Original Agreement")

This Amendment No. 2 serves to increase the original contract fees under the Original Agreement (\$2,073,011) and Amendment No. 1 (11,369,931) based on the following changes to the project scope as detailed in the attached Exhibit A2: "Amendment 2 - Scope of Services." The new total professional services shall now be \$ 21,917,189.

The contract amount under the Original Agreement and Amendment No. 1 shall be increased by a fee not to exceed \$ 8,474,247 as presented in the attached Exhibit B2: "Amendment No. 2 – Project Design Budget Summary."

I. Basic Services (Lump Sum)

	Scope Item – South WWTP MBR Design & Construction Services	Fee
A	Preliminary Design	\$ 566,044
B	Equipment Preselection	\$ 566,845
C	CMAR Coordination	\$ 313,282
D	Final Design	\$ 3,521,542
E	PM & Meetings	\$ 257,627
F	Regulatory & Permitting	\$ 0
Total Basic Services Amendment No. 2:		\$ 5,225,340

II. Special Services (Time & Materials)

	Scope Item – South WWTP MBR Design & Construction Services	Fee
G	Construction Administration Services	\$ 302,407
H	Support Services - Geotech, Survey	-\$ 53,500
I	Construction Management and Resident Project Representative Services (through first 12 months of construction)	\$ 3,000,000
Total Special Services Amendment No. 2:		\$ 3,248,907

TOTAL AMENDMENT NO. 2 NOT TO EXCEED	\$ 8,474,247
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This Amendment No. 2 shall be effective on the date it is executed by the last party to execute it. The OWNER and CONSULTANT hereby agree to amend the Proposed Fees section of this Original Agreement to read as follows:

Proposed Fees

Consultant shall be compensated on the following lump sum basis. Special and Additional Services shall be performed based on the rate schedule included in the Original Agreement.

Basic Services	Fee
Wastewater Treatment and Water Reuse Master Plan	\$ 1,488,011
Amendment 1 - Post Oak WWTP Improvements	\$ 7,156,818
Amendment 2 - South WWTP – MBR	\$ 5,225,340
Total Basic Services:	\$ 13,870,169
Special Services	Fee
Wastewater Treatment and Water Reuse Master Plan	\$ 585,000
Amendment 1 – Post Oak WWTP Improvements	\$ 4,213,113
Amendment 2 – South WWTP – MBR	\$ 3,248,907
Total Special Services:	\$ 8,047,020
TOTAL NOT TO EXCEED (LUMP SUM)	\$ 21,917,189

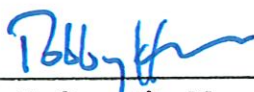
The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and acknowledge and agree that the Original Agreement remains in full force and effect, except as amended in this Amendment No. 1 and Amendment No. 2. To the extent that any provision contained herein conflicts with the Original Agreement, the provision contained herein shall supersede such conflicting provision contained in the Original Agreement and Amendment No. 1. This Amendment No. 2, the Original Agreement, and Amendment No. 1 contain the entire agreement of the parties with respect to the matters contained herein. This Amendment No. 2 may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

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EXECUTED in three (3) counterparts (each of which is an original) on behalf of CONSULTANT shown below, and on behalf of the OWNER by its City Manager (thereunto duly authorized) this 17 day of January, 2024.

OWNER:
CITY OF SHERMAN, TEXAS

CONSULTANT:
PLUMMER ASSOCIATES, INC



Robby Hefton, City Manager



Alan E. Davis, P.E., Principal

ATTEST:

ATTEST:

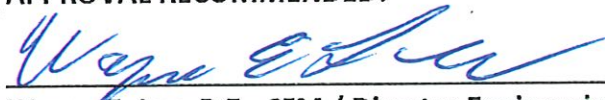


Linda Ashby
City Clerk



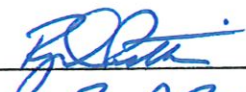
Marshall Plunk, PE
Team Leader

APPROVAL RECOMMENDED:



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

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

BY: 

NAME: 

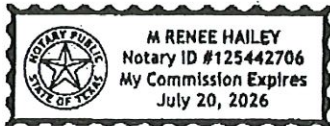
CITY ATTORNEY

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 3rd day of January, A.D. 2024.



M. R. Hailey
Notary Public In and For Tarrant County, Texas

My Commission Expires:

July 20, 2026

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

PROJECT DESCRIPTION

The City has selected Plummer Associates, Inc. (Plummer) to provide engineering consulting services for planning, design and construction administration associated with the wastewater treatment and water reuse facilities needed to support continued growth of the industrial and domestic wastewater system in the City. Phase 1 of this effort, master planning services, is ongoing and includes data analysis and wastewater process modeling. Results from modeling indicate that the increases in industrial wastewater flows and loads, in conjunction with projected increases in domestic wastewater flows, may exceed the capacity of the Post Oak WWTP as early as 2025.

Amendment No.1 included design services for expanding the North Post Oak WWTP, the acquisition of long-lead equipment, and procurement of a Construction Manager at Risk (CMAR). The tasks specifically associated with the North Post Oak WWTP expansion were included in Amendment No. 1. After consideration of additional data and further development of the Master Plan, the decision was made by the City and recommended by Plummer to move forward with a new South Membrane Bioreactor (MBR) treatment train located across Post Oak Road on property owned by the City in lieu of an expanding the conventional process train. Although more expensive than the conventional treatment process, the MBR treatment train would be more suited to the semiconductor industry wastewater and would provide the City with better redundancy and less risk of plant upsets during and after construction.

Amendment No. 2 includes the following tasks and replaces the work for Amendment No. 1 as described below. The fee shown for Amendment No. 2 is in addition to the approved fee for Amendment No. 1. Table 1 at the end of Exhibit A2 provides a summary of the changes between Amendment No. 1 and Amendment No. 2:

- Preliminary Design
- Equipment Preselection
- Construction Manager at Risk (CMAR) Coordination
- Final Design
- Meetings, Workshops, and Project Management
- Regulatory & Permitting
- Construction Services
- Support Services (e.g. Survey, Geotech, Subsurface Utility Engineering)
- Construction Management and Resident Project Representation

I. ASSUMPTIONS

A. Flow from the City's MEMC interceptor will be routed to the South WWTP – MBR

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

(Membrane Biological Reactor) train. Phase 1 of the South WWTP – MBR will be designed for an annual average flow (AAF) of 4 MGD and peak day flow of 8 MGD.

- B.** Beyond year 2025 expected flows and mass loading, additional wastewater treatment facilities will be constructed.
- C.** Semiconductor industries will be ramping up flows from their facilities beginning in 2024. During this interim period prior to the new plant coming on line, the conventional North WWTP will be treating the wastewater from these industries. This project includes some improvements to the conventional train to help process these initial wastewater flows from the industries.
- D.** The alternative project delivery Construction Manager at Risk (CMAR) approach will be utilized.
- E.** Both the new MBR train along with the conventional train will operate under the existing TCEQ discharge permit requirements. The 5-year permit will expire in 2025. The permit application is not included in this amendment. The MBR train will be designed with 20% spare capacity.
- F.** Solids disposal is assumed to be via landfill.
- G.** The design will consider Chapter 210 reuse potential, cooling water reuse, and reuse via discharge that flows to a downstream reservoir, but it will not include any advanced treatment (TDS treatment, advanced oxidation processes, adsorption, etc). The South treatment plant site will be planned for adding future advanced treatment and the treatment technologies in this project will be suitable pretreatment for those advanced treatment technologies. Chemical feed points will be planned for improving future nutrient removal.
- H.** Major equipment will have early procurement packages based on equipment pre-selection. Front end documents for pre-selection to be coordinated with CMAR.
- I.** Initial Conceptual Opinion of Probable Construction Cost (OPCC) will be developed by the Design Engineer for the Post Oak facility improvements. A cost model will be prepared by the Construction Manager at Risk (CMAR). Engineer will provide an updated OPCC at the 60% and 90% design milestones.
- J.** In the first phase, the plant will use potable water for service water and no plant water pumping will be provided.
- K.** Stormwater will be routed from the new MBR site into the northwest earthen basin, and the southwest earthen basin will be used for emergency wastewater storage with piping into and out of it from the diversion structure and influent pump station.
- L.** No odor control treatment is included in this project

II. TASK SUMMARY, BASIC SERVICES

A. TASK A: PRELIMINARY DESIGN

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

- a. Delete the evaluation of additional convention treatment facilities (Task A.a) and the preliminary design of the conventional treatment processes (Task A.b) of Amendment No. 1.
- b. Perform preliminary and process design for the following facilities.
 - i. South WWTP – MBR train:
 - a. Diversion Structure – Design new diversion structure to collect influent flow from the South Interceptors. Design a parallel raw water diversion pipeline (approximately 1500 LF) from a connection at the western boundary of the City's property to collect influent from the southwest industrial interceptor and Luella interceptor prior to connecting to the southern interceptor (MEMC) pipeline. Design a diversion pipeline from the MEMC pipeline to the diversion structure (approximately 300 LF). The diversion structure will be designed for 32 MGD capacity and have provision for emergency overflow to the existing wet weather basins and to the Post Oak WWTP.
 - b. Screening Facility – Design new coarse screening facility (1/4-inch spacing) ahead of the raw wastewater pumps. Channels and screens for 16 MGD will be included in this design.
 - c. Influent Pump Station – Design new influent pump station to pump influent flow to the new Preliminary Treatment Unit facility. The pump station will be designed for 8 MGD firm pumping capacity initially and the ability to expand capacity by adding pumps to 32 MGD firm capacity. Design chemical storage, feed equipment, and mixing to provide alkalinity adjustment to the raw wastewater.
 - d. Influent Pump Station Electrical Structure – The electrical equipment serving the influent pump station and screening facility will be designed on a slab on grade with canopy cover.
 - e. Preliminary Treatment Unit (PTU) Facility – Design new PTU structure to house fine screens (1 mm opening), vortex grit removal, screenings compactor, and grit classifier/washer. The facility will be designed for a peak flow of 8 MGD.
 - f. Primary Clarifiers (PC) – No primary clarifiers are included in the design, but the site layout will include space for adding primary clarifiers in the future.
 - g. Daily Flow Equalization Basin – Design new 4-million-gallon basin with cover and mixing system. Flow control will be provided with a motor operated valve in a vault. Diversion piping around the basin will be provided with isolation gates at the Headworks facility and valves downstream of the basin.

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

- h. Biological Reactor Basins – Design new basins associated with the MBR facility including mixing for anoxic zones, diffusers for aerobic zones, and new blower building and blowers serving the biological reactor basins and MBR facility. The blower building will include an electrical building serving the blowers and a canopy covered area for the blowers. Design for chemical storage, feed equipment, and mixing to add carbon to the influent wastewater will be provided.
- i. Membrane Bioreactor Facility – Design new 4MGD MBR average daily flow (ADF) facility with space planned to immediately expand to 8 MGD.
- j. Membrane Support Pipe Gallery and Building – Design membrane basin pipe gallery to house the permeate pumps, WAS pumps, chemical feed, permeate tank, backpulse piping and valves, and clean in place (CIP) piping and valves. Design membrane support building to house HVAC equipment, electrical equipment, restrooms, and operations facilities. Facility shall be designed to house the equipment for 8 MGD.
- k. RAS Pumping – Design new RAS pumping facility to support MBRs and biological reactors.
- l. Sludge Storage Basin – Design a new tank to store WAS from the MBR facility. The tank will include aeration and pumping facilities to deliver WAS to the existing dewatering building.
- ii. Conventional North Post Oak WWTP train:
 - a. Disc Filters – Design new filters for 10 MGD average flow, design will include considerations for the existing Biological Clarifier loadings.
 - b. Relift Pump Station – Design new pump station to lift flow to the filter facility at the North Post Oak WWTP.
- c. Develop liquids and solids process drawings based on above scope. Include process design information. Develop liquids and solids mass balance, and incorporate recycle streams into liquids process. Utilize biological model results developed in the master plan project.
- d. Develop P&IDs, Operating and Control descriptions, and equipment lists for above facilities. Up to 25 P&IDs are estimated.
- e. Develop equipment list with electrical loads. Coordinate electrical loads with the ongoing electrical rehabilitation project.
- f. Develop preliminary sizing and layouts for facilities in above list. Determine new buildings needed for mechanical equipment and electrical equipment. The City will provide input on building space criteria for operations and maintenance.
- g. Develop Piping Schedule with pipe sizes and materials for piping systems based on process and peak flow capacities.

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

- h. Develop Site Plan based on above facilities with roads, parking areas, and drainage concepts.
- i. Perform biological modeling for the plant to develop treatment requirements. Up to 24 modeling scenarios will be performed. Develop headworks loadings and constituent mass balances.
- j. Perform hydraulic modeling for the plant and develop a hydraulic profile drawing. Assess flow splitting for new facilities. Develop system head curves for each modified pump station and perform pump selections. Determine piping sizes and materials. Develop plant drain and plant water schematics.
- k. Perform alternative evaluations for the following items – other facility's equipment will be designed to match existing facilities.
 - i. Blowers for the biological reactors (centrifugal vs. positive displacement)
 - ii. MBRs (Four manufacturers)
 - iii. Cloth Disc Filters (Two manufacturers)
- l. Prepare Preliminary Design Report
 - i. Include wastewater flow, concentration, and load analysis from Master Plan.
 - ii. Include biological model inputs, results, and assumptions from Master Plan.
- m. Prepare Preliminary Design Report and submit to TCEQ. Coordinate with TCEQ for approvals using CMAR construction
- n. Prepare 30% design drawings and specification list.

Deliverables: *Draft and Final Preliminary Design Report, 30% drawings, P&IDs*

B. TASK B: EQUIPMENT PRESELECTION

- a. In conjunction with Task C below, develop up to five equipment preselection or early procurement front-end document packages in coordination with City and CMAR to assist in obtaining equipment proposals for up to 20 equipment packages, including the following equipment. Additional packages may be added to the list based on input from the CMAR relative to market conditions at the time of design.
 - i. Preselection Package:
 - a. Coarse and Fine Screens
 - b. Grit Removal Equipment
 - c. Precast Wire Wound Prestressed Concrete Tanks
 - d. Bioreactor Mixers, Blowers, and Diffusers
 - e. Membrane Bioreactor Equipment
 - f. Effluent Filters
 - g. Chemical Storage and Feed Equipment
 - h. Electrical Switchgear

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

- i. Variable Speed Drives
- j. Mixing system for EQ Basin
- k. Mixing system for Sludge Storage Tanks
- l. Sludge Pumps (Positive Displacement)
- m. Influent and Sludge Pumps (Submersible)
- n. Programmable Logic Controller (PLC) Panels
- b. Develop equipment specifications for above equipment items. Develop performance requirements and information necessary for evaluation of proposals.
- c. Prepare opinions of probable construction costs for preselection materials
- d. Assist in solicitation of prospective material providers.
- e. Assist the City and CMAR during advertisement of equipment proposals. Respond to requests for information and prepare addendum items.
- f. Attend one prebid meeting and one proposal evaluation meeting with the City.
- g. Perform proposal reviews for conformance with the specifications and contract documents.
- h. Prepare proposal review summary and selection recommendation letters for each equipment item.
- i. Prepare notice of award letters and coordinate award with the CMAR. The CMAR will issue notice to proceed for shop drawing preparation and coordinate shop drawing submittals.
- j. Incorporate preselected equipment in the plans and specifications for the expansion.

Deliverables: *Pre-procurement Packages, RFI Response Documents during Bid Period,, Proposal Review Summaries, Vendor Recommendation Letters, Notice of Award, Meeting Minutes.*

C. TASK C: CMAR COORDINATION, EARLY OUT PACKAGES/SEQUENCING

- a. It is the City's intent based on Engineer's recommendation to deliver the Project using the CMAR delivery method. The CMAR will be initially contracted to provide pre-construction phase [Design Phase] services, including but not necessarily limited to the following efforts:
 - i. CMAR will develop and progressively update a detailed "open book" cost model based on current market conditions to confirm budgets and help guide design decisions.
 - ii. CMAR will develop a construction management plan and schedule in advance of construction.

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

- iii. CMAR will perform evaluations of cost, constructability, schedule, materials availability, etc. to be included in alternative system evaluations and provide constructability reviews.
- iv. CMAR will develop long-lead procurement strategies, including the pre-selected equipment, and initiate early procurement of these long-lead items in conjunction with Task B above.
- v. CMAR will provide any potholing or laser scanning activities required to support development of accurate design information, as identified by the Engineer.
- vi. CMAR will assist in the design and construction phase permitting processes, as required.
- vii. CMAR will provide procurement services for selection of key subcontractors and suppliers.
- viii. CMAR will develop a guaranteed maximum price (GMP) for construction for City review and consideration.
- b. Assuming City acceptance of the GMP, the CMAR will then provide all services required of a general contractor, including self-performance and subcontractor procurement and management, during subsequent construction and post-construction phases of the Project.
- c. The relationship between the CMAR and Engineer is intended to be collaborative and proactive, with both participating as advisors to the City during the pre-construction phase [Design Phase]. It is the City's desire and Engineer's recommendation to incorporate a contractor's perspective and input into the Project planning and design decisions, and to leverage the ability for early procurement and phased construction prior to full completion of design.
- d. CMAR Design Phase – The following tasks define the specific efforts to be performed and completed by the Engineer during the pre-construction phase [Design Phase] of the Project.
 - i. Cost Model and GMP Review.
 - a. Coordinate with CMAR, Program Manager, and City to provide input and information on materials, appurtenances and other major capital cost items throughout design phase. Review and comment on the initial cost model and subsequent cost model updates (based on 60% and 90% design submittals) developed by CMAR. Cost review activities will include a review

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

of direct and indirect costs, CMAR fee and CMAR contingency; review supplier and subcontractor quotes and request supplemental quotes, as necessary; compare costs with other applicable projects; and perform review of risk analysis model and/or cost contingencies developed by the CMAR. Indirect costs included in the CMAR cost model will include applicable general conditions and general requirements, bonds, insurance and sales tax. Using the cost models and GMP(s) as the basis for the total construction cost(s), coordinate with the City and program manager regarding additional City administrative costs, engineering fees, construction administration and inspection fees, and (if applicable) City contingency to develop a Total Construction Cost Estimate (TCCE).

- b. A parallel opinion of probable construction cost will be prepared by the Engineer at the 30%, 60% and 90% design milestones. Written recommendation(s) to City regarding opinion of GMP(s) acceptance (Electronic format only) will be provided by the Engineer.
- e. Early Procurement Activities: Coordinate with CMAR and City to develop an equipment and materials procurement plan, including identification of items to be selected and/or procured early based on "best value" or low-bid strategies, and define the parameters associated with "best value" selection as applicable. For those items selected for early procurement, specify the acceptable manufacturers and identify associated Bid Document requirements and incorporate into the preselected equipment packages.
 - i. Coordinate with CMAR to develop the preselection equipment packages and supporting design drawings for early procurement of major long-lead equipment items with the specific acceptable manufacturers. Coordinate with CMAR as part of the bidding process and prepare any addenda as required. Assist the City and CMAR with the review of the supplier proposals and bid packages and the subsequent selection process.
 - ii. CMAR shall be responsible for the packaging of front-end documents, technical specifications and applicable design drawings developed by Engineer; submittal of packages to applicable manufacturers and/or vendors; coordination of vendor proposals; pre-selection of equipment and appurtenances (with City and Engineer input); delivery of detailed design criteria and documents of selected equipment to Engineer for further use and incorporation into detailed design documents; and coordination of delivery, storage, and payment of procured items accordingly.

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

- iii. Early Procurement Design Document Packages (Electronic "PDF" format only) will be provided by the Engineer. Twenty "early-out" packages are included in this scope of service.
- f. General CMAR Coordination: In addition to efforts above, general coordination with CMAR during the pre-construction phase [Design Phase] will include, but not necessarily be limited to:
 - i. Coordination with City and Program Manager regarding development of the CMAR Construction and/or Post- Construction Phase contract, applicable City front-end documents, and Engineer's Division 1 specifications.
 - ii. Soliciting input from CMAR during design development as appropriate.
 - iii. Coordinating any potholing or laser scanning activities by the CMAR required to support accurate development of design documents.
 - iv. Providing input to construction management plan and schedule development.
 - v. Evaluating alternative systems and materials proposed or suggested by CMAR.
 - vi. Responding to constructability review comments.
 - vii. Providing input to Maintenance of Plant Operations (MOPO) plan and schedule.
 - viii. *NOTE: Should the City be unable or unwilling to accept the CMAR GMP and instead decide to procure and deliver the Project using a traditional "design-bid-build" delivery method, subsequent modifications to the front-end documents, technical specifications, and associated design drawings specifically applicable to the City delivery method will be handled as Additional Services. Additional services for bidding, including preparation of Bid Document sets, participation on a pre-bid conference, responding to Bidder questions, preparing applicable addenda, attendance at the Bid opening, assistance in evaluation of Bids, and participation in a pre-construction conference with the selected General Contractor will also be handled as Additional Services, if desired by the City.*
- g. CMAR Advertisement/Selection Phase: Provide assistance and support City and Program Manager in selecting a CMAR.
 - i. Request for Qualifications: The Engineer shall review the CMAR Request for Qualifications (RFQ) document as part one of the two-step CMAR procurement process. This task includes one (1) coordination meeting with City to finalize the documents and establish minimum contractor qualifications.

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

- ii. Request For Proposals: The Engineer shall review the CMAR Request For Proposals (RFP) document and scoring rubric as part two of the two-step CMAR procurement process. This task includes one (1) coordination meeting with City to finalize the documents and establish selection criteria by which to evaluate the submitted CMAR proposals.
- iii. Selection Assistance: The Engineer shall provide City technical assistance for the two-step CMAR procurement process to support City in the review and selection of the CMAR. This task includes one (1) coordination meeting with City to review the scoring of submittals.
- iv. Contract Development: The Engineer shall review the CMAR contract document using the Engineers Joint Contract Documents Committee (EJCDC) contract template as a basis. This task includes one (1) coordination meeting with City to review the documents. City will provide legal review of the contract documents and provide the Engineer with any applicable legal opinions needed during the contract development process.

D. TASK D: FINAL DESIGN

- a. Delete the design drawings and specifications for the expansion of the Post Oak WWTP as provided in Amendment No. 1.
- b. Based on the Preliminary Design, Equipment Preselection, and Coordination with the CMAR, the Engineer shall prepare for approval by the City Drawings and Specifications that set forth in detail the requirements for the construction of the Project and comply with applicable laws, statutes, ordinances, codes, and regulations.
- c. Contract Documents: The Engineer shall assist the City and CMAR in preparation of necessary bidding information, and bidding forms. Engineer will use the City's "front-end" and EJCDC documents for the Project. Engineer will use the Engineer's technical specifications.
- d. Opinion of Probable Construction Cost: The Engineer shall provide updates to the opinions of cost prepared during preliminary design and compare it with the opinion of cost prepared by the CMAR prior to early out packages and at the 30-percent, 60-percent, and 90-percent phases.
- e. Submit plans, specifications, and contract documents to the applicable federal and state agency(s) for approval, where required.

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

- f. Coordinate with utility companies and furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.

Deliverables: 60%, 90% and 100% (*Issued for Construction/IFC*) documents, Engineer review comments on CMAR cost estimates, meeting minutes.

E. TASK E: MEETINGS AND WORKSHOPS AND PROJECT MANAGEMENT

a. Meetings and Workshops:

- i. Schedule and direct regular coordination meetings with the design team to coordinate project task assignments, action items, and to prepare for progress meetings with the City. Engineer will maintain an Action Item Log and Decision Log to monitor project activity. Coordinate with subconsultants to confirm all project elements are compatible, integrated, and meet City performance requirements.
- ii. Schedule and direct weekly progress meetings with the City, Program Manager, CMAR, and design team to review and discuss design development progress with plant operations staff, discuss deliverable status, schedule, outstanding action items, and decisions made. Coordinate with the selected CMAR contractor during progress meetings. Engineer will prepare draft meeting minutes to include action lists and decision lists.
- iii. Discipline Design Coordination Meetings: Participate in up to 30 meetings with subconsultants to coordinate specific discipline requirements (such as structural, architectural, building mechanical) for design.
- iv. Additional Site Visits: Attend up to twelve (12) additional visits to the plant site, not associated with the Review Workshops.
- v. Task Force Meetings: Participate in up to 8 task force meetings per week through 60-percent design related to project areas such as document management, project management, procurement, process design, etc. Task force meetings will be scheduled and conducted by the CMAR.
- vi. QC Review Meetings: plan and participate in two internal QC meetings with the design team. The meetings will be held at approximately the 60 percent and 90 percent project completion stages.

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- vii. Review Workshops: Plan and participate in two (2) review workshops with the design team, Program Manager, and City to review the 60 percent and 90 percent deliverables.
- b. Project Management:
 - i. Project administration will include but not be limited to developing and implementing a project management plan; tracking and managing internal schedules of work; monitoring and addressing issues related to the scope of work, budget and deliverables; preparing and processing monthly billings; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to the City on a regular basis. A standard monthly invoice and progress reports will be prepared for all services.

F. TASK F: REGULATORY & PERMITTING

- a. Coordinate with ongoing permitting projects and comply with any applicable state and local limits.
- b. Coordinate with the City, CMAR, Program Manager and the TCEQ to expedite review and approval of design packages. This coordination will require both formal and informal meetings, by phone, virtual MS Teams meetings or in-person meetings. This activity includes the following tasks:
- c. Coordination with City and Program Manager
 - i. Meet with the City and Program Manager at the initiation of the project and, at the discretion of the City and Program Manager, periodically during the duration of the project. The purpose of the initial meeting is to present the regulatory approach for coordinating with the TCEQ and obtaining approval of the plans and specifications. Subsequent meetings will be conducted to discuss status of approvals and to prepare for meetings with the TCEQ. Meetings may be convened either by phone, MS, Teams or in-person. In-person meetings will occur at the City's offices.
- d. Coordination with TCEQ
 - i. Prepare for and attend one review meeting with the TCEQ's Plan Review Team in Austin. The TCEQ review meeting will be held when the process design for the new facilities is approximately 90% complete and will include a review of the project design criteria, projected wastewater flow and load increases, and potential variances to TCEQ design criteria for wastewater treatment plants. The

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purpose of the meeting will be to inform TCEQ of the treatment plant improvement scope and schedule, and prepare the TCEQ for an unconventional project delivery method (CMAR) of the facilities.

- ii. The scope of work also includes up to four (4) additional coordination meetings with the TCEQ during the design and construction phases corresponding with the CMAR's phases of construction (e.g. facilities requiring early completion, facilities requiring normal completion, and the remaining facilities). The purpose of the review meetings is to coordinate and answer questions related to the design packages and the overall schedule of the construction project. Meetings will be convened either by phone, MS Teams, or in person. In-person meetings will be convened at the TCEQ offices in Austin.
- e. Coordination with the CMAR
 - i. Prepare for and attend periodic meetings with the CMAR to coordinate regulatory approval for construction. Meetings will be convened either by phone, MS Teams, or in-person. Coordinate meetings with the City and Program Manager.

Deliverables: *Meeting agendas, draft meeting notes, revised meeting notes.*

III. TASK SUMMARY, SPECIAL SERVICES

G. TASK G: CONSTRUCTION ADMINISTRATION SERVICES

- a. General Construction Administration Phase services
 - i. The scope of Construction Administration Services is based on a construction timeframe of eighteen (18) months from construction Notice to Proceed to construction substantial completion and twenty-one (21) months from construction Notice to Proceed to construction final completion.
 - ii. Construction Phase duties, responsibilities, and limitations of the Engineer shall not be restricted, modified, or extended without agreement of the City and Engineer in writing.
 - iii. The City's approval, acceptance, use of, or payments for all or any part of Engineer's services hereunder or the Project itself shall in no way alter the Engineer's obligations to the City's rights herein.
 - iv. The Engineer shall be a representative of and shall advise and consult the City during construction. The Engineer shall have the authority to act on behalf of the

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City only to the extent provided in this Agreement, unless otherwise modified by written instrument.

b. Engineer's Personnel at the Construction Site

- i. The presence and duties of Engineer's personnel at a construction site, whether as onsite representative or otherwise, do not make the Engineer or its personnel in any way responsible for those duties that belong to the City and/or construction contractors or other entities, and do not relieve the construction contractors or any other entity from their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the contract documents and any health and/or safety precautions related to such construction work.
- ii. Engineer and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health and/or safety precautions related to such work and have no duty for inspecting, noting, observing, correcting, or reporting on health and/or safety deficiencies of the construction contractors or other persons at the site except Engineer's own personnel.
- iii. The presence of the Engineer's personnel at a construction site is for the purpose of providing the Engineer and the City a greater degree of confidence that the completed work will conform generally to the contract documents and that the integrity of the design concept, as reflected in the contract documents, has been implemented and preserved. The Engineer neither guarantees the performance of any construction contractor nor assumes responsibility for contractor's failure to perform the work in accordance with the contract documents.

c. Internet-based Construction Management

- i. The Engineer will utilize the management software provided by the CMAR contractor for this project.

d. Pre-Construction Conference

- i. The Engineer shall conduct a pre-construction conference for the Project. Meeting shall be conducted with the City and contractor at the City's facility. At a minimum, the following items will be discussed at the pre-construction conference:

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- a. The construction schedules prepared by the contractor;
- b. Schedule of values and payment procedures and schedules;
- c. Designation of key personnel and their duties; and
- d. Procedures for the construction administration of the Project.
- e. Construction Progress Meetings
 - i. The Engineer 's project manager and project engineer will participate in monthly construction progress meetings for the Project.
 - ii. The Engineer will prepare and distribute agendas and meetings notes for each meeting.
 - iii. Additional site visits beyond those listed will be a Special Service and the Engineer shall be entitled to additional compensation.
- f. Shop Drawings and Submittal Review
 - i. The Engineer will review samples; catalog data; schedules; shop drawings; laboratory, shop, and mill tests of materials and equipment; and other data pursuant to the general conditions of the construction contract. Review quality related documents provided by the contractor such as test reports, equipment installation reports, or other documentation required by the construction contract documents. This review is for the benefit of the City and covers only general compliance with the information given by the construction contract documents. This review does not relieve the contractor of any responsibilities such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect the workers and the public, or the necessary to construct and complete a workable facility in accordance with the construction contract documents.
 - ii. The fee is based on review of up to five hundred (500) submittals.
 - iii. Additional submittal reviews beyond those listed will be a Special Service and the Engineer shall be entitled to additional compensation.
- g. Requests for Information
 - i. The Engineer will interpret the intent of the plans and specifications and respond to requests for information (RFIs) for the City and contractors.
 - ii. The fee is based on processing up to four hundred (400) RFIs.

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- iii. Additional RFI responses beyond those listed will be a Special service and the Engineer shall be entitled to additional compensation.
- h. Contract Modifications
 - i. The Engineer will review contract modification requests (CMRs) and prepare proposed contract modifications (PCMs) for items identified during construction that are necessary or requested by the City or contractor but are not in accordance with the construction documents.
 - ii. The Engineer will prepare documentation for construction modifications required to implement modifications in the design of the Project.
 - iii. The fee is based on processing up to a total of one hundred twenty (120) CMRs, PCMs, field/change orders, and work change directives (WCDs).
 - iv. Additional contract modifications beyond those listed will be a Special service and the Engineer shall be entitled to additional compensation.
 - v. Investigations, analyses, studies, or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the City are a Special Service. Substitutions of materials or equipment or design modifications requested by the City are a Special Service and the Engineer shall be entitled to additional compensation.
- i. Pay Estimates
 - i. The Engineer will review and comment on a maximum of twenty-one (21) estimates for payment to contractor, pursuant to the general conditions of the construction contract. Recommendations by the Engineer to the City for periodic construction progress payments to the construction contractor will be based on the Engineer's knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations do not represent: that continuous or detailed examinations have been made by the Engineer to ascertain that the construction contractor has completed the work in accordance with the contract documents; that the final work will be acceptable in all aspects; that the Engineer has made an examination to ascertain how or for what purpose the construction contractor has used the monies paid; that title to any of the work, materials, or equipment passed to the City free and clear of liens, claims, security interest, or encumbrances; or that there are no other matters

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at issue between the City and the construction contractor that affect the amount that should be paid.

j. Substantial and Final Review

- i. The Engineer will conduct, in the company of the City's representative, a substantial completion review for the project for conformance with the design concept of the project and general compliance with the contract documents and provide a list of deficiencies to the contractor. Three (3) interim phase and one overall substantial review site visits are anticipated.
- ii. The Engineer will conduct, in the company of the City's representative, a final review for the project for conformance with the design concept of the project and general compliance with the contract documents, verify that items identified on the deficiency list from the substantial completion review have been completed, and make recommendation for final payment to the contractor. Three (3) interim phase and one overall final review site visits are anticipated.

k. Record Drawings

- i. The contractor will provide to the Engineer red-line drawings for use in the development of the record drawings. In the event that the contractor does not provide adequate red-line drawings and the Engineer must develop the record drawings based on in-depth investigation and research will be considered a Special Service.
- ii. The Engineer will revise the construction drawings in accordance with the information furnished by the contractor reflecting changes to the project made during construction. Record drawings are defined as the drawings produced by the Engineer's modifications to the original design drawings to reflect the changes during the construction.
- iii. The Engineer shall prepare record drawings, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the project was finally constructed.
- iv. The Engineer is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

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- v. Record drawings for the project will be issued by the ENGINEER within sixty (60) days after the comments and markups are provided by the contractor, and the City.
- vi. The Engineer will provide the City with digital copies in Adobe PDF on compact disc, two (2) half-sized (11" x 17") sets of plans (bound, bond), and two digital copies on USB drives to the City. No technical specification books will be provided in paper but will be on USB drives.

H. TASK H: SUPPORT SERVICES – SURVEY AND GEOTECH (IF NEEDED FOR EXISTING SITE)

- a. Surveying Services: Engineer will coordinate surveying services for the following:
 - i. Engineer will provide and coordinate land survey at location for the WWTP sites as required to perform the design.
 - ii. The survey will base horizontal and vertical control on the treatment plant benchmark coordinates and datum. Survey measurements will be based on NAD 83 state plane coordinates.
 - iii. Survey will produce a topographical survey of project area to map utilities and existing structures. The survey will include contours shown at one-foot intervals, plotted locations of structures, paving, visible improvements, and utility information based on surface evidence.
- b. Geotechnical Engineering: Engineer will coordinate and subcontract Geotechnical services for the collection and analysis of up to twelve (12) locations and provide a draft and final geotechnical report for foundation design recommendations.
 - i.

I. TASK I: CONSTRUCTION MANAGEMENT AND RESIDENT PROJECT REPRESENTATIVE SERVICES

- a. General services:
 - i. Represent the City's interests in administering a CMAR contract with both overall construction oversight and daily on-site representation for the CMAR contractor's construction activity. The requested services include documentation and reporting to the City and Program Manager the issues and status relating to the CMAR contractor's work.
 - ii. Provide the staff necessary to perform the construction management and on-site representation as outlined below and for the Project. Construction Manager and subconsultants will provide these services for an anticipated period of 21 months.

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Services assumed to begin December 2023 and end in August 2025. Initial planning level assumption is for the following contract positions:

- a. Senior Construction Manager (CM) – Overall oversight and representative of the Construction Management firm in contractual and performance issues. Responsible in charge of day-to-day inspection, schedule review, and coordinating quality assurance testing of contractor, and construction activity. Detailed task coordination with CMAR contractor, the City's project manager, the Program Manager (PM), construction observation staff, and the Construction Materials Testing (CMT) firm.
- b. Assistant CM and Document Support – Work directly under the CM and assist with CM duties as required on the project and administer movement and proper filing of project documents handled by Construction Manager.
- c. On-site representatives – Work directly under the CM, and in coordination with City's Project Manager and Program Manager, observe and document construction performance in accordance with the Contract Documents. Also provide comments and advice to the City and Program Manager on the CMAR contractor's performance with regard to industry standard practices. This scope includes up to 6 full-time inspectors across the following disciplines: civil, mechanical, electrical, and instrumentation and controls.
- d. Construction Materials Testing (CMT) – The CMT will not be subcontracted to the CM, but the CM will coordinate with the CMT, city Project Manager, Program Manager and CMAR to provide quality assurance testing in accordance with the Contract Documents.
- iii. Establish and manage the Construction Management Team.
- iv. Develop and maintain a Construction Management Plan.
- v. Store all project related records in the CMAR Project Management Information System (PMIS), for required document retention purposes.
- vi. Quality Assurance and Quality Control:
 - a. Disseminate pertinent project information internally and externally, implement Quality Assurance (QA) and Quality Control (QC) measures, and submit deliverables as required per the agreed-upon project schedule.
- vii. Communication:
 - a. Establish communication procedures and protocol with the City, Contractor, Inspectors, Engineer of Record (EOR), and CMT.
 - b. Conduct weekly construction progress meetings with City, CM, Contractor to exchange information regarding progress of construction, safety or quality concerns, status of submittals, status of modifications, and to

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address any project related issues. Prepare agenda and minutes related to these meetings. One of the weekly construction progress meetings will serve as the monthly project meetings with City, EOR, Contractors, and CM Team for the benefit of the City Staff to provide overview of progress of construction and to discuss any major project issues. Intent of this meeting is for additional City and other staff to attend as desired without having to be involved in the bi-weekly meetings where specific project details are discussed.

- c. Develop and distribute meeting agendas, workshop planning information and handouts, and other applicable information pertaining to each specific meeting or workshop.
- d. Record meeting minutes, send a draft to meeting attendees for review, and distribute final meeting minutes after incorporating changes and comments.
- e. Provide weekly emails to City and EOR summarizing the work completed for the week including photos as appropriate and outlining work to be completed the following week.

viii. Cost Management:

- a. Review proposed schedule of values and payment requests prepared by CMAR Contractor. CM will review pay requests monthly and recommend payments at the intervals required by the Program Manager.
- b. Coordinate with City, Program Manager, and CMAR Contractor to establish a basis and procedure for review of monthly quantities of work in place and payment requests.

ix. Schedule Management:

- a. Review approved baseline schedules, "look-ahead" schedules, and monthly construction progress schedules prepared by the CMAR Contractor.
- b. Monitor progress of actual work completed relative to planned progress and address any identified schedule slippage or other anomalies with Contractor. Collaborate with the Contractor to develop a recovery schedule if tasks on the critical path continue to slip.
- c. Review each monthly schedule submittal and provide comments related to the requirements of the Contract Documents. Analyze each schedule to identify changes over the previous month's schedule, including tasks that are behind schedule, tasks that have not yet started, changes in float, critical path, and task relationships.

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- d. Develop a monthly Schedule Review Memo that identifies any significant changes to the schedule (critical path, float, reporting relationships, etc.), tasks that are behind schedule, and tasks that are at risk of falling behind schedule. The memo will be transmitted to the Contractor followed by a discussion with the Contractor during the monthly coordination meetings.
 - e. The memo will be transmitted electronically to the City and saved to the program PMIS site.
- x. Project Status Reports and Invoicing:
 - a. Provide written project status reports to the City once per month throughout the duration of the project. Project status reports will include, at a minimum, a summary description of activities completed, description of activities planned for the next 30 days, financial status of the project, status of schedule for the project, and identification of any technical or other issues which may have an impact on the overall project budget and/or schedule. Project status reports will be provided to the City with each invoice.
 - b. Submit invoices monthly along with the project status report referenced above.
- xi. Issues Management:
 - a. Provide initial interpretation of the drawings and specifications and coordinate with EOR to develop official interpretation for City and CMAR Contractor. Track and coordinate the resolution of all project and program related issues. An Issues Log will be saved to the Program PMIS site.
- xii. Change Management:
 - a. Establish procedures for administering constructive changes to the construction contracts, which will be documented in the Construction Management Plan.
 - b. Prepare documentation for contract modifications required to implement modifications in the design of the project, including the summary memo. Coordinate with the EOR for technical review and approval of any design modifications, and all design modifications will have the EOR seal affixed.
 - c. Process contract modifications and negotiate with the Contractor in conjunction with and on behalf of the City to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the City.
 - d. Receive and evaluate notices of Contractor claims and make recommendations to the City on the merit and value of the claim on the basis of information submitted by the Contractor or available in project

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documentation. Endeavor to negotiate a settlement value with the Contractor in conjunction with and on behalf of the City.

xiii. Project Completion:

- a. When Contractor requests that substantial completion be granted for the Project (or applicable portions thereof), the Construction Manager will conduct, in company with City's representative, a review of the Project for conformance with the design concept of the Project and general compliance with the construction contract documents. Coordinate with EOR as appropriate regarding any reviews of the work that are deemed necessary. Support the EOR in the development of a list of deficiencies to be corrected by the Contractor before recommending Substantial Completion be granted and/or any partial release or reduction of retainage is made.
- b. Support the EOR in conducting a final review of the Project for conformance with the design concept of the Projects and general compliance with the construction contract documents.
- c. Support the EOR in obtaining legal releases, permits, warranties, spare parts, O&M manuals, as-built drawings, and keys from the Contractor. Review closeout submittals and other documents and make recommendation for final payment to Contractor when appropriate.

xiv. Record Documents

- a. Receive and review record drawings from Contractor. Transmit drawings and other documents as needed to EOR for preparation of "Record Drawings," indicating locations of project elements and final built conditions of project components. Drawings prepared by incorporating notes, Contractor field notes and City field notes taken at the project during the construction process.

b. Construction Management Roles

i. Construction Manager / Assistant Construction Manager:

- a. Construction Managers will manage and administer the day-to-day requirements of the Projects and coordinate regularly with the City's Program Manager.
- b. CM will serve as the liaison between the City, the CMAR/Contractor, and the EOR. The CM provide leadership to the assigned Inspectors in the performance of their inspection duties.
- c. Primary responsibilities of CM include the following:
 - 1) Serve as the primary point of contact, with primary responsibility for construction contract administration and quality assurance.

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- 2) Provide direction and manage the efforts of Inspectors. Manage Inspectors as a resource across construction tasks.
- 3) Manage the quality of services provided by Inspectors to determine that their duties are performed in a timely manner.
- 4) Work with City staff when needed to coordinate construction activities that may impact the City's ongoing operations. Coordinate upcoming shut-downs at the plant site and coordinate with the City's Project Manager to prepare a Shut-Down Request Form following the City's policies and procedures.
- 5) Attend progress meetings and report on project progress.
- 6) Review daily construction reports prepared by the Inspectors and discuss any issues noted with the Inspector and other parties as required.
- 7) Monitor overall construction of the project and determine that construction is in conformance with Contract Documents. Recognize when an issue might impact or improve scheduling or construction operation on another known efforts and bring this to the attention of the City's Project Manager.
- 8) Coordinate with Contractor to resolve any issues or disputes related to construction. Support the City's Project Manager in the resolution of any disputes or claims that cannot be resolved at the field level.
- 9) Support administration and negotiations of claims with Contractor with support from the EOR.
- 10) Recognize risk elements of the risk management plan and initiate countermeasures as directed.
- 11) Provide progress reports to the City Project Manager for updating and presentation purposes to City upper management and the Board.
- 12) Manage the efforts of the construction materials testing laboratories and technicians.
- 13) Coordinate with document management staff to verify that all documentation is filed properly in both digital and hard copy files as required.
- 14) Verify that the inspectors have reviewed the quantities of work in place, review the payment requests and supporting documentation, and recommend the amount the CMAR/Contractor be paid on monthly and final payment requests.
- 15) Administer Construction Contracts: Prepare project documentation in accordance with the contract documents.

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- 16) Manage the receipt, logging, control, tracking, and timely processing of all Project documents using the CMAR's Project Management Information System (PMIS).
- 17) Schedule and conduct construction progress meetings with CMAR/Contractor, City, EOR, and other staff.
- 18) Attend other on-site project related construction meetings, as needed.
- 19) Review Shop Drawings received from the Contractor for conformance with the Contract Documents' submittal requirements and administrative completeness. Distribute shop drawings to the appropriate EOR staff and monitor the responsiveness of the EOR during the review process.
- 20) Work directly with the EOR to see that documentation and submittals provided for review are returned with adequate and timely written review comments. Determine that design issues related to requests for information on construction documents, Shop Drawing reviews, and proposed contract modifications are adequately addressed.
- 21) Consolidate written comments on Shop Drawings and other submittals by the EOR and return to the Contractor.
- 22) Review Contractor Requests for Information. Distribute requests to inspectors, City PM, other appropriate staff, and EOR when applicable and coordinate timely response. Review answers and prepare formal response to Contractor pursuant to contract documents.
- 23) Prepare notices of defective work. Coordinate the resolution of non-compliant work with the Contractor, and the City. Document and follow up on non-conforming work to determine that acceptable correction of defects is accomplished.
- 24) Initiate and review field orders. Record the changes in the record contract documents.
- 25) Coordinate evaluation of product substitution requests with City staff, and the EOR.
- 26) Administer and manage resolution of day-to-day construction issues. Coordinate with the CITY PM, EOR, and Contractor on technical issues and concerns working to resolve disputes at the Project level and keep Construction Manager informed of issues.
- 27) Review schedules presented in accordance with the Contract Documents. Coordinate with a P6 schedule analyst monthly to review and report on the contractor's P6 schedule.

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- 28) Review and coordinate approval of a Schedule of Values. Conduct monthly schedule and progress payment meetings with the Contractor. Work with the Contractor to have pay requests ready for City processing in accordance with the Contract Documents. Determine that documentation required for measurement for payment of work is in place and that the materials on hand are accurate.
- 29) Implement the Change Management process in accordance with the Contract Documents. Prepare Requests for a Change Proposals for City initiated changes to the work. Respond to Contractor's Change Proposals. Prepare written justification statements and include cost estimates for each Change Proposal. Include a description of the background explaining the reason for the change, resolution alternatives, and resolution recommendation for action by the City. Prepare and submit Change Request Form and the justification memo with all of the appropriate back-up information in accordance with the Contract Documents and City Policy. Change Orders and Contract Amendments require approval from the City.
- 30) Maintain a working set of record documents. Determine that measurements required for record documents are taken before work is covered.
- 31) Take photographs to document differing site conditions, change order and claim items, and any special or unique conditions as they arise.
- 32) Manage Project completion activities as required by the Contract Documents.
- 33) Manage the process of closing out the construction contract.
- 34) Recommend acceptance of the work in writing in preparation of issuance of the Certificate of Substantial Completion, recommendation to the Board, Notice of Completion, and the City's Internal Notice of Completion.
- 35) Prepare final Change Orders as required. Classify and summarize the change orders and include in the final construction summary report.
- 36) Prepare an Internal Notice of Completion addressed to the City's Operations and Maintenance Department.
- 37) Coordinate with the City's Project Manager to assist with the development of a list of deficiencies to be corrected by the Contractor before recommendation of final payment.

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38) Coordinate with the Contractor to provide O&M Manuals to the City and training is developed and delivered to City Staff in a timely manner.

ii. On-Site Representatives:

- a. Provide Civil, Structural, Electrical, and Instrumentation & Controls inspection services.
- b. Primary responsibilities of Inspectors include the following:
 - 1) Serve as point of contact for the CM, with primary responsibility for construction quality assurance.
 - 2) Observe construction work daily to determine that construction is in conformance with Construction Contract Documents. In this effort the On-Site Representatives will endeavor to protect the City against defects and deficiencies in the work of contractor.
 - 3) Prepare Daily Construction Reports (DCRs) documenting daily construction activities in PMIS, number of construction staff on site, equipment staged and/or operating on site, visitors to the site, discussions of any field issues with any parties, and any other information pertinent to or potentially impacting the Project.
 - 4) Assist the CM and the CITY staff when needed to coordinate construction activities that may impact the CITY's ongoing operations.
 - 5) Coordinate the efforts of CMT laboratories and technicians.
 - 6) Verify quantities of work in place and assist CM in the review of the payment requests and supporting documentation.
 - 7) Attend periodic project coordination meetings (semi-monthly or monthly) when requested by the CM to provide updates and inputs on construction progress and issues as appropriate.
 - 8) Attend other project related construction meetings as needed.
 - 9) Assist CM in preparation of notices of defective work. Assist in coordinating the resolution of non-compliant work with the contractor. Document and follow up on non-conforming work to determine that acceptable correction of defects is accomplished.
 - 10) Maintain a working set of record documents. Determine that measurements required for record documents are taken before work is covered.
 - 11) Take photographs to document differing site conditions, change order and claim items, and any special or unique conditions as they arise.

iii. Administrative Assistant (AA):

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- a. The Administrative Assistant will provide administrative support for the Construction Manager and On-site Project Representatives.
- b. Edits, formats, and finalizes project-related documents, including outsourcing where necessary for binding and/or copying services.
- c. Assist CM with on-boarding new on-site representatives.
- d. Helps maintain inventory of office supplies.
- e. Primary responsibilities of AA include the following:
 - 1) Assist CM with scheduling and coordinating meetings and video calls. Attend progress meetings and other on-site meetings in support of the CM to assist with the development of agendas and the preparation and distribution of meeting notes.
 - 2) Assist in the preparation of daily reports. Review reports and correct for formatting and work with RPRs and CMs to provide missing information as necessary.
 - 3) Assist CM with development of progress reports.
 - 4) Assist CM with contacting and coordinating CMT services.
 - 5) Assist document management staff to verify that all documentation is filed properly in both digital and hard copy files as required at the project level and the program level (SharePoint).
 - 6) Assist CM with the receipt, logging, control, tracking, and timely processing of all Project documents using the CMAR's PMIS at the project level and the Program Manager at the program level (SharePoint).
 - 7) Assist CM with collecting submittal review comments from reviewers.
 - 8) Assist CM in preparation of notices of defective work.
- c. Limitations of Authority of Construction Management:
 - i. The CM will not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by City and EOR via Change Order, Field Order, or other written authorization for or-equal items.
 - ii. The CM will not exceed the authority as set forth in Agreement or the Contract Documents.
 - iii. The CM will not undertake any of the responsibilities of CMAR Contractor, Subcontractor, Suppliers, or CMAR Contractor's superintendent.
 - iv. On site representative services do not relieve the CMAR Contractor of its contractual responsibility for construction quality.
 - v. The CM will not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences, or procedures of

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construction unless such advice or directions are specifically required by the Contract Documents.

- vi. The CM will not advise on; issue directions regarding or assume control over safety precautions and programs in connection with the Work or any activities or operations of City or Contractor.
- d. Schedule:
- i. Refer to the enclosed schedule for the assumed "Construction Management On-Site Personnel". The following list is a summary of the enclosed schedule.

Position	Budgeted Hours this Amendment*	Calculated Total Hours**
Construction Manager/Lead Inspector	2220	3600
Assistant CM	2400	4140
On-Site Representative 1	2050	3360
On-Site Representative 2	1850	3140
On-Site Representative 3	1850	2850
On-Site Representative 4 (EI&C)	950	2050
On-Site Representative (Seasonal) 1	0	800
On-Site Representative (Seasonal) 2	0	800
On-Site Engineer – Part Time	680	984
On-Site Administrative Assistant	1320	2160

*Assumes a work schedule of 5 days per week, 10 hours per day, and 12 months of the construction period and does not include additional seasonal shift work during the summer.

**Assumes a work schedule of 6 days per week and 10 hours per day, and 21 month duration.

- ii. CM will include a summary of hours worked in each monthly report. The CM will notify the City and Program Manager if longer or additional shifts are required causing the actual work hours to exceed the total estimated hours in this proposal. CM will prepare an amendment to the contract for compensation for additional hours.
- e. Deliverables:
- i. Construction Management Plan (saved electronically and/or the Program PMIS site).
 - ii. Documentation and Summary Memos for Allowance, Contingency, and Change Order Requests.
 - iii. Monthly Schedule Review Memos (submitted electrically by email and saved to PMIS and/or the Program PMIS site).

EXHIBIT A2
AMENDMENT NO. 2 - SCOPE OF SERVICES

- iv. Monthly invoices and Project Status Reports (submitted electrically by email and saved to PMIS and/or the Program PMIS site).
- v. Meeting Agendas and Meeting Minutes.
- vi. Daily Construction Reports, including photos, will be loaded into PMIS.
- f. Recurring Meetings:
 - i. Bi-weekly construction progress meetings with City, CM, Contractor to discuss construction specific topics.
 - ii. Monthly project meetings with City, Contractor, EOR, and CM Team for the benefit of the City Staff to provide overview of progress of construction and to discuss any major project issues.

EXHIBIT B1
AMENDMENT NO. 2 - PROJECT DESIGN BUDGET SUMMARY

I. Basic Services (Lump Sum)

Scope Item – South WWTP MBR		Fee
A	Preliminary Design	\$ 566,044
B	Equipment Preselection	\$ 566,845
C	CMAR Coordination	\$ 313,282
D	Final Design	\$ 3,521,542
E	PM & Meetings	\$ 257,627
F	Regulatory & Permitting	\$ 0
Total Basic Services Amendment No. 2:		\$ 5,225,340

II. Special Services (Time & Materials)

Scope Item – South WWTP MBR		Fee
G	Construction Administration Services	\$ 302,407
H	Support Services - Geotech, Survey	-\$ 53,500
I	Construction Management and Resident Project Representative Services (through first 12 months of construction)	\$ 3,000,000
Total Special Services Amendment No. 2:		\$ 3,248,907

TOTAL AMENDMENT NO. 2 NOT TO EXCEED	\$ 8,474,247
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RESOLUTION NO. 7306

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AMENDMENT NO. 3 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR DESIGN OF THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN PROJECT; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

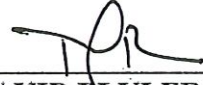
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute Amendment No. 3 to the Professional Services Agreement with Plummer Associates, Inc. for engineering services for the design of the Wastewater Treatment and Water Reuse Master Plan Project, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 20th day of May 2024.

CITY OF SHERMAN, TEXAS

BY: 

DAVID PEYLER, MAYOR

ATTEST:

BY: 

LINDA ASHBY, CITY CLERK

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

BY: 

RYAND. PITTMAN, 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.


CITY CLERK, SHERMAN, TEXAS

ISSUED: 7.3.2024

AMENDMENT NO. 3

TO THE PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES BETWEEN
THE CITY OF SHERMAN ("OWNER") AND PLUMMER ASSOCIATES, INC. ("CONSULTANT")
FOR THE WASTEWATER TREATMENT AND WATER REUSE MASTER PLAN PROJECT

Dated June 6, 2022 ("Original Agreement")

This Amendment No. 3 serves to increase the original contract fees under the Original Agreement (\$2,073,011), Amendment No. 1 (11,369,931), and Amendment No. 2 (8,474,247) based on the following **changes** to the project scope as detailed in the attached Exhibit A3: "Amendment 3 - Scope of Services." The new total professional services shall now be \$ 22,467,189.

The contract amount under the Original Agreement, Amendment No. 1, and Amendment No. 2 shall be increased by a fee not to exceed \$ 550,000 as presented in the attached Exhibit B3: "Amendment No. 3 – Project Design Budget Summary."

Basic Configuration Services (Lump Sum)

Scope Item – South WWTP MBR Design & Construction Services		Fee
A	Project Management, Meetings, Workshops, & Expenses	\$ 60,000
B	Configuration Standards, Requirements Definition & Documentation	\$ 20,000
C	Project Coordination & Control Strategies	\$ 15,000
D	Network Configuration, PLC Programming, and HMI Configuration	\$ 260,000
E	Testing Services	\$ 75,000
F	Training Services	\$ 35,000
G	Startup and Commissioning Services	\$ 45,000
H	Maintenance Services	\$ 40,000
Total Basic Configuration Services Amendment No. 3:		\$ 550,000
TOTAL AMENDMENT NO. 3 NOT TO EXCEED		\$ 550,000

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This Amendment No. 3 shall be effective on the date it is executed by the last party to execute it. The OWNER and CONSULTANT hereby agree to amend the Proposed Fees in EXHIBIT B3 of the Original Agreement plus EXHIBIT B1 of Amendment #1 and EXHIBIT B2 of Amendment #2 to read as follows:

Proposed Fees

Consultant shall be compensated on the following lump sum basis. Special and Additional Services shall be performed based on the rate schedule included in the Original Agreement.

I.	Basic Services	
A.	Information Gathering and Review	\$117,221
B.	Capacity and Treatability Study	\$190,251
C.	Treatment Alternatives Screening Evaluation	\$339,260
D.	Water Reuse Alternatives Screening Evaluation	\$102,919
E.	Indirect Potable Reuse Alternatives Screening Evaluation	\$55,212
F.	Detailed Alternative Evaluation	\$337,909
G.	Implementation Plan	\$37,341
H.	Report	\$117,765
I.	Project Administration	\$154,053
J.	Additional Meetings	\$36,080
K.	Preliminary Design	\$1,649,103
L.	Equipment Preselection	\$913,402
M.	CMAR Coordination	\$650,812
N.	Final Design	\$7,664,917
O.	PM & Meetings	\$1,366,650
P.	Regulatory and Permitting	\$137,274
Total Basic Services*		\$13,870,169

II.	Special Services	
A.	Additional Sampling	\$20,000
B.	Additional Detailed Alternative Evaluation	\$340,000
C.	Additional Data Collection and Analysis	\$30,000
D.	Additional Model Development & Screening	\$50,000
E.	Additional Meetings	\$50,000
F.	Surveying, Easement Preparation, and SUE	\$50,000
G.	Geotechnical Engineering	\$25,000
H.	Environmental and Architectural Investigation Services	\$20,000
I.	Construction Administration	\$4,302,407
J.	Support Services – Geotech, Survey, SUE	\$159,613
K.	Construction Management and Resident Project Representative Services (through first 12 months of construction)	\$3,000,000
Total Special Services		\$8,047,020

III.	Basic Configuration Services (Lump Sum)		
	A.	Project Management, Meetings, Workshops, & Expenses	\$60,000
	B,	Configuration Standards, Requirements Definition & Documentation	\$20,000
	C.	Project Coordination & Control Strategies	\$15,000
	D	Network Configuration, PLC Programming, and HMI Configuration	\$260,000
	E.	Testing Services	\$75,000
	F.	Training Services	\$35,000
	G.	Startup and Commissioning Services	\$45,000
	H.	Maintenance Services	\$40,000
Total Basic Configuration Services (Lump Sum)			\$550,000

Total Services with Amendments 1 through 3		
I.	Total Basic Services	\$13,870,169
II.	Total Special Services	\$8,047,020
III.	Total Basic Configuration Services (Lump Sum)	\$550,000
Total Revised Contract		\$22,467,189

The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and acknowledge and agree that the Original Agreement remains in full force and effect, except as amended in Amendment No. 1, Amendment No. 2, and this Amendment No. 3. To the extent that any provision contained herein conflicts with the Original Agreement, the provision contained herein shall supersede such conflicting provision contained in the Original Agreement and Amendment No. 1 and Amendment No. 2. This Amendment No. 3, the Original Agreement, Amendment No. 1, and Amendment No. 2 contain the entire agreement of the parties with respect to the matters contained herein. This Amendment No. 3 may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

EXECUTED in three (3) counterparts (each of which is an original) on behalf of CONSULTANT shown below, and on behalf of the OWNER by its City Manager (thereunto duly authorized) this 22 day of May, 2024.

OWNER:
CITY OF SHERMAN, TEXAS



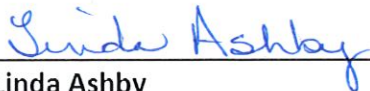
Robby Hefton, City Manager

CONSULTANT:
PLUMMER ASSOCIATES, INC



Alan E. Davis, P.E., Principal

ATTEST:



Linda Ashby
City Clerk

ATTEST:



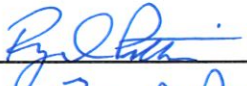
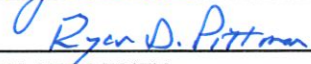
Nick Toussaint, P.E., Principal

APPROVAL RECOMMENDED:



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

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

BY: 
NAME: 

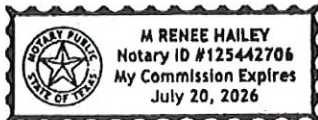
CITY ATTORNEY

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 3rd day of May, A.D. 2024.



M R Hailey
Notary Public In and For Tarrant County, Texas

My Commission Expires:

July 20, 2026

PROJECT DESCRIPTION

The City of Sherman ("City" or "Owner") has selected Plummer Associates, Inc. ("Plummer") to provide engineering consulting services for planning, design and construction administration associated with the south wastewater treatment and water reuse facilities needed to support continued growth of the industrial and domestic wastewater system in the City.

The additional scope of services described below includes programming and configuration services to the City of Sherman in support of the South Wastewater Treatment Plant - MBR Phase 1 project. Plummer will now also provide project management services for the programming and configuration project and will act as the primary point of contact for the project.

Plummer and its sub-contractor Tek Automation will serve as the "integration team" to provide PLC Programming and Human Machine Interface (HMI) configuration additions to the existing Post Oak WWTP control system. The integration team will also develop a programming documentation package for each process area, as well as conduct controls workshops, to be held with the plant operations staff, that will focus on the programming and configuration effort while it is underway. For plant areas that include vendor panels, the integration team will perform coordination reviews of the package PLCs, verifying the data is available for the HMI as well as providing the necessary IP addressing back to the vendor.

The integration team will confirm tagging standards, standard Add-On-Instructions (AOIs), Function Blocks (FBs) and other PLC and HMI constructs to aid the development process and provide the City with a standard controls approach that can be easily operated and maintained in the future. Programming activities will include several workshops with the City to discuss the programming effort and possible options available that City staff may wish to review, as well as discuss the rationale for alarm notification, data historization, and reporting requirements.

The integration team will provide an overall testing plan, that will describe the different components of the project testing, beginning with the testing that occurs at the control panel fabrication facility, followed by the different on-site testing activities.

Operator training will be conducted in multiple sessions to accommodate multiple operations shifts and an appropriate number of sessions. An HMI operations manual will be provided to support the operator training and longer-term operations. It is anticipated that the HMI operations manual will be an online system to promote ease of use and future expansion.

The project will include startup-up services and warranty/corrective and maintenance services.

The HMI configuration and PLC programming deliverables to be provided by area will include:

Area 200 – Screening

The screenings area will have a new Programmable Logic Controller (200-PLC-101) provided by contractor and programmed by the Plummer Integration Team.

Scope of Services:

The screening PLC will be programmed for influent lift station level control and monitoring/alarm functions. The programming will also include Lead/Lag control and alternation of the pumps. Other functions included in the scope of work are the PLC logic for the operation of the sluice gates in the influent box, and the integration of screen channel with the screening equipment.

Also, control and monitoring programming will be furnished for Remote Input/Output (RIO) racks, including the Alkalinity System (380-RIO-101), and the Sludge Storage System (800-RIO-101).

Area 300 – Pretreatment

The Pretreatment Unit area will have a new Programmable Logic Controller (300-PLC-101) provided by contractor and programmed by the Plummer Integration Team.

Scope of Services:

The PTU PLC program will include monitoring of the grit system (310-GS-111), the fine screens monitoring (320-FS-111 & 320-FS-121), and the equalization tank controls including the valve controls (330-RIO101). Programming will also include the I/O of the Equalization Remote I/O Rack, (330-RIO-101) and the Bubbler system (330-PLC-101).

Area 400 – Blower Building

The Blower Building will have a new Programmable Logic Controller (450-PLC-101) provided by the contractor and programmed by the Plummer Integration Team.

Scope of Services:

Programming for primary services of the Blower PLC will include control of the BRB basins, the BRB Internal Recycle Pumps, the VFDs for same, and the BRB mixers. The PLC will also be programmed to monitor and control the BRB Basins Remote I/O, the Scum collector, carbon addition, the Carbon system, and its remote I/O (400-RIO-101, 400-RIO-102, 370-RIO-101). The Blower PLC will also monitor the vendor BRB Aeration Blower Master Control Panel, the Scum Pump Station, and the MBR Blowers.

Area 550 – MBR Support Building

The MBR Support Building will have a new Programmable Logic Controller (550-PLC-101) provided by the contractor and programmed by the Plummer Integration Team.

Scope of Services:

Programming for primary services of the MBR Support PLC will include monitoring of the Membrane Master Control Panel (500-PLC-101), the RAS Wetwell Mixers, the WAS Sludge

Pumps, and Filters 1 & 2 I/O at the Influent Pump Station. In addition, the PLC will be programmed to control the Relift Pumps.

I. TASK SUMMARY, BASIC CONFIGURATION SERVICES

A. TASK A: CONFIGURATION PROJECT MANAGEMENT AND QUALITY CONTROL

- a. Provide project management for Basic Configuration Services. Project management shall include monitoring and addressing issues related to the scope of work, budget and deliverables; preparing and processing monthly billings; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to the City on a regular basis.
 - i. The Engineer shall coordinate efforts on project tasks identified above.
 - ii. The Engineer shall prepare a common monthly invoice.

B. TASK B: PROJECT CONFIGURATION STANDARDS, REQUIREMENTS DOCUMENTATION

- a. The Engineer will provide an HMI and PLC documentation package, along with a network documentation package.
 - i. The Engineer will provide an HMI documentation package showing the additions to the existing navigation system, a list of the hierarchy of screens, and individual proposed and finalized HMI screens. The engineer will also produce an I/O tag list for the HMI database for all new tags, indicating process ranges and alarming conditions.
 - ii. The engineer will develop a PLC submittal that will document each PLC's I/O, memory map and control subroutines. The Engineer will also develop a mapping list documenting communication messages between each of the PLCs.
 - iii. The engineer will develop a detailed physical and logical network diagram for the facility and will maintain the master IP address listing, including any Virtual Lan (VLAN) or IP subnet information. The engineer will also document any configuration information for remote access or virtual private networks (VPNs)
 - iv. The Engineer shall provide final system documentation of the HMI system, including software listings and databases, software graphics, configuration files on CD-ROMS or otherwise incorporate into the online O&M Manual.

C. TASK C: PROJECT COORDINATION & CONTROL STRATEGIES

- a. The Engineer will prepare an agenda and conduct bi-weekly coordination meetings to ensure timely and effective communications between the City, contractor, and integration team. During hi-effort construction periods or planned shutdowns, these meetings will be moved to a weekly frequency.

- b. The Engineer will maintain a control network IP addressing master list and will provide direction to vendors on this item.
- c. The Engineer will develop control strategies for each process area and will conduct a workshop to discuss strategies prior to PLC coding.

D. TASK D: NETWORK CONFIGURATION, PLC PROGRAMMING, AND HMI CONFIGURATION

a. PLC Programming

i. Influent Pump Station 200-PLC-101

- a. The Engineer will develop and test a PLC program for the Influent Pump Station 200-PLC-101 and include PLC data mapping to support SCADA monitoring and control.
- b. The Engineer will develop and test a PLC program for the Relift Pump Station and include PLC data mapping to support SCADA monitoring and control of the Effluent Filters.
- c. The Engineer will develop and test a PLC program for the monitoring of the Coarse Screens (200-ACS-111, 121) and include PLC data mapping to support SCADA monitoring and control.
- d. The Engineer will develop and test logic to control (2) small and (2) large influent pumps. Controls will provide for Lead/Lag control of the reduced voltage soft starters (RVSS) and will provide for manual and automatic modes. In automatic mode, level sensors will be used, and alternation of the pumps will be performed each day.
- e. The engineer will provide logic to control the header valves to PTU in manual and automatic control. In auto, logic will close the header valve and modulate header valve to peak storage basin to maintain discharge header pressure.
- f. The Engineer will provide flow limiting to PTU using the PTU High Level safety interlock. In addition, an Operator-entered Flow maximum to PTU will be provided to maintain desired flow to PTU.
- g. The Engineer will develop and test logic to control the alkalinity system chemical feed pumps over the 380-RIO-101 I/O rack. In manual mode, operators will be able to set the GPH feed rate. In auto, operators will enter a desired dosage rate in mg/l and the PLC program will calculate the dosage based on the IPS discharge rate.

- h. The chemical pump control will also contain an auto sequence to rotate the pumps each day.
 - i. The Engineer will develop and test logic to control the sludge storage tank system blowers over the 800-RIO-101 I/O rack. In manual, the blowers will be controlled to run at setpoint, In auto, the blowers will be controlled based on the level. An interlock from the sludge storage tank will prevent the WAS pumps from operating.
 - j. The blowers will also contain an auto sequence to rotate the pumps each day.
- ii. Preliminary Treatment Unit 300-PLC-101
- a. The Engineer will develop and test monitoring the I/O of the control panel for Fine Screen Unit No.1 and Fine Screen Unit No. 2
 - b. The Engineer will develop and test monitoring the I/O of the control panel for Grit Removal Unit No.1
 - c. The Engineer will program and test a monitoring routine for the equalization tank large-bubble mixing system over ethernet communications.
 - d. The Engineer will develop and test a PLC program for the Preliminary Treatment PLC 300-PLC-101 and include PLC data mapping to support SCADA monitoring and control.
 - e. The Engineer will develop and test logic for the PTU outlet gates. In manual, the operator will control the gates. In auto, the cleaning action logic will be implemented to control the gates.
 - f. The Engineer will develop and test the logic for the EQ Basin Effluent Control Valve and Flow Meter. Manual logic will be provided to allow manual control of the Effluent Control Valve. Automatic logic will be provided to control effluent valve automatically.
- iii. Blower Building 450-PLC-101
- a. The Engineer will develop and test a PLC program for the Blower Building PLC 450-PLC-101 and include PLC data mapping to support SCADA monitoring and control.
 - b. The Engineer will develop and test the logic to monitor information coming from the BRB Aeration Blower Master Control Panel. In addition, logic will be provided which allows the blowers to be started or stopped

and will also include the adjustment of the header pressure to be adjusted.

- c. The engineer will develop and test logic for the BRB basin controls. This logic will allow the operators to select the basins in service.
- d. The Engineer will develop and test logic that will allow manual control of the BRB Recycle Pump VFDs over the Ethernet/IP. In addition, logic will be provided to allow for automatic control of the pump VFDs where the operator enters a Flow "Q" setpoint and will divide the basin effluent flow by the number of basins in service and will adjust the speed of the pumps to maintain the recycle flow rate. Additional logic will be provided to rotate the pumps once a day.
- e. The Engineer will develop and test logic for both manual and automatic control of the BRB Mixers. The program will monitor the operation of the mixers as well as provide indication of alarm conditions, including motor winding temperature and motor moisture intrusion.
- f. The engineer will develop and test logic to control the BRB Basins air flow control valves via the Remote I/O Racks 400-RIO-101 & 400-RIO-102. Logic will be provided for several modes of auto control, including Dissolved Oxygen control and Ammonia control. The control modes will have automatic mode to maintain DO levels in the basins.
- g. The ammonia control mode will also be developed to lower ammonia through a cascaded control loop and using the flow signals. An alternate solution using flow control will also be provided along with manual control modes for each header.
- h. The Engineer will also develop and test control logic for the scum collection system. Logic will be provided to allow for manual control as well as auto control. In auto, a timer will be implemented to be interlocked with the other basin scum collector. A high-level interlock will also prevent collector opening.
- i. The Engineer will develop and test logic for the carbon system pumps via the 370-RIO-101 remote rack. The pumps will have manual control and auto control. In auto, the operator will enter dosage in mg/l based on equalization basin flow and the PLC will calculate dosage. An alternator control will also be provided.

iv. Membrane Support Building 550-PLC-101

- a. The Engineer will develop and test a PLC program for the MBR Support Building 550-PLC-101 and include PLC data mapping to support SCADA monitoring and control.
- b. The Engineer will develop and develop and test the logic to monitor information coming from the Membrane Master Control Panel. Logic will be provided to organize this data and make it available for polling by the HMI.
- c. The Engineer will develop and test control logic for the RAS Wetwell Mixers (600-MX-111 & 121). Manual control will be programmed to allow remote start/stop of the mixers. In auto control mode, mixers will run unless prohibited by low wetwell level.
- d. The Engineer will develop and test control logic for the RAS wetwell pumps. Logic will be provided for manual control of the RAS VFDs, allowing the operator to set a manual speed output to the pumps. In the automatic mode, the RAS pumps will automatically speed up or down to maintain a wetwell operating level. Wetwell level will be used as the process variable (PV) in this control and the high and low float level will be used for alarm and shutdown interlocks.
- e. The Engineer will develop and test WAS pump control logic for the two (2) WAS pumps. In the auto mode, a WAS pump control loop will maintain a constant flow to the sludge storage tank using the WAS flowmeter as PV. In this mode, the operator will enter the total gallons to waste each day, and the number of wasting periods, and the PLC will calculate and set the wasting pumps until the total gallons wasted is reached. The operator will also have manual control of the pumps where a manual wasting rate can be set. The Engineer will also create a pump rotation routine for the pumps.
- f. The Engineer will develop and test PLC program logic to monitor the Filters 1 & 2 I/O and map it for consumption by the HMI.
- g. The Engineer will develop and test PLC program logic to control the two (2) re-lift pumps via the VFDs over ethernet to supply the filters. The re-lift pumps will have operator adjustable manual control logic and automatic control logic. In the automatic mode, the operator will set a desired flow rate to the filters and a flow control loop will minimize the fluctuations to the filters, while maintaining level in storage. The Engineer will also create a pump rotation routine for the pumps.

b. Server Cabinet and Network Configuration

- i. Network Cabinet
 - a. The Engineer will configure the managed ethernet switches in the PLC cabinets including the creation and configuration of the Virtual LANS (VLANs).
 - b. A Remote Access Solution (eWon VPN) may be installed for secure HMI and PLC updates.
- c. Rockwell FactoryTalk HMI Configuration
 - i. The Engineer shall create the graphical user screens, alarms, trends and setup the tag database additions for the equipment in the project's scope of work.
 - ii. The Engineer will with assistances from plant staff, develop and plant tag (I/O) database for the newly added equipment.
 - iii. The Engineer will update menu and navigation templates for the process additions.
 - iv. The Engineer develop detailed operating screens for the new plant equipment.
 - v. The engineer will also develop control screens to allow setpoint changes for PLC control and alarm functions.
 - vi. The Engineer will develop a communications status screen to show the additional PLCs added during the project
 - vii. The Engineer will update and configure system security and log-in as appropriate for the added processes.
- d. Programming Code Review and Assistance
 - i. The Engineer shall review PLC controller code and HMI configuration written by our team members.

E. TASK E: TESTING

- a. The Engineer will develop, manage and perform a comprehensive field-testing effort that will involve all parties to test new equipment from the field device, it's Input/Output signals, through the field wiring to the PLC, the PLC logic functions, communications across the network, polling from the HMI, HMI database screens, trending, alarming and reporting processes.
- b. The Engineer will develop a testing plan, complete with a listing of the areas, items to be tested, testing sheets for review, and will lead the execution of the testing planThe Engineer will develop an un-witnessed Factory Test (UFT) plan.
- c. The Engineer will specify and witness the System Integration Test (SIT).

- d. The Engineer will specify and witness the Factory Acceptance Test (FAT).
- e. The Engineer will specify and witness the Operational Readiness Test (ORT).
- f. The Engineer will specify and witness the Functional Demonstration Test (FDT).
- g. The Engineer will specify and witness the 30-day Site Acceptance Test (SAT)

F. TASK F: TRAINING SERVICES

- a. The engineer will develop a training plan that will encompass the operation and control of the new equipment being supplied. The training will supplement the individual vendor training being provided and will focus on the PLC and HMI controls.
- b. The Engineer will provide training on the basics of the PLC, HMIs and use of the Operator Interfaces will be provided.
- c. Additional in-depth equipment troubleshooting, and maintenance activities will be provided to maintenance and support staff.

G. TASK G: STARTUP AND COMMISSIONING SERVICES

- a. As part of the coordination effort, The Engineer will lead the overall commissioning activities, providing the overall plan and administering the weekly start-up activities. The engineer will plan, witness and coordinate activities with the contractor and witness.

H. TASK H: MAINTENANCE SERVICES

- a. The Integration Team will provide a one-year maintenance period during which any issues arising out of the programming and configuration items will be rectified through a periodic review and execution of a master punchlist.

I. SCHEDULE

- a. The integration team will coordinate with the CMAR contractor's schedule to align the completion of programming and configuration services with the startup and testing of equipment for the South WWTP MBR project. Implementation and cutover activities will be coordinated and scheduled with the CMAR Contractor. Additionally, it is anticipated that the time-period for the programming and configuration services as detailed above in the Basic Configuration Services shall be completed within 410 days after the execution date of this Agreement.

II. TASK SUMMARY, SPECIAL SERVICES

Special Services incidental to the Project, but not included within the scope of Basic Configuration Services covered above, which may be performed or arranged for separately by the City or may be added to the Engineer's responsibilities by mutual agreement and prior written authorization.

EXHIBIT B3
AMENDMENT NO. 3 - PROJECT DESIGN BUDGET SUMMARY

Basic Configuration Services (Lump Sum)

Scope Item – South WWTP MBR Design & Construction Services		Fee
A	Project Management, Meetings, Workshops & Expenses	\$ 60,000
B	Configuration Standards, Requirements Definition & Documentation	\$ 20,000
C	Project Coordination & Control Strategies	\$ 15,000
D	Network Configuration, PLC Programming, & HMI Configuration	\$ 260,000
E	Testing Services	\$ 75,000
F	Training Services	\$ 35,000
G	Startup & Commissioning Services	\$ 45,000
H	Maintenance Services	\$ 40,000
Total - Basic Configuration Services Amendment No. 3:		\$ 550,000
TOTAL AMENDMENT NO. 3 NOT TO EXCEED		\$ 550,000

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City Council Regular Meeting

Agenda Item No. F.4.

Meeting Date: 1/6/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 7460**

Authorizing Execution of a Professional Services Agreement with Plummer Associates, Inc. for the SWWTP-MBR Solids Thickening Improvements

Issue:

To consider a Professional Services Agreement with Plummer Associates, Inc. for the SWWTP-MBR Solids Thickening Improvements

Background:

With the implementation of the new South WWTP facility, it is necessary to add additional sludge thickening facilities to reduce the volume of sludge generated in the treatment process to more-manageable quantities, which must eventually have to be hauled to the landfill.

Approval of this item will initiate engineering services needed to design, bid and award, and some construction management needed to complete this additional south facility.

This project was in the 2025 GTUA OM Bond under the South WWTP.

Origination:

Engineering Department

Financial Consideration:

Funding needed for the agreement is \$699,344, and will be available through 2025 GTUA OM Bond proceeds.

Staff Recommendation:

It is recommended that the contract for professional services with Plummer Associates, Inc. for the SWWTP-MBR Solids Thickening Improvements be approved.

Alternatives:

As may be directed by the City Council

Attachments:

1. Resolution No. 7460
2. Professional Services Agreement
3. Location Map

RESOLUTION NO. 7460

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR THE SWWTP-MBR SOLIDS THICKENING IMPROVEMENTS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Plummer Associates, Inc. for engineering services for the SWWTP-MBR Solids Thickening Improvements, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of January 2025.

CITY OF SHERMAN, TEXAS

**BY: _____
SHAWN TEAMANN, MAYOR**

ATTEST:

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

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

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

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
PLUMMER ASSOCIATES
FOR
PROFESSIONAL SERVICES

Made as of the _____ day of _____, 2024:

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

and Consultant: **Plummer Associates**
 1320 South University, Ste. 300
 Fort Worth, TX 76107
 Telephone: (817) 806-1700

for the following Project: **SWWTP-MBR Solids Thickening Improvements**

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

WHEREAS, City desires to engage Consultant to provide professional services for the SWWTP-MBR Solids Thickening Improvements Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a Lump Sum basis in an amount not to exceed **six hundred ninety-four thousand three hundred forty-four Dollars (\$694,344.00)**; and (b) for Special Services, in an amount not to exceed **five thousand Dollars (\$5,000.00)** (collectively, "Consultant's Fee"); and (c) paid in accordance with this Article 3 and the Project Engineering Budget Summary as set forth in **Exhibit B**.
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in **Exhibit C**, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for City to

declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

- 3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be solely responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and for consulting with such agencies and utilities to obtain all necessary approvals and/or permissions. Consultant shall be responsible for preparation and timely submittal of documents required for review, approval and/or recording by such agencies and/or utilities. Consultant shall be solely responsible for making such changes in the construction documents ("Construction Documents") as may be required by existing written standards promulgated by such agencies and/or utilities at no additional charge to City.
- 3.1.4 **Substantial Compliance with Architectural Barriers Act** – Should the Project fall within the regulatory requirements of the Texas Architectural Barriers Act, Chapter 68 of the Texas Administrative Code, as it exists or may be amended ("Barriers Act"), as solely determined by City, Consultant shall comply with the Barriers Act. As part of the Scope of Services defined in this Agreement, it is the sole responsibility of Consultant to identify and analyze the requirements of the Barriers Act and to become familiar with the governmental authorities having jurisdiction to approve the design of the Project. Consultant shall consult with such authorities to obtain approval for the Project. As part of the Services provided under Consultant's Fee, Consultant shall obtain the Notice of Substantial Compliance for the Project from the Texas Department of Licensing and Regulation ("TDLR"). Consultant shall, without additional compensation, immediately correct any errors, omissions, or deficiencies in the design services and/or construction documents identified by TDLR and/or a Registered Accessibility Specialist ("RAS") at any phase of the Project, either by review of the Construction Documents or inspection of the Project at the commencement of construction, during the construction of the Project or at the completion of construction.
- 3.1.4.1 **Submission of Construction Documents to TDLR** – Consultant shall mail, ship or hand-deliver the Construction Documents to TDLR not later than five (5) calendar days after Consultant issues the Construction Documents for the Project.
- 3.1.4.2 **Completion of Registration Form to TDLR** – Consultant shall complete an Elimination of Barriers Project Registration Form

("Form") for each subject building or facility within the Scope of the Project, and submit the registration form(s) along with the applicable fees not later than fourteen (14) calendar days after Consultant completes the submittal of the Construction Documents to TDLR.

3.1.4.3 **TDLR Approval of Construction Documents** – After review of the Construction Documents by TDLR, Consultant will be notified in writing of the results; however, it is Consultant's responsibility to obtain TDLR's written comments. Consultant shall address all comments that prevent TDLR approval of the Construction Documents, including comments relating to conditional approval that must be addressed in the design and construction of the Project. Consultant shall resubmit Construction Documents to TDLR for review prior to the completion of construction of the Project.

3.1.4.4 **TDLR Project Inspection** – Consultant shall request an inspection from TDLR or a TDLR locally approved RAS no later than thirty (30) calendar days after the completion of construction of the Project. Consultant shall advise City in writing of the results of each Project inspection. City reserves the right to verify the written results with TDLR at any time during design, construction, or at the completion of the Project.

3.1.4.5 **Corrective Modifications following TDLR Project Inspection** – When corrective modifications to achieve substantial compliance are required, the TDLR inspector or the RAS shall provide Consultant a list of deficiencies and a deadline for completing the modifications. Consultant shall provide City with this list within five (5) calendar days of receipt. It is the sole responsibility of Consultant to completely address the deficiencies by the stated deadline or to obtain a written notice of extension from the TDLR. When the corrective measures have been completed, Consultant shall provide the TDLR (and/or the RAS who completed the inspection) and City with written verification of the corrective measures completed

3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in **Exhibit B**, and consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for

reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.

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

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

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.5 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on direct billable labor rates and expenses.

3.3.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.

Hourly Billable Rates by Position

Position	Hourly Rate
Principal	\$354
Senior Project Manager	\$317
Project Manager	\$260
Project Engineer	\$187
Technician	\$151
Admin	\$120

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

- 3.8 **Adjusted Compensation** – If the Scope of the Project (“Scope of the Project”) or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant’s compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant’s compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed
- 3.10 **Fixed Budget Limit for Construction Cost** – If a fixed budget limit for the Construction Cost has been established, the Consultant shall be permitted to make reasonable adjustments in the scope of the Project and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in this Agreement. All adjustments in the Scope of the Project shall be approved by the City and documented in writing. Should the lowest bona fide bid for construction of the Project be in excess of 130% of the 100% plans EOPCC due to the negligence or other fault of the Consultant, the City may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4), require that the Consultant adjust the Project scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the Consultant, without additional charge to the City, shall consult with the City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the Project into multiple Construction Phases that will fall within budget constraints. The Consultant shall provide the services defined in Exhibit A, as required, for each of the new phases created by splitting the Project.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of City** – The Project is the property of City, and Consultant

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

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

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

- 5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Contractor Insurance Guidelines, which is attached hereto and incorporated herein by reference for all purposes, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall name City, its officers, agents, representatives, and employees as additional insureds as to all applicable coverage. Such policy shall provide for a waiver of subrogation against City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance.

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

- 5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each claim, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.
- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.
- 5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If the Project’s size and scope warrant, and if identified on the checklist located in **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars (\$2,000,000.00). Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

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

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

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

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

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports,

photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

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

ARTICLE 10 INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE

USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE

TEXAS LOCAL GOVERNMENT CODE.

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

ARTICLE 11 NOTICES

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

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

With a copy to:

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

If to Consultant, addressed to:

Alan E. Davis, PE
Principal
Plummer Associates, Inc.
1320 South University, Ste. 300
Fort Worth, TX 76107
Telephone: (817) 806-1700
Email: adavis@plummer.com

ARTICLE 12 MISCELLANEOUS

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

- 12.1.1 **Exhibit A**, Scope of Services.
- 12.1.2 **Exhibit B**, Project Engineering Budget Summary.
- 12.1.3 **Exhibit C**, Guidelines for Computer Aided Design and Drafting (CADD).
- 12.1.4 **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.
- 12.1.5 **Exhibit E**, Contractor Insurance Guidelines.
- 12.1.6 **Exhibit F**, Conflict of Interest Questionnaire, Form CIQ.

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

Exhibit F or **Exhibit A** shall prevail in that order.

- 12.2 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 12.3 **Attorney's Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 12.4 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.5 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 12.6 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 12.7 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.8 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

- 12.9 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.10 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.11 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.
- 12.13 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.
- 12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.16 **No Third-Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.

- 12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.
- 12.20 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's current fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's current fiscal year unless and until such funds are budgeted.
- 12.23 **Certifications Required by Texas Law** – In accordance with Chapter 2270 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott Israel and will not boycott Israel during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 809 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott energy companies and will not boycott energy companies during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter

2274 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of any contract with City, including during the term of this Agreement. The foregoing terms have the meanings ascribed to them in the referenced statutes if defined therein.

12.24 Reference to Consultant – When referring to “Consultant,” this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

12.25 Reference to City – When referring to “City,” this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

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

CITY:

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

By: _____
Robby Hefton, City Manager

CONSULTANT:

Plummer Associates, Inc.
a Texas corporation

By: _____
Alan E. Davis, PE, Principal

APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF Tarrant §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **ALAN E. DAVIS**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS A **PRINCIPAL** AND DULY AUTHORIZED REPRESENTATIVE FOR **PLUMMER ASSOCIATES, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 12 DAY OF December 2024.

Susan Beaman
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 10-31-2028



EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

- A. The City of Sherman ("City") has selected Plummer Associates, Inc. ("Plummer" or "Consultant") to provide engineering consulting services for evaluation, design and bidding associated with new solids thickening facilities at the MBR plant.

The scope of the project includes design and bid phase services to install new rotary drum solids thickening facilities at the South Wastewater Treatment Plant-MBR (SWWTP-MBR) to process the MBR waste activated sludge (WAS).

Plummer will provide project management services and will act as the primary point of contact for the project. Subconsultants include Carollo Engineers, Inc. and Mead & Hunt, Inc.

B. Assumptions:

- a. WAS flows and loads will be based on the SWWTP-MBR facility capacity of 4 mgd Average Annual Daily Flow (AADF) and 8 mgd Peak Day Flow (PDF). The facilities will be designed to accommodate an expansion of 4 mgd AADF and 8 mgd PDF.
- b. Thickening filtrate will be sent back to the MBR plant influent pump station.
- c. The solids thickening design will consider the additional quantity of solids associated with chemical phosphorus removal.
- d. The new facilities will be located wholly inside the SWWTP-MBR plant site.
- e. The thickening facilities will require an enclosed building that would also house pumping, polymer feed, electrical, control systems, and HVAC equipment. The building will be a single-story insulated pre-engineered metal building to include a ventilated/heated process area, an air-conditioned electrical room, and an air-conditioned PLC room separate from the process area. Plumbing is anticipated to be limited to a laboratory-style sink, emergency eyewash/shower, and process drains. The building will not include office space or restrooms.
- f. The RDT facilities will be designed around one manufacturer's equipment, with alternate equipment manufacturers included in the specifications.
- g. A design-bid-build delivery approach will be used for the project.
- h. A pre-selection package will be developed for the rotary drum thickener (RDT) equipment to be competitively bid. The pre-selected equipment will then be included in the construction contract for the project.

EXHIBIT A SCOPE OF SERVICES

- i. Solids disposal is assumed to be via landfill.
- j. No odor control treatment is included in the project.

II. GENERAL REQUIREMENTS

- A.** Specific design requirements shall be obtained from the City of Sherman Engineering Design Standards. Consultant will establish and summarize design criteria. The design criteria will be reviewed by the City for approval prior to beginning design work.
- B.** Consultant shall coordinate with other engineering consultants, utility companies, franchise utilities, City of Sherman, pipeline companies, and any other entity which has facilities within or adjacent to the Project.
- C.** Each time the Consultant submits plans and/or specifications to City, PDF versions of each shall be submitted unless otherwise instructed. These shall be reviewed and checked by City and returned to Consultant for corrections. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.
- D.** The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.
- E.** Communications and Reporting:
 - i. Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
 - ii. Attend review meeting with the City at the end of each design phase.
 - iii. Prepare and submit monthly invoices in the format acceptable to the City.
 - iv. Prepare and submit monthly progress reports.
 - v. Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
 - vi. Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
 - vii. With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.

EXHIBIT A SCOPE OF SERVICES

viii Attend additional project coordination meetings, if needed.

III. TASK SUMMARY, BASIC SERVICES

A. Preliminary Design Phase (50%)

- a. Determination of the size, layout, location, building requirements and support facilities for Solids Thickening Facilities near the Sludge Storage Tank that discharges thickened solids into the Sludge Storage Tank and returns filtrate to the plant Influent Pump Station. The building will be a single-story insulated pre-engineered metal building to include a ventilated/ heated process area, an air-conditioned electrical room, and an air-conditioned PLC room separate from the process area. Plumbing is anticipated to be limited to a laboratory-style sink, emergency eyewash/shower, and process drains. The building will not include office space or restrooms.
- b. Develop recommendations for polymer and a polymer feed system for the thickening facilities. If no MBR WAS is available for polymer testing, recommendations will be based on Consultant's experience and supplier recommendations.
- c. Determine washwater and potable water needs for the facilities and incorporate a potable water booster pumping system in the project if required.
- d. Coordinate and attend one site visit to an alternate RDT manufacturer's installation with City staff to collect information and observe operations, for the purpose of inclusion in the specification for the major equipment.
- e. Develop one work package of preliminary design documents.
- f. Develop an early procurement package for the RDT equipment.
- g. Prepare preliminary engineering review drawings (1"=20' scale, 22"x34" sheets) to include preliminary horizontal and vertical alignments of all proposed improvements with minimal construction-related notes. Cross-sections at least every fifty (50) feet will be required for paving-related or channel-related projects. If necessary, report in sufficient detail to indicate clearly any of the problems involved and provide alternate solutions available to the City. Include preliminary layouts, a right-of-way map, sketches, and cost estimates for the Project and set forth clearly the Consultant's recommendations for any alternate designs.
- h. Water, sanitary sewer, and storm drains will be shown on the plans based on field information and surveys collected by the Consultant and from existing "Record Drawings" provided by the City of Sherman.

EXHIBIT A SCOPE OF SERVICES

- i. Prepare preliminary Project Manual, including Bid Form and technical specifications.
- j. Upon completion of the Preliminary Design Phase, the Engineer will advise the City of any geotechnical, soil, foundation, or other subsurface investigations or any special surveys, Level B or A SUE, or special testing which, in the opinion of the Consultant, may be required for the proper execution of the project, and assist the City in arranging for the conduct of such investigations and tests. The performance of geotechnical investigations and tests will not be a part of the Consultant's Basic Engineering Services and will not be included unless specifically authorized in writing under "F. Special Services."
- k. The Consultant will consult with the City, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. Consultant will design City facilities to avoid or minimize conflicts with existing utilities, and where known and possible, consider potential future utilities in designs.
- l. The Consultant will coordinate with local building officials to determine code compliance and permitting requirements.
- m. Prepare a preliminary 50% OPCC.
- n. Coordinate one review meeting with the City and address any comments received.

Deliverables: One work package of 50% design documents and preliminary OPCC, one pre-selection package for RDT equipment, meeting notes.

B. Final Design/Construction Phase (90%, 100%)

- a. Prepare final engineering review drawings that address all comments from the previous review.
- b. Prepare final Project Manual, including Bid Form, Special Conditions and technical specifications.
- c. Prepare a final OPCC. Prepare detailed cost estimates based on current unit prices from the proposal of authorized construction, which shall include summaries of bid items and quantities on the unit price system of bidding, wherever practical.
- d. Finalize miscellaneous plan sheets, including cover sheet, index, general

EXHIBIT A SCOPE OF SERVICES

notes, project control and applicable City standard details.

- e. Coordinate one review meeting with the City .
- f. Upon completion of the final design review, the Consultant shall furnish to the City, where required by the circumstances of the assignment, the engineering data, construction plans, completed forms, and reports necessary for applications for routine permits by local, state, and federal authorities (as distinguished from detailed applications and supporting documents for government grants-in-aid or for planning advances not included in Basic Engineering Services).

Deliverables: One work package of final design documents and OPCC, meeting notes

C. Bid Phase Services

- a. Prepare bid set drawings and specifications that address all comments from the final design review.
- b. Furnish to the City all necessary copies of approved Construction Contract Documents needed for competitive bidding (plans, specifications, notice to bidders, proposals, etc.). All sets of Construction Contract Documents in excess of eight (8) copies are to be paid for separately as provided hereinafter.
- c. Consultant will submit the project plans to the State of Texas for the TAS/ADA review, if required for the Project. Consultant will prepare the application and make the submittal. The City will provide a check for the fee based on the construction cost of pedestrian improvements per the submittal requirements. Consultant will address comments from the review and revise plans if necessary.
- d. Submit the project plans to the Texas Commission on Environmental Quality (TCEQ) for review and approval.
- e. Up to two separate bid periods are anticipated. Assist the City in the advertisement of the equipment preselection package and the Project construction package for competitive bids.
- f. Assist the City with one Pre-Bidders meeting.
- g. Prepare addenda as appropriate to interpret, clarify, or expand the Bid Documents.

EXHIBIT A SCOPE OF SERVICES

- h. Assist the City in the opening and tabulation of bids for each package.
- i. Prepare a written summary of the bid tabulation and evaluation together with a letter addressing the award of the construction contract.
- j. Assist in the preparation of formal Construction Contract Documents, provide four (4) copies of contracts to be executed by the contractor, and coordinate their execution by the respective parties.
- k. The Consultant shall not be required to guarantee the accuracy of the final design Cost of Construction but may be required to provide additional services at no cost to the City if bids for the Project exceed the fixed budget limit for the Construction Cost as provided in Article 3.

Deliverables: Two sets of bid documents, Pre-Bid meeting agenda, addenda, two bid tabulation/evaluations, two bid award recommendation letters, one set of Construction Contract Documents for execution, TAS submittal, TCEQ submittal, meeting notes.

D. Special Services

- a. Various services incidental to the project, but not within the scope of the Basic Engineering Services covered by A., B., C., D., and E. preceding, which may be performed or arranged for separately by City, or may be added to the Consultant's responsibilities by mutual agreement and written authorization include but are not necessarily limited to the following:
 - i. Design Surveying - to collect information required for design, including photogrammetry, land surveying, and related office computations and drafting. All surveys and coordinate information shall be based on the NAD 83 CORS Grid Coordinate System utilizing control monuments established within the City of Sherman. This also includes refreshing and re-establishing benchmarks and reference points on NAD 83 CORS Grid Coordinate System for construction of the project, one time only. This does not include construction staking.

IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

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

EXHIBIT A SCOPE OF SERVICES

Services include the following:

- a. Staking of the Centerline of the proposed Project for utility coordination. The Consultant or its surveyor shall stake the centerline throughout the extent of the Project. The beginning and the end of the Project shall be designated. The points of intersection, points of curvature, and points of tangency of all horizontal curves shall be designated. Stations and half-stations (50-foot and 100-foot) shall be designated throughout the entire Project, on tangential and curvilinear portions. Said centerline control is to be established in a timely fashion as directed by City staff. Said centerline control markings are to be a one-time event and shall be of a nature to last a minimum of eight months.
- b. Furnish descriptive instruments related to the acquisition of easements and/or rights-of-way. The description of these parcels should be rotated to match the bearings of the individual deeds. The payment for these instruments will be made on a per parcel basis unless otherwise indicated. As part of providing instruments for right-of-way acquisition, the Engineer/Surveyor will need to stake the corners of the acquisition.
- c. Appearances before hearings for eminent domain proceedings are specifically not included in the specified per parcel payment.
- d. Appearances before regulatory agencies.
- e. Assistance to the City as an expert witness in any litigation or claim, arising from, or in connection with, the Project.
- f. Special investigations involving detailed consideration of operation, maintenance, and overhead expense; preparation of rate schedules; preparation of special reports and an engineer's certificate as required for marketing bonds; earnings and expense statements; preparation of assessment rolls; special feasibility studies; appraisals; valuations; and material audits or inventories required for certification of force account construction performed by the City.
- g. Detailed mill, shop, and/or laboratory inspection of materials or equipment.
- h. Geotechnical Investigation & Report - obtain the services of a qualified geotechnical engineering laboratory to conduct soil and foundation investigations, including test borings, soil tests, and analyses of test results.
- i. Preparation of applications and supporting documents for government grants or planning advances for public works projects.

**EXHIBIT A
SCOPE OF SERVICES**

- j. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.
- k. Revision of reports and Construction Contract Documents after specific approval by City.
- l. Subsurface Utility Engineering that involves Level "A" or "B" identification of a utility.
- m. In-depth investigation and research to develop Record Drawings in the event that the Contractor does not provide adequate red-line drawings.
- n. SCADA and control systems integration will be completed by the City's subcontractor

EXHIBIT B
PROJECT BUDGET SUMMARY

III. Basic Services

A. Preliminary Design Phase Services (Expected Completion: April 30, 2025)	\$299,537.00
B. Final Design Phase (90%, 100%) Services (Expected Completion: October 1, 2025)	\$344,929.00
C. Bid Phase Services (Expected Completion: November 30, 2025)	\$49,877.00
Total Basic Services (Lump Sum)	<u>\$694,344.00</u>

III. Special Services

D. <u>Design Surveying</u>	<u>\$5,000.00</u>
Total Authorized Special Services	\$5,000.00
Project Budget, Grand Total (Not-To-Exceed)	\$699,344.00

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

1. Files shall be done in DWG/DXF format.
2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83 Grid.
3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.
4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.
5. The file shall contain required features for the project type as detailed below:
 - a. Pre-Construction/As-Built Plans and/or Record Documents:
 - i. Layers from Final Plat Requirements as Applicable to Project Type.
 - ii. Water Utility Features.
 - iii. Sanitary Sewer Features.
 - iv. Storm Sewer Features.
6. Each required feature group should be provided as a separate layer within the file.
7. Layer names should be representative of the information contained in the layer.
8. Line work should be done per accepted industry norms.

Text should not be smaller than 0.08" on a full size sheet, and should be a font such as Simplex, Calibri, or Arial.

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

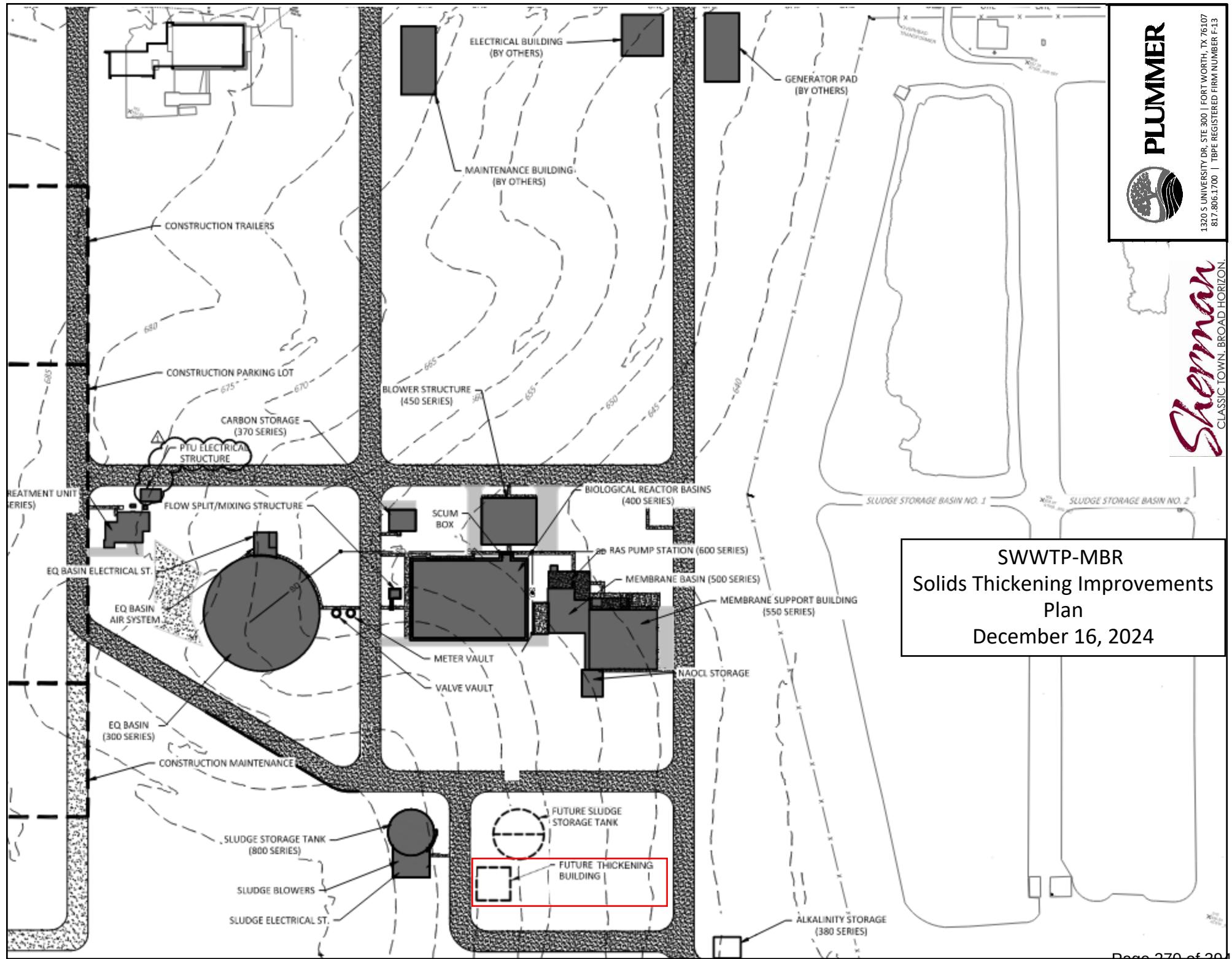
EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

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

EXHIBIT F

CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.		OFFICE USE ONLY
1 Name of vendor who has a business relationship with local governmental entity.	2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)	
3 Name of local government officer about whom the information is being disclosed.		
Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.		
A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7 Signature of vendor doing business with the governmental entity Date 12.12.2024		



SWWTP-MBR
Solids Thickening Improvements
Plan
December 16, 2024



City Council Regular Meeting

Agenda Item No. F.5.

Meeting Date: 1/6/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 7461**

Authorizing Execution of a Professional Services Agreement with Plummer Associates, Inc. for the South WWTP Phase II Expansion

Issue:

To consider a Professional Services Agreement with Plummer Associates, Inc. for the South WWTP Phase II Expansion

Background:

Due to the expected increasing industrial wastewater, engineering consulting services were requested to provide preliminary evaluations / analysis of expected wastewater flows and future loading to the new south wastewater treatment plant (SWWTP). Services will include biological modeling and assessment of existing facilities, and possible expansion of existing facilities. Also included will be expected costs associated with a design-bid-build of future SWWTP plant expansion and application engineering feasibility report (PEFR) to the Texas Water Development Board (TWDB) through a GTUA application. The effort of this project is called Phase II South WWTP Expansion.

With final application and TWDB approval, final design services will be based upon this study and construction focused on the budget described therein. That project will be undertaken under separate contract.

Origination:

Engineering Department

Financial Consideration:

Funding needed for the agreement is \$794,117.00 and is available in the 2024A GUTA OM Bonds

Staff Recommendation:

It is recommended that the contract for professional services with Plummer Associates, Inc. for the South WWTP Phase II Expansion be approved.

Alternatives:

As may be directed by the City Council

Attachments:

1. Resolution No. 7461
2. Prof Svcs Agmt Ph-2 Eval_v2.1_signed
3. Location Map

RESOLUTION NO. 7461

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PLUMMER ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR THE SOUTH WWTP PHASE II EXPANSION; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Plummer Associates, Inc. for engineering services for the South WWTP Phase II Expansion, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of January 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
PLUMMER ASSOCIATES
FOR
PROFESSIONAL SERVICES

Made as of the _____ day of _____, 2025:

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

and Consultant: **Plummer Associates**
 1320 South University, Ste. 300
 Fort Worth, TX 76107
 Telephone: (817) 806-1700

for the following Project: **South WWTP Phase II Expansion**

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

WHEREAS, City desires to engage Consultant to provide professional services for the South WWTP Phase II Expansion Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be: (a) for Basic Services, on a Lump Sum basis in an amount not to exceed **seven hundred eighty-nine thousand one hundred seventeen Dollars (\$789,117.00)**; and (b) for Special Services, in an amount not to exceed **five thousand Dollars (\$5,000.00)** (collectively, "Consultant's Fee"); and (c) paid in accordance with this Article 3 and the Project Engineering Budget Summary as set forth in **Exhibit B**.
 - 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in **Exhibit C**, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
 - 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for City to declare Contractor in default of the terms and conditions of the Agreement.

Consultant shall submit his findings in writing to City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

3.1.3 Consultation and Approval by Governmental Authorities and Franchised Utilities

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

3.1.4 Substantial Compliance with Architectural Barriers Act – Should the Project fall within the regulatory requirements of the Texas Architectural Barriers Act, Chapter 68 of the Texas Administrative Code, as it exists or may be amended ("Barriers Act"), as solely determined by City, Consultant shall comply with the Barriers Act. As part of the Scope of Services defined in this Agreement, it is the sole responsibility of Consultant to identify and analyze the requirements of the Barriers Act and to become familiar with the governmental authorities having jurisdiction to approve the design of the Project. Consultant shall consult with such authorities to obtain approval for the Project. As part of the Services provided under Consultant's Fee, Consultant shall obtain the Notice of Substantial Compliance for the Project from the Texas Department of Licensing and Regulation ("TDLR"). Consultant shall, without additional compensation, immediately correct any errors, omissions, or deficiencies in the design services and/or construction documents identified by TDLR and/or a Registered Accessibility Specialist ("RAS") at any phase of the Project, either by review of the Construction Documents or inspection of the Project at the commencement of construction, during the construction of the Project or at the completion of construction.

3.1.4.1 Submission of Construction Documents to TDLR – Consultant shall mail, ship or hand-deliver the Construction Documents to TDLR not later than five (5) calendar days after Consultant issues the Construction Documents for the Project.

3.1.4.2 Completion of Registration Form to TDLR – Consultant shall complete an Elimination of Barriers Project Registration Form ("Form") for each subject building or facility within the Scope of the

Project, and submit the registration form(s) along with the applicable fees not later than fourteen (14) calendar days after Consultant completes the submittal of the Construction Documents to TDLR.

3.1.4.3 **TDLR Approval of Construction Documents** – After review of the Construction Documents by TDLR, Consultant will be notified in writing of the results; however, it is Consultant's responsibility to obtain TDLR's written comments. Consultant shall address all comments that prevent TDLR approval of the Construction Documents, including comments relating to conditional approval that must be addressed in the design and construction of the Project. Consultant shall resubmit Construction Documents to TDLR for review prior to the completion of construction of the Project.

3.1.4.4 **TDLR Project Inspection** – Consultant shall request an inspection from TDLR or a TDLR locally approved RAS no later than thirty (30) calendar days after the completion of construction of the Project. Consultant shall advise City in writing of the results of each Project inspection. City reserves the right to verify the written results with TDLR at any time during design, construction, or at the completion of the Project.

3.1.4.5 **Corrective Modifications following TDLR Project Inspection** – When corrective modifications to achieve substantial compliance are required, the TDLR inspector or the RAS shall provide Consultant a list of deficiencies and a deadline for completing the modifications. Consultant shall provide City with this list within five (5) calendar days of receipt. It is the sole responsibility of Consultant to completely address the deficiencies by the stated deadline or to obtain a written notice of extension from the TDLR. When the corrective measures have been completed, Consultant shall provide the TDLR (and/or the RAS who completed the inspection) and City with written verification of the corrective measures completed

3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in **Exhibit B**, and consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for

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

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

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

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.5 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on direct billable labor rates and expenses.

3.3.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.

Hourly Billable Rates by Position

Position	Hourly Rate
Principal	\$354
Senior Project Manager	\$317
Project Manager	\$260
Project Engineer	\$187
Technician	\$151
Admin	\$120

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

if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant's compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.

- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed
- 3.10 **Fixed Budget Limit for Construction Cost** – If a fixed budget limit for the Construction Cost has been established, the Consultant shall be permitted to make reasonable adjustments in the scope of the Project and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in this Agreement. All adjustments in the Scope of the Project shall be approved by the City and documented in writing. Should the lowest bona fide bid for construction of the Project be in excess of 130% of \$(n/a) due to the negligence or other fault of the Consultant, the City may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4), require that the Consultant adjust the Project scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the Consultant, without additional charge to the City, shall consult with the City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the Project into multiple Construction Phases that will fall within budget constraints. The Consultant shall provide the services defined in Exhibit A, as required, for each of the new phases created by splitting the Project.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of City** – The Project is the property of City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps,

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

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

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

- 5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each claim, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.
- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent service(s), and is authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.
- 5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If the Project’s size and scope warrant, and if identified on the checklist located in **Exhibit E**, Consultant shall procure and maintain throughout the term of this Agreement, at no expense to City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s), and is authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars (\$2,000,000.00). Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

ARTICLE 6

CONSULTANT'S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

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

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

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

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

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

prior to Consultant receiving final payment.

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

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

ARTICLE 10 INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS “CITY” FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES AND EXPENSES (INCLUDING ATTORNEY’S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS “CONSULTANT” FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, “CLAIMS”). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM “CLAIMS” IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS

NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS ("JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

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

ARTICLE 11 NOTICES

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:

Alan E. Davis, PE
Principal
Plummer Associates, Inc.
1320 South University, Ste. 300
Fort Worth, TX 76107
Telephone: (817) 806-1700
Email: adavis@plummer.com

ARTICLE 12 MISCELLANEOUS

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

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

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

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

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

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

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

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

- 12.2 **Assignment and Subletting** – Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of City. Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Consultant of its full obligations to City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 12.3 **Attorney's Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
- 12.4 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.5 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 12.6 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 12.7 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.8 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

- 12.9 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.10 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.11 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.
- 12.13 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.
- 12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.16 **No Third-Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.

- 12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.
- 12.20 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's current fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's current fiscal year unless and until such funds are budgeted.
- 12.23 **Certifications Required by Texas Law** – In accordance with Chapter 2270 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott Israel and will not boycott Israel during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 809 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott energy companies and will not boycott energy companies during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter

2274 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of any contract with City, including during the term of this Agreement. The foregoing terms have the meanings ascribed to them in the referenced statutes if defined therein.

12.24 **Reference to Consultant** – When referring to “Consultant,” this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

12.25 **Reference to City** – When referring to “City,” this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

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

CITY:

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

By: _____
Robby Hefton, City Manager

CONSULTANT:

Plummer Associates, Inc.
a Texas corporation

By: _____
Alan E. Davis, PE, Principal

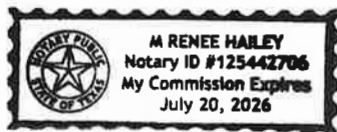
APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF Tarrant §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **ALAN E. DAVIS**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS A PRINCIPAL AND DULY AUTHORIZED REPRESENTATIVE FOR **PLUMMER ASSOCIATES, INC.**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 18th DAY OF
December 2024.



M R Haley

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: July 20, 2026

EXHIBIT A SCOPE OF SERVICES

I. **PROJECT DESCRIPTION**

A. Project Summary

Plummer Associates, Inc. will provide preliminary engineering consulting services for the wastewater treatment and water reuse facilities needed to support continued growth of the industrial and domestic wastewater system in the City.

The project includes evaluating expansion alternatives for increasing design load and peak flow handling capacities of selected Post Oak Wastewater Treatment Plant and South Wastewater Treatment Plant – MBR facilities. The scope of the project includes preliminary evaluations/analysis of peaking factors, flow projections and wastewater quality mass balance; biological modeling for the POWWTP and SWWTP-MBR facilities; an assessment for potential BRB and MBR uprating capacities, and implications for subsequent phases following Phase 2. Plummer will develop a conceptual Opinion of Probable Construction Costs (OPCC) for the recommended alternatives and prepare a Preliminary Engineering Feasibility Report (PEFR) for a Texas Water Development Board (TWDB) funding application.

The project does not include final design, bidding or construction-related services. Any provisions of this contract that address preparation of plans, specifications and construction documents are not applicable to this scope of services.

Plummer will provide project management services and will act as the primary point of contact for the project. Subconsultants include Carollo Engineers, Inc. and Mead & Hunt, Inc.

B. Assumptions

- a. Additional incremental capacity for the Phase 2 expansion is 4 mgd Average Annual Daily Flow (AADF) for the combined POWWTP and SWWTP-MBR facilities.
- b. Phase 2 of the SWWTP-MBR is anticipated to be designed for an AADF of 2 mgd and a peak day flow of 4 mgd. The plant will be designed to accommodate an expansion up to 4 mgd AADF and 8 mgd PDF, without uprating.
- c. In a separate project, the GlobalWafers industrial flows will be re-routed to the Post Oak WWTP via the Blalock Park interceptor pipeline (to be replaced) and a new diversion structure, thereby reducing the MBR plant flow by approximately 1.5 mgd when complete (design by others).
- d. The existing Post Oak WWTP facility has been biologically modeled based on the flow increase and is shown to have capacity for up to 12.5 mgd AADF,

EXHIBIT A SCOPE OF SERVICES

including the GlobalWafers flows.

- e. The South WWTP-MBR Influent Diversion Box, Influent Pump Station (IPS), Equalization Basin (EQ Basin), and Sludge Storage Tank (SST) have adequate capacity. These facilities are not expected to be expanded in this Phase 2.
- f. The MBR manufacturer used in Phase 1 of the SWWTP-MBR will be used for Phase 2.
- g. The evaluation will consider the potential for future reuse. The Phase 2 facility layout will include planning for a future reuse pump station.
- h. A design-bid-build delivery approach is expected to be used for this project.
- i. The City is conducting a separate evaluation of the anaerobic digesters that includes evaluation of thickening at the POWWTP.
- j. The City has a separate design and bidding agreement for new solids thickening facilities at the SWWTP-MBR.
- k. This project does not include chemical feed facilities for phosphorus removal. The sludge thickening and dewatering designs will consider the additional quantity of sludge associated with chemical phosphorus removal.
- l. Solids flows and filtrate from the POWWTP and the SWWTP-MBR are not required to be separated for thickening/dewatering.
- m. Solids disposal is assumed to be via landfill.
- n. No odor control treatment is included in the project.

II. GENERAL REQUIREMENTS

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

EXHIBIT A SCOPE OF SERVICES

Consultant for corrections. When the corrected copies of the plans and specifications are returned to City, the original and reviewed plans and specifications shall also be returned to City. All plans, specifications, documents, provisions, attachments, and correspondence provided in accordance with this contract shall be dated.

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

E. Communications and Reporting:

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

III. TASK SUMMARY, BASIC SERVICES

A. Preliminary Evaluations

a. Wastewater Flow and Loading Projections:

- i. Based on current City information for future flows from industrial users and the service area and data from the City's MEMC pipeline flowmeter, determine peak 2-hour and peak 24-hour ratios to AADF to use for Phase 2 design.
- ii. Determine design loadings for AADF, maximum monthly flows, peak 2-hour flow, and peak 24-hour flow for Phase 2 design and subsequent phases.

EXHIBIT A SCOPE OF SERVICES

- iii. Perform biological modeling for revised mass balance of influent for the POWWTP and the SWWTP-MBR to determine impact on plant treatment unit capacities. Model up to twelve scenarios to include nine known modeling scenarios and three (3) potential additional scenarios to be developed in collaboration with the design team and the City.
- iv. Model chemical phosphorus treatment addition, carbon addition and alkalinity addition to determine needs and locations for the additions at the POWWTP and the SWWTP-MBR facilities. Quantify the resulting relevant sludge production for both POWWTP and SWWTP-MBR facilities.
- b. Assess current SWWTP-MBR coarse screening facilities at the Influent Pump Station for Phase 2 AADF and peak flows without expansion or uprating.
- c. Assess Preliminary Treatment Unit facility fine screening and vortex grit removal/classifier to accommodate planned capacity of four additional BRBs, including potential uprating.
- d. UV Disinfection Replacement or Expansion Evaluation
 - i. Evaluate two alternatives using horizontal or inclined lamp technology for a new UV facility for the SWWTP-MBR plant and a new facility for the combined POWWTP and SWWTP-MBR flows. Include an air-conditioned electrical building for the control system of the selected alternative.
- e. Prepare a technical memorandum documenting the assumptions, basis of design and recommendations, and submit for review by the City.
- f. Coordinate one review meeting with the City, address any comments received, and provide the revised technical memorandum to the City.

Deliverables: Draft and final technical memorandum, meeting notes

B. Conceptual Design

- a. SWWTP-MBR
 - i. Evaluate capacity of Phase 1 BRB splitter box and provide sizing, dimensions and configuration of design modifications if needed for uprating.
 - ii. Provide sizing, dimensions and configuration of new BRB splitter box and two new basins including mixing for anoxic zones, diffusers for aerobic zones, and blowers serving the BRBs. Facility will include 2 basins similar in size and configuration to Phase 1 and be suitable for expansion to 4 mgd AADF by adding blowers and two more basins.

EXHIBIT A SCOPE OF SERVICES

- iii. Provide sizing, dimensions and configuration of new electrical building and canopy-covered area for new BRB blowers and new MBR blowers and suitable for expansion to 4 mgd capacity.
 - iv. Provide sizing, dimensions and configuration of new metering facilities between existing Equalization Basin and new BRBs.
 - v. Provide sizing, dimensions and configuration of chemical addition and mixing for carbon addition to the influent wastewater at the new BRBs.
 - vi. Provide sizing, dimensions and configuration of supplementary alkalinity addition and mixing, if required.
 - vii. Provide sizing, dimensions and configuration of new 2-mgd AADF MBR facility suitable for expansion to 4 mgd. Evaluate expansion of capacity of Phase 1 facility with additional basins, considering filling in spares and assessment of flux rates. Evaluate chemical feed system to determine if tote system should be converted to a bulk system.
 - viii. Provide sizing, dimensions and configuration of additional equipment and piping in the Membrane Support Building pipe gallery to house new permeate pumps, WAS pumps, and other required equipment for the MBR expansion. No building modifications are anticipated.
 - ix. Provide sizing, dimensions and configuration of a new plant water pump station at the Membrane Support Building gallery to provide service water to the SWWTP-MBR.
 - x. Evaluate concepts for RAS pumping to accommodate the two additional BRBs in Phase 2 and ultimately a total of 8 BRBs at buildout. Provide sizing, dimensions and configuration of new pumps for RAS pumping facility to support Phase 2.
 - xi. Evaluate concepts and provide sizing, dimensions and configuration of dewatering facilities at the SWWTP-MBR and discharge filtrate to the Influent Pump Station. The building architecture will match the Blower Building and include separate spaces for equipment, electrical panels, and operations control panels. The building will be designed to accommodate future additional dewatering facilities for the SWWTP-MBR buildout.
 - xii. Update facility layout and include planning for chemical phosphorus removal and a future reuse pump station at the POWWTP.
- b. POWWTP
- i. Update facility layout and include planning for chemical phosphorus removal

EXHIBIT A SCOPE OF SERVICES

and a future reuse pump station.

- c. Design UV improvements for the total flows of the SWWTP-MBR and POWWTP based on the evaluation in this project and results from concurrent Mead & Hunt evaluation.
- d. Prepare Solids Management Plan for TPDES permit application.
- e. Prepare a conceptual Level 2 Opinion of Probable Construction Cost (OPCC), and coordinate the format of the OPCC with the Greater Texoma Utility Authority (GTUA).
- f. Prepare a Preliminary Engineering Feasibility Report (PEFR) to meet TWDB-0556 requirements for funding applications.
- g. Coordinate one review meeting with the City and address any comments received.
- h. Finalize and assist with submittal of PEFR to the TWDB.
- i. Prepare presentation and attend one City Council meeting to describe recommended improvements to the Council.

Deliverables: Draft and final PEFR, meeting notes, Council presentation.

C. Special Services

- a. Various services incidental to the project, but not within the scope of the Basic Engineering Services covered by A., B., C., D., and E. preceding, which may be performed or arranged for separately by City, or may be added to the Consultant's responsibilities by mutual agreement and written authorization include but are not necessarily limited to the following:
 - i. Design Surveying - to collect information required for design, including photogrammetry, land surveying, and related office computations and drafting. All surveys and coordinate information shall be based on the NAD 83 CORS Grid Coordinate System utilizing control monuments established within the City of Sherman. This also includes refreshing and re-establishing benchmarks and reference points on NAD 83 CORS Grid Coordinate System for construction of the project, one time only. This does not include construction staking.
 - ii. .

IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

- A **Additional Services not included in the existing Scope of Services** – City and Consultant agree the following services are beyond the Scope of Services

EXHIBIT A SCOPE OF SERVICES

described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

- a. Staking of the Centerline of the proposed Project for utility coordination. The Consultant or its surveyor shall stake the centerline throughout the extent of the Project. The beginning and the end of the Project shall be designated. The points of intersection, points of curvature, and points of tangency of all horizontal curves shall be designated. Stations and half-stations (50-foot and 100-foot) shall be designated throughout the entire Project, on tangential and curvilinear portions. Said centerline control is to be established in a timely fashion as directed by City staff. Said centerline control markings are to be a one-time event and shall be of a nature to last a minimum of eight months.
- b. Furnish descriptive instruments related to the acquisition of easements and/or rights-of-way. The description of these parcels should be rotated to match the bearings of the individual deeds. The payment for these instruments will be made on a per parcel basis unless otherwise indicated. As part of providing instruments for right-of-way acquisition, the Engineer/Surveyor will need to stake the corners of the acquisition.
- c. Appearances before hearings for eminent domain proceedings are specifically not included in the specified per parcel payment.
- d. Appearances before regulatory agencies.
- e. Assistance to the City as an expert witness in any litigation or claim, arising from, or in connection with, the Project.
- f. Special investigations involving detailed consideration of operation, maintenance, and overhead expense; preparation of rate schedules; preparation of special reports and an engineer's certificate as required for marketing bonds; earnings and expense statements; preparation of assessment rolls; special feasibility studies; appraisals; valuations; and material audits or inventories required for certification of force account construction performed by the City.
- g. Detailed mill, shop, and/or laboratory inspection of materials or equipment.
- h. Geotechnical Investigation & Report - obtain the services of a qualified geotechnical engineering laboratory to conduct soil and foundation investigations, including test borings, soil tests, and analyses of test results.
- i. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.
- j. Revision of reports and Construction Contract Documents after specific approval by City.
- k. Subsurface Utility Engineering that involves Level "A" or "B" identification of

**EXHIBIT A
SCOPE OF SERVICES**

a utility.

EXHIBIT B
PROJECT BUDGET SUMMARY

I. Basic Services

A. Preliminary Evaluations
(Expected Completion: April 1, 2025) \$298,267.00

B. Conceptual Design
(Expected Completion: July 1, 2025) \$490,850.00

Total Basic Services (Lump Sum) \$789,117.00

II. Special Services

Design Surveying \$5,000.00

Total Authorized Special Services \$5,000.00

Project Budget, Grand Total (Not-To-Exceed) \$794,117.00

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

1. Files shall be done in DWG/DXF format.
2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83 Grid.
3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.
4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.
5. The file shall contain required features for the project type as detailed below:
 - a. Pre-Construction/As-Built Plans and/or Record Documents:
 - i. Layers from Final Plat Requirements as Applicable to Project Type.
 - ii. Water Utility Features.
 - iii. Sanitary Sewer Features.
 - iv. Storm Sewer Features.
6. Each required feature group should be provided as a separate layer within the file.
7. Layer names should be representative of the information contained in the layer.
8. Line work should be done per accepted industry norms.

Text should not be smaller than 0.08" on a full size sheet, and should be a font such as Simplex, Calibri, or Arial.

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

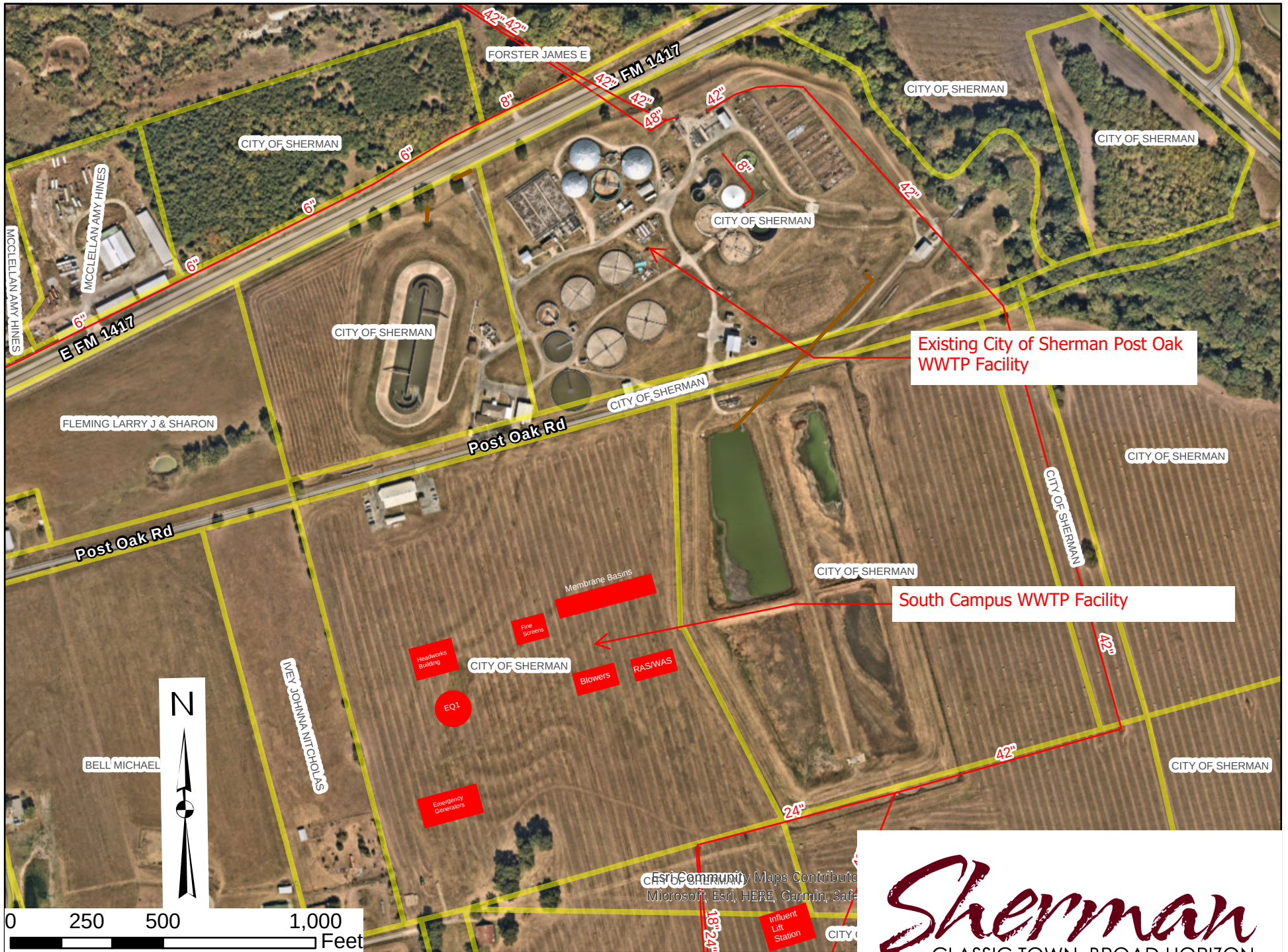
Coverage Required		Limits
<u> X </u>	1. Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
<u> X </u>	2. General Liability	▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate
<u> </u>	3. XCU Coverage	▪ Minimum \$1,000,000.00 each occurrence;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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

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

EXHIBIT F
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY Date Received	
1 Name of vendor who has a business relationship with local governmental entity.		
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed.		
_____ Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.		
A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7		
Signature of vendor doing business with the governmental entity		Date



Sherman
 CLASSIC TOWN. BROAD HORIZON.



City Council Regular Meeting

Agenda Item No. F.6.

Meeting Date: 1/6/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 7462**

Authorizing Execution of a Professional Services Agreement with Walter P. Moore & Associates, Inc. for the Blanton Drive Drainage Improvements

Issue:

To consider a Professional Services Agreement with Walter P. Moore & Associates, Inc. for the Blanton Drive Drainage Improvements.

Background:

Blanton Drive collects surface drainage from many cross streets to the west between College Street and McGee Street. Based on a drainage study performed, during heavy rain events the drainage capacity of Blanton Drive is exceeded, causing flooding in the area at and near the intersection of McGee Street and on Dundale Circle and Crestview Drive.

This professional services agreement will provide engineered construction drawings for an underground drainage system in Blanton Drive to capture the surface drainage coming from the side streets and in Blanton Drive.

Walter P. Moore & Associates, Inc. are highly qualified to perform these services.

Origination:

Engineering Department

Financial Consideration:

Total funding needed for this agreement is \$234,445.00 and will be funded by the Drainage Utility Fund.

Staff Recommendation:

It is recommended that the professional service agreement with Walter P. Moore & Associates, Inc. be approved.

Alternatives:

As may be directed by City Council.

Attachments:

1. Resolution No. 7462
2. Unsigned - Professional Services Agreement Form - 2024-12-23 Final
3. Location Map

RESOLUTION NO. 7462

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH WALTER P. MOORE & ASSOCIATES, INC. FOR THE BLANTON DRIVE DRAINAGE IMPROVEMENTS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Walter P. Moore & Associates, Inc. for the Blanton Drive Drainage Improvements, in accordance with all contract documents attached hereto and made a part hereof for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of January 2025.

CITY OF SHERMAN, TEXAS

**BY: _____
SHAWN TEAMANN, MAYOR**

ATTEST:

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

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

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

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
WALTER P MOORE
FOR
PROFESSIONAL SERVICES

Made as of the _____ day of _____, 2025:

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

and Consultant: **Walter P. Moore & Associates, Inc.**
 500 N Akard, Suite 2300
 Dallas, TX 75201
 Telephone: (214) 740-6200

for the following Project: **Blanton Drive Drainage Improvements**

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

WHEREAS, City desires to engage Consultant to provide professional services for the Blanton Drive Drainage Improvements Project ("Project"); and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

ARTICLE 1 CONSULTANT'S SERVICES

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

ARTICLE 2 CITY'S RESPONSIBILITIES

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

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

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services" of this Agreement, compensation for this Project shall be:
(a) for Basic Services, on a Lump Sum basis in an amount not to exceed **One Hundred Sixty-Four Thousand Eight Hundred Ninety Dollars (\$164,890.00)**; and
(b) for Special Services, in an amount not to exceed **Sixty-Nine Thousand Five Hundred Fifty Five Dollars (\$69,555.00)** (collectively, "Consultant's Fee"); and
(c) paid in accordance with this Article 3 and the Project Engineering Budget Summary as set forth in **Exhibit B**.
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by City prior to payment. Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement." The electronic formatting shall be consistent with the standards established in **Exhibit C**, Guidelines for Computer Aided Design and Drafting ("CADD"), which is attached hereto and incorporated herein by reference for all purposes.
- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor ("Contractor") and City, and on receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for City to

declare Contractor in default of the terms and conditions of the Agreement. Consultant shall submit his findings in writing to City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from City. City and Consultant agree that if requested by City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

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

3.1.4 **Substantial Compliance with Architectural Barriers Act** – Should the Project fall within the regulatory requirements of the Texas Architectural Barriers Act, Chapter 68 of the Texas Administrative Code, as it exists or may be amended ("Barriers Act"), as solely determined by City, Consultant shall comply with the Barriers Act. As part of the Scope of Services defined in this Agreement, it is the sole responsibility of Consultant to identify and analyze the requirements of the Barriers Act and to become familiar with the governmental authorities having jurisdiction to approve the design of the Project. Consultant shall consult with such authorities to obtain approval for the Project. As part of the Services provided under Consultant's Fee, Consultant shall obtain the Notice of Substantial Compliance for the Project from the Texas Department of Licensing and Regulation ("TDLR"). Consultant shall, without additional compensation, immediately correct any errors, omissions, or deficiencies in the design services and/or construction documents identified by TDLR and/or a Registered Accessibility Specialist ("RAS") at any phase of the Project, either by review of the Construction Documents or inspection of the Project at the commencement of construction, during the construction of the Project or at the completion of construction.

3.1.4.1 **Submission of Construction Documents to TDLR** – Consultant shall mail, ship or hand-deliver the Construction Documents to TDLR not later than five (5) calendar days after Consultant issues the Construction Documents for the Project.

3.1.4.2 **Completion of Registration Form to TDLR** – Consultant shall complete an Elimination of Barriers Project Registration Form

(“Form”) for each subject building or facility within the Scope of the Project, and submit the registration form(s) along with the applicable fees not later than fourteen (14) calendar days after Consultant completes the submittal of the Construction Documents to TDLR.

3.1.4.3 **TDLR Approval of Construction Documents** – After review of the Construction Documents by TDLR, Consultant will be notified in writing of the results; however, it is Consultant’s responsibility to obtain TDLR’s written comments. Consultant shall address all comments that prevent TDLR approval of the Construction Documents, including comments relating to conditional approval that must be addressed in the design and construction of the Project. Consultant shall resubmit Construction Documents to TDLR for review prior to the completion of construction of the Project.

3.1.4.4 **TDLR Project Inspection** – Consultant shall request an inspection from TDLR or a TDLR locally approved RAS no later than thirty (30) calendar days after the completion of construction of the Project. Consultant shall advise City in writing of the results of each Project inspection. City reserves the right to verify the written results with TDLR at any time during design, construction, or at the completion of the Project.

3.1.4.5 **Corrective Modifications following TDLR Project Inspection** – When corrective modifications to achieve substantial compliance are required, the TDLR inspector or the RAS shall provide Consultant a list of deficiencies and a deadline for completing the modifications. Consultant shall provide City with this list within five (5) calendar days of receipt. It is the sole responsibility of Consultant to completely address the deficiencies by the stated deadline or to obtain a written notice of extension from the TDLR. When the corrective measures have been completed, Consultant shall provide the TDLR (and/or the RAS who completed the inspection) and City with written verification of the corrective measures completed

3.2 **Direct Expenses** – Direct Expenses (“Direct Expenses”) are included in Consultant’s Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant’s employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in **Exhibit B**, and consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for

reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.

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

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

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in **Exhibit A**.

3.3.5 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on direct billable labor rates and expenses.

3.3.6 Compensation for Additional Services authorized by City shall be in addition to Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to and approved by City.

Hourly Billable Rates by Position

Position	Hourly Rate
Principal	\$330
Senior Project Manager	\$290
Senior Engineer	\$240
Engineer	\$185
Graduate Engineer	\$165
Engineering Intern	\$115
Sr Technician	\$160
Technician	\$130
GIS Specialist	\$175
Admin	\$120

- 3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to City. Consultant shall submit monthly invoices for Services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or shall submit invoices to City immediately upon completion of each individual task listed in **Exhibit B**. On all submitted invoices for Services rendered, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Upon request, such background material may include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices shall provide a summary methodology for administrative markup and/or overhead charges.
- 3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5 of this Agreement. If a dispute is resolved in favor of City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number,

clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

- 3.7 **Failure to Pay** – Failure of City to pay an invoice, for a reason other than on written notification as stated in the provisions of Article 3.6 of this Agreement, to Consultant within sixty (60) days from the date of the invoice shall grant Consultant the right, in addition to any and all other rights provided, to, upon written notice to City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter “D” of the TEX. GOV’T CODE. City shall not be required to pay any invoice submitted by Consultant if Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project (“Scope of the Project”) or if the Services are materially changed due to no error by Consultant in the performance of Services under this Agreement, the amounts of Consultant’s compensation shall be equitably adjusted as approved by City in its sole discretion. Any additional amounts paid to Consultant as a result of any material change to the Scope of the Project shall be authorized by written Change Order duly executed by both parties before the Services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, Consultant’s compensation shall be equitably adjusted as approved by City. Any additional amounts paid to Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed
- 3.10 **Fixed Budget Limit for Construction Cost** – If a fixed budget limit for the Construction Cost has been established, the Consultant shall be permitted to make reasonable adjustments in the scope of the Project and to include alternate bid items in the Bid Proposal to adjust the Construction Cost to the fixed limit. However, this paragraph shall not operate to increase the fixed budget limit of the Construction Cost established in this Agreement. All adjustments in the Scope of the Project shall be approved by the City and documented in writing. Should the lowest bona fide bid for construction of the Project be in excess of 130% of \$1,500,000 due to the negligence or other fault of the Consultant, the City may (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or

re-negotiating of the Project, (3) terminate the Project and this Agreement in accordance herewith, or (4), require that the Consultant adjust the Project scope or quality, or both, as necessary to reduce the Construction Cost to within the budgetary constraints. In the case of (4) the Consultant, without additional charge to the City, shall consult with the City and shall revise and modify the drawings and specifications as necessary to achieve compliance with the fixed limitation on Construction Cost. These revisions and modifications may include splitting the Project into multiple Construction Phases that will fall within budget constraints. The Consultant shall provide the services defined in Exhibit A, as required, for each of the new phases created by splitting the Project.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

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

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

Mail. Consultant shall furnish City with certificates and required endorsement(s) evidencing such coverage prior to commencing work on the Project.

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

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

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

ARTICLE 7 AUDITS AND RECORDS/VENDOR DISCLOSURE

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

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

ARTICLE 8 TERMINATION OF AGREEMENT/REMEDIES

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

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

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

ARTICLE 9 DISPUTE RESOLUTION/MEDIATION

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

ARTICLE 10 INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY") FOR PURPOSES OF THIS ARTICLE 10) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS (REGARDLESS OF

WHETHER THE ALLEGATIONS ARE FALSE, FRAUDULENT OR GROUNDLESS), SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS ARTICLE 10), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH, OR THAT ARE ALLEGED TO HAVE ARISEN OUT OF OR CONNECTED WITH, GOODS AND/OR SERVICES PROVIDED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONSULTANT IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONSULTANT" FOR PURPOSES OF THIS ARTICLE 10) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, THAT IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR

THE CLAIMS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (“JUDGMENT”), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY’S PERCENTAGE OF JOINT, CONCURRENT OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY’S FEES AND EXPENSES, WITHIN SIXTY (60) DAYS OF THE DATE THE JUDGMENT BECOMES FINAL AND NON-APPEALABLE. IF THIS AGREEMENT IS A CONTRACT FOR ENGINEERING OR ARCHITECTURAL SERVICES, THEN CONSULTANT’S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY, AND TO BE READ AS COMPLYING WITH, SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

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

ARTICLE 11 NOTICES

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

If to City, addressed to:

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

With a copy to:

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

If to Consultant, addressed to:

Jeffrey J. Frison, P.E.
Principal
Walter P Moore
500 N Akard, Suite 2300
Dallas, TX, 75201
Telephone: 214-740-6253
Email: jfrison@walterpmoore.com

ARTICLE 12 MISCELLANEOUS

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

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

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

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

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

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

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

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

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

12.3 **Attorney’s Fees** – If either party files any action or brings any proceeding against the other arising from this Agreement, then as between City and Consultant, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys’ fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV’T CODE § 271.153, as it exists or may be amended, if applicable.

12.4 **Successors and Assigns** – City and Consultant, and their respective partners, assigns, successors, subcontractors, executors, officers, agents, employees,

representatives and administrators are hereby bound to the terms and conditions of this Agreement.

- 12.5 **Savings/Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.
- 12.6 **Governing Law/Venue** – This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles. The exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- 12.7 **Execution/Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.8 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.9 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.10 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.11 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 12.12 **Immunity** – It is expressly understood and agreed that, in the execution and performance of this Agreement, City has not waived, nor shall be deemed to have

waived, any immunity, governmental, sovereign and/or official, or defense that is available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth in this Agreement.

- 12.13 **Incorporation of Recitals** – The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement and adopted as findings of City and the authorized representative of Consultant.
- 12.14 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.15 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.16 **No Third-Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.17 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 of this Agreement is conspicuous and the parties have read and understood the same.
- 12.18 **Representations** – All representations and covenants made by one party to the other in this Agreement or in any certificate or other instrument delivered by one party to the other under this Agreement shall be considered to have been relied upon by the other party and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by either party.
- 12.19 **Independent Contractor** – In performing this Agreement, Consultant shall act as an independent contractor with respect to City. In no event shall this Agreement be construed as establishing a partnership, joint venture or similar relationship between the parties and nothing herein shall authorize either party to act as agent for the other. Consultant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all of Consultant's officers, directors, partners, employees and representatives, who shall not be considered City employees and shall not be eligible for any employee benefit plan offered by City.

- 12.20 **Debarment/Suspension** – City is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. City, Consultant and Consultant's subcontractors shall comply with federal and state regulations regarding debarment and suspension. Consultant shall include a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.
- 12.21 **Restrictions on Lobbying** – City and Consultant are prohibited from using funds awarded under the Agreement for lobbying purposes. Consultant shall include a statement of compliance with this provision in applicable procurement solicitations and third-Party agreements for work on the Project.
- 12.22 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of City's current fiscal year. City will give Consultant sixty (60) days' notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's current fiscal year unless and until such funds are budgeted.
- 12.23 **Certifications Required by Texas Law** – In accordance with Chapter 2270 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott Israel and will not boycott Israel during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 809 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not boycott energy companies and will not boycott energy companies during the term of any contract with City, including during the term of this Agreement. In accordance with Chapter 2274 of the Texas Government Code (to the extent applicable), Consultant hereby certifies that Consultant does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of any contract with City, including during the term of this Agreement. The foregoing terms have the meanings ascribed to them in the referenced statutes if defined therein.
- 12.24 **Reference to Consultant** – When referring to "Consultant," this Agreement shall refer to and be binding upon Consultant, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Consultant is legally responsible.

12.25 **Reference to City** – When referring to “City,” this Agreement shall refer to and be binding upon City, its Council members, officers, agents, representatives, employees and/or any other authorized third parties for whom City is legally responsible.

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

CITY:

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

CONSULTANT:

Walter P. Moore & Associates, Inc.
a Texas Corporation

By: _____
Robby Hefton, City Manager

By: _____
Jeffrey J. Frison, P.E.
Principal

APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **JEFFREY J. FRISON**, KNOWN TO ME TO BE ONE OF THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT; HE ACKNOWLEDGED TO ME THAT HE IS THE PRESIDENT AND DULY AUTHORIZED REPRESENTATIVE FOR **WALTER P. MOORE & ASSOCIATES, INC**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____ 2024.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

Design of an enclosed drainage system for Blanton Drive to correct flooding issues on properties east of Blanton Drive resulting from stormwater overflowing from Blanton Drive. This system will start at W College Street and discharge to an existing channel north of W McGee Street which flows to Post Oak Creek. Discharge to the channel will include a headwall and limited concrete riprap to protect the headwall from erosion. Assumptions for the design include inlets on W College, W Birge, W Hunt, Belden and W McGee Streets, and along the sides of Blanton Drive. Preliminary pipe sizes have been determined during a drainage study performed by Walter P Moore. The associated hydraulic model will be updated to actual design sizes of inlets and pipes to confirm analyses.

Water system impacts will be limited to relocation or lowering of water lines impacted by the storm system design. Wastewater system impacts are not anticipated.

Pavement impacted by the storm system design will be replaced. Replacement assumptions include the east half of Blanton Drive, the adjacent curb and gutter, and the adjacent driveways, and intersection crossings at the cross streets. Driveway replacement limits will be determined by the need to reconstruct in order to gain at least six inches of rise above the street gutter.

Existing sidewalks along the east side of Blanton Drive will be reconstructed if they will be impacted by adjacent construction. The limited sidewalk reconstruction is not expected to trigger the requirement for TDLR registration and review.

II. GENERAL REQUIREMENTS

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

EXHIBIT A SCOPE OF SERVICES

- D.** The Consultant shall submit a monthly report outlining, at a minimum, the work on the project which occurred the previous month, the work expected to be completed the following month, the next major project milestone, and any information needed from the City. The report is to be submitted with monthly invoice.
- E. Communications and Reporting:**
- i Attend a pre-design project kickoff meeting with City staff to confirm and clarify scope, understand City objectives, and ensure economical and functional designs meet City requirements.
 - ii Attend review meeting with the City at the end of each design phase.
 - iii Prepare and submit monthly invoices in the format acceptable to the City.
 - iv Prepare and submit monthly progress reports.
 - v Prepare and submit baseline Project Schedule initially, Project Schedule updates, and updated Opinion of Probable Construction Cost with each plan submittal.
 - vi Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
 - vii With respect to coordination with permitting authorities, Consultant shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Consultant shall work with regulatory authorities to obtain approval of the designs, and make changes necessary to meet their requirements.
 - viii Attend additional project coordination meetings, if needed.

III. TASK SUMMARY, BASIC SERVICES

A. Preliminary Design Phase

- a. Prepare preliminary engineering review drawings (1"=20' scale or 1"=40' scale, 22"x34" sheets) to include preliminary horizontal and vertical alignments of all proposed improvements with minimal construction-related notes. Cross-sections at least every fifty (50) feet will be required for paving-related or channel-related projects. If necessary, report in sufficient detail to indicate clearly any of the problems involved and provide alternate solutions available to the City. Include preliminary layouts, a right-of-way map, sketches, and cost estimates for the Project and set forth clearly the Consultant's recommendations for any alternate designs.
- b. Water, sanitary sewer, and storm drains will be shown on the plans based on field information and surveys collected by the Consultant and from existing "Record Drawings" provided by the City of Sherman. Other utilities should be shown on the plans based on field information and surveys collected by the

EXHIBIT A SCOPE OF SERVICES

Consultant, utility locates requested by the Consultant, and any available "Record Drawings" that the Consultant can obtain from other utilities.

- c. Depending on comments received from the City's review and field investigations, another set of preliminary phase construction drawings may be required.
- d. Upon completion of the Preliminary Design Phase, the Engineer will advise the City of any geotechnical, soil, foundation, or other subsurface investigations or any special surveys, Level B or A SUE, or special testing which, in the opinion of the Consultant, may be required for the proper execution of the project, and assist the City in arranging for the conduct of such investigations and tests. The performance of geotechnical investigations and tests will not be a part of the Consultant's Basic Engineering Services and will not be included unless specifically authorized in writing under "F. Special Services."
- e. Prior to the Preliminary review meeting with the City, the Consultant shall schedule and attend a project site visit with the City Project Manager and Construction personnel to walk the project. The Consultant shall summarize the City's comments from the field visit and submit this information to the City in writing.
- f. The Consultant will consult with the City, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. Consultant will design City facilities to avoid or minimize conflicts with existing utilities, and where known and possible, consider potential future utilities in designs.

B. Intermediate Design Plans (60%)

- a. Prepare intermediate engineering review drawings that address all comments from the preliminary engineering review, including detailed construction-related notes. Cross-sections at least every fifty (50) feet will be required for paving-related or channel-related projects. Driveway profiles will be required for paving-related projects. A general notes sheet(s), coordinate control sheet(s), proposed traffic control sheet(s), proposed erosion control plan sheet(s), and detail sheet(s) will be required for all projects. Drainage-related projects will require all pertinent information showing calculations for drainage areas, inlet capacity, spread of flow and depth in street, and hydraulic grade line.
- b. Prepare miscellaneous plan sheets, including cover sheet, index, general notes, project control (1"=100' scale, 22"x34" sheets), and applicable City standard details.

EXHIBIT A
SCOPE OF SERVICES

- c. Prepare Preliminary Project Manual, including Bid Form and Special Conditions and technical specifications.

C. Final Design/Construction Plans (90%, 100%)

- a. Prepare final engineering review drawings that address all comments from the intermediate review.
- b. Prepare detailed cost estimates based on current unit prices from the proposal of authorized construction, which shall include summaries of bid items and quantities on the unit price system of bidding, wherever practical.
- c. Finalize miscellaneous plan sheets, including cover sheet, index, general notes, project control and applicable City standard details.
- d. Submit three (3) final sealed copies each of any necessary right-of-way or easement documents.
- e. When required by the nature of the project, the Consultant shall provide necessary exhibits and attend a public meeting with the City.
- f. Upon completion of the final design review, the Consultant shall furnish to the City up to four (4) additional copies and a pdf of the construction drawings to be forwarded to the utility companies.
- g. Upon completion of the final design review, the Consultant shall furnish to the City, where required by the circumstances of the assignment, the engineering data, construction plans, completed forms, and reports necessary for applications for routine permits by local, state, and federal authorities (as distinguished from detailed applications and supporting documents for government grants-in-aid or for planning advances not included in Basic Engineering Services).

D. Bid Phase Services

- a. Prepare bid set drawings and specifications that address all comments from the final design review and additional information provided by utility relocations and right-of-way negotiations.
- b. Furnish to the City all necessary copies of approved Construction Contract Documents needed for competitive bidding (plans, specifications, notice to bidders, proposals, etc.). All sets of Construction Contract Documents in excess of eight (8) copies are to be paid for separately as provided hereinafter.

EXHIBIT A SCOPE OF SERVICES

- c. Consultant will submit the project plans to the State of Texas for the TAS/ADA review, if required for the Project. Consultant will prepare the application and make the submittal. The City will provide a check for the fee based on the construction cost of pedestrian improvements per the submittal requirements. Consultant will address comments from the review and revise plans if necessary.
- d. Assist the City in the advertisement of the Project for competitive bids.
- e. Assist the City with any Pre-Bidders meetings.
- f. Prepare addenda as appropriate to interpret, clarify, or expand the Bid Documents.
- g. Assist the City in the opening and tabulation of bids for construction of the Project.
- h. Prepare a written summary of the bid tabulation and evaluation together with a letter addressing the award of the construction contract.
- i. Assist in the preparation of formal Construction Contract Documents, provide four (4) copies of contracts to be executed by the contractor, and coordinate their execution by the respective parties.
- j. The Consultant shall not be required to guarantee the accuracy of the final design Cost of Construction, but may be required to provide additional services at no cost to the City if bids for the Project exceed the fixed budget limit for the Construction Cost as provided in Article 3.

E. Construction Phase Services

- a. Conformed Document submittal:
 - i. Update the Bid Documents (plans and Project Manual) to incorporate bid addenda items
 - ii. Print up to ten (10) sets 11"x17" plans and Project Manuals for issuance at the Pre-Construction Conference.
 - iii. Package and submit CAD base files upon request.
- b. Site Visits upon request
- c. *Pre-Construction Meeting*. Attend Pre-Construction Meeting(s) prior to commencement of Work at the Site
- d. *Franchise Utility Coordination*. Assist the City with franchise utility coordination efforts and conflict resolution during construction.
- e. *Requests for information*. Coordinate with Engineer and issue clarifications and

EXHIBIT A SCOPE OF SERVICES

interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field Orders authorizing variations from the requirements of the Contract Documents will be made by City.

- f. *Change Orders.* Recommend Change Orders to City, as appropriate. Review and make recommendations related to Change Orders submitted or proposed by the Contractor. Task includes preparing plan sheet revisions.
- g. *Shop Drawings, Samples, and Submittals.* Review and approve or take other appropriate action in respect to Shop Drawings, Samples, Submittals and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.
- h. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- i. *Disagreements between City and Contractor.* As necessary, render written decision on all claims of City and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to City or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- j. *Limitation of Responsibilities.* Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.
- k. Consultant shall prepare construction Record Documents based on the information received from Contractor within 30 days of final completion in accordance with the Agreement. Consultant shall submit one full size set and one pdf file of the Record Documents.

F. Special Services

- a. Various services incidental to the project, but not within the scope of the Basic Engineering Services covered by A., B., C., D., and E. preceding, which may be performed or arranged for separately by City, or may be added to the Consultant's responsibilities by mutual agreement and written authorization include but are not necessarily limited to the following:

EXHIBIT A SCOPE OF SERVICES

- i. Design Surveying –
 - a. Establishment of four (4) Control Points. Control Points shall be located at stable locations and outside of the anticipate construction area(s).
 - b. Provide sufficient field reconnaissance and office research to recover the general limits of the property , right-of-way lines and any easements discovered during research.
 - c. Standard topographic survey to capture features along Blanton Drive that will include but not limited to cross-sections at a minimum of 50-foot intervals, edges, and centerlines of roadways, top and bottom of wall, toe of slope, grade breaks, rip-rap, drainage pipes, headwalls, overhead electric lines, and guy wires. Topo shall include locating of all existing manholes, inlets and water valves within project area and shall include measure down information (where accessible). Design survey includes Texas811 coordination to obtain subsurface utilities. All surveys and coordinate information shall be based on the NAD 83 CORS Grid Coordinate System utilizing control monuments established within the City of Sherman. This also includes refreshing and re-establishing benchmarks and reference points on NAD 83 CORS Grid Coordinate System for construction of the project, one time only. This does not include construction staking.
- ii. Furnish descriptive instruments related to the acquisition of easements and/or rights-of-way. The description of these parcels should be rotated to match the bearings of the individual deeds. The payment for these instruments will be made on a per parcel basis unless otherwise indicated. As part of providing instruments for right-of-way acquisition, the Engineer/Surveyor will need to stake the corners of the acquisition.
- iii. Appearances before hearings for eminent domain proceedings are specifically not included in the specified per parcel payment.
- iv. Appearances before regulatory agencies.
- v. Assistance to the City as an expert witness in any litigation or claim, arising from, or in connection with, the Project.
- vi. Special investigations involving detailed consideration of operation, maintenance, and overhead expense; preparation of rate schedules; preparation of special reports and an engineer's certificate as required for marketing bonds; earnings and expense statements; preparation of assessment rolls; special feasibility studies; appraisals; valuations; and material audits or inventories required for certification of force account construction performed by the City.
- vii. Detailed mill, shop, and/or laboratory inspection of materials or equipment.
- viii. Geotechnical Investigation & Report - obtain the services of a qualified geotechnical engineering laboratory to conduct soil and foundation

EXHIBIT A SCOPE OF SERVICES

- investigations, including test borings, soil tests, and analyses of test results.
- ix. Preparation of applications and supporting documents for government grants or planning advances for public works projects.
 - x. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.
 - xi. Revision of reports and Construction Contract Documents after specific approval by City.
 - xii. Subsurface Utility Engineering that involves Level “A” or “B” identification of a utility.

IV. **ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES**

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

- 1. Environmental services and permitting
- 2. Stream stabilization or erosion prevention downstream of storm drainage discharge.

EXHIBIT B
PROJECT BUDGET SUMMARY

I. Basic Services

A. Preliminary Design Plans (30%) (Expected Completion: 60 calendar days)	\$36,630.00
B. Intermediate Design Plans (60%) (Expected Completion: 60 calendar days)	\$43,320.00
C. Final Design/Construction Plans (90%, 100%) (Expected Completion: 90 calendar days)	\$40,140.00
D. Bid Phase Services (Expected Completion: 30 calendar days)	\$27,360.00
E. <u>Construction Phase Services</u>	<u>\$17,440.00</u>
<i>Total Basic Services (Lump Sum)</i>	<i>\$164,890.00</i>

II. Special Services

Descriptive instruments for <u>up to 3</u> parcels at <u>\$3,000</u> each:	\$9,000.00
Design Surveying	\$25,000.00
TDLR Registration and Review	\$2,000.00
Level "A" and "B" Subsurface Utility Engineering	\$33,055.00
<u>Reimbursable Direct Expenses (unexpected printing)</u>	<u>\$500.00</u>
<i>Total Authorized Special Services</i>	<i><u>\$69,555.00</u></i>

Project Budget, Grand Total (Not-To-Exceed) ***\$234,445.00***

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

1. Files shall be done in DWG/DXF format.
2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83 Grid.
3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.
4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.
5. The file shall contain required features for the project type as detailed below:
 - a. Pre-Construction/As-Built Plans and/or Record Documents:
 - i. Layers from Final Plat Requirements as Applicable to Project Type.
 - ii. Water Utility Features.
 - iii. Sanitary Sewer Features.
 - iv. Storm Sewer Features.
6. Each required feature group should be provided as a separate layer within the file.
7. Layer names should be representative of the information contained in the layer.
8. Line work should be done per accepted industry norms.

Text should not be smaller than 0.08" on a full size sheet, and should be a font such as Simplex, Calibri, or Arial.

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

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

II. **GUIDELINES FOR DIRECT EXPENSES**.

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

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

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

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

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

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

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

I. GENERAL INSURANCE REQUIREMENTS –

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

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

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

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

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

EXHIBIT E
CONTRACTOR'S INSURANCE GUIDELINES

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

EXHIBIT E

CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY Date Received	
1 Name of vendor who has a business relationship with local governmental entity.		
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information is being disclosed.		
_____ Name of Officer		
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.		
A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No		
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.		
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).		
7		
Signature of vendor doing business with the governmental entity		Date

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 1/1/2021





City Council Regular Meeting

Agenda Item No. F.7.

Meeting Date: 1/6/2025

Prepared By: Loren Siems, Right of Way Specialist

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 7463**

Authorizing the Execution of an Encroachment Agreement to Alterrian Capital, LLC for the Encroachment of a Monument Sign within a 15-foot Utility, Landscape & Sidewalk Easement Established in Instrument No. 2024-156, Plat Records, Grayson County, Texas, in the City of Sherman

Issue:

To consider executing an encroachment agreement relating to an existing 15-foot Utility, landscape & sidewalk easement established in Instrument No. 2024-156, Plat records, Grayson County, Texas.

Background:

Alterrian Capital, LLC, the property owner of the subject property, is building Sherman Park Apartments. The property owner is requesting an encroachment into the platted 15-foot Utility, landscape & sidewalk easement to place their entrance monument sign. The proposed location of the monument sign is preferable for visibility from the public roadway as well as to allow for safe visibility to the public roadway for residents.

Origination:

Alterrian Capital, LLC- property owner

Financial Consideration:

None

Staff Recommendation:

City staff has no objections to the proposed encroachment and upon receiving approval from franchise utilities, it is recommended that the encroachment agreement be executed.

Alternatives:

As may be directed by City Council

Attachments:

1. Resolution No. 7463
2. Location Map - Encroachment
3. Encroachment easement-owner signed

RESOLUTION NO. 7463

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT AGREEMENT TO ALTERRIAN CAPTIAL, LLC FOR THE ENCROACHMENT OF A MONUMENT SIGN WITHIN 15-FOOT UTILITY, LANDSCAPE & SIDEWALK EASEMENT ESTABLISHED IN INSTRUMENT NO 2024-156, PLAT RECORDS, GRAYSON COUNTY, TEXAS, IN THE CITY OF SHERMAN; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute an encroachment agreement for the encroachment for a monument sign within the 15-foot utility, landscape & sidewalk easement established in Instrument No. 2024-156, Plat Records, Grayson County, Texas, in the City of Sherman, as shown on the Exhibit "A" attached hereto and incorporated herein for all purposes.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of January 2025.

CITY OF SHERMAN, TEXAS

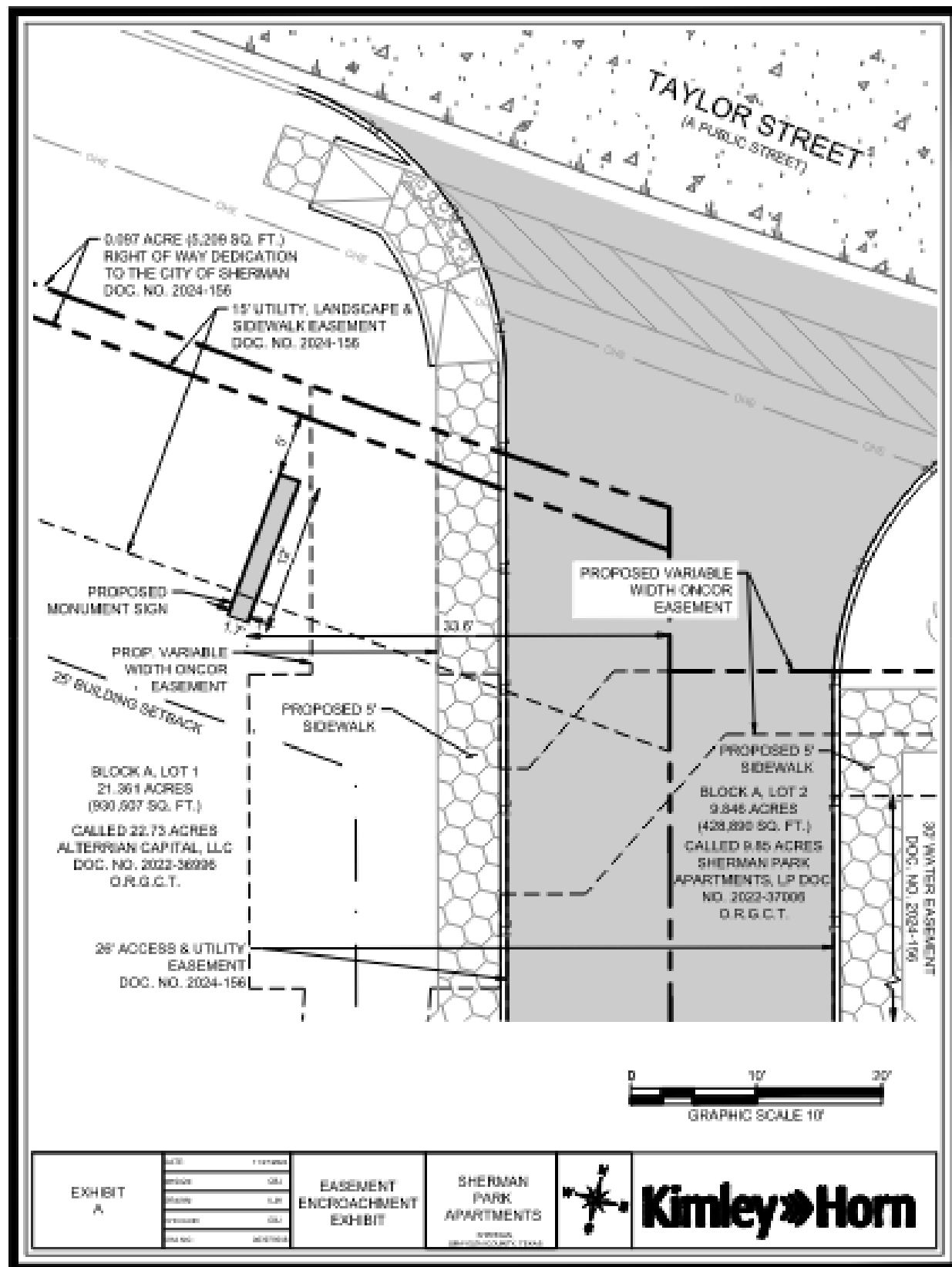
**BY: _____
SHAWN TEAMANN, MAYOR**

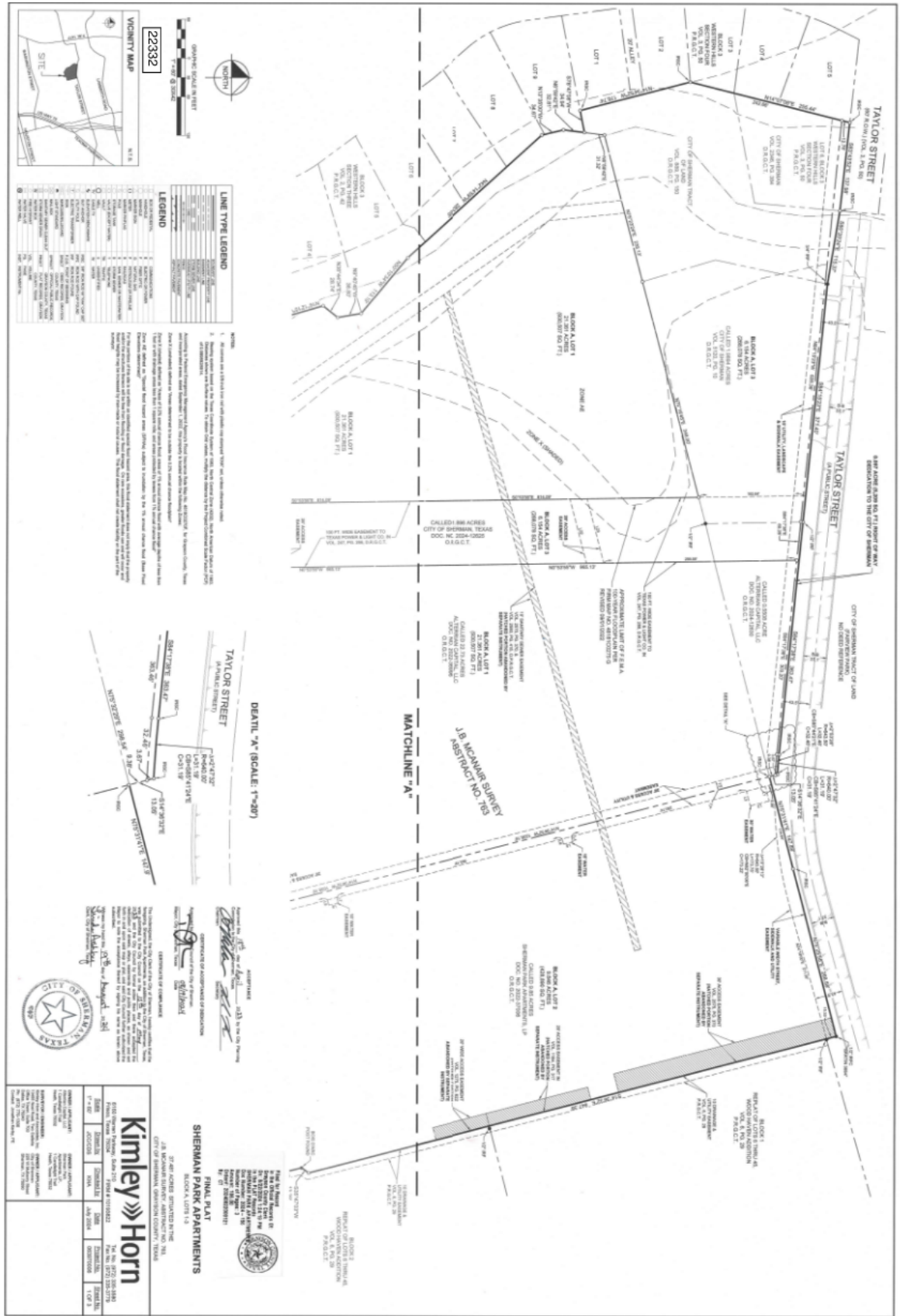
ATTEST:

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

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

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





Encroachment - Sherman Park Apartments



0 100 200 400 Feet



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

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

ENCROACHMENT AND LICENSE AGREEMENT

THIS ENCROACHMENT AND LICENSE AGREEMENT ("Agreement") is made and entered into by and between the **CITY OF SHERMAN, TEXAS**, a home-rule municipality ("City"), and **ALTERRIAN CAPITAL, LLC, a Delaware limited liability company** ("Licensee"). City and Licensee are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, City and any Franchise Utility Company (each a "Franchisee") have existing rights in certain real property by virtue of that certain Plat of the Sherman Park Apartments Final Plat ("Plat"), filed in Instrument No. 2024-156, Plat Records, Grayson County, Texas. The Plat, which more particularly describes and depicts a 15-foot Utility, Landscape & Sidewalk Easement ("Property"), is incorporated herein by reference for all purposes; and

WHEREAS, Licensee desires to operate, repair and maintain a monument sign ("Encroaching Facility"), as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference for all purposes, within the boundaries of the Property; and

WHEREAS, in exchange for the consideration set forth below, City has agreed to grant a license to permit the encroachment of the Encroaching Facility on the Property subject to the terms and conditions of this Agreement and provided that Licensee first complies with the City's ordinances relating to the construction and use of the Encroaching Facility.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Licensee do hereby agree as follows:

1. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are incorporated into the body of this Agreement.

2. Location of Encroaching Facility. City hereby grants a nonexclusive license to Licensee, authorizing Licensee to, at its own cost and expense, maintain and repair the Encroaching Facility within that portion of the Property as generally depicted and described in Exhibit A, subject to the terms and conditions of this Agreement. Any modification, alteration, expansion or addition to the Encroaching Facility, or any portion thereof, is prohibited without the prior written consent of City. In particular, Licensee shall not modify the Encroaching Facility in any manner that results in the Encroaching Facility: (a) occupying more space within the Property than as approved by this Agreement; (b) extending further into the Property than as approved by this Agreement; or (c) changing the Encroaching Facility's location within the Property to be outside the area approved by this Agreement. Licensee shall ensure that Licensee and any third party and/or contractor of Licensee engaged in maintaining and/or repairing the Encroaching Facility abide by the terms and conditions set forth herein and any permit governing the Encroaching Facility. Licensee shall, at its own cost and expense, provide a copy of this Agreement to any third party and/or contractor of Licensee engaged in maintaining and/or repairing the Encroaching Facility. Notwithstanding anything to the contrary herein, nothing in this Agreement shall be deemed to waive any applicable requirement of the City's ordinances or regulations applicable to the Encroaching Facility, and Licensee shall be responsible for obtaining a permit, if required under the City's ordinance, prior to any construction on the Encroaching Facility.
3. Restrictions on Use of Property. In using the Property for the purposes described herein, Licensee shall, at its own cost and expense, comply with all applicable laws, rules, regulations and requirements, as they exist, may be amended or in the future arising, including but not limited to, City's ordinances, and shall promptly execute and fulfill all orders and requirements imposed by City or other governmental authorities for the correction, prevention and abatement of nuisances or Code violations in, on or connected with the Encroaching Facility. At the conclusion of any work in connection with the Encroaching Facility, Licensee shall ensure that any third party and/or contractor of Licensee engaged in such work shall remove all debris and other materials from the Property and restore the same to substantially the same condition it was in prior to the commencement of the work thereon or in proximity thereto, with the exception of the encroachment permitted herein. Licensee shall ensure that any third party and/or contractor of Licensee engaged in maintaining and/or repairing the Encroaching Facility does not, and shall not itself, place trash dumpsters, toxic or hazardous substances or flammable material in or on the Property. Additionally, Licensee shall not place in or on the Property any other improvements unless approved in advance in writing by City. Any modification, alteration, expansion or other addition to the Encroaching Facility, or any portion thereof, is prohibited without the prior written consent of City.
4. Maintenance of Encroaching Facility. Licensee shall, at Licensee's sole cost and expense, maintain the Encroaching Facility in good condition and repair. City will

not, under any circumstance, be responsible for any costs, whatsoever, of construction, reconstruction, operation, maintenance, repair or removal of the Encroaching Facility. If City notifies Licensee of any deficiencies in any such maintenance, repair or removal of the Encroaching Facility, Licensee shall make the necessary repairs within the earlier of (a) thirty (30) days after the date of such notice or the (b) another date as determined by City and Licensee in writing. If City notifies Licensee of any deficiencies in any such maintenance, repair or removal of the Encroaching Facility, and Licensee shall thereafter fail to complete such maintenance, repair or removal within the required time period, then City may require Licensee to promptly remove the Encroaching Facility or contract, at Licensee's sole cost and expense, for the maintenance, repair or removal of the Encroaching Facility.

5. **Removal of Encroaching Facility.** City and any Franchisee are entitled to remove all or a portion of the Encroaching Facility as reasonably necessary to construct, reconstruct, maintain or repair public improvements within the affected Property. City or Franchisee will notify Licensee of any intent to remove all, or a portion, of the Encroaching Facility, and upon receiving such notice, Licensee shall ensure that the requested removal is made within the earlier of (a) thirty (30) days after the date of such notice or (b) another date as determined by City and Licensee in writing. If City or Franchisee notifies Licensee of its intent to remove all, or a portion, of the Encroaching Facility, and Licensee shall thereafter fail to complete the removal within the required time period, then City or Franchisee may require Licensee to promptly remove the Encroaching Facility. Notwithstanding anything to the contrary herein, if the removal is necessitated by an emergency, no notice is required. If so removed, City or Franchisee has no obligation to replace the affected portions of the Encroaching Facility upon completion of such work.
6. **Risk and Liability.** Licensee assumes all risks and liability resulting or arising from or relating to Licensee's use of the Property, the Encroaching Facility, the existing condition or location of the Property or the existing state of maintenance, repair or operation of the Property. Licensee agrees and acknowledges that City or Franchisee shall not be liable, whatsoever, for any damage to the Encroaching Facility as a result of City's or Franchisee's use or enjoyment of the rights provided it in the Property. Any City and/or Franchisee property or infrastructure damaged or destroyed by Licensee or its agents, employees, representatives, invitees, contractors, subcontractors and/or any other third parties for whom Licensee is legally responsible, shall be repaired or replaced by City or Franchisee at Licensee's sole cost and expense and payment is due immediately upon Licensee's receipt of an invoice from City or Franchisee.
7. **INDEMNIFICATION.** **LICENSEE AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES AND ANY**

OTHER THIRD PARTIES FOR WHOM CITY IS LEGALLY RESPONSIBLE, AS WELL AS EACH FRANCHISEE, ITS AGENTS, REPRESENTATIVES, EMPLOYEES, AND ANY OTHER THIRD PARTIES FROM WHOM FRANCHISE IS LEGALLY RESPONSIBLE FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS OF USE), LOSSES, DEMANDS, EXPENSES AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), OR OTHER HARM ARISING OUT OF, OR OCCASIONED BY, ANY NEGLIGENCE, GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT, WHETHER BY ACT OR OMISSION, OF ANY LICENSEE OR ITS AGENTS, REPRESENTATIVES, EMPLOYEES, SEPARATE CONTRACTORS AND/OR SUBCONTRACTORS AND/OR THIRD PARTIES FOR WHOM EACH SUCH LICENSEE IS LEGALLY RESPONSIBLE, REGARDLESS OF ANY JOINT OR CONCURRENT NEGLIGENCE OF CITY OR FRANCHISEE.

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

THE PROVISIONS OF THIS SECTION 7 ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY

OTHER PERSON, ENTITY OR THIRD PARTY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION 7 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

8. **No "Permit."** NOTHING CONTAINED IN THIS AGREEMENT SHALL CONSTITUTE A "PERMIT" AS DEFINED IN CHAPTER 245, TEX. LOC. GOV'T CODE, AND NOTHING IN THIS AGREEMENT SHALL BE CONSIDERED TO PROVIDE THE CITY WITH FAIR NOTICE OF A PROJECT. LICENSEE WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEX. LOC. GOV'T CODE BASED ON THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
9. **Default/Remedies.** If Licensee, its employees, agents, representatives, contractors, subcontractors and/or any other third parties for whom Licensee is legally responsible, defaults under any of the terms and conditions of this Agreement and such default continues for a period of five (5) days after City or Franchisee notifies Licensee of such default in writing, City or Franchisee may, at its sole election and in addition to any other remedies it may exercise, terminate this Agreement, and upon such termination, all of Licensee's rights hereunder shall cease and terminate. This Agreement shall also terminate upon Licensee's abandonment of the Encroaching Facility.
10. **Miscellaneous Provisions.**
 - a. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party via hand-delivery service, or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the Parties shall be as follows:

If to City, addressed to it at:

City of Sherman

Attention: Wayne E. Lee, P.E., CFM, Director of Engineering

220 W. Mulberry St.

Sherman, TX 75091

Telephone: (903) 892-7327

Email: waynel@cityofsherman.com

with a copy to:

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

If to Licensee, addressed to it at:

Alterrian Capital, LLC
1 Candlelight Trail
Heath, TX 75032

- b. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties.
- c. Governing Law; Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Grayson County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Grayson County, Texas.
- d. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- e. Authority to Execute. Each party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing its signatories hereto, warrant and represent that they have the authority to bind its respective parties as duly authorized representatives thereof.
- f. Savings/Severability. In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained in this Agreement.

- g. Representations. Each party represents that it has carefully read this Agreement, knows the contents hereof, has consulted with an attorney of its choice regarding the meaning and effect hereof and is signing the same solely of its own judgment.
- h. No Third Party Beneficiaries. The parties do not intend that this Agreement be construed as creating any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- i. Indemnification. The parties agree that the indemnity provisions set forth in Section 7 herein are conspicuous, and the parties have read and understood the same.
- j. Waiver. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- k. Immunity. The parties acknowledge and agree that, in executing and performing this Agreement, City has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.
- l. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the parties. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

[Signature page follows.]

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

CITY:

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager

Date: _____

LICENSEE:

ALTERRIAN CAPITAL, LLC
a Delaware limited liability company

By: _____


Name: _____
Justin Webb

Title: _____
President

Date: _____
12/13/24

THE STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared **ROBBY HEFTON**, known to me to be the person whose name is subscribed to the foregoing instrument; he acknowledged to me that he is the city manager and duly authorized representative of the **CITY OF SHERMAN, TEXAS**, a Texas home-rule municipality, and that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of the CITY OF SHERMAN, TEXAS.

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

Notary Public in and for the State of Texas
My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF Rockwall §

BEFORE ME, the undersigned authority, on this day personally appeared Justin Webb, known to me to be the person whose name is subscribed to the foregoing instrument; he acknowledged to me that he is the President and duly authorized representative of of **ALTERRIAN CAPITAL, LLC**, a **Delaware limited liability company**, and that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of the said company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13 day of December, 2024.



Jodi Lynn Hobbs
Notary Public in and for the State of Texas
My Commission Expires: 3/9/2025

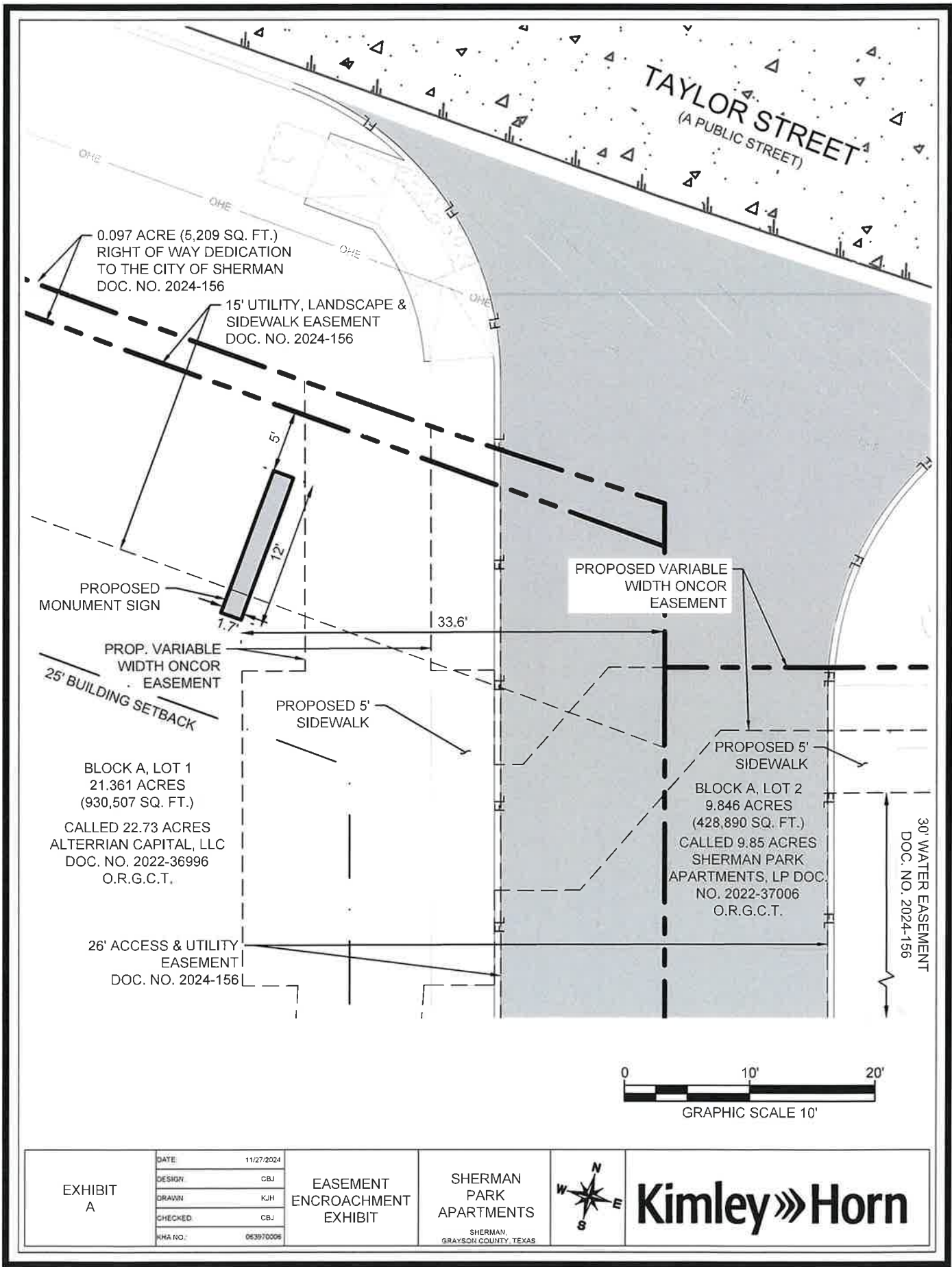


EXHIBIT A	DATE:	11/27/2024	EASEMENT ENCROACHMENT EXHIBIT	SHERMAN PARK APARTMENTS SHERMAN, GRAYSON COUNTY, TEXAS		
	DESIGN:	CBJ				
	DRAWN:	KJH				
	CHECKED:	CBJ				
	KHA NO.:	063970006				



City Council Regular Meeting

Agenda Item No. F.8.

Meeting Date: 1/6/2025

Prepared By: Mary Lawrence, Chief Financial Officer

Approved By: Robby Hefton, City Manager

Caption:

*** RESOLUTION NO. 7464**

Joining with the State of Texas and Political Subdivisions of the State as a Party in the Global Opioid Settlement Agreement Regarding Opioid Use and Distribution in *In Re: Texas Opioid Litigation*, MDL No. 2018-63587, in the 152nd District Court of Harris County, Texas, and Other Litigation; Opting into the Kroger Global Settlement Agreement Dated as of March 22, 2024; Authorizing the City Manager to Execute Settlement Participation Documents and Ratifying the City Manager's Prior Execution of the Same

Issue:

Seeking approval to opt into the Kroger Global Settlement Agreement

Background:

Texas, along with a broad coalition of states and subdivisions, has now reached final agreements with twelve companies to resolve legal claims for their role in the opioid crisis. The newest agreement is with retail pharmacy Kroger. Texas' share of all agreements to date, including Kroger, is almost \$3 billion. Distribution within Texas is governed by the Texas Term Sheet, which was adopted by the City Council at the November 15, 2021, meeting. The funding must be used to support any of a wide variety of strategies to fight the opioid crisis. For example, the City previously entered into an Agreement with Texoma Community Center to fund one full-time employee to provide the citizens of Sherman with opioid education and treatment assistance.

All the settlement agreements contain industry-changing injunctive terms. The distributors will be subject to more oversight and accountability, including an independent monitor, to prevent deliveries of opioids to pharmacies where diversion and misuse occur. The distributors will be required to establish and fund an independent clearinghouse to track opioid distribution nationwide and flag suspicious orders. The pharmacies will also be subject to this oversight and will be participating in the clearinghouse.

Origination:

City Attorney

Financial Consideration:

There is no cost to opting into the Kroger settlement. The City has received \$123,966.78 from previous settlements with other distributors and retail pharmacies.

Staff Recommendation:

Staff recommends the City Council opt into the agreement with Kroger.

Alternatives:

Council could choose to not participate in the settlement.

Attachments:

1. Resolution authorizing participation in Kroger opioid settlement(4629597.1) (ID 434780)
2. Signed Participation Release form

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, JOINING WITH THE STATE OF TEXAS AND POLITICAL SUBDIVISIONS OF THE STATE AS A PARTY IN THE GLOBAL OPIOID SETTLEMENT AGREEMENTS REGARDING OPIOID USE AND DISTRIBUTION IN *IN RE: TEXAS OPIOID LITIGATION*, MDL NO. 2018-63587, IN THE 152ND DISTRICT COURT OF HARRIS COUNTY, TEXAS, AND OTHER LITIGATION; OPTING INTO THE KROGER GLOBAL SETTLEMENT AGREEMENT DATED AS OF MARCH 22, 2024; AUTHORIZING THE CITY MANAGER TO EXECUTE SETTLEMENT PARTICIPATION DOCUMENTS AND RATIFYING THE CITY MANAGER’S PRIOR EXECUTION OF THE SAME; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the people of the State of Texas and its communities, including the City of Sherman, Texas (“City”), have been harmed through the national and statewide epidemic caused by the sale, use and distribution of opioids within the State of Texas; and

WHEREAS, the City has been provided information indicating that certain drug companies and their corporate affiliates, parents, subsidiaries and such other defendants as may be added to the litigation (collectively, “Defendants”) have engaged in fraudulent and reckless marketing as well as fraudulent distribution of opioids that have resulted in addictions and overdoses; and

WHEREAS, these actions have resulted in the death of many Texans and has resulted in the devastation of families and communities across the State; and

WHEREAS, the City and other local governments have been on the front lines of the opioid crisis, resulting in significant financial costs related to healthcare services, social services, law enforcement and the criminal justice systems; and

WHEREAS, on May 13, 2020, the State of Texas and a negotiation group for Texas political subdivisions entered into an agreement titled Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet (the “Texas Term Sheet”), approving the allocation of any and all opioid settlement funds within the State of Texas. The City previously adopted and approved the Texas Term Sheet, which is available at <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2021/Global%20Opioid%20Settlement%20Files/Settlement%20Allocation%20Term%20Sheet.pdf>; and

WHEREAS, the State of Texas has recommended that the City Council of the City of Sherman, Texas (“City Council”), opt into and participate in a settlement with The Kroger Co., as set forth in that certain Kroger Global Settlement Agreement dated as of March 22, 2024; and

WHEREAS, participating in the settlement increases the State of Texas’ opportunity to maximize its share of opioid settlement funds and will provide a method to ensure that needed

resources reach communities once all negotiations are finalized; and

WHEREAS, the City Council finds and determines that it is in the best interest of the health, safety and welfare of the City to participate in the settlement.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: City Manager Authorization. The City Council hereby authorizes the City Manager or his designee to execute the Subdivision Settlement Participation Form, attached hereto as Exhibit 1, in accordance with the provisions set forth in the previously adopted Texas Term Sheet, and further authorizes the City Manager or his designee to take any additional actions necessary to implement the intent of this Resolution. All such actions previously taken by the City Manager or his designee are hereby ratified.

SECTION 3: Effective Date. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this _____ day of _____, 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Exhibit 1
TEXAS SETTLEMENT SUBDIVISION PARTICIPATION AND RELEASE FORM

Political Subdivision:	Texas
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("Texas Political Subdivision"), in order to obtain and in consideration for the benefits provided to the Texas Political Subdivision pursuant to the Kroger Texas Settlement Agreement and Full Release of All Claims dated October 30, 2024 ("Kroger Texas Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Texas Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Texas Political Subdivision above is aware of and has reviewed the Kroger Settlement Agreement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Texas Political Subdivision elects to participate in the Kroger Texas Settlement and become a Participating Texas Political Subdivision as provided therein.
2. The Texas Political Subdivision shall immediately cease any and all litigation activities as to the Released Entities and Released Claims and, within 14 days of executing this Participation and Release Form, its counsel shall work with Kroger's counsel to dismiss with prejudice any Released Claims that it has filed.
3. The Texas Political Subdivision agrees to the terms of the Kroger Texas Settlement pertaining to Texas Political Subdivisions as provided therein.
4. By agreeing to the terms of the Kroger Texas Settlement and becoming a Releasor, the Texas Political Subdivision is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date of the Release.
5. The Texas Political Subdivision agrees to use any monies it received through the Kroger Texas Settlement solely for the purposes provided therein.

A-1

6. The Texas Political Subdivision submits to the exclusive jurisdiction and authority of the Texas Consolidated Litigation Court as defined in the Kroger Texas Settlement. For the avoidance of doubt, nothing contained in this Participation and Release Form, or the Kroger Texas Settlement, constitutes consent to jurisdiction, express or implied, over the Texas Political Subdivision or its selected counsel to the jurisdiction of any other court (including without limitation MDL 2804, the MDL 2804 Fee Panel, the MDL 2804 Enforcement Committee, or the Court in which any Texas Consent Judgment is filed) for any purpose whatsoever.
7. The Texas Political Subdivision, as a Participating Texas Subdivision, has the right to enforce the Kroger Texas Settlement in the Texas Consolidated Litigation Court as provided therein.
8. The Texas Political Subdivision, as a Participating Texas Subdivision, hereby becomes a Releasor for all purposes in the Kroger Texas Settlement, including but not limited to all provisions of Section V (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Texas Political Subdivision hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entities in any forum whatsoever. The releases provided for in the Kroger Texas Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entity the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Texas Political Subdivision to release claims. The Kroger Texas Settlement shall be a complete bar to any Released Claim.
9. The Texas Political Subdivision hereby takes on all rights and obligations of a Participating Texas Subdivision as set forth in the Kroger Texas Settlement.
10. In connection with the releases provided for in the Kroger Texas Settlement, each Texas Political Subdivision expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Texas Political Subdivision hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Kroger Texas Settlement.

11. The Texas Political Subdivision acknowledges, agrees, and understands that the Maximum Texas Settlement Amount to be paid under the Kroger Texas Settlement for the benefit of the Participating Texas Political Subdivision, is less than or equal to the amount, in the aggregate, of the Alleged Harms allegedly suffered by the governmental entity, constitutes restitution and remediation for damage or harm allegedly caused by Kroger in order to restore, in whole or part, the governmental entity to the same position or condition that it would be in had it not suffered the Alleged Harms; and constitutes restitution and remediation for damage or harm allegedly caused by the potential violation of a law and/or is an amount paid to come into compliance with the law.
12. Nothing herein is intended to modify in any way the terms of the Kroger Texas Settlement Agreement, to which the Texas Political Subdivision hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Texas Settlement, the Kroger Texas Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Texas Political Subdivision.

Signature: _____
Name: _____
Title: _____
Date: _____

Exhibit A

TEXAS SETTLEMENT SUBDIVISION PARTICIPATION AND RELEASE FORM

Political Subdivision:	City of Sherman	Texas
Authorized Official:	Robby Hefton, City Manager	
Address 1:	220 W. Mulberry St	
Address 2:	P.O. Box 1106	
City, State, Zip:	Sherman, TX 75091-1106	
Phone:	903-892-7200	
Email:	Robbyh@cityofsherman.com	

The governmental entity identified above ("Texas Political Subdivision"), in order to obtain and in consideration for the benefits provided to the Texas Political Subdivision pursuant to the Kroger Texas Settlement Agreement and Full Release of All Claims dated October 30, 2024 ("Kroger Texas Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Kroger Texas Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Texas Political Subdivision above is aware of and has reviewed the Kroger Settlement Agreement, understands that all terms in this Participation and Release Form have the meanings defined therein, and agrees that by executing this Participation and Release Form, the Texas Political Subdivision elects to participate in the Kroger Texas Settlement and become a Participating Texas Political Subdivision as provided therein.
2. The Texas Political Subdivision shall immediately cease any and all litigation activities as to the Released Entities and Released Claims and, within 14 days of executing this Participation and Release Form, its counsel shall work with Kroger's counsel to dismiss with prejudice any Released Claims that it has filed.
3. The Texas Political Subdivision agrees to the terms of the Kroger Texas Settlement pertaining to Texas Political Subdivisions as provided therein.
4. By agreeing to the terms of the Kroger Texas Settlement and becoming a Releasor, the Texas Political Subdivision is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date of the Release.
5. The Texas Political Subdivision agrees to use any monies it received through the Kroger Texas Settlement solely for the purposes provided therein.

6. The Texas Political Subdivision submits to the exclusive jurisdiction and authority of the Texas Consolidated Litigation Court as defined in the Kroger Texas Settlement. For the avoidance of doubt, nothing contained in this Participation and Release Form, or the Kroger Texas Settlement, constitutes consent to jurisdiction, express or implied, over the Texas Political Subdivision or its selected counsel to the jurisdiction of any other court (including without limitation MDL 2804, the MDL 2804 Fee Panel, the MDL 2804 Enforcement Committee, or the Court in which any Texas Consent Judgment is filed) for any purpose whatsoever.
7. The Texas Political Subdivision, as a Participating Texas Subdivision, has the right to enforce the Kroger Texas Settlement in the Texas Consolidated Litigation Court as provided therein.
8. The Texas Political Subdivision, as a Participating Texas Subdivision, hereby becomes a Releasor for all purposes in the Kroger Texas Settlement, including but not limited to all provisions of Section V (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Texas Political Subdivision hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entities in any forum whatsoever. The releases provided for in the Kroger Texas Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entity the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Texas Political Subdivision to release claims. The Kroger Texas Settlement shall be a complete bar to any Released Claim.
9. The Texas Political Subdivision hereby takes on all rights and obligations of a Participating Texas Subdivision as set forth in the Kroger Texas Settlement.
10. In connection with the releases provided for in the Kroger Texas Settlement, each Texas Political Subdivision expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Texas Political Subdivision hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Kroger Texas Settlement.

11. The Texas Political Subdivision acknowledges, agrees, and understands that the Maximum Texas Settlement Amount to be paid under the Kroger Texas Settlement for the benefit of the Participating Texas Political Subdivision, is less than or equal to the amount, in the aggregate, of the Alleged Harms allegedly suffered by the governmental entity, constitutes restitution and remediation for damage or harm allegedly caused by Kroger in order to restore, in whole or part, the governmental entity to the same position or condition that it would be in had it not suffered the Alleged Harms; and constitutes restitution and remediation for damage or harm allegedly caused by the potential violation of a law and/or is an amount paid to come into compliance with the law.
12. Nothing herein is intended to modify in any way the terms of the Kroger Texas Settlement Agreement, to which the Texas Political Subdivision hereby agrees. To the extent this Participation and Release Form is interpreted differently from the Kroger Texas Settlement, the Kroger Texas Settlement controls.

I have all necessary power and authorization to execute this Participation and Release Form on behalf of the Texas Political Subdivision.

Signature: 
Name: Robby Hefton
Title: City Manager
Date: 12/19/2024



City Council Regular Meeting

Agenda Item No. G.1.

Meeting Date: 1/6/2025

Prepared By: Robby Hefton, City Manager

Approved By: Robby Hefton, City Manager

Caption:

OTHER BUSINESS

Appoint Acting City Manager

Issue:

City Council appointment of an acting City Manager

Background:

The City Charter, at Article IV, Section 2(a), grants the City Council authority to "appoint a city manager who shall be the administrative and executive officer of the city. He or she shall be chosen by the council solely on the basis of his or her training, experience, and ability. He or she need not, when appointed, be a resident of the City of Sherman; however, upon acceptance, he or she shall immediately establish his or her residence within the city. The city manager shall receive such compensation may be fixed by the council."

Article IV, Section 2(c) (Acting City Manager) provides that "[t]he assistant city manager shall, subject to the approval of the council, exercise the powers and perform the duties of city manager during an absence or disability of the city manager. During such absence or disability, the council may revoke such designation at any time and appoint another officer of the city to serve until the city manager shall return."

It is the City Council's desire to appoint Zachary Flores as Acting City Manager, effective March 1, 2025, in the absence of the retiring City Manager Robby Hefton, who has indicated his last day of employment will be February 28, 2025.

Origination:

Mayor Shawn Teamann

Financial Consideration:

The funding in the FY24-25 budget is sufficient to cover any impact of this temporary appointment.

Staff Recommendation:

Staff recommends appointing acting City Manager, according to City Council direction.

Alternatives:

None recommended.

Attachments:

None



City Council Regular Meeting

Agenda Item No. G.2.

Meeting Date: 1/6/2025

Prepared By: Jim Cross, Water Systems Manager

Approved By: Robby Hefton, City Manager

Caption:

*** OTHER BUSINESS**

Emergency Repair of the Shepherd #1 Trinity Well under Emergency Designation

Issue:

To allow the repair of the Shepherd #1 Trinity Well under Emergency Designation

Background:

The Shepherd 1T groundwater well has suffered damage by a lightning strike. The well went down on November 6, 2024. Thunderstorms moved through the area on or around 11/4/24 – 11/6/24. HH Electric performed a local test and confirmed that the motor was bad. Weisinger Inc. removed the equipment and performed an inspection at their shop and confirmed the motor was damaged.

Origination:

Water Production

Financial Consideration:

The City staff's estimated cost to repair the well is approximately \$242,378.00. Insurance is expected to cover the repair. The difference of insurance payment and total costs will be funded from the Utility Fund.

Staff Recommendation:

It is recommended that the emergency repair to the Shepherd #1 Trinity Well under Emergency Designation be approved and that the City Manager be authorized to execute any required contract documents.

Alternatives:

As may be directed by the City Council

Attachments:

1. AGREEMENT
2. Proposal_City of Sherman Old Shepard 1T_2024-12-09
3. Location Map

AGREEMENT

THIS AGREEMENT is by and between the CITY OF SHERMAN, TEXAS, a home-rule municipality (the "CITY"), and WEISINGER, INCORPORATED, a corporation (the "CONTRACTOR"). CITY and CONTRACTOR are sometimes referred to collectively as the "parties" or individually as a "party."

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

Article 1. WORK

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

Shepard 1 Trinity Well Emergency Repair – Emergency Designation

Article 2. ENGINEER

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

Article 3. CONTRACT TIME

- 3.1 The Work will be substantially completed and ready for final payment within 90 calendar days from the date when the Contract Time commences to run, as provided in the Special Conditions.
- 3.2 Liquidated Damages. CITY and CONTRACTOR recognize that time is of the essence of this Agreement and that CITY will suffer financial loss and actual damages if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the Special Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss and damages suffered by CITY if the Work is not completed on time. The exact amount of such loss and damages will be difficult to ascertain. Accordingly, instead of requiring any such proof, CITY and CONTRACTOR agree that CONTRACTOR shall pay CITY \$ 20.00 for each calendar day in which the Work is not completed, not as a penalty but as liquidated damages for the loss and damages that would be suffered by CITY as a result of delay for each and every calendar day that the CONTRACTOR shall have failed to have completed the Work as required herein

Article 4. CONTRACT PRICE

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

At the unit prices shown on the Quote included in the Contract Documents.

Article 5. **PAYMENT PROCEDURES**

CONTRACTOR shall submit Applications for Payment in accordance with the Special Conditions. Applications for Payment will be processed by ENGINEER, as provided in the Special Conditions.

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

The CITY shall retain 5% of the amount of each payment until final completion and acceptance of all Work covered by the Contract Documents. When the Work is substantially complete, the retained amount may be reduced to 2%, at the CITY'S discretion.

Article 6. **INTEREST**

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

Article 7. **CONTRACTOR'S REPRESENTATIONS**

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

- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that, in any manner, may affect cost, progress, performance or furnishing of the Work.
- 7.2 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions and drawings of physical conditions, if any, which are contained or identified in the Contract Documents, and accepts the determination set forth in the Contract Documents of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.
- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies in addition to, or to supplement, those referred to above, which pertain to the subsurface or physical conditions at or contiguous to the site, or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are, or will be, required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and

assumes responsibility for the accurate location of all Underground Facilities, whether indicated in the Contract Documents, or not. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are, or will be, required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 7.7 CONTRACTOR has reviewed and fully agrees to the limitation of liability provisions included in the Special Conditions.
- 7.8 CONTRACTOR certifies that they are eligible to be awarded government contracts. CONTRACTOR also certifies that any agreement entered into with a subcontractor will contain a clause stating that the subcontractor is eligible to be awarded government contracts.

Article 8. **CONTRACT DOCUMENTS**

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

- 8.1 This Agreement
- 8.2 Certifications Required by Texas Law
- 8.3 Suspension and Debarment Certification
- 8.4 Agenda Item
- 8.5 Request for Quotation
- 8.6 Quotation
- 8.7 Form 1295, Certificate of Interested Parties
- 8.8 Certificate of Insurance
- 8.9 Performance Bond and POA
- 8.10 Payment Bond and POA
- 8.11 Notice to Proceed
- 8.12 Maintenance Bond and POA
- 8.13 Closeout Documents
- 8.14 Davis-Bacon Wage Determinations
- 8.15 Special Conditions
- 8.16 General Conditions of Agreement
- Technical Specification prepared or issued by City of Sherman ___/___/___
- 8.17 The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

All written Amendments, change orders, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the Special Provisions. The parties understand and agree that deviations or modifications to the scope of Work described in the

Contract Documents, in the form of one or more written Contingency Change Allowance or also change orders, may be authorized from time to time by CITY ("Change Orders"). "Extra" work, "claims" invoiced as "extra" work or "claims" which have not been issued as a duly executed, written Change Orders by the Sherman City Manager or his designee will not be authorized for payment and/or shall not become part of this Agreement. A duly executed, written Change Order shall be preceded by the City Council's authorization for the City Manager to execute said Change Order. CONTRACTOR agrees that CITY'S project managers are authorized to issue Contingency Allowance Authorization but CITY'S project managers, superintendents and/or inspectors not authorized to issue verbal or written Change Orders.

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

Article 9. INDEMNITY

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

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION

TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

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

Article 10. LIABILITY

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

Article 11. TERMINATION

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

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

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

Article 12. MISCELLANEOUS

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

12.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

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

this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

- 12.12 This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.
- 12.13 CITY and CONTRACTOR each binds itself, its partners, successors, assign, and legal representatives to the other party hereto, its partners, successors, assign and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

Article 13. **OTHER PROVISIONS**

None.

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

CITY: CITY OF SHERMAN, TEXAS

CONTRACTOR: WEISINGER, INCORPORATED

By: _____

By: _____

Date: _____

Date: _____

(Corporate Seal)

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

December 9, 2024

City of Sherman
243 La Cima Dr.
Sherman, TX 75090

Attn: Oscar Canales

Ref: *Shepard 1T Well*

Mr. Canales:

As you requested, we have removed the pumping equipment and inspected it. Listed below are our findings and recommendations.

Inspections of the pump, motor and cable found that the pump is in good condition with just over tolerance wear to the bowl bearings and their respective shaft surfaces. The 150 HP motor megged to ground on three legs and the thrust bearing is in good condition. The existing cable megged good dry but the spool is to large to perform the water immersion testing.

Scope of Services and Materials

Pumping Equipment

- | | |
|--|---------------------|
| - New 150 HP, 3/60/460 volt, 3600 RPM HE submersible motor | <u>\$37,460.00</u> |
| - 1300 ft of New Paige 4/0 3C WG 90 degree cable with splice kits | <u>\$153,090.00</u> |
| - Rebuild the existing pump to include a new stainless steel pump shaft and new bronze bowl bearings | <u>\$8,730.00</u> |
| - Miscellaneous items to make well operational | <u>\$1,500.00</u> |

Labor to Install New Pumping Equipment

\$36,280.00

- Shop labor to assemble and prepare new equipment for shipment
- Haul pumping equipment to the well site
- Service rig and crew to install pumping equipment in the well
- Service Technician to start-up, test the well, and collect (1) bacteriological sample

Total of Services and Materials Outlined Above\$237,060.00

Adder to Provide Performance, Payment, and Maintenance Bonds.....\$5,318.00

Thank you for the opportunity to offer you our services as we await your response.

Sincerely,



Charlie Liesberger





City Council Regular Meeting

Agenda Item No. G.3.

Meeting Date: 1/6/2025

Prepared By: Robby Hefton, City Manager

Approved By:

Caption:

*** Other Business**

Authorize Partial Payout of Accumulated Paid Time Off

Issue:

Authorize payment of a portion of accumulated paid time off to outgoing City Manager

Background:

In accordance with historical practice of the City for payout of accrued but unused/unpaid paid time off for outgoing City Managers and payout of paid time off for other classes of City employees, namely Civil Service employees, this item authorizes City Human Resource staff to make a payout of 559 hours of the City Manager's current accumulated but unused/unpaid paid time off to the City Manager.

Origination:

Sherman City Council

Financial Consideration:

The effect of the payout of these hours will be reflected in the FY24-25 current year budget and a budget amendment, if any, would be made as part of the year-end reconciling budget amendment in September 2025.

Staff Recommendation:

City staff recommends following City Council's direction in this matter.

Alternatives:

As directed by City Council.

Attachments:

None

Council Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
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February						
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March						
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April						
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December						
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21	22	23	24	25	26	27
28	29	30	31			

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

[illegible]