

**CITY OF SHERMAN
CITY COUNCIL REGULAR MEETING AGENDA
COMMUNITY ROOM OF THE SHERMAN POLICE HEADQUARTERS
2600 W. TRAVIS STREET
SHERMAN, TEXAS
MONDAY, FEBRUARY 3, 2025
5:00 PM**

- A.1. CALL TO ORDER, QUORUM DETERMINED, MEETING DECLARED OPEN**
- A.2. PLEDGE OF ALLEGIANCE AND INVOCATION LED BY COUNCIL MEMBER HENRY MARROQUIN**
- A.3. APPROVE MINUTES OF THE REGULAR CITY COUNCIL MEETING OF JANUARY 21, 2025.**

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

Resolutions

D.1. RESOLUTION NO. 7470

Amending Resolution No. 7025 and the City of Sherman's Economic Development Program to Promote Development/Redevelopment in Tax Increment Reinvestment Zone Number 2; Establishing Amended Guidelines and Criteria

D.2. RESOLUTION NO. 7471

Authorizing Execution of an Advanced Funding Agreement between the State of Texas, Acting by and Through the Texas Department of Transportation, and the City of Sherman, Texas, for Bridge Replacement or Rehabilitation

D.3. RESOLUTION NO. 7472

Authorizing Execution of a Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the Sherman Crossroads Offsite Mitigation Pond

D.4. * RESOLUTION NO. 7473

Authorizing the Purchase of Furniture for the Remodeled City Hall from Business Essentials

- D.5. * RESOLUTION NO. 7474**
Authorizing Execution of a Professional Services Agreement with Mead & Hunt, Inc. for the Blalock Park Interceptor Improvement
- D.6. * RESOLUTION NO. 7475**
Authorizing Execution of a Second Amendment to the Professional Services Agreement with Brockett/Davis/Drake, Inc. for the Engineering Design of Flanary Road and Progress Drive Expansion/Improvements
- D.7. * RESOLUTION NO. 7476**
Awarding a Bid to and Execution of a Contract With All Pro Irrigation LLC for the Kidd-Key Water Fountain Remodel Project
- D.8. * RESOLUTION NO. 7477**
Authorizing Execution of a Professional Services Agreement with Mead & Hunt, Inc. for the WWTP Relift Pump Station and Filter
- D.9. * RESOLUTION NO. 7478**
Authorizing Execution of an Easement to Oncor Electric Delivery Company, LLC for the Installation of Overhead and/or Underground Electric Supply
- D.10. * RESOLUTION NO. 7479**
Authorizing the Purchase of a New 2024 Tahoe RST 4x4 for the Equipment Services Department from Sam Pack's Five Star Chevrolet through the Texas Local Government Purchasing Cooperative (BuyBoard).
- D.11. * RESOLUTION NO. 7480**
Authorizing Submission and Acceptance of a Grant Application to the Governor's Office for a Criminal Justice Assistance Grant Program

Request to Advertise

- E.1. * REQUEST TO ADVERTISE**
Sale of Approximately 1.65 Acres of Land Located in the 900 Block of South Travis Street

Other Business

- F.1. OTHER BUSINESS**
Receive Update on the Residential Rental Inspection Program
- F.2. OTHER BUSINESS**
Receive Update from Hidell and Associates Architects, Inc. for Ongoing Construction Projects
- F.3. OTHER BUSINESS**
Receive update on ongoing projects in Sherman
- F.4. OTHER BUSINESS**
Appoint City Council Working Groups
- F.5. OTHER BUSINESS**
Discuss and Consider Approval of the Budget Calendar for Fiscal Year (FY) 2025-2026

F.6. *OTHER BUSINESS

Approve Investment Report for Quarter Ended December 31, 2024

COUNCIL COMMENTS

EXECUTIVE SESSION

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

H.1. TEX. GOV'T CODE § 551.071

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

a) Sweetwater Springs

H.2. TEX. GOV'T CODE § 551.072

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

H.3. TEX. GOV'T CODE § 551.073

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

H.4. TEX. GOV'T CODE § 551.074

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

a) City Manager's Position

H.5. TEX. GOV'T CODE § 551.076

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

H.6. TEX. GOV'T CODE § 551.087

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

a) Shepherd's Place

H.7. TEX. GOV'T CODE § 551.089

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

The Council reconvenes into General Session

COUNCIL CALENDAR

J.1. 2025 COUNCIL CALENDAR

CERTIFICATION

I, the undersigned authority, do hereby certify that the above Notice of Regular Meeting of the City Council of the City of Sherman is a true and correct copy of said Notice and that I posted a true and correct copy of said Notice on the bulletin board at City Hall of said City of Sherman, Texas, a place convenient to the public, and said notice was posted on Thursday, January 30, 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 30th day of January 2025. City of Sherman, Texas

City Clerk

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

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

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

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

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

<u>Mayor</u>	<u>Deputy Mayor</u>	<u>Council Members</u>	
Shawn C. Teamann	Juston Dobbs	Henry Marroquin, Council-At-Large, PL #1	Josh Stevenson, Council – District #2
		Juston Dobbs, Council-At-Large, PL #2	Pamela L. Howeth, Council – District #3
		Clay Barnett, Council – District #1	Daron Holland, Council – District #4

SPECIAL PRESENTATION
RECEIVE PRESENTATION FROM THE LEADERSHIP SHERMAN'S
CLASS OF 2025

**LEADERSHIP
SHERMAN
PROJECT**

Sandy Rehkopf, President, Sherman Chamber of Commerce, said the leadership programs, such as Leadership Sherman, are nationwide programs sponsored by Chambers of Commerce, to turn citizens into Council Members. Participants tour the community and the county to learn about government. She said, this year, there was a 32-member class.

Travis Buckner, Manager of Public Affairs, Atmos Energy, briefed the City Council on the class project for the Leadership Sherman group. The project is dubbed "Makers and Mentors," and will help create a makerspace at the Sherman Public Library, to provide tools and technologies that encourage creativity, innovation, and hands-on learning.

They will also provide some additional equipment for the Grayson County Detention Center, to enhance the recreational opportunities for the youth residents of the facility.

Mr. Buckner invited community partners to donate to the project to "empower a vibrant community through collaborative action."

Mayor Teamann introduced Ordinance No. 6800 and called for a public hearing:

**ORD 6800
SUP FOR HOTEL
(301 W. TRAVIS ST)**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, REPEALING ORDINANCE 6602, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW HOTEL OR MOTEL IN THE BLALOCK COMMERCIAL OVERLAY DISTRICT LOCATED AT 301 WEST TRAVIS STREET, CONSISTING OF 4.821 ACRES BEING IN THE PRESTON KITCHEN SURVEY, ABSTRACT NO. 667 AND CURRENTLY IN THE BLALOCK COMMERCIAL OVERLAY DISTRICT/BLALOCK PLANNED DEVELOPMENT DISTRICT, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS TEKMAK SHERMAN HOTEL, LP (OWNER), KELLEN ROBERTSON (REPRESENTATIVE) AND VOTEX SURVEYING COMPANY (SURVEYOR) PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

Rob Rae, Director of Development Services, said the Specific Use Permit Amendment, would repeal and replace the SUP for the Springhill Suites to allow a second hotel with dual brands adjacent to each other on two lots. The other brand will be TownePlace Suites. He said they will increase their square footage from 79,000 to 141,000.

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

Tom Kirkland, President and CEO, TEKMAK Development Company, Rockwall, Texas

Mr. Kirkland said the original Marriott Springhill Suites was planned for 125 rooms and was approved. At the time, they planned to construct the second hotel a year or two later. They were able to acquire additional acreage adjoining the original site, and decided to construct both hotels at the same time.

He said Marriott allowed them to do it with the dual brand of Springhill Suites and TownePlace Suites, which will increase the square footage to 147,000, with a room count going from 125 to 233. It will also enhance the outdoor space and the meeting space.

No other citizens appeared before the City Council to discuss Ordinance No. 6800.

Mayor Teamann introduced Ordinance No. 6801 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/75 & 82 OVERLAY DISTRICT, LOCATED IN THE 500 BLOCK EAST LAMBERTH ROAD, CONSISTING OF 2.233 ACRES BEING IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS SHERMAN DEVELOPMENT LIMITED PARTNERSHIP NO. 3, LP (OWNER), STEVE MEIER (REPRESENTATIVE) AND VASQUEZ ENGINEERING, 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 6801
SUP FOR HOTEL
(500 BLOCK EAST
LAMBERTH RD)

Mr. Rae said this Specific Use Permit is for an Extended Stay America, to be located at the intersection of Lamberth Road and Masters Street. The hotel will be developed first, with the restaurants developed shortly thereafter.

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

Steve Meier, Managing Member, SCM2 Development, Dallas, Texas

Mr. Meier appeared representing Four Rivers Capital, 4514 Cole Avenue, Suite 1220, Dallas, Texas. He said the plan is to subdivide the site into four lots. One lot will be used for the Extended Stay America Premier Suites hotel, and three lots will face the US Hwy 75 Frontage Road.

Mr. Meier said they already have commitments from two “national sit-down restaurants” for two of the frontage lots. The hotel will be four stories, approximately 56,000 square feet, with 124 guest rooms, a snack bar, and exercise room. There will not be a full-service dinning room nor any meeting rooms.

No other citizens appeared before the City Council to discuss Ordinance No. 6801.

Mayor Teamann introduced Ordinance No. 6802 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, REPEALING ORDINANCE 6605, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW MINI-WAREHOUSE IN A C-1 (RETAIL BUSINESS) DISTRICT/FM HIGHWAY 1417 OVERLAY DISTRICT LOCATED IN THE 3600 BLOCK STEEPLE CHASE DRIVE, CONSISTING OF 3.002 ACRES, BEING LOT 4, BLOCK 1 OF BEARCAT CROSSING ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS CORE SELF STORAGE, LLC (OWNERS), JIM LEE (REPRESENTATIVE) AND A&W SURVEYORS, INC. (SURVEYOR) 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 6802
SUP FOR MINI-
WAREHOUSE
(3600 BLOCK STEEPLE
CHASE DR)

Mr. Rae said this was an amendment to a previous Specific Use Permit. The developers would like to expand the floor area of their site, from 5,400 square feet to 72,000 square feet of floor area. This would not increase the lot size because they plan to "go vertical" on Building C, with a multi-story self-storage building.

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

Jeremy Gray, Gray and Co. Realtors, Inc, Dallas, Texas

Mr. Gray said they are requesting approval of the amended Site Plan to include the increase in Building C, and a variance to the floor/area ratio requirement to allow a slightly higher ratio.

No other citizens appeared before the City Council to discuss Ordinance No. 6802.

Mayor Teamann introduced Ordinance No. 6803 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND BEING THE WEST 100 FEET OF LOT 5 AND LOT 6, BLOCK 37 OF THE COLLEGE PARK ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 100 BLOCK NORTH CLEVELAND AVENUE, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-4 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, JINAL AND HARSIDDH PATEL (OWNER) AND UNDERWOOD DRAFTING & SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6803
ZONE CHANGE
(100 BLOCK N.
CLEVELAND AVE)

Mr. Rae said this is a zone change, and the property owner would like to construct two lots for two single-family homes. The Planning and Zoning Commission recommended approval of the zone change.

No citizens appeared before the City Council to discuss Ordinance No. 6803.

Mayor Teamann introduced Ordinance No. 6804 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 SCHOOLS; ELEMENTARY, HIGH, COLLEGE AND UNIVERSITIES, PUBLIC, PRIVATE, OR DENOMINATIONAL IN A R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT, LOCATED AT 400 NORTH SUNSET BOULEVARD, CONSISTING OF 12.131 ACRES BEING IN THE J.B. McANAI SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS SHERMAN INDEPENDENT SCHOOL DISTRICT (OWNER), TAYLOR BOSWELL (REPRESENTATIVE) AND TEAGUE NALL & PERKINS (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 6804
SUP FOR SCHOOLS
(400 N. SUNSET BLVD)

Mr. Rae said the Sherman Independent School District has requested a Specific Use Permit for the current Wakefield Elementary School site. They would like to demolish the existing facility and construct an Early Childhood Center and Elementary School.

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

Taylor Boswell, Civil Engineer, Teague Nall and Perkins, Dallas, Texas

Ms. Boswell said the plan is to keep the school open for the remainder of the school year, then to demolish it and construct the Early Childhood Center for Pre-K students, to be open in the Fall of 2026.

No other citizens appeared before the City Council to discuss Ordinance No. 6804.

Mayor Teamann asked that the captions of Ordinance Nos. 6805 and 6806 be read together.

ORD 6805
ZONE CHANGE
(1831 TEXOMA PKWY)

Mayor Teamann introduced Ordinance No. 6805 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 2.820 ACRES BEING IN THE J.B. McANAI SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 1831 TEXOMA PARKWAY, HERETOFORE ZONED C-2 (GENERAL COMMERCIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-1 (RETAIL BUSINESS) DISTRICT ZONING CLASSIFICATION, RASH VENTURES, LLC (OWNER) 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. 6806 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 1831 TEXOMA PARKWAY, CONSISTING OF 2.820 ACRES BEING IN THE J.B. McANAI SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS RASH VENTURES, LLC (OWNER) 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 6806
SUP FOR HOTEL
(1831 TEXOMA PKWY)

Mr. Rae said the first item is a zone change for the Sherman Inn, an existing hotel, so they can obtain a Specific Use Permit. The second step is getting the SUP approved. This existing hotel has been there for “a number of decades.”

The previous owners have recently sold the facility, and the City staff is hoping that the hotel improves with this new ownership. If the SUP is approved, one condition is that they return in one year for reapproval, to make sure progress is being made.

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

No citizens appeared before the City Council to discuss Ordinance Nos. 6805 or 6806.

Mayor Teamann introduced Ordinance No. 6807 and called for a public hearing:

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

ORD 6807
ZONE CHANGE
(401 S. SAM
RAYBURN FRWY)

Mr. Rae said this was a “clean-up” item from 2024, where the language in the ordinance was incorrect.

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

No citizens appeared before the City Council to discuss Ordinance No. 6807.

Mayor Teamann introduced Ordinance No. 6808 and called for a public hearing:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, TEMPORARILY REDUCING THE MAXIMUM RATES OF SPEED ON CERTAIN PORTIONS OF U.S. HIGHWAY 75 FRONTAGE ROADS IN THE CORPORATE LIMITS OF SHERMAN, GRAYSON COUNTY, TEXAS, DURING CONSTRUCTION; PROVIDING FOR A PENALTY CLAUSE WITH A MAXIMUM FINE OF \$2,000; DECLARING AN EMERGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ORD 6808
SPEED LIMITS
ON HWY 75
FRONTAGE ROADS

Wayne Lee, Director of Engineering, said the Texas Department of Transportation is starting on the next phase of construction for US Hwy 75, and they are requesting that the speed limit on the service roads be reduced from 45 mph to 35 mph, between North Travis Street and US Hwy 82.

No citizens appeared before the City Council to discuss Ordinance No. 6808.

The Public Hearing was closed.

Ordinance 6800

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, REPEALING ORDINANCE 6602, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW HOTEL OR MOTEL IN THE BLALOCK COMMERCIAL OVERLAY DISTRICT LOCATED AT 301 WEST TRAVIS STREET, CONSISTING OF 4.821 ACRES BEING IN THE PRESTON KITCHEN SURVEY, ABSTRACT NO. 667 AND CURRENTLY IN THE BLALOCK COMMERCIAL OVERLAY DISTRICT/BLALOCK PLANNED DEVELOPMENT DISTRICT, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS TEKMAK SHERMAN HOTEL, LP (OWNER), KELLEN ROBERTSON (REPRESENTATIVE) AND VOTEX SURVEYING COMPANY (SURVEYOR) PRESCRIBING CONDITIONS TO THE SPECIFIC USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6800
SUP FOR HOTEL
(301 W. TRAVIS ST)

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance No. 6800, as presented. Second by Council Member Howeth.

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

VOTING NAY: None.

ABSTAIN: Barnett.

MOTION CARRIED.

Ordinance 6801

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/75 & 82 OVERLAY DISTRICT, LOCATED IN THE 500 BLOCK EAST LAMBERTH ROAD, CONSISTING OF 2.233 ACRES BEING IN THE J.B. McANAIR SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS SHERMAN DEVELOPMENT LIMITED PARTNERSHIP NO. 3, LP (OWNER), STEVE MEIER (REPRESENTATIVE) AND VASQUEZ ENGINEERING, 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 6801
SUP FOR HOTEL
(500 BLOCK EAST
LAMBERTH RD)

For transparency, Mayor Teamann said he would not participate in the discussion and would abstain from the vote. He owns property next door.

Deputy Mayor Dobbs felt this was a premium piece of property and asked if parking would be facing US Hwy 75. Mr. Meier said the hotel will be toward the east side of the property at Masters Street and Lamberth Road. The proposed restaurants will be facing the US Hwy 75 Frontage Road.

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance No. 6801, as presented. Second by Deputy Mayor Dobbs.
VOTING AYE: Barnett, Dobbs, Howeth, Marroquin, Stevenson.
VOTING NAY: None.
ABSTAIN: Teamann.
MOTION CARRIED.

Ordinance 6802

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, REPEALING ORDINANCE 6605, AND GRANTING A SPECIFIC USE PERMIT TO ALLOW MINI-WAREHOUSE IN A C-1 (RETAIL BUSINESS) DISTRICT/FM HIGHWAY 1417 OVERLAY DISTRICT LOCATED IN THE 3600 BLOCK STEEPLE CHASE DRIVE, CONSISTING OF 3.002 ACRES, BEING LOT 4, BLOCK 1 OF BEARCAT CROSSING ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS CORE SELF STORAGE, LLC (OWNERS), JIM LEE (REPRESENTATIVE) AND A&W SURVEYORS, INC. (SURVEYOR) 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 6802
SUP FOR MINI-
WAREHOUSE
(3600 BLOCK STEEPLE
CHASE DR)

Council Member Stevenson said the current owners were not the original applicant, and he asked if the previous requirements for the color of the building facing the High School would still apply. There was a verbal agreement that the property that was visible to the Sherman High School ballfields would be maroon or feature a

Bearcat or the wording. Mr. Gray said they would be happy to work with that.

Council Member Stevenson asked Aliceson Cotton, City Attorney, about wording for the agreement. Council Members discussed possible formal wording for the ordinance. Ms. Cotton said there could be special wording added to the Specific Use Permit.

Council Member Barnett recommended that the wording state that the building façade must be approve by the City Council.

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance No. 6802, with the stipulation that the building façade must be approved by the City Council. Second by Council Member Barnett.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6803

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND BEING THE WEST 100 FEET OF LOT 5 AND LOT 6, BLOCK 37 OF THE COLLEGE PARK ADDITION, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED IN THE 100 BLOCK NORTH CLEVELAND AVENUE, HERETOFORE ZONED R-6 (SINGLE FAMILY RESIDENTIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE R-4 (SINGLE FAMILY RESIDENTIAL) DISTRICT ZONING CLASSIFICATION, JINAL AND HARSIDDH PATEL (OWNER) AND UNDERWOOD DRAFTING & SURVEYING, INC. (SURVEYOR) PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00; PROVIDING A REPEALING/SAVINGS CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

ORD 6803
ZONE CHANGE
(100 BLOCK N.
CLEVELAND AVE)

Council Member Howeth expressed concern about the size of the homes.

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance No. 6803, as presented. Second by Deputy Mayor Dobbs.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6804

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 SCHOOLS; ELEMENTARY, HIGH, COLLEGE AND UNIVERSITIES, PUBLIC, PRIVATE, OR DENOMINATIONAL IN A R-6 (SINGLE FAMILY

ORD 6804
SUP FOR SCHOOLS
(400 N. SUNSET BLVD)

RESIDENTIAL) DISTRICT, LOCATED AT 400 NORTH SUNSET BOULEVARD, CONSISTING OF 12.131 ACRES BEING IN THE J.B. McANAI SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS SHERMAN INDEPENDENT SCHOOL DISTRICT (OWNER), TAYLOR BOSWELL (REPRESENTATIVE) AND TEAGUE NALL & PERKINS (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.

ACTION TAKEN.

Motion by Deputy Mayor Dobbs to approve Ordinance No. 6804, as presented. Second by Council Member Stevenson.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6805

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING SHERMAN'S ZONING ORDINANCE/CODE OF ORDINANCES CHAPTER 14, TO REZONE A TRACT OF LAND CONSISTING OF 2.820 ACRES BEING IN THE J.B. McANAI SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS, LOCATED AT 1831 TEXOMA PARKWAY, HERETOFORE ZONED C-2 (GENERAL COMMERCIAL) DISTRICT; REZONING AND PLACING THE TRACT IN THE C-1 (RETAIL BUSINESS) DISTRICT ZONING CLASSIFICATION, RASH VENTURES, LLC (OWNER) 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 6805
ZONE CHANGE
(1831 TEXOMA PKWY)

Ordinance 6806

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 1831 TEXOMA PARKWAY, CONSISTING OF 2.820 ACRES BEING IN THE J.B. McANAI SURVEY, ABSTRACT NO. 763, CITY OF SHERMAN, GRAYSON COUNTY, TEXAS RASH VENTURES, LLC (OWNER) 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 6806
SUP FOR HOTEL
(1831 TEXOMA PKWY)

Council Member Marroquin asked about the improvements that the new owners were making. Mr. Rae said they have already done some improvements, including painting. They do need to update parking and the dumpster enclosure to meet City requirements.

He said they plan to apply for the Certificate of Occupancy tomorrow, which will start the inspection process. Then they would need to address any other non-compliance items. He added that the new owners have been willing to apply for the CO and to bring everything into compliance. He added that they have been cooperative.

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance Nos. 6805 and 6806, as presented. Second by Council Member Barnett.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6807

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

ORD 6807
ZONE CHANGE
(401 S. SAM
RAYBURN FRWY)

ACTION TAKEN.

Motion by Council Member Stevenson to approve Ordinance No. 6807 as presented. Second by Deputy Mayor Dobbs.

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

VOTING NAY: None.

MOTION CARRIED.

Ordinance 6808

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, TEMPORARILY REDUCING THE MAXIMUM RATES OF SPEED ON CERTAIN PORTIONS OF U.S. HIGHWAY 75 FRONTAGE ROADS IN THE CORPORATE LIMITS OF SHERMAN, GRAYSON COUNTY, TEXAS, DURING CONSTRUCTION; PROVIDING FOR A PENALTY CLAUSE WITH A MAXIMUM FINE OF \$2,000; DECLARING AN EMERGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER.

ORD 6808
SPEED LIMITS
ON HWY 75
FRONTAGE ROADS

ACTION TAKEN.

Motion by Council Member Barnett to approve Ordinance No. 6808, as presented. Second by Council Member Marroquin.

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

VOTING NAY: None.

MOTION CARRIED.

RESOLUTION NO. 7465 -- AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY WARRANTY DEED FOR THE PURCHASE OF 0.0888 ACRES OF LAND SITUATED IN THE ELIZABETH JONES SURVEY A-625, SHERMAN, TEXAS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY WARRANTY DEED FOR THE PURCHASE OF 0.0888 ACRES OF LAND SITUATED IN THE ELIZABETH JONES SURVEY A-625, SHERMAN, TEXAS.

RES 7465
ROW WARRANTY
DEED FOR LAND
PURCHASE

For transparency, Mayor Teamann said he would not participate in the discussion and would abstain from the vote.

Deputy Mayor Dobbs asked for discussion on Resolution 7465.

Clint Philpott, Assistant City Manager, explained that, as part of the Phase 2 Extension Project for FM 1417, the City has agreed to acquire right-of-way for the Texas Department of Transportation. All of the needed parcels are from SH 56 to Sherman High School.

Typically, a parcel under \$50,000 does not need City Council approval. However, this parcel is partially owned by Mayor Teamann, and for transparency purposes, he and the staff agreed that the Council should approve this item. Negotiations did not include Mayor Teamann, and were only with his partners, and the purchase price is the same as the appraised value, which was done by a third-party appraiser, and ended up being one of the lowest appraised values so far.

ACTION TAKEN.

Motion by Council Member Howeth to approve Resolution No.

7465, as presented. Second by Council Member Marroquin.

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

VOTING NAY: None.

ABSTAIN: Teamann.

MOTION CARRIED.

RESOLUTION NO. 7466 -- AUTHORIZING THE EXECUTION OF AN ENCROACHMENT AGREEMENT WITH 5922 TEXOMA PARKWAY, LLC FOR THE ENCROACHMENT OF A MARQUEE SIGN WITHIN 15-FOOT UTILITY EASEMENT TO BE DEDICATED IN THE FINAL PLAT OF 5922 TEXOMA PARKWAY ADDITION, TO BE FILED IN THE PLAT RECORDS, GRAYSON COUNTY, TEXAS

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN ENCROACHMENT AGREEMENT TO 5922 TEXOMA PARKWAY, LLC FOR THE ENCROACHMENT OF A MARQUEE SIGN WITHIN 15-FOOT UTILITY EASEMENT TO BE DEDICATED IN THE FINAL PLAT OF 5922

RES 7466
ENCROACHMENT FOR
MARQUEE SIGN
(5922 TEXOMA PKWY)

TEXOMA PARKWAY ADDITION, TO BE FILED IN THE PLAT RECORDS, GRAYSON COUNTY, TEXAS, IN THE CITY OF SHERMAN.

CONSENT AGENDA.

RESOLUTION NO. 7467 -- AUTHORIZATION FOR EXECUTION OF CONTRACT THROUGH TIPS (CONTRACT NUMBER 230601) WITH CLIENTFIRST TO ASSIST WITH SELECTION OF COMPUTERIZED MAINTENANCE SYSTEM (CMMS) FOR WATER UTILITIES

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF AN AGREEMENT THROUGH TIPS CONTRACT (230601) WITH CLIENTFIRST.

CONSENT AGENDA.

RES 7467
WATER UTILITIES
COMPUTER
MAINTENANCE
SYSTEM

RESOLUTION NO. 7468 -- AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A 20-FOOT DRAINAGE EASEMENT FROM SHERMAN ECONOMIC DEVELOPMENT CORPORATION ACROSS PROPERTY LOCATED AT HWY 75 PROPERTY ID 125557, GROUND STORAGE TANK PROPERTY

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF A 20' DRAINAGE EASEMENT (0.152 ACRES) FOR SHERMAN ECONOMIC DEVELOPMENT CORPORATION ACROSS PROPERTY AT S. HWY 75 PROPERTY ID 125557.

CONSENT AGENDA.

RES 7468
DRAINAGE EASEMENT
(SEDCO HWY 75
PROPERTY)

RESOLUTION NO. 7469 -- AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT BETWEEN LYNN VESSELS CONSTRUCTION, LLC AND THE GREATER TEXOMA UTILITY AUTHORITY BASED ON AN INVITATION TO BID FOR THE CROSSROADS WASTEWATER MAIN EXTENSION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT BETWEEN LYNN VESSELS CONSTRUCTION, LLC AND THE GREATER TEXOMA UTILITY AUTHORITY BASED ON AN INVITATION TO BID FOR THE CROSSROADS WASTEWATER MAIN EXTENSION.

CONSENT AGENDA.

RES 7469
CROSSROADS
WASTEWATER
MAIN EXTENSION

REQUEST TO ADVERTISE
ANNUAL SUPPLY OF WATER CHEMICALS

The City Council approved the request to advertise for the annual supply of water chemicals for 2025. The chemicals are used at the Water Treatment Plant, Wastewater Lift Stations, and the Wastewater Treatment Plant.

CONSENT AGENDA.

ANNUAL SUPPLY
OF WATER
CHEMICALS

PARK RESTROOM CLEANING SERVICES

The City Council approved the request to advertise for the private contract cleaning of City public park restrooms. This contract would include cleaning and securing of the facilities, seven days a week for a twelve month period.

CONSENT AGENDA.

PARK RESTROOM
CLEANING SERVICES

OTHER BUSINESS

RECEIVE PRESENTATION ON DOWNTOWN INCENTIVE PROGRAM

**DOWNTOWN
INCENTIVE
PROGRAM**

Nate Strauch, Community and Support Services Manager, said there have been conversations with Council Members and developers recently about the Downtown Incentive Program, how it's working, and how it might be improved to make more of a difference.

He outlined the history of the Downtown Incentive Program, from the Façade Grant, created in the early 2000's, to the DBIG (Downtown Building Incentive Grant), in 2022. Funding for the program changed from the City's General Fund to the Tax Increment Reinvestment Zone, and from a maximum of \$25,000 to \$50,000.

Since moving to TIRZ funding, the program now has a current balance of \$92,000, down from \$638,000, with annual income at \$388,000.

Mr. Strauch said, on the larger projects, \$50,000 to \$100,000 is not enough to really make a difference. The TIRZ is "drained" and the sewer bond payment will continue to be paid from that fund, so it is no longer a viable option for incentives.

The program is designed to attract restaurants and retail to the Downtown area, and not for maintenance projects on older buildings. He added that the required grease trap continues to be the biggest hurdle for many restaurants that would like to locate Downtown. It is a very large "up-front" cost and the benefit comes to the City, not the building owner or the tenant.

He proposed possible changes to the program, including increasing the cap, which is now at \$50,000, and allowing a business to come back for multiple years. Funding would also be moved back to the General Fund, and a determination would be made as to what constitutes a "single project."

Mr. Strauch said they also propose moving from a 50% match to a 100% match for any project that takes an old building and makes it capable of being a restaurant. Any grease trap installed is a permanent improvement and could continue to be used, for any future tenant that is a restaurant.

Council Members have indicated that they want the Downtown to receive even more attention than it does now. Other things that might be considered later this year include a Downtown Master Plan, bringing back a true façade grant with a 100% match up to the cap, outlining better design standards, and adding staff.

He also suggested that the City initiate a Land Bank, where they would purchase "hard to sell" buildings and make the needed changes or use the investment to offer additional incentives to attract developers. They have also discussed a vacant building registration system and the possibility of spending bonds for downtown infrastructure.

Bonds could be used to increase walkability, especially from Kidd-Key to the Square, to construct a new Hot Summer Nights stage and green room, for a downtown park, and for streetscape improvements.

Robby Hefton, City Manager, felt the City could do more for Downtown, with the current funding. He asked Council to increase the cap, adding that the larger amount will have a greater impact. Tonight, he asked them to consider what this cap should be, and how much they would like to spend on Downtown, as well as appointing a Mayor's Downtown "working group."

Mayor Teamann confirmed that about \$300,000 was spent last year on the current program, making up four or five properties. He did feel that the cap should be increased and discussed what the amount might be. Mr. Hefton felt the cap should be in the \$200,000 to \$300,000 range, but it is a matching grant. He also felt that the grease trap issue was a major issue and restaurants would not come Downtown unless that was addressed. Mr. Hefton also recommended allowing for exceptions to the rule, for major projects.

Council Members discussed issues that they were concerned about and what changes might be made to the City's program. The "working group" will consist of Mayor Teamann, Council Member Barnett, and Council Member Stevenson.

Mr. Hefton asked if there was a consensus on the recommended cap. Council Members were "comfortable" with a proposed cap of \$300,000 per building "project" or structure. Most projects would not reach the \$300,000 cap, and the match would be 25%, up to \$300,000.

Mr. Hefton said a proposed program will be brought back to Council at the next meeting for consideration.

CONSIDER BOARD/COMMISSION APPOINTMENTS

AIRPORT ADVISORY BOARD (4)

Mayor Teamann said Council appointments to the Airport Advisory Board would be made after the Executive Session.

AIRPORT ADVISORY
BOARD

CITIZEN'S COMMENTS

DOWNTOWN PARKING ISSUE

Peter Tracy, 705 S. Valentine, said parking is the biggest problem Downtown, and the people working Downtown are the habitual offenders.

DOWNTOWN
PARKING ISSUE

COUNCIL COMMENTS

- Recognized the Martin Luther King Day and the Downtown March celebrating Dr. King. (Clay Barnett, Shawn Teamann)
- Thanks to the Leadership Sherman Group and recognizing the Chamber of Commerce event. (Clay Barnett)

COUNCIL COMMENTS

ANNOUNCEMENTS

Mayor Teamann announced the following:

- Habitat for Humanity will hold their annual Habi-taters fundraiser on January 25, 2025, at 6:00 p.m. in the Municipal Ballroom.
- Parks and Recreation will hold their annual Father-Daughter Dance on February 7 and 8, 2025.
- The inaugural Sherman Showdown Food Truck Competition will be held May 3, 2025, in Downtown Sherman.

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

TEX. GOV'T CODE § 551.076 --

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

TEX. GOV'T CODE § 551.087 –

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

- A) Crossroads Development**
- B) Shepherd Place Development**
- C) Hospital Project**

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 6:40 p.m.

On Motion duly made and carried, the Executive Session recessed at 7:53 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

CONSIDER BOARD/COMMISSION APPOINTMENTS

AIRPORT ADVISORY BOARD (4)

ACTION TAKEN.

Motion by Council Member Barnett to reappoint WaaDee Hudson and Randy Workman to the Airport Advisory Board for a term from October 18, 2024 to October 18, 2026, to reappoint Stephen Sanderson for a term from October 22, 2024 to October 22, 2026, and to appoint Bob Nunn for a term from January 22, 2025 to January 22, 2027. Second by Council Member Stevenson.

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

VOTING NAY: None.

MOTION CARRIED.

AIRPORT ADVISORY BOARD

ADJOURNMENT

On Motion duly made and carried, the meeting adjourned at 7:55 p.m.

ADJOURNMENT

MAYOR

CITY CLERK

HOW MANY "CENTS"
IN "INCENTIVE"

BRIEF HISTORY

- FAÇADE GRANT CREATED IN EARLY 2000S
- TRANSITIONED TO DBIG IN 2022:
 - FUNDING MECHANISM CHANGED FROM GF TO TIRZ
 - MAXIMUM GRANT CHANGED FROM \$25K TO \$50K
 - CITY-REQUIRED IMPROVEMENTS ELIGIBLE FOR 2:1 MATCH; ALL OTHERS, STILL 4:1
 - SPRINKLER SYSTEMS
 - GREASE TRAPS
 - EXCEPTION FOR *HISTORIC* FAÇADE RENOVATIONS
 - APPROVED PROJECTS ARE EXEMPT FROM FEES (NOT RETROACTIVE)
 - REQUIREMENT TO REMAIN OCCUPIED FOR 4 OF THE NEXT 5 YEARS FOR ONGOING APPLICANT ELIGIBILITY
 - MULTI-YEAR ELIGIBILITY FOR PROJECTS VALUED AT >\$500K
 - “HISTORIC” DEFINED AS MORE THAN 50 YEARS OLD
 - RESIDENTIAL PROJECTS ARE ELIGIBLE

TIRZ REVIEW

- CURRENT BALANCE OF 92K (DOWN FROM \$638K)
- YEARLY INCOME \$388K (UP FROM \$273K)
- CAN BE USED FOR:
 - PUBLIC INFRASTRUCTURE,
 - DEMOLITION (PUBLIC OR PRIVATE PROPERTY),!
 - REMODEL OF EXISTING PUBLIC BUILDINGS,!
 - PRESERVATION OF THE FAÇADE OF PUBLIC OR PRIVATE BUILDINGS,!
 - ECONOMIC DEVELOPMENT PROGRAMS (CHAPTER 380 AGREEMENTS),
 - REMEDIATION OF PUBLIC OR PRIVATE LAND OR BUILDINGS,!
 - “PAYMENTS MADE AT THE DISCRETION OF THE GOVERNING BODY OF THE CITY THAT THE CITY FINDS NECESSARY OR CONVENIENT TO THE IMPLEMENTATION OF THE PROJECT PLANS FOR THE ZONE.”

DBIGGER?

- \$50-100K IS NOT ENOUGH TO MOVE NEEDLE ON LARGE PROJECTS
- TIRZ IS DRAINED AND SEWER BOND PAYMENTS WILL CONTINUE TO VAMPIRE
- WHAT CONSTITUTES A SINGLE PROJECT?
- HOW TO BRING THE FOCUS MORE ON PREFERRED INDUSTRIES?
- THE GREASE TRAP TRAP

DBIGGER.

- \$50-100K IS NOT ENOUGH
 - INCREASE CAP TO...?
- TIRZ IS DRAINED
 - BACK TO THE GF
- WHAT CONSTITUTES A SINGLE PROJECT?
 - "BUILDING" DEFINED
- THE GREASE TRAP TRAP
 - MOVE FROM 50% MATCH TO 100% MATCH FOR RESTAURANTS

DBIGGEST?

- “D6: THE RETURN” LATER THIS YEAR?
 - DOWNTOWN MASTER PLAN
 - BRING BACK A TRUE FAÇADE GRANT
 - 100% MATCH UP TO CAP
 - DESIGN STANDARDS
 - DBIG DOUBLE-DIPPABLE?
 - ADD STAFF
 - LAND BANK?
 - VACANT BUILDING REGISTRATION
 - BONDS FOR PROJECTS?
 - WALKABLE FROM KIDD-KEY TO SQUARE
 - NEW HSN STAGE/ GREEN ROOM
 - DOWNTOWN PARK
 - STREETScape IMPROVEMENTS

HEAD-NOD TIME

- YES TO UPPING CAP? HOW MUCH?
- HOW MUCH DO WE WANT TO SPEND ON DOWNTOWN
- HOW AGGRESSIVE MOVING FORWARD?
- MAYOR'S DOWNTOWN WORKING GROUP



City Council Regular Meeting

Agenda Item No. C.1.

Meeting Date: 2/3/2025

Prepared By:

Approved By:

Caption:

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

Issue:

D. 4. * RESOLUTION NO. 7473

Authorizing the Purchase of Furniture for the Remodeled City Hall from Business Essentials

D. 5. * RESOLUTION NO. 7474

Authorizing Execution of a Professional Services Agreement with Mead & Hunt, Inc. for the Blalock Park Interceptor Improvement

D. 6. * RESOLUTION NO. 7475

Authorizing Execution of a Second Amendment to the Professional Services Agreement with Brockett/Davis/Drake, Inc. for the Engineering Design of Flanary Road and Progress Drive Expansion/Improvements

D. 7. * RESOLUTION NO. 7476

Awarding a Bid to and Execution of a Contract With All Pro Irrigation LLC for the Kidd-Key Water Fountain Remodel Project

D. 8. * RESOLUTION NO. 7477

Authorizing Execution of a Professional Services Agreement with Mead & Hunt, Inc. for the WWTP Relift Pump Station and Filter

D. 9. * RESOLUTION NO. 7478

Authorizing Execution of an Easement to Oncor Electric Delivery Company, LLC for the Installation of Overhead and/or Underground Electric Supply

D. 10. * RESOLUTION NO. 7479

Authorizing the Purchase of a New 2024 Tahoe RST 4x4 for the Equipment Services Department from Sam Pack's Five Star Chevrolet through the Texas Local Government Purchasing Cooperative (BuyBoard).

D. 11. * RESOLUTION NO. 7480

Authorizing Submission and Acceptance of a Grant Application to the Governor's Office for a Criminal Justice Assistance Grant Program

Background:

Origination:

Financial Consideration:

Staff Recommendation:

Alternatives:

Attachments:

None



City Council Regular Meeting

Agenda Item No. D.1.

Meeting Date: 2/3/2025

Prepared By: Nate Strauch, Community and Support Services Manager

Approved By: Zachary Flores, Assistant City Manager

Caption:

RESOLUTION NO. 7470

Amending Resolution No. 7025 and the City of Sherman's Economic Development Program to Promote Development/Redevelopment in Tax Increment Reinvestment Zone Number 2; Establishing Amended Guidelines and Criteria

Issue:

Declaring the City of Sherman's Intention to Participate in an Economic Development Program to Promote Development/ Redevelopment in Tax Increment Reinvestment Zone Number 2; Establishing Guidelines and Criteria

Background:

This item is to effect the changes to the City of Sherman's Downtown Building Improvement Grant as discussed at the meeting held January 20, 2025. The most prominent of those changes include:

- Increasing the grant cap from \$100,000 over two years to \$300,000 in any one year for projects that meet certain criteria.
- Stipulating that grease traps (100% match) and sprinkler systems (50% match) do not count toward the grant cap and will be reimbursed as stated.
- Defining the scope of a single project as work on a single building, regardless of plats or addresses. Providing leeway for City staff to make that determination when buildings are interconnected.

Origination:

Financial Consideration:

Funding for the "DBIGger" program will now come from the General Fund instead of the TIRZ. Available funds will be determined by Council on a year-by-year basis.

Staff Recommendation:

Staff recommends approval.

Alternatives:

As directed.

Attachments:

1. Resolution No. 7470
2. DBIGger Program Guidelines
3. Dbig Program - Redlined Version
4. Resolution No. 7025

RESOLUTION NO. 7470

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AMENDING RESOLUTION NO. 7025 AND THE CITY OF SHERMAN'S ECONOMIC DEVELOPMENT PROGRAM TO PROMOTE DEVELOPMENT/REDEVELOPMENT IN TAX INCREMENT REINVESTMENT ZONE NUMBER 2; ESTABLISHING AMENDED GUIDELINES AND CRITERIA; 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 amends Resolution No. 7025 and the economic development program to promote development/redevelopment in Tax Increment Reinvestment Zone Number 2, approved thereunder, and to establish amended program guidelines as set forth in Exhibit A, attached hereto.

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 3rd day of February 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



Downtown Building Improvement Grant

Guidelines and Policies

Policy Statement

The Downtown Building Improvement Grant program is designed to stimulate improvements to existing, historic buildings in the downtown Tax Increment Reinvestment Zone of the City of Sherman, Texas. The goal of this program is to enhance the physical appearance and economic vitality of downtown Sherman, and to promote public/private investment to complement ongoing historical revitalization efforts.

Program Description

This program is designed to make positive, high-impact visual improvements to historically significant commercial and residential buildings by providing an overall enhanced image for downtown Sherman, thereby attracting visitors to shop, dine, and do business downtown.

The program provides grants as a matching monetary incentive to the owners or tenants of historically significant commercial or residential properties in the downtown TIRZ.

In most cases, for every \$4 the applicant invests in the renovation or improvement of the subject property, the City will reimburse \$1 of qualified expenditures, up to the maximum grant authorized by the City Council.

If a project will provide new commercial space to be used primarily for restaurant or retail purposes, owners may apply for reimbursements covering all eligible costs incurred, in which cases grants will be capped at \$300,000 per project. For all other eligible projects, total reimbursements are capped at \$50,000.

Grease traps are not counted toward the total cap amount and will be reimbursed at 100% of total cost, provided that a grease trap is part of a larger project, explicitly intended for a restaurant tenant. Likewise, sprinkler system matching grants made under the City's separate grant program do not count toward the cap.

Any project approved for this grant will not be charged the following planning, zoning, and inspection fees, when legally permitted. However, this provision is NOT retroactive and applies only to such fees incurred after approval of the grant application. The waived fees shall include:

- Civil plans (\$1000)
- Tap fees (up to \$800)
- Zoning change (\$500)
- Building permits (\$.30/ square foot)
- Plats (\$350)
- Variances (\$250)
- Site plans (\$150)
- Grading permits (\$150)
- Inspection fees (variable)

Eligibility

Historic buildings within the downtown TIRZ that are of a commercial, residential, retail, service, or professional use are eligible to participate in the program. For the purposes of this grant, “historic” refers to any building built more than 50 years before the current year.

Buildings with multiple addresses or on multiple platted lots are not eligible for multiple grants, unless staff deems that multiple connected buildings do, in fact, constitute separate projects. Staff and Council retain full discretion to make that determination on a case-by-case basis.

Notwithstanding any statement to the contrary herein, grants, funding and other assistance under this program is subject to the availability of funding and subject to the approval of the Council.

Minimum Guidelines

To be approved for a grant under this program, projects must make a substantial improvement to the building, at the discretion of City staff and Council. Routine upgrades such as painting are considered maintenance, not an improvement.

Building improvements should maintain the character of the downtown area. Program funds shall be made available only to projects that enhance and are sensitive to the historical nature of the structure. The design drawings must be approved by the City in order to access funding for

improvement.

Buildings improved with funds from this program must remain occupied for at least 4 of the 5 years following the completion of the project. Any applicant who fails to satisfy this requirement will not be eligible for additional grants under this program, and the City reserves the right to claw back funds paid to the applicant under this program. For the purposes of this grant, “Occupied” refers to ongoing commercial, residential, retail, service, or professional use, and does not include passive uses such as storage, as determined by the City in its sole discretion.

Retroactive applications will not be accepted. Only work that is currently underway or has yet to begin at the time of approval qualifies for reimbursement.

Grants are provided on a first-come, first-served basis. The City reserves the right to amend or modify these Guidelines and program eligibility and requirements at any time. Grants, funding and other assistance under this program are not assignable without the written consent of the City.

Additional requirements:

- Improvements to be undertaken shall conform to the City’s then-current codes and any other then-current policies and regulations applying to the subject property.
- For properties with multiple storefronts, it is recommended that the façade treatment provide a cohesive theme while also allowing for some distinctive design elements to the various businesses, such as signage, exposing transom windows, lighting, flower boxes, murals, etc., to provide better street visibility and promote economic development downtown.
- Permits for any project under this program must be obtained no more than six (6) months after Council approval. The approval of an application under this program is considered null and void if this requirement is not met or if permits have expired without the work being completed. If those permits expire, the applicant must re-apply.

Eligible Improvements

Eligible improvements must be permanent in nature as determined by the City of Sherman in its sole discretion. All improvements must be consistent with the City of Sherman Master Plan, zoning ordinance, building regulations, and other applicable laws. Eligible costs include the cost of materials, equipment, and contracted labor to complete eligible improvements, including, but not limited to, the following:

- Commercial code compliance renovations
- Permanent commercial interior remodeling improvements
- Permanent commercial site (exterior) improvements
- Compliance with Americans with Disabilities Act (ADA) for commercial properties
- Work necessary to bring the structure up to life-safety code standards
- Installation, repair, and replacement of exterior doors and hardware
- Repair, replacement, or addition of exterior shutters and awnings/canopies
- Repair, replacement, or purchase of signs (when performed as part of an overall façade improvement)
- Repair and replacement or installation of interior and exterior stairs, porches, railings, and exit facilities
- Repair and rebuilding of interior and exterior walls, including cleaning, sealing, tuckpointing and painting
- Repair or replacement of frames, sills, glazing, replacement of glass and installation of new windows
- Installation of permanently affixed landscaping, such as stone or brick planters
- Installation, repair, or replacement of exterior lighting
- Mechanical, including rewiring, replumbing, insulation, mechanical systems/climate control

Ineligible Improvements include:

- Furnishings and equipment purchases
- Working capital
- Inventory financing
- Title reports and legal fees
- Extermination of insects, rodents, vermin, and other pests
- Improvements that do not comply with City of Sherman Master Plan, Zoning Ordinance, Building Regulations, and other applicable laws

Application Process

Program Application and Agreement forms are available on the City of Sherman website, www.cityofsherman.com. The application process is as follows:

After reviewing the program guidelines, the applicant will meet with City staff to discuss the work to be undertaken. If the proposed work is within the program guidelines, as determined by City staff in its sole discretion, a completed application is submitted to the City. Written bids, sketches, color samples, and material supplies should be included with the complete application,

as well as proof of ownership or a lease agreement. The applicant is responsible for submitting plans and specifications to the City and obtaining all required planning and building permits, and any other applicable approvals.

The Sherman City Council will consider the recommendations made by the City staff and will make its decision in a public meeting.

Deviations from approved plans and specifications may disqualify the applicant from reimbursement under this grant program unless those changes are approved by City staff. False or incomplete information submitted by the applicant to the City also shall disqualify the applicant for reimbursement. Any applicant disqualified for these reasons or denied for a grant has the right to appeal to the City Manager, who will make a final determination. Any appeals must be in writing, state the grounds for the appeal, and submitted within 10 days of the date of disqualification or denial.

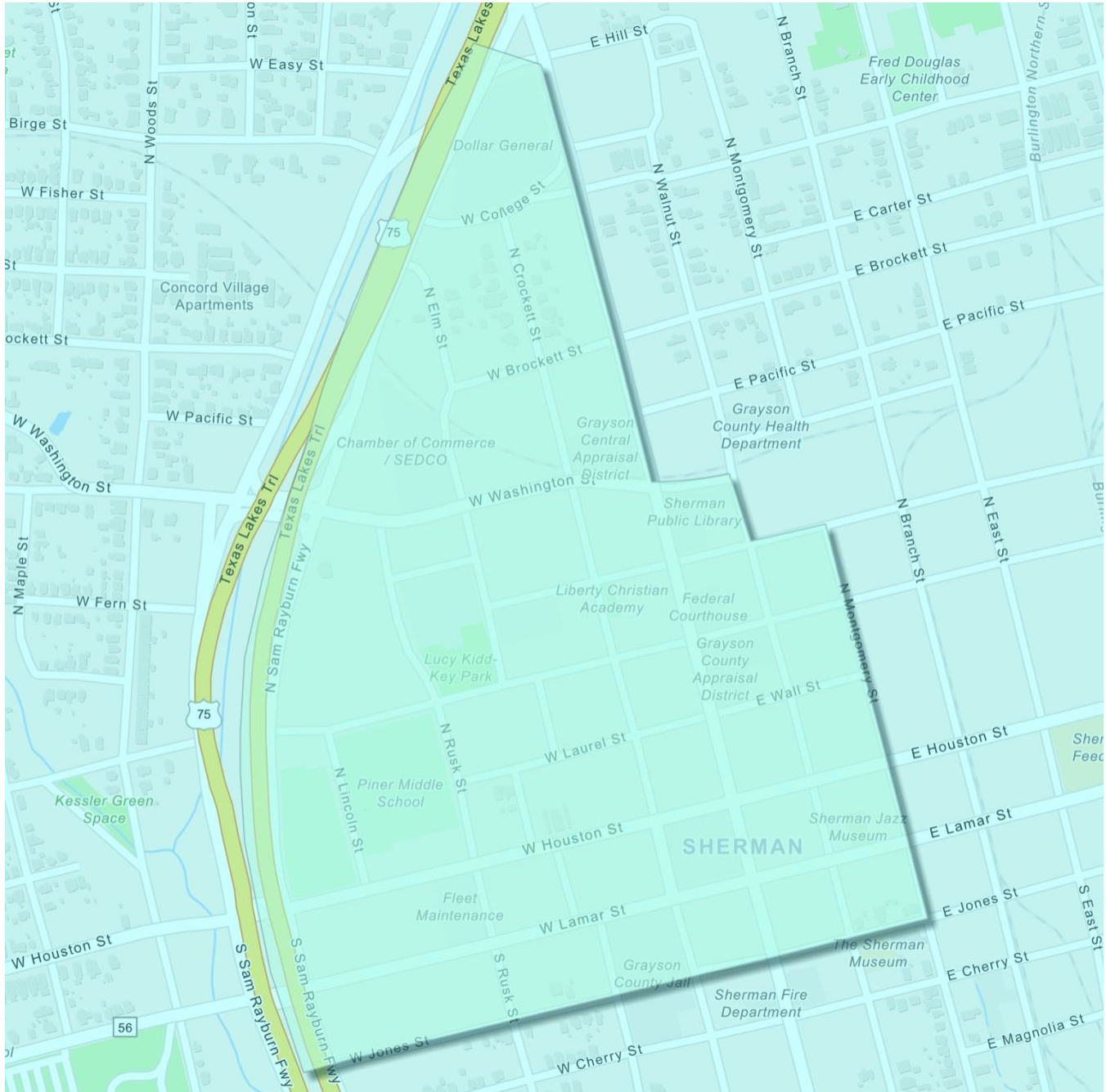
Funds will be reimbursed only after payment has been made by the applicant. Reimbursement claims for all eligible expenses must be submitted along with cancelled checks and matching invoices/receipts for eligible work. Any invoices paid more than eighteen months after City Council approval of a grant application are not eligible for reimbursement.



Downtown Tax Increment Reinvestment Zone

An online version of this map is available here:

<https://experience.arcgis.com/experience/6000d76bee8f4c47a07f21e9a9ceae6a>



Downtown Building Improvement Grant Application and Agreement

The information requested below will be used to process your application under the terms and conditions of the City of Sherman's Downtown Building Improvement Grant. All grant applications must include pictures of the current building, designs or renderings of the finished product, and historical pictures, if available.

I. Applicant Information

1. Applicant(s) name: _____
Mailing address: _____
City: _____ State: _____ Zip: _____

2. Applicant's daytime telephone number: _____
E-mail address: _____
3. Status of applicant (please check one)
____ Property owner with vacant facility
____ Property owner with tenant business
____ Property owner/operator of existing business on property
____ Property tenant with property owner consent
____ Property deed, lease, or other document evidencing applicant's status
5. Length of ownership/ lease: _____
Date purchased/ leased: _____

II. Property Information

1. Address of property to be improved: _____
2. Legal description of subject property:

3. Grayson County Tax Assessor Parcel Number(s):

4. Year built: _____ Square footage: _____
(Eligible buildings must be at least 50 years of age.)
6. What are the current types of businesses or other uses occupying the building?

7. Name and phone number of tenant(s), if applicable: _____
(Attach additional names/numbers, if needed)

8. Use of building after construction: _____

9. Number of parking spaces provided: _____ Proposed: _____ Total: _____
10. Current zoning: _____
11. Is a zoning amendment required? Yes___ No___

III. Project Description

1. Description of Proposed Improvements. Please provide a detailed description of your proposed improvements. Attach a copy of your architectural or design plans.

Description: _____

☐ **Designs Attached**

☐ **“Before” Picture(s) Attached**

2. How many jobs will be **retained** once the project is completed?
 _____ Full-time positions _____ Part-time positions
3. How many **new positions** will result from this project?
 _____ Full-time positions _____ Part-time positions

IV. Work Estimates

Please attach a minimum of two (2) independent contractor estimates for the proposed improvements. Please note that grant funding shall be based on the lowest bid. Eligible costs shall be the cost of materials, equipment, and contracted labor to complete eligible improvements.

1. Name/Company and Phone Number of Preferred Contractor:

 Amount: _____
2. Name/Company and Phone Number of Second Contractor:

 Amount: _____
3. Additional Estimates/Comments: (Please attach additional quotes, as required)

4. Total estimated costs of your improvements: _____
5. Estimated completion date for your improvements? _____

VI. Agreement of Applicant and Property Owner

I/We, _____, of the City of Sherman, County of Grayson, State of Texas, declare under penalty of perjury that the information contained in this application is true and correct and that the information contained in the documents that accompany this application is true, correct, and complete. I/We certify and warrant that the proposed work described in this Application meets the eligibility requirements of the City of Sherman Downtown Building Improvement Grant Program. In exchange for the City of Sherman's consideration of this application, I/We hereby agree to the following:

I/We hereby authorize City of Sherman employees and agents to perform inspections of my/our property if granted funds under the City of Sherman Downtown Building Improvement Grant Program, both before and during the work for which funds are granted under this Program and after completion of the work to ensure compliance with the terms and conditions of the Program and all other applicable ordinances and other laws.

I/We acknowledge that any work carried out prior to written confirmation of grant approval may not be eligible for reimbursement.

I/We acknowledge receiving, understanding, and accepting the terms and conditions of the City of Sherman Downtown Building Improvement Grant Program, and agree to fully comply with the same along with all other applicable ordinances and other laws, all of which are incorporated herein by reference, if granted funds under the Program. I agree that the City of Sherman is entitled to the immediate return or reimbursement of any and all funds paid to the Applicant or other persons under the Program, plus interest and collection costs, in the event the Applicant fails to complete the work for which the grant was approved or otherwise fails to comply with all applicable Program guidelines and requirements, ordinances and other laws. I/We Applicants further acknowledge and agree that, if funds provided by the City to the Applicant under the Program are determined at any time not to comply with applicable state laws relating to the authorized uses of such funds, all funds paid to the Applicant or other persons under the Program shall be immediately returned or reimbursed to the City.

Chapter 2264 Certification: Pursuant to Chapter 2264 of the Texas Local Government Code, I/We hereby certifies that the Applicant's business, or a branch, division, or department of the Applicant's business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under the law to be employed in that manner in the United States. If after receiving this grant from the City of Sherman, Applicant, or a branch, division, or department of Applicant's business, is convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the grant with interest, at the rate and according to the terms provided by this Agreement under Section 2264.053 of the Texas Local Government Code, not later than the 120th day after the date the Applicant is notified of the violation. I/We agree that this document serves as an agreement under Chapter 380 of the Texas Local Government Code.

I/WE AGREE TO INDEMNIFY, RELEASE, DEFEND AND HOLD HARMLESS THE CITY OF SHERMAN AND ITS OFFICERS, EMPLOYEES AND AGENTS, FROM AND AGAINST ALL CLAIMS, LOSSES, LIABILITIES, DAMAGES, SUITS, ACTIONS, OR PROCEEDINGS ASSERTED OR BROUGHT BY ANY PERSON, INCLUDING APPLICANT AND THE PROPERTY OWNER AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AND SUBCONTRACTORS, ARISING OUT OF PERSONAL INJURY, DEATH OR PROPERTY DAMAGE FROM ANY CAUSE WHATSOEVER IN WHOLE OR IN PART ARISING OUT OF THIS AGREEMENT OR THE ACTIVITIES COMPLETED HEREUNDER.

Applicant or Authorized Agent of Applicant

**Property Owner (if different from Applicant)
or Authorized Agent of Property Owner**

VII. Consent of the Owner to the Use and Disclosure of Information

I/We, _____, am the owner of the land that is the subject of this Application, and I/we authorize and consent to the use by or the disclosure to any person or public body, including the City of Sherman, of any personal or other information that is collected for the purposes of processing this application and administering the grant program. *(Note: Information provided in this application will become a public record, subject to disclosure under the Texas Public Information Act and/or Texas Open Meetings Act.)*

Date

Signature of Owner(s)



Downtown Building Improvement Grant

Guidelines and Policies

Policy Statement-

The Downtown Building Improvement Grant program is designed to stimulate improvements to existing, historic buildings in the downtown Tax Increment Reinvestment Zone of the City of Sherman, Texas. The goal of this program is to enhance the physical appearance and economic vitality of downtown Sherman, and to promote public/private investment to complement ongoing historical revitalization efforts.

Program Description-

This program is designed to make positive, high-impact visual improvements to historically significant commercial and residential buildings by providing an overall enhanced image for downtown Sherman, thereby attracting visitors to shop, dine, and do business downtown.

The program provides grants as a matching monetary incentive to the owners or tenants of historically significant commercial or residential properties in the downtown TIRZ.

In most cases, for every \$4 the applicant invests in the renovation or improvement of the subject property, the City will reimburse \$1 of qualified expenditures, up to the maximum grant authorized by the City Council.

~~For improvements required by any City of Sherman department—including but not limited to grease traps, sprinkler systems, and plumbing improvements—the City will reimburse \$1 for every \$2 spent by the applicant.~~

~~Likewise, any portion of a project to restore a historic façade (e.g. removing “modernized” cladding to reveal original architecture), is eligible for the increased 2:1 match. Council retains authority to decide the final matching amount on any project.~~

If a project will provide new commercial space to be used primarily for restaurant or retail purposes, owners may apply for reimbursements covering all eligible costs incurred, in which cases grants will be capped at \$300,000 per project. For all other eligible projects, total reimbursements are capped at \$50,000.

Grease traps are not counted toward the total cap amount and will be reimbursed at 100% of total cost, provided that a grease trap is part of a larger project, explicitly intended for a

restaurant tenant. Likewise, sprinkler system matching grants made under the City's separate grant program do not count toward the cap.

Any ~~City building permit for work covered under project approved for~~ this grant will not be charged ~~any~~the following planning, zoning, and inspection fees related to those permits, when legally permitted. However, this provision is NOT retroactive and applies only to such fees incurred after approval ~~of the grant application.~~ The waived fees shall include:

- Civil plans (\$1000)
- Tap fees (up to \$800)
- Zoning change (\$500)
- Building permits (\$.30/ square foot)
- Plats (\$350)
- Variances (\$250)
- Site plans (\$150)
- Grading permits (\$150)
- Inspection fees (variable)

Eligibility

Historic buildings within the downtown TIRZ that are of a commercial, residential, retail, service, or professional use are eligible to participate in the program. For the purposes of this grant, "historic" refers to any building built more than 50 years before the current year.

AssistanceBuildings with multiple addresses or on multiple platted lots are not eligible for multiple grants, unless staff deems that multiple connected buildings do, in fact, constitute separate projects. Staff and Council retain full discretion to make that determination on a case-by-case basis.

Notwithstanding any statement to the contrary herein, grants, funding and other assistance under this program ~~will be considered~~is subject to the availability of funding and subject to the approval of the ~~City~~ Council.

Minimum Guidelines

To be approved for a grant under this program, projects must make a substantial improvement to the building, at the discretion of City staff and Council. Routine upgrades such as painting are considered maintenance, not an improvement.

Building improvements should maintain the character of the downtown area. Program funds shall be made available only to projects that enhance and are sensitive to the historical nature of the structure. The design drawings must be approved by the City in order to access funding for improvement.

Buildings improved with funds from this program must remain occupied for at least 4 of the 5 years following the completion of the project. Any applicant who fails to satisfy this requirement will not be eligible for additional grants under this program, and the City reserves the right to claw back funds paid to the applicant under this program. For the purposes of this grant, "Occupied" refers to ongoing commercial, residential, retail, service, or professional use, and does not include passive uses such as storage, as determined by the City in its sole discretion.

Retroactive applications will not be accepted. Only work that is currently underway or has yet to begin at the time of approval qualifies for reimbursement.

Grants are provided on a first-come, first-served basis. The City reserves the right to amend or modify these Guidelines and program eligibility and requirements at any time. Grants, funding and other assistance under this program are not assignable without the written consent of the City.

Additional requirements:

- Improvements to be undertaken shall conform to the City's then-current codes and any other then-current policies and regulations applying to the subject property.
- For properties with multiple storefronts, it is recommended that the façade treatment provide a cohesive theme while also allowing for some distinctive design elements to the various businesses, such as signage, exposing transom windows, lighting, flower boxes, murals, etc., to provide better street visibility and promote economic development downtown.
- Permits for any project under this program must be obtained no more than six (6) months after Council approval. The approval of an application under this program is considered null and void if this requirement is not met or if permits have expired without the work being completed. If those permits expire, the applicant must re-apply.

Eligible Improvements

Eligible improvements must be permanent in nature as determined by the City of Sherman in its sole discretion. All improvements must be consistent with the City of Sherman Master Plan, zoning ordinance, building regulations, and other applicable laws. -Eligible costs include the cost of materials, equipment, and contracted labor to complete eligible improvements, including, but not limited to, the following:—

- Commercial code compliance renovations
- Permanent commercial interior remodeling improvements
- Permanent commercial site (exterior) improvements

- Compliance with Americans with Disabilities Act (ADA) for commercial properties
- Work necessary to bring the structure up to life-safety code standards
- Installation, repair, and replacement of exterior doors and hardware
- Repair, replacement, or addition of exterior shutters and awnings/canopies
- Repair, replacement, or purchase of signs (when performed as part of an overall façade improvement)
- Repair and replacement or installation of interior and exterior stairs, porches, railings, and-
 - exit facilities
- Repair and rebuilding of interior and exterior walls, including cleaning, sealing, tuckpointing and painting
- Repair or replacement of frames, sills, glazing, replacement of glass and installation of ~~new~~ new windows
- Installation of permanently affixed landscaping, such as stone or brick planters
- Installation, repair, or replacement of exterior lighting
- Mechanical, including rewiring, replumbing, insulation, mechanical systems/climate control

Ineligible Improvements include:

- Furnishings and equipment purchases
- Working capital
- Inventory financing
- Title reports and legal fees
- Extermination of insects, rodents, vermin, and other pests
- Improvements that do not comply with City of Sherman Master Plan, Zoning Ordinance, Building Regulations, and other applicable laws

Application Process

Program Application and Agreement forms are available on the City of Sherman website, ~~www.cityofsherman.com~~ www.cityofsherman.com. The application process is as follows:

After reviewing the program guidelines, the applicant will meet with City staff to discuss the work to be undertaken. If the proposed work is within the program guidelines, as determined by City staff in its sole discretion, a completed application is submitted to the City. Written bids, sketches, color samples, and material supplies should be included with the complete application, as well as proof of ownership or a lease agreement. The applicant is responsible for submitting plans and specifications to the City and obtaining all required planning and building permits, and any other applicable approvals.

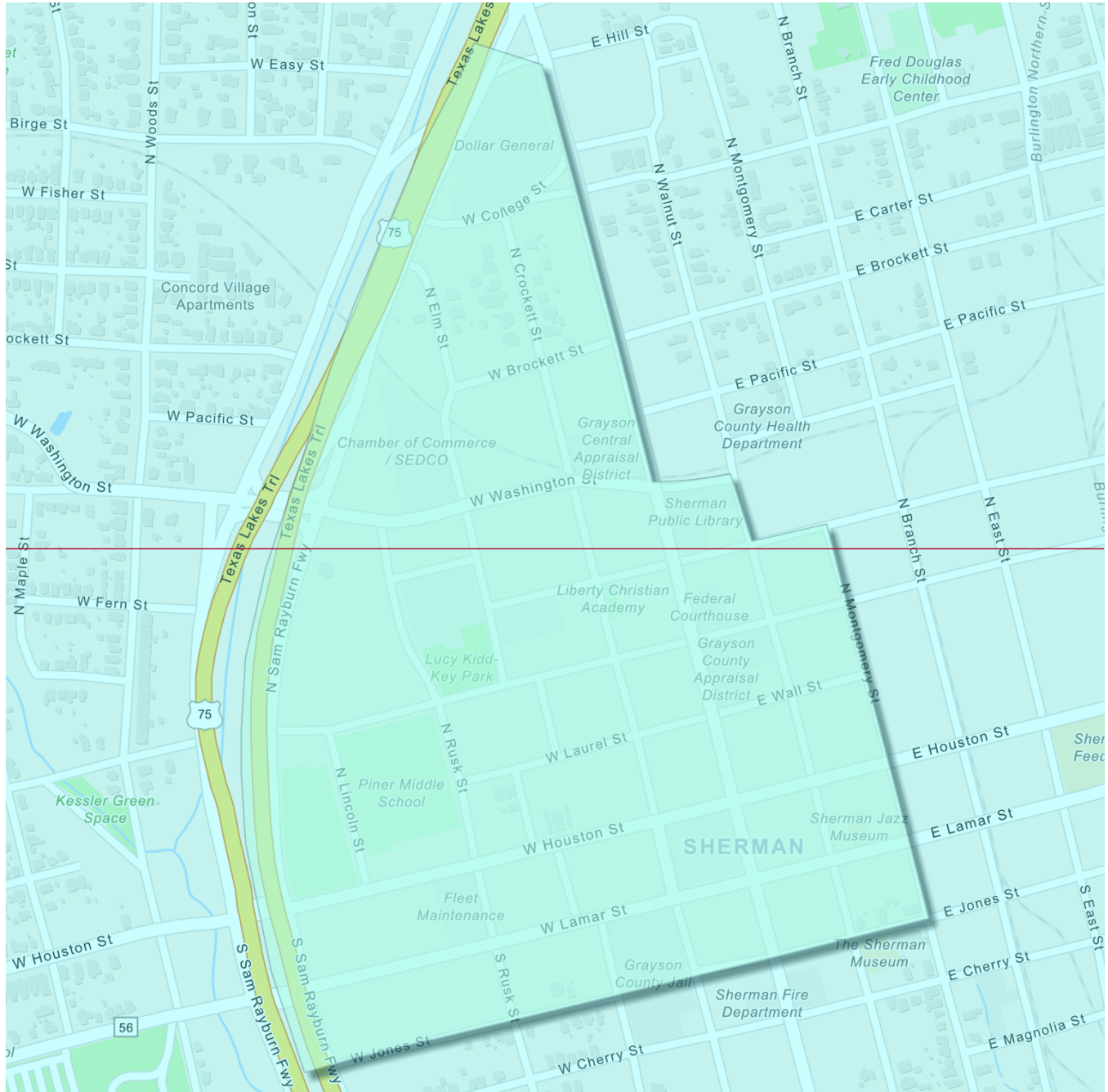
The Sherman City Council will consider the recommendations made by the City staff and will make its decision in a public meeting.-

Deviations from approved plans and specifications may disqualify the applicant from reimbursement under this grant program unless those changes are approved by City staff. False or incomplete information submitted by the applicant to the City also shall disqualify the applicant for reimbursement. Any applicant disqualified for these reasons or denied for a grant has the right to appeal ~~their disqualification directly~~ to the City Manager, who will make a final determination. Any appeals must be in writing, state the grounds for the appeal, and submitted within 10 days of the date of disqualification or denial.

Funds will be reimbursed only after payment has been made by the applicant. Reimbursement claims for all eligible expenses must be submitted along with cancelled checks and matching invoices/receipts for eligible work. ~~For expenditures made under the program before the subject work is completed and accepted by the City, the City reserves the right to require the return of funds provided, plus interest and collection costs, in the event the applicant fails to complete the work or otherwise fails to comply with all applicable program guidelines and requirements, ordinances and other laws~~ Any invoices paid more than eighteen months after City Council approval of a grant application are not eligible for reimbursement.

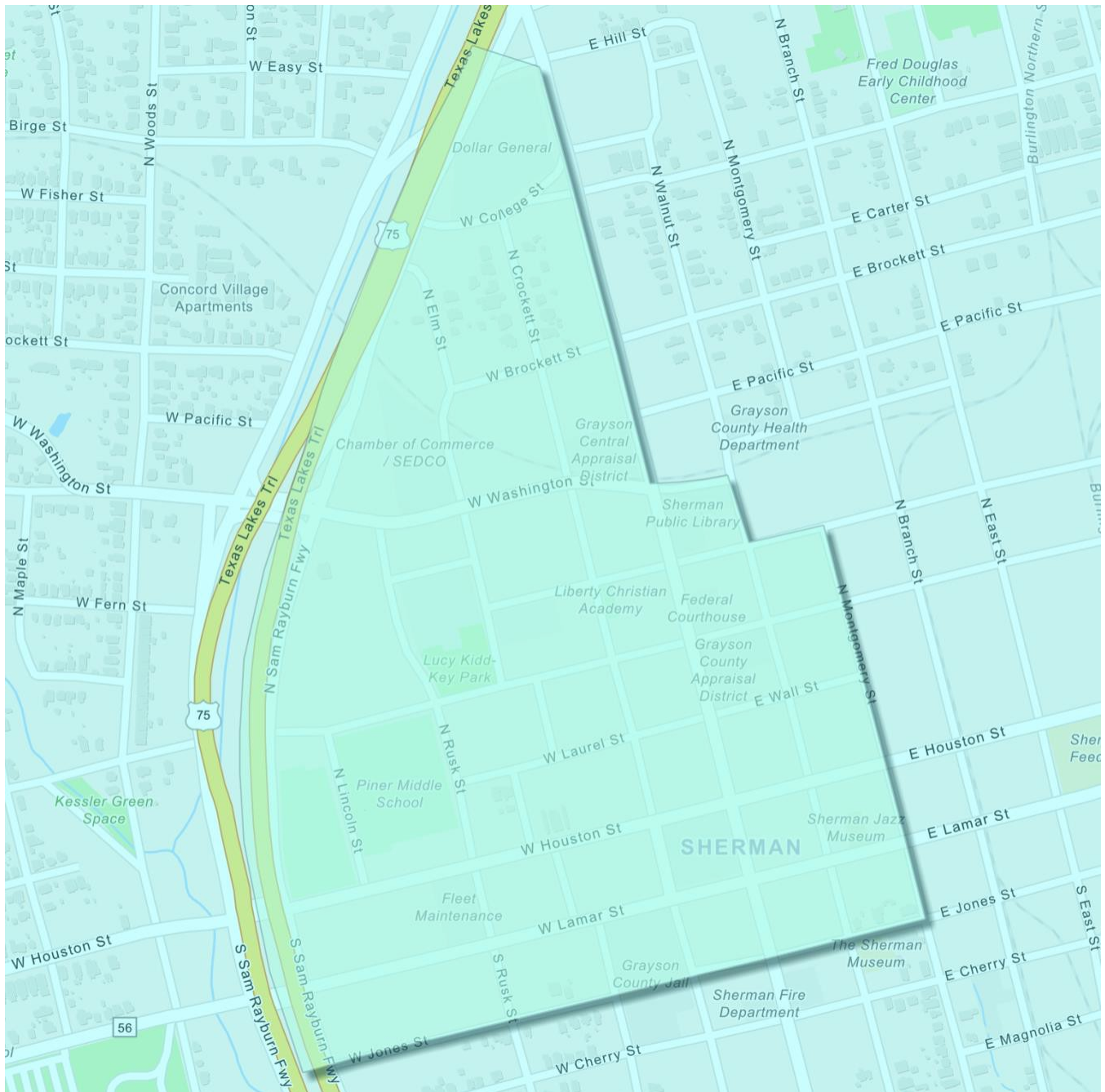


Downtown Tax Increment Reinvestment Zone



[An online version of this map is available here:](https://experience.arcgis.com/experience/6000d76bee8f4c47a07f21e9a9ceae6a)

<https://experience.arcgis.com/experience/6000d76bee8f4c47a07f21e9a9ceae6a>



Downtown Building Improvement Grant Application and Agreement

The information requested below will be used to process your application under the terms and conditions of the City of Sherman's Downtown Building Improvement Grant. All grant applications must include pictures of the current building, designs or renderings of the finished product, and historical pictures, if available.

I. Applicant Information

1. Applicant(s) name: _____
Mailing address: _____
City: _____ State: _____ Zip: _____

2. Applicant's daytime telephone number: _____
E-mail address: _____
3. Status of applicant (please check one)
____ Property owner with vacant facility
____ Property owner with tenant business
____ Property owner/operator of existing business on property
____ Property tenant with property owner consent
____ Property deed, lease, or other document evidencing applicant's status
5. Length of ownership/ lease: _____
Date purchased/ leased: _____

II. Property Information

1. Address of property to be improved: _____
2. Legal description of subject property:

3. Grayson County Tax Assessor Parcel Number(s):

4. Year built: _____ Square footage: _____
(Eligible buildings must be at least 50 years of age.)
6. What are the current types of businesses or other uses occupying the building?

7. Name and phone number of tenant(s), if applicable: _____
(Attach additional names/numbers, if needed)
8. Use of building after construction: _____

9. Number of parking spaces provided: _____ Proposed: _____ Total: _____
10. Current zoning: _____
11. Is a zoning amendment required? Yes _____ No _____

III. Project Description

1. Description of Proposed Improvements. Please provide a detailed description of your proposed improvements. Attach a copy of your architectural or design plans.

Description:

☐ Designs Attached	☐ "Before" Picture(s) Attached

2. How many jobs will be **retained** once the project is completed?
- _____ Full-time positions _____ Part-time positions
3. How many **new positions** will result from this project?
- _____ Full-time positions _____ Part-time positions

IV. Work Estimates

Please attach a minimum of two (2) independent contractor estimates for the proposed improvements. Please note that grant funding shall be based on the lowest bid. Eligible costs shall be the cost of materials, equipment, and contracted labor to complete eligible improvements.

1. Name/Company and Phone Number of Preferred Contractor:
-
-
- Amount: _____
2. Name/Company and Phone Number of Second Contractor:
-
-
- Amount: _____

3. Additional Estimates/Comments: (Please attach additional quotes, as required)
4. Total estimated costs of your improvements: _____
5. Estimated completion date for your improvements? _____

VI. Signature Agreement of Applicant and Property Owner/Authorized Agent—Affidavit or Sworn Declaration

I/We, _____, of the City of Sherman, County of Grayson, State of Texas, ~~make oath and say (or solemnly declare) under penalty of perjury~~ that the information contained in this application is true and correct and that the information contained in the documents that accompany this application ~~in respect of~~ is true, correct, and complete. I/We certify and warrant that the proposed work described in this Application meets the eligibility requirements of the City of Sherman Downtown Building Improvement Grant Program. In exchange for the City of Sherman's consideration of this application is true. I/We hereby agree to the following:

~~I/We hereby authorize inspections of my/our property to be improved.~~

I/We hereby authorize City of Sherman employees and agents to perform inspections of my/our property if granted funds under the City of Sherman Downtown Building Improvement Grant Program, both before and during the work for which funds are granted under this Program and after completion of the work to ensure compliance with the terms and conditions of the Program and all other applicable ordinances and other laws.

I/We acknowledge that any work carried out prior to written confirmation of grant approval may not be eligible for reimbursement.

~~I/We acknowledge receiving, understanding, and accepting the terms and conditions of the City of Sherman Downtown Building Improvement Grant Program.~~

Applicant

I/We acknowledge receiving, understanding, and accepting the terms and conditions of the City of Sherman Downtown Building Improvement Grant Program, and agree to fully comply with the same along with all other applicable ordinances and other laws, all of which are incorporated herein by reference, if granted funds under the Program. I agree that the City of Sherman is entitled to the immediate return or reimbursement of any and all funds paid to the Applicant or other persons under the Program, plus interest and collection costs, in the event the Applicant fails to complete the work for which the grant was approved or otherwise fails to comply with all applicable Program guidelines and requirements, ordinances and other laws. I/We Applicants further acknowledge and agree that, if funds provided by the City to the Applicant under the Program are determined at any time not to comply with applicable state laws relating to the authorized uses of such funds, all funds paid to the Applicant or other persons under the Program shall be immediately returned or reimbursed to the City.

Chapter 2264 Certification: Pursuant to Chapter 2264 of the Texas Local Government Code, I/We hereby certifies that the Applicant's business, or a branch, division, or department of the Applicant's business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under the law to be employed in that manner in the United States. If after receiving this grant from the City of Sherman, Applicant, or a branch, division, or department of Applicant's business, is convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the grant with interest, at the rate and according to the terms provided

by this Agreement under Section 2264.053 of the Texas Local Government Code, not later than the 120th day after the date the Applicant is notified of the violation. I/We agree that this document serves as an agreement under Chapter 380 of the Texas Local Government Code.

I/WE AGREE TO INDEMNIFY, RELEASE, DEFEND AND HOLD HARMLESS THE CITY OF SHERMAN AND ITS OFFICERS, EMPLOYEES AND AGENTS, FROM AND AGAINST ALL CLAIMS, LOSSES, LIABILITIES, DAMAGES, SUITS, ACTIONS, OR PROCEEDINGS ASSERTED OR BROUGHT BY ANY PERSON, INCLUDING APPLICANT AND THE PROPERTY OWNER AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AND SUBCONTRACTORS, ARISING OUT OF PERSONAL INJURY, DEATH OR PROPERTY DAMAGE FROM ANY CAUSE WHATSOEVER IN WHOLE OR IN PART ARISING OUT OF THIS AGREEMENT OR THE ACTIVITIES COMPLETED HEREUNDER.

Applicant or Authorized Agent of Applicant

**Property Owner (if different from Applicant)_
or Authorized Agent of Property Owner**

VII. Consent of the Owner to the Use and Disclosure of ~~Personal~~ Information

I/We, _____, am the owner of the land that is the subject of this Application, and, ~~for the purposes of the Freedom of Information and Protection of Privacy Act,~~ I/we authorize and consent to the use by or the disclosure to any person or public body, including the City of Sherman, of any personal or other information that is collected ~~under the authority of the~~ _____ for the purposes of processing this application, and administering the grant program. (Note: *Information provided in this application will become ~~part of~~ a public record, subject to disclosure under the Texas Public Information Act and/or Texas Open Meetings Act.*)

Date

Signature of Owner(s)

RESOLUTION NO. 7025

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, DECLARING THE CITY OF SHERMAN'S INTENTION TO PARTICIPATE IN AN ECONOMIC DEVELOPMENT PROGRAM TO PROMOTE DEVELOPMENT/REDEVELOPMENT IN TAX INCREMENT REINVESTMENT ZONE NUMBER 2; ESTABLISHING GUIDELINES AND CRITERIA; 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 intends to participate in an economic development program to promote development/redevelopment in Tax Increment Reinvestment Zone Number 2 and to establish program guidelines.

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.

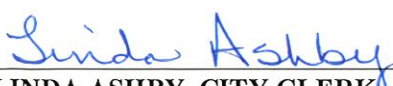
DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 6th day of February 2023.

CITY OF SHERMAN, TEXAS

BY:


DAVID PLYLER, MAYOR

ATTEST:

BY: 
LINDA ASHBY, CITY CLERK

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

BY: 
RYAN D. PITTMAN, CITY ATTORNEY



Downtown Building Improvement Grant

Guidelines and Policies

Policy Statement

The Downtown Building Improvement Grant program is designed to stimulate improvements to existing, historic buildings in the downtown Tax Increment Reinvestment Zone of the City of Sherman, Texas. The goal of this program is to enhance the physical appearance and economic vitality of downtown Sherman, and to promote public/private investment to complement ongoing historical revitalization efforts.

Program Description

This program is designed to make positive, high-impact visual improvements to historically significant commercial and residential buildings by providing an overall enhanced image for downtown Sherman, thereby attracting visitors to shop, dine, and do business downtown.

The program provides a maximum grant of \$50,000 per project, per year as a matching monetary incentive to the owners or tenants of historically significant commercial or residential properties in the downtown TIRZ.

In most cases, for every \$4 the applicant invests in the renovation or improvement of the subject property, the City will reimburse \$1 of qualified expenditures, up to the maximum grant authorized by the City Council, not to exceed \$50,000 per project, per year.

For improvements required by any City of Sherman department – including but not limited to grease traps, sprinkler systems, and plumbing improvements – the City will reimburse \$1 for every \$2 spent by the applicant, up to \$50,000 per project, per year.

Likewise, any portion of a project to restore a historic façade (e.g. removing “modernized” cladding to reveal original architecture), is eligible for the increased 2:1 match. The City Council retains authority to decide the final matching amount and funding ratio on any project.

Any City building permit for work covered under this grant will not be charged any fees for those permits. However, this provision is NOT retroactive and applies only to building permit fees incurred after approval.

Eligibility

Historic buildings within the downtown TIRZ that are of a commercial, residential, retail, service, or professional use are eligible to participate in the program. For the purposes of this grant, “historic” refers to any building built more than 50 years before the current year.

Assistance under this program will be considered subject to the availability of funding and subject to the approval of the City Council.

Minimum Guidelines

To be approved for a grant under this program, projects must make a substantial improvement to the building, at the discretion of City staff and City Council. Routine upgrades such as painting are considered maintenance, not an improvement.

Building improvements should maintain the character of the downtown area. Program funds shall be made available only to projects that enhance and are sensitive to the historical nature of the structure. The design drawings must be approved by the City in order to access funding for improvement.

Buildings improved with funds from this program must remain occupied for at least 4 of the 5 years following the completion of the project. Any applicant who fails to satisfy this requirement will not be eligible for additional grants under this program, and the City reserves the right to claw back funds paid to the applicant under this program. For the purposes of this grant, “Occupied” refers to ongoing commercial, residential, retail, service, or professional use, and does not include passive uses such as storage, as determined by the City in its sole discretion.

Retroactive applications will not be accepted. Only work that is currently underway or has yet to begin at the time of approval qualifies for reimbursement.

Grants are provided on a first-come, first-served basis. The City reserves the right to amend or modify these Guidelines and program eligibility and requirements at any time.

Additional requirements:

- Improvements to be undertaken shall conform to the City’s then-current codes and any other then-current policies and regulations applying to the subject property.
- For properties with multiple storefronts, it is recommended that the façade treatment provide a cohesive theme while also allowing for some distinctive design elements to the various businesses, such as signage, exposing transom windows, lighting, flower boxes, murals, etc., to provide better street visibility and promote economic development downtown.

- Permits for any project under this program must be obtained no more than six (6) months after Council approval. The approval of an application under this program is considered null and void if this requirement is not met or if permits have expired without the work being completed. If those permits expire, the applicant must re-apply.
- Any project with a verified, third-party bid for work totaling more than \$500,000 is eligible to be considered for a grant for each budget year during which work is ongoing, so long as the total amount granted in the previous year has been exhausted. Applicants will be eligible for a second grant covering only the remaining, unpaid work, not for work that has already been completed.

Eligible Improvements

Eligible improvements must be permanent in nature as determined by the City of Sherman in its sole discretion. All improvements must be consistent with the City of Sherman Master Plan, zoning ordinance, building regulations, and other applicable laws. Eligible costs include the cost of materials, equipment, and contracted labor to complete eligible improvements, including, but not limited to, the following:

- Commercial code compliance renovations
- Permanent commercial interior remodeling improvements
- Permanent commercial site (exterior) improvements
- Compliance with Americans with Disabilities Act (ADA) for commercial properties
- Work necessary to bring the structure up to life-safety code standards
- Installation, repair, and replacement of exterior doors and hardware
- Repair, replacement, or addition of exterior shutters and awnings/canopies
- Repair, replacement, or purchase of signs (when performed as part of an overall façade improvement)
- Repair and replacement or installation of interior and exterior stairs, porches, railings, and exit facilities
- Repair and rebuilding of interior and exterior walls, including cleaning, sealing, tuckpointing and painting
- Repair or replacement of frames, sills, glazing, replacement of glass and installation of new windows
- Installation of permanently affixed landscaping, such as stone or brick planters
- Installation, repair, or replacement of exterior lighting
- Mechanical, including rewiring, replumbing, insulation, mechanical systems/climate control

Ineligible Improvements include:

- Furnishings and equipment purchases
- Working capital
- Inventory financing
- Title reports and legal fees
- Extermination of insects, rodents, vermin, and other pests
- Improvements that do not comply with City of Sherman Master Plan, Zoning Ordinance, Building Regulations, and other applicable laws

Application Process

Program Application and Agreement forms are available on the City of Sherman website, www.cityofsherman.com. The application process is as follows:

After reviewing the program guidelines, the applicant will meet with City staff to discuss the work to be undertaken. If the proposed work is within the program guidelines, as determined by City staff in its sole discretion, a completed application is submitted to the City. Written bids, sketches, color samples, and material supplies should be included with the complete application, as well as proof of ownership or a lease agreement. The applicant is responsible for submitting plans and specifications to the City and obtaining all required planning and building permits, and any other applicable approvals.

The Sherman City Council will consider the recommendations made by the City staff and will make its decision in a public meeting.

Deviations from approved plans and specifications may disqualify the applicant from reimbursement under this grant program unless those changes are approved by City staff. False or incomplete information submitted by the applicant to the City also shall disqualify the applicant for reimbursement. Any applicant disqualified for these reasons or denied for a grant has the right to appeal to the City Manager, who will make a final determination. Any appeals must be in writing, state the grounds for the appeal, and submitted within 10 days of the date of disqualification or denial.

Funds will be reimbursed only after payment has been made by the applicant. Reimbursement claims for all eligible expenses must be submitted along with cancelled checks and matching invoices/receipts for eligible work. Any invoices paid more than eighteen months after City Council approval of a grant application is not eligible for reimbursement. The City reserves the right to require the return of funds provided, plus interest and collection costs, in the event the applicant fails to complete the work or otherwise fails to comply with any applicable program guidelines and requirements, ordinances or other laws.

Downtown Tax Increment Reinvestment Zone



An online version of this map is available here:

<https://experience.arcgis.com/experience/6000d76bee8f4c47a07f21e9a9ceae6a>

Downtown Building Improvement Grant Application and Agreement

The information requested below will be used to process your application under the terms and conditions of the City of Sherman's Downtown Building Improvement Grant. All grant applications must include pictures of the current building, designs or renderings of the finished product, and historical pictures, if available.

I. Applicant Information

1. Applicant(s) name: _____
Mailing address: _____
City: _____ State: _____ Zip: _____
2. Applicant's daytime telephone number: _____
E-mail address: _____
3. Status of applicant (please check one)
☐ Property owner with vacant facility
☐ Property owner with tenant business
☐ Property owner/operator of existing business on property
☐ Property tenant with property owner consent
☐ Property deed, lease, or other document evidencing applicant's status
5. Length of ownership/ lease: _____
Date purchased/ leased: _____

II. Property Information

1. Address of property to be improved: _____
2. Legal description of subject property:

3. Grayson County Tax Assessor Parcel Number(s):

4. Year built: _____ Square footage: _____
(Eligible buildings must be at least 50 years of age.)
6. What are the current types of businesses or other uses occupying the building?

7. Name and phone number of tenant(s), if applicable: _____

(Attach additional names/numbers, if needed)

8. Use of building after construction: _____

9. Number of parking spaces provided: _____ Proposed: _____ Total: _____
10. Current zoning: _____
11. Is a zoning amendment required? Yes ___ No ___

III. Project Description

1. Description of Proposed Improvements. Please provide a detailed description of your proposed improvements. Attach a copy of your architectural or design plans.

Description: _____

☐ Designs Attached

☐ "Before" Picture(s) Attached

2. How many jobs will be **retained** once the project is completed?
_____ Full-time positions _____ Part-time positions
3. How many **new positions** will result from this project?
_____ Full-time positions _____ Part-time positions

IV. Work Estimates

Please attach a minimum of two (2) independent contractor estimates for the proposed improvements. Please note that grant funding shall be based on the lowest bid. Eligible costs shall be the cost of materials, equipment, and contracted labor to complete eligible improvements.

1. Name/Company and Phone Number of Preferred Contractor:

Amount: _____

2. Name/Company and Phone Number of Second Contractor:

Amount: _____

3. Additional Estimates/Comments: (Please attach additional quotes, as required)

4. Total estimated costs of your improvements: _____

5. Estimated completion date for your improvements? _____

VI. Agreement of Applicant and Property Owner

I/We, _____, of the City of Sherman, County of Grayson, State of Texas, declare under penalty of perjury that the information contained in this application is true and correct and that the information contained in the documents that accompany this application is true, correct, and complete. I/We certify and warrant that the proposed work described in this Application meets the eligibility requirements of the City of Sherman Downtown Building Improvement Grant Program. In exchange for the City of Sherman's consideration of this application, I/We hereby agree to the following:

I/We hereby authorize City of Sherman employees and agents to perform inspections of my/our property if granted funds under the City of Sherman Downtown Building Improvement Grant Program, both before and during the work for which funds are granted under this Program and after completion of the work to ensure compliance with the terms and conditions of the Program and all other applicable ordinances and other laws.

I/We acknowledge that any work carried out prior to written confirmation of grant approval may not be eligible for reimbursement.

I/We acknowledge receiving, understanding, and accepting the terms and conditions of the City of Sherman Downtown Building Improvement Grant Program, and agree to fully comply with the same along with all other applicable ordinances and other laws, all of which are incorporated herein by reference, if granted funds under the Program. I agree that the City of Sherman is entitled to the immediate return or reimbursement of any and all funds paid to the Applicant or other persons under the Program, plus interest and collection costs, in the event the Applicant fails to complete the work for which the grant was approved or otherwise fails to comply with all applicable Program guidelines and requirements, ordinances and other laws. I/We Applicants further acknowledge and agree that, if funds provided by the City to the Applicant under the Program are determined at any time not to comply with applicable state laws relating to the authorized uses of such funds, all funds paid to the Applicant or other persons under the Program shall be immediately returned or reimbursed to the City.

Chapter 2264 Certification: Pursuant to Chapter 2264 of the Texas Local Government Code, I/We hereby certifies that the Applicant's business, or a branch, division, or department of the Applicant's business, does not and will not knowingly employ an undocumented worker. An undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under the law to be employed in that manner in the United States. If after receiving this grant from the City of Sherman, Applicant, or a branch, division, or department of Applicant's business, is convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall repay the amount of the grant with interest, at the rate and according to the terms provided by this Agreement under Section 2264.053 of the Texas Local Government Code, not later than the 120th day after the date

the Applicant is notified of the violation. I/We agree that this document serves as an agreement under Chapter 380 of the Texas Local Government Code.

I/We agree to indemnify, release, defend and hold harmless the City of Sherman and its officers, employees and agents, from and against all claims, losses, liabilities, damages, suits, actions, or proceedings asserted or brought by any person, including Applicant and the property owner and their respective officers, employees, agents, contractors, and subcontractors, arising out of personal injury, death or property damage from any cause whatsoever in whole or in part arising out of this Agreement or the activities completed hereunder.

Applicant or Authorized Agent of Applicant

**Property Owner (if different from Applicant)
or Authorized Agent of Property Owner**

VII. Consent of the Owner to the Use and Disclosure of Information

I/We, _____, am the owner of the land that is the subject of this Application, and I/we authorize and consent to the use by or the disclosure to any person or public body, including the City of Sherman, of any personal or other information that is collected for the purposes of processing this application and administering the grant program. *(Note: Information provided in this application will become a public record, subject to disclosure under the Texas Public Information Act and/or Texas Open Meetings Act.)*

Date

Signature of Owner(s)



City Council Regular Meeting

Agenda Item No. D.2.

Meeting Date: 2/3/2025

Prepared By: Clint Philpott, Assistant City Manager

Approved By: Zachary Flores, Assistant City Manager

Caption:

RESOLUTION NO. 7471

Authorizing Execution of an Advanced Funding Agreement between the State of Texas, Acting by and Through the Texas Department of Transportation, and the City of Sherman, Texas, for Bridge Replacement or Rehabilitation

Issue:

Authorizing Execution of an Advanced Funding Agreement between the State of Texas, Acting by and Through the Texas Department of Transportation, and the City of Sherman, Texas, for Bridge Replacement or Rehabilitation

Background:

As part of a Federal requirement, TXDOT provides annual Bridge Inspection Reports for specific bridges throughout Texas. During the latest report TXDOT determined that the bridge on OB Groner Road just west of Cathleen Lane is in need of repair. The bridge does qualify for Federal Funding, similar to the South Travis Street Bridge over Post Oak. The attached agreement allows TXDOT to complete the design and replace the bridge in 2025. With the help of Federal funds the City is only required to pay for potential utilities needing relocation and additional ROW. TXDOT is working to design the new bridge without the need for additional ROW. Any Utility relocation cost will be brought back to Council for approval.

Origination:

State of Texas, Texas Department of Transportation
City Manager Office

Financial Consideration:

None.

Staff Recommendation:

Staff recommends approval.

Alternatives:

Council may deny this advanced funding agreement.

Attachments:

1. Resolution No. 7471
2. Agreement
3. Location Map

RESOLUTION NO. 7471

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN TEXAS, AUTHORIZING EXECUTION OF AN ADVANCED FUNDING AGREEMENT BETWEEN THE STATE OF TEXAS, ACTING BY AND THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE CITY OF SHERMAN, TEXAS, FOR BRIDGE REPLACEMENT OR REHABILITATION; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED AND NOTIVE AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, the City of Sherman, hereinafter referred to as the Local Government owns a bridge located at O B Groner Rd at Choctaw Creek, National Bridge Inventory (NBI) Structure Number 01-092-0-AA01-57-001, State Control-Section-Job (CSJ) Number 0901-19-224, and

WHEREAS, a project to remedy the bridge is included in the currently approved program of projects as authorized by Transportation Commission Minute Order Number 116292, dated 08/30/2022; and

WHEREAS, federally-eligible items of work for this project are approved for 100% federal and state funding through the Infrastructure Investment and Jobs Act (IIJA) as well as the Highway Bridge Replacement and Rehabilitation Program (HBRRP).

WHEREAS, the typical estimated local match fund participation requirement for federally-eligible items of work is waived in full for CSJ 0901-19-224.

WHEREAS, any non-eligible items of work will be paid by the Local Government; and

THEREFORE, BE IT RESOLVED that the Local Government approves the execution of an Advance Funding Agreement with the State. The Sherman City Manager is authorized to execute the agreement on behalf of the Local Government.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 3rd day of February 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

TxDOT:					NBI Structure #	01-092-0-AA01-57-001
CCSJ #		AFA ID	Z00010643		Federal Highway Administration:	
AFA CSJs	0901-19-224				CFDA No.	20.205
District #	01	Code Chart 64#	39200		CFDA Title	Highway Planning and Construction
Project Name		OB Groner Rd at Choctaw Creek			AFA Not Used For Research & Development	

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
For Bridge Replacement or Rehabilitation
Projects Where the LG Match Contribution is Waived
Off the State System**

THIS Advance Funding Agreement (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the “State”, and the City of Sherman, acting by and through its duly authorized officials, called the “Local Government.”

WITNESSETH

WHEREAS, Title 23 United States Code Section 144 authorizes federal funds to assist the states in the replacement or rehabilitation of deficient bridges located on public highways, roads, and streets, including those under the jurisdiction of local governments; and

WHEREAS, the Texas Transportation Code Sections 201.103 and 222.052 establish that the State shall plan and make policies for the construction of a comprehensive system of state highways and public roads in cooperation with local governments; and

WHEREAS, the Local Government owns one or more bridges on a public road or street located at OB Groner Rd at Choctaw Creek, and these bridges are included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order Number 116292, dated August 30, 2022; and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance, which is attached to and made a part of this agreement as Attachment D for the development of the specific programmed replacement or rehabilitation project, called the “Project”. The Project is identified in the location map shown as Attachment A, which is attached to and made a part of this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth, it is agreed as follows:

TxDOT:					NBI Structure #	01-092-0-AA01-57-001
CCSJ #		AFA ID	Z00010643		Federal Highway Administration:	
AFA CSJs	0901-19-224				CFDA No.	20.205
District #	01	Code Chart 64#	39200		CFDA Title	Highway Planning and Construction
Project Name		OB Groner Rd at Choctaw Creek			AFA Not Used For Research & Development	

AGREEMENT

1. Period of this Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

2. Termination of this Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A. The Agreement is terminated in writing with the mutual consent of the parties;
- B. The Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party;
- C. The Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for one-hundred percent (100%) of its reasonable actual direct and indirect costs incurred for the project; or
- D. The project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may at its discretion terminate the agreement.

3. Amendments

Amendments to this Agreement may be made due to changes in the character of the work, the terms of the Agreement, or the responsibilities of the parties.

Amendments shall be enacted through a mutually agreed upon written amendment executed by all parties to this Agreement.

4. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any Agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

5. Scope of Work

The scope of work for this Agreement is the replacement or rehabilitation of the bridges identified in the recitals of this Agreement. This replacement or rehabilitation shall be accomplished in the manner described in the plans, specifications, and estimates developed in accordance with this Agreement and which are incorporated in this agreement by reference.

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6. Right of Way and Real Property

- A. The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.
- B. The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the sites of these bridges and adjacent right of way or relocation right of way to perform surveys, inspections, construction, and other activities necessary to replace or rehabilitate these bridges and approaches.

7. Adjustment of Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

8. Environmental Assessment and Mitigation

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The State is responsible for the identification and assessment of any environmental problems associated with the development of the Project governed by this Agreement.
- B. Cost participation in environmental assessment and remediation work shall be paid by the parties in the same ratio as construction costs and will be included in the construction costs identified in Attachment C, Estimate of Direct Costs.
- C. The State is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- D. The State will not begin construction of the Project until identified environmental problems have been remediated, unless provided for otherwise.

9. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of the Project subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS

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CFDA No.				20.205			
CFDA Title				Highway Planning and Construction			
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establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

11. Construction Responsibilities

- A. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

12. Project Maintenance

After the Project has been completed, the Local Government shall accept full ownership, and operate and maintain the facilities authorized by this Agreement for the benefit of and at no charge of toll to the public. This covenant shall survive the completion of construction under this Agreement.

13. Local Project Sources and Uses of Funds

- A. A Project Cost Estimate is provided in Attachment C, Estimate of Direct Costs.
- B. Attachment C provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- C. The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HBRP. The Local Government is also responsible for any cost

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resulting from changes made at the request of the Local Government. The State and the Federal Government will not reimburse the Local Government for any work performed before federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information.

- D. If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- E. After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government shall remit to the State the amount specified in Attachment C for the Local Government's contribution for preliminary engineering. The Local Government will pay, at a minimum, its funding share for this estimated cost of preliminary engineering.
- F. Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs and any other costs owed.
- G. If, at the completion or termination of the Project, the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- H. Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation". The check or warrant shall be deposited by the State and managed by the State. The funds may only be applied to the State Project.
- I. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- J. The State will not pay interest on any funds provided by the Local Government.
- K. The Local Government funding participation responsibilities include ROW Acquisition, Utility Relocation, and any additional requested work by the LG

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above what is eligible for Category 6 funding, except when the Project is terminated before completion at the request of the Local Government as addressed in the Termination provision of this Agreement.

- L.** The amounts shown on Attachment C are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the federal HBRRP. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
- M.** Projects approved for 100% federal and State funding under the Infrastructure Investment and Jobs Act (IIJA) as well as the Highway Bridge Replacement and Rehabilitation Program (HBRRP), do not require local participation for costs eligible for federal funding. For IIJA and HBRRP funded projects, adjustments to the typical local participation as provided by Texas Transportation Code Section 222.053 do not apply.
- N.** The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- O.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- P.** The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

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14. Performance by Local Government of Equivalent-Match Projects (EMP) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWP)

A. Projects approved for 100% federal and state funding under the Infrastructure Investment and Jobs Act (IIJA) and the Highway Bridge Replacement and Rehabilitation Program (HBRRP) do not require local participation for costs eligible for federal funding. Since no cost offset through the performance of Equivalent-Match work is required, this Article is not applicable.

15. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

State: Director, Bridge Division
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701

Local Government: Sherman City Manager
220 W Mulberry Street
Sherman, TX 75090

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

16. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

17. Responsibilities of the Parties

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

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18. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

19. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

20. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this Agreement.

21. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

22. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

23. Inspection of Books and Records

The parties to the Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA) and the U.S. Office of the Inspector General, or their duly authorized representatives, for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, the FHWA, and their duly authorized representatives shall have

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access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

24. Civil Rights Compliance

- A. Compliance with Regulations: The Local Government will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding of payments to the Local Government under the contract until the Local Government complies and/or
 2. cancelling, terminating, or suspending of the contract, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations

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and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

25. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not*

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discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.

26. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

27. Lobbying Certification

In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this

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certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

28. Federal Funding Accountability and Transparency Act Requirements

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. The Local Government agrees that it shall:
 1. Obtain and provide to the State, a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://sam.gov/SAM/pages/public/index.jsf>;
 2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
 3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

29. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

30. Local Government Restrictions

In the case that the Local Government has an existing, future, or proposed local ordinance, commissioners court order, rule, policy, or other directive that is more restrictive than the state or federal regulations that results in an increase cost to the State for the project, the local government is responsible for all increased costs associated with the ordinance, order, policy, directive, or change.

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31. Single Audit Report

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at singleaudits@txdot.gov.
- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY_____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

32. Pertinent Non-Discrimination Authorities

During the performance of this contract, the Local Government, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age

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Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).

- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

33. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

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THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Robby Hefton

Typed or Printed Name

City Manager

Title

Date

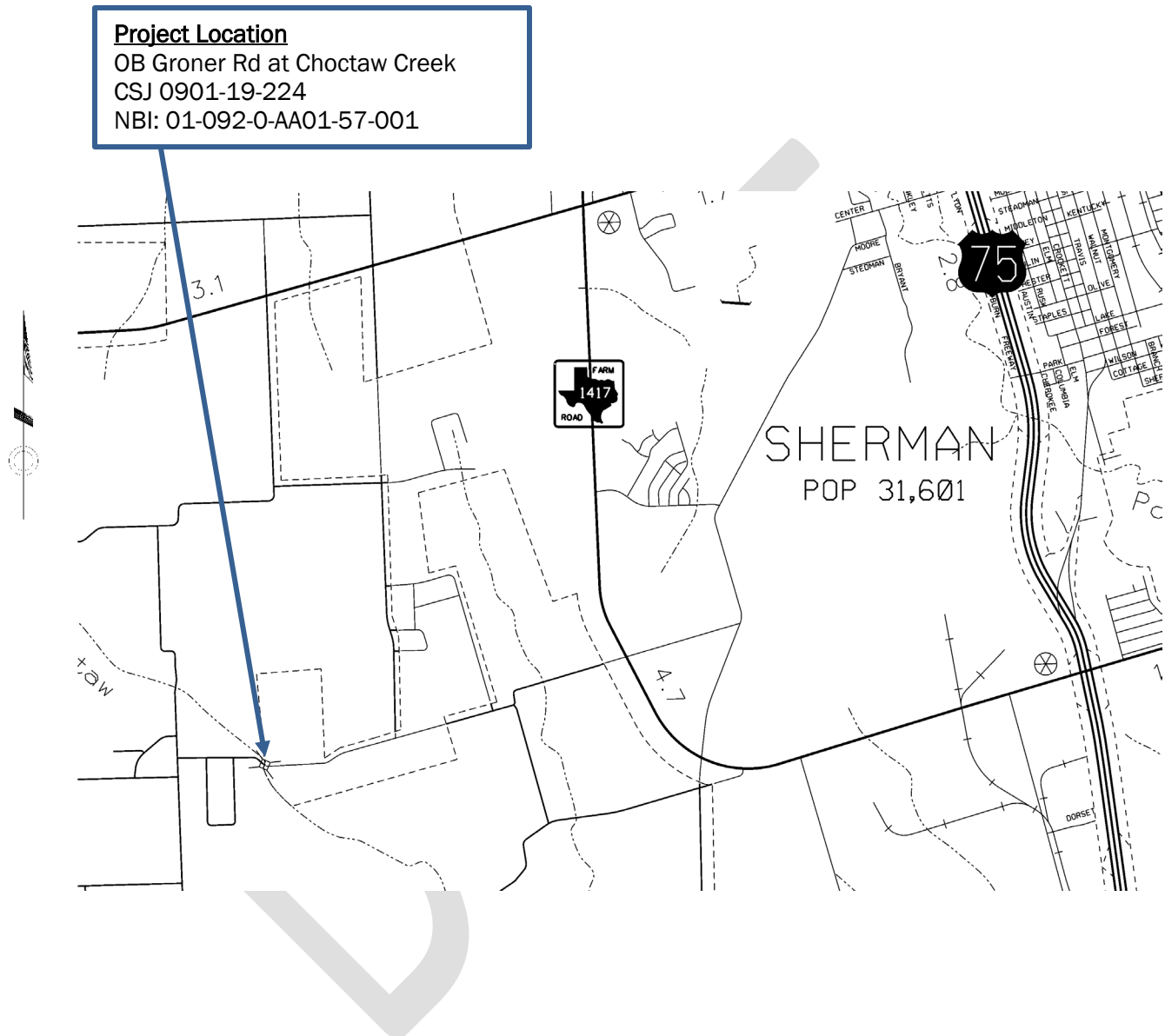
THE STATE OF TEXAS

Jamie Farris, P.E.
Bridge Division Director
Texas Department of Transportation

Date

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ATTACHMENT A PROJECT LOCATION MAP



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ATTACHMENT C ESTIMATE OF DIRECT COSTS

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1) \$80,886	
Ten Percent (10%) or EDC Adjusted Percent of PE for Local Government Participation – WAIVED BY TxDOT		\$0
Construction	\$475,800	
Engineering and Contingency (E&C)	\$23,790	
The Sum of Construction and E&C	(2) \$499,590	
Ten Percent (10%) or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation – WAIVED BY TxDOT		\$0
Amount of Advance Funds Paid by Local Government *		\$0
Amount of Advance Funds to be Paid by Local Government *		\$0
Balance of Local Government Participation which is to be Waived where the Project is a PWP		\$0
Total Project Direct Cost	(1+2) \$580,476	

*Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown
on Attachment B. \$0

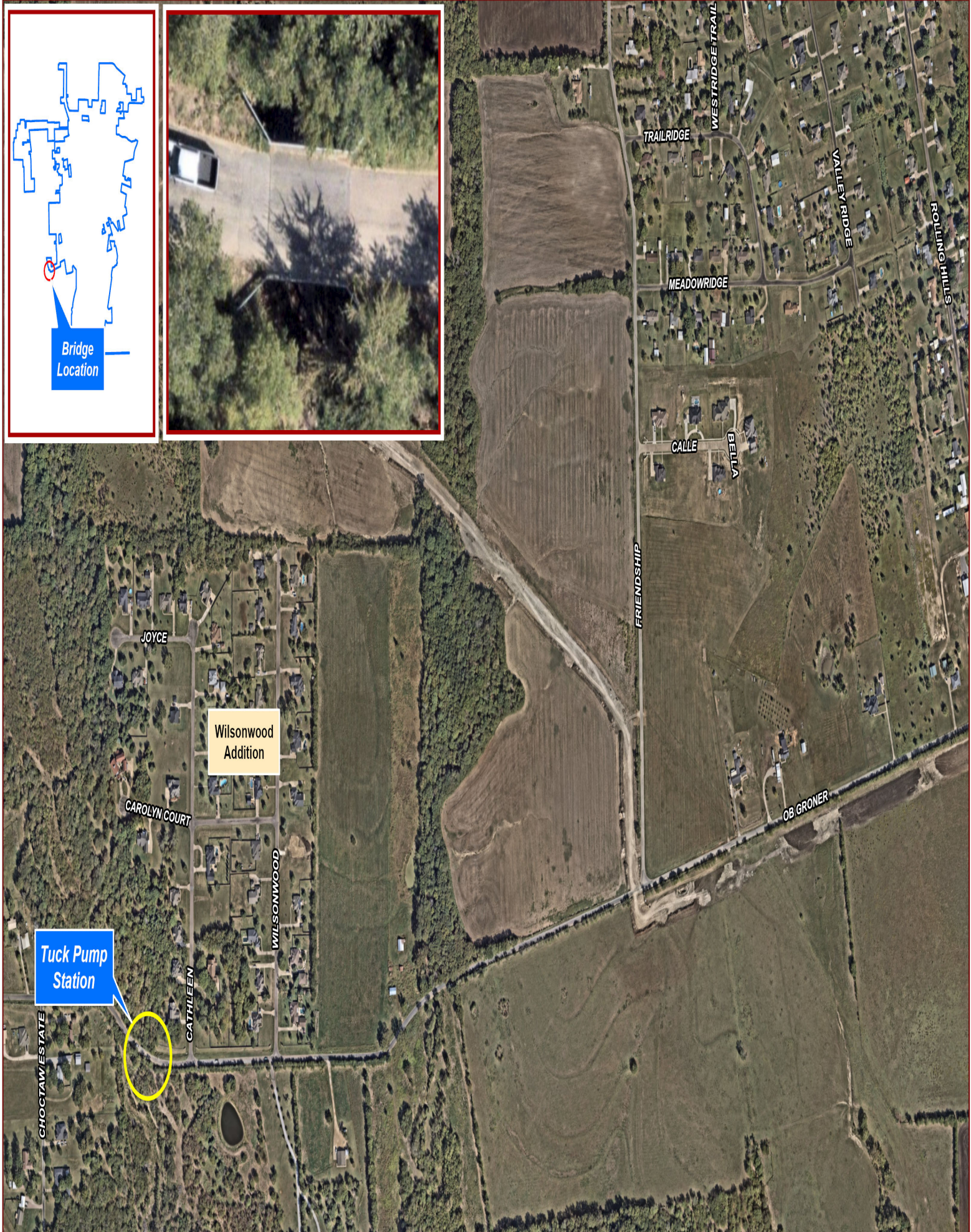
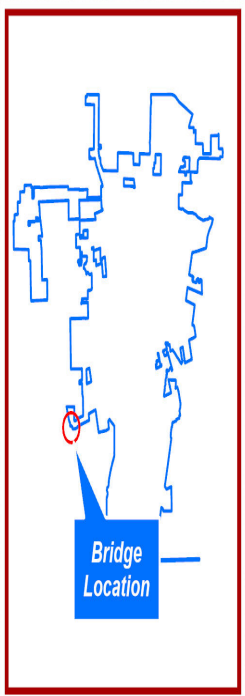
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ATTACHMENT D

RESOLUTION OR ORDINANCE OF LOCAL GOVERNMENT

DRAFT





City Council Regular Meeting

Agenda Item No. D.3.

Meeting Date: 2/3/2025

Prepared By: Clint Philpott, Assistant City Manager

Approved By: Zachary Flores, Assistant City Manager

Caption:

RESOLUTION NO. 7472

Authorizing Execution of a Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the Sherman Crossroads Offsite Mitigation Pond

Issue:

To consider a Professional Services Agreement with Kimley-Horn and Associates, Inc. for the Design of the Sherman Crossroads Offsite Mitigation Pond project.

Background:

To help incentivize further commercial development west of Crossroads Boulevard, additional infrastructure is required. Part of that future development may include a large box user requiring the construction of Aston Drive from US 75, across Crossroads Boulevard to FM 1417. This project will also require substantial drainage improvements including the modification and partial relocation of the existing wet detention pond. The relocation of the pond requires additional wetland mitigation offsite. The site chose for this increased wetland is the Site 8A flood mitigation pond near the Hickory Hill Planned Development. This contract provides for coordination, approval and construction plans to add additional wetlands and park amenities on Site 8A.

Kimley-Horn and Associates, Inc. is highly qualified to perform the scope of services in this contract.

Origination:

Engineering Department

Financial Consideration:

Funding needed for this contract is \$312,000.00 and is budgeted in the 2025 CO issuance.

Staff Recommendation:

It is recommended that this professional services agreement with Kimley-Horn and Associates, Inc. be approved.

Alternatives:

As may be directed by City Council.

Attachments:

1. Resolution No. 7472
2. PSA Sherman Crossroads
3. Pond Mitigation Map

RESOLUTION NO. 7472

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THE DESIGN OF THE SHERMAN CROSSROADS OFFSITE MITIGATION POND; 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 Kimley-Horn and Associates, Inc. for the Design of the Sherman Crossroads Offsite Mitigation Pond, 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 3rd day of February 2025

CITY OF SHERMAN, TEXAS

BY:

SHAWN TEAMANN, MAYOR

ATTEST:

BY:

LINDA ASHBY, CITY CLERK

**APPROVED AS TO FORM AND
CONTENT:**

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

BY:

RYAN D. PITTMAN, CITY ATTORNEY

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
KIMLEY-HORN AND ASSOCIATES, INC.
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: **Kimley-Horn and Associates, Inc.**
 200 N. Travis Street, Suite 500
 Sherman, Texas 75090
 Telephone: (469) 353-6061

for the following Project: **Sherman Crossroads Offsite Mitigation Pond**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sherman, Texas, a home-rule municipality ("City"), and Kimley-Horn, a North Carolina 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 Crossroads Offsite Mitigation Pond 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 **Two Hundred Forty Seven Thousand Dollars (\$247,000)**; and (b) for Special Services, in an amount not to exceed **Sixty Five Thousand Dollars (\$65,000)** (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.
- 3.2 **Direct Expenses** – Direct Expenses ("Direct Expenses") are included in Consultant's Fee as described in Article 3.1 of this Agreement and include actual reasonable and necessary expenditures made by Consultant and Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Project Engineering Budget Summary set forth in **Exhibit B**, and consistent with **Exhibit D**, Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses, which is attached hereto and incorporated herein by reference for all purposes. Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to City for reimbursement. Any over-payment by City for errors in submittals for reimbursement may be deducted from Consultant's subsequent payment for Services; provided, however, that this shall not be City's sole and exclusive remedy for said over-payment.
- 3.3 **Additional Services** – Consultant shall provide the Services as described in the Scope of Services set forth in **Exhibit A** of this Agreement. If authorized in writing by City, Consultant shall provide additional services, to be compensated as provided in an Amendment to the Contract on a cost not to exceed sum or hourly basis in accordance with this paragraph ("Additional Services") and a mutually agreed estimate of man-hours and expenses. These services may include, but are not limited to:

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

Hourly Billable Rates by Position

Position	Hourly Rate
Analyst	\$165 - \$250
Professional	\$235 - \$300
Senior Professional I	\$260 - \$360
Senior Professional II	\$345 - \$380
Senior Technical Support	\$160 - \$285
Support Staff	\$110 - \$150
Technical Support	\$125 - \$155

- 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 \$800,000 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:

Michael J. Carlisle, P.E.

Associate

Kimley-Horn and Associates, Inc.

200 N Travis Street, Suite 500

Sherman, Texas, 75090

Telephone: 469-353-6061

Email: Michael.Carlisle@Kimley-Horn.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:

Kimley-Horn and Associates, Inc.
a North Carolina Corporation

By: _____
L. Nathan Ante, P.E.
Senior Vice President

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 _____, 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 **KIMLEY-HORN AND 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 _____ 2025.

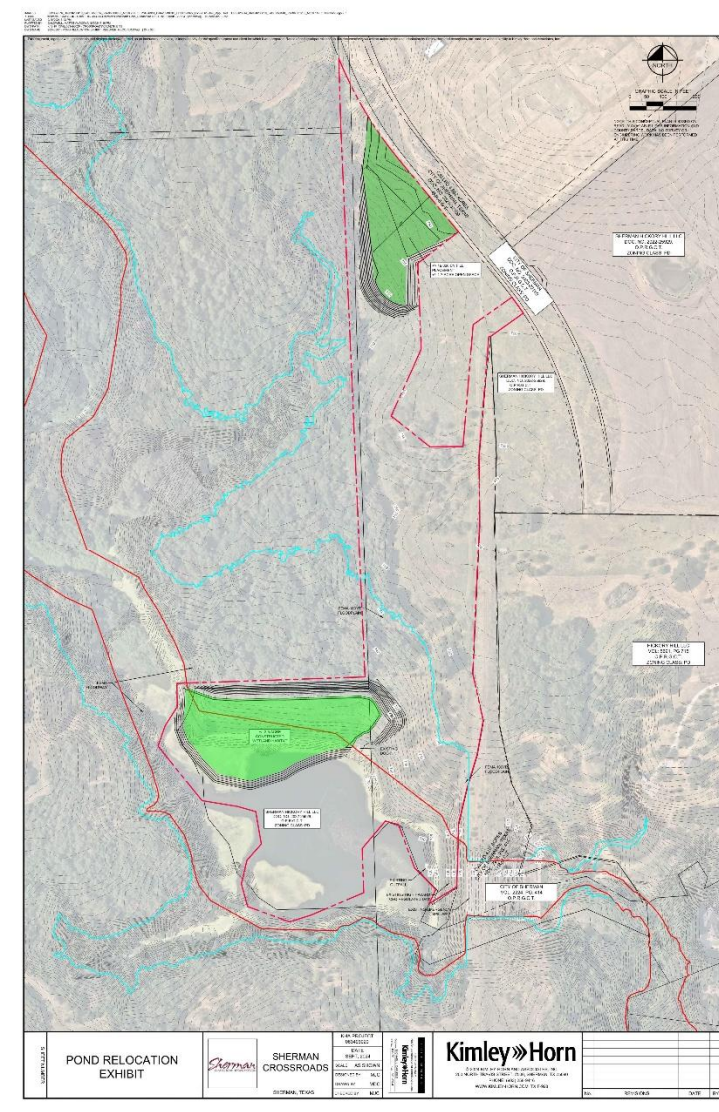
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

- A. The USACE has required an offsite mitigation pond for Sherman Crossroads to offset the impacts that the proposed reclamation and mass grading creates on that project. KH has worked with The City and a public wetland scientist to identify the Subject Site included in this agreement of current City owned property. The proposed improvements include a 2.5 acre wetland to be constructed as part of the USACE individual permit process. The limits of mass grading are hatched in green in the Subject Site portion of this Agreement.

II. Subject Site



**EXHIBIT A
SCOPE OF SERVICES**

Site Exhibit

III. 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.
 - 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

EXHIBIT A SCOPE OF SERVICES

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.

IV. TASK SUMMARY, BASIC SERVICES

A. Preliminary Design Plans (30%)

- a. Prepare preliminary engineering review drawings: Preliminary engineering plans (1"=20' scale or 1"=40' scale, 22"x34" sheets). The preliminary engineering review drawings will consist of the following sheets:
 - i. Cover Sheet
 - ii. Sheet Index
 - iii. General Notes
 - iv. Project Control (1"=100')
 - v. Overall Grading Plan
 - vi. Drainage Area Map (Existing and Proposed)
 - vii. Storm Drain Plan
 - viii. Standard Details
 - ix. Updated OPCC
- b. To expedite the design process, the preliminary engineering review drawings will be based on a desktop deed sketch and readily available Lidar information and locations of existing facilities from existing record drawings provided by the City of Sherman, record drawing provided by franchise utilities, in-field and aerial observations.
- c. Depending on comments received from the City's and Developer's review and field investigations, another set of preliminary phase construction drawings and/or coordination exhibits 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.
- e. 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,

EXHIBIT A SCOPE OF SERVICES

consider potential future utilities in designs.

B. Intermediate Design Plans (60%)

- a. Prepare intermediate engineering review drawings based on field survey data and includes addressing all comments from the preliminary engineering review, including detailed construction-related notes.
- b. Prepare miscellaneous plan sheets, including cover sheet, sheet index, general notes, project control (1"=100' scale, 22"x34" sheets), and applicable City standard details.
- 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.
Final drawings to include the following sheets (22"x34" sheets at 1"=40' or 1"=20'):
 - i. Cover Sheet
 - ii. Sheet Index
 - iii. General Notes
 - iv. Project Control (1"=100')
 - v. Site Demolition Plan (1"=100', 1"=40', or 1"=20')
 - vi. Mass Grading Plan
 - vii. Drainage Area Map (Existing and Proposed)
 - viii. Drainage Calculations
 - ix. Erosion Control Plan
 - x. Cross Sections
 - xi. Standard Details
 - xii. TxDOT Details (where applicable)
- b. Submit three (3) final sealed copies of any necessary right-of-way or easement documents.
- c. Final design submittal (90%) to include:
 - i. 90% Design Plans
 - ii. 90% Project Manual
 - iii. 90% Opinion of probable construction cost
- d. Incorporate the final design submittal review comments.
- e. 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.
- f. Consultant shall furnish to the City, where required by the circumstances of

EXHIBIT A SCOPE OF SERVICES

- the assignment, the engineering data, construction plans, completed forms, and reports necessary for applications for routine permits by local, state, and federal authorities. Project is anticipated to include a USACE Individual Permit provided by others.
- g. 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.
 - h. When required by the nature of the project, the Consultant shall provide necessary exhibits and attend a public meeting with the City.
 - i. 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.
 - j. 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. Park Conceptual Master Plan (Landscape Architecture)

- a. The Consultant will develop a conceptual masterplan to establish a design framework that illustrates the preliminary program concept and general layout of the proposed park improvements. This process is not intended to completely design the project, but only to establish the relationship of the key park improvements and the basic organizational form to the site components. This material will be hand drawn or CAD drawn and delivered to the Client at a scale suitable for presentations and in sufficient detail to indicate the following:
 - Parking and vehicular circulation
 - Pedestrian trail improvements and circulation
 - Playground
 - Locations of shade structure, pavilion
 - Landscape
 - Open / common space
 - Imagery examples of intended scale and mass, character, and open space

EXHIBIT A SCOPE OF SERVICES

- b. Consultant will prepare one (1) OPCC to assist the City with budget planning for elements related to park masterplan. Because the Consultant does not control the cost of labor, materials, equipment, or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids, or actual costs will not vary from its opinions of cost.
- c. Deliverables will include illustrative concept plans, including:
 - One (1) Final Conceptual Plan
 - One (1) OPCC.
- d. Drawings and renderings will be conceptual in nature and will be used for illustrative and programming purposes only. 3D modeling, marketing graphics, and Masterplan Development Standards and Guidelines are excluded, but can be provided as additional services.

E. Phase 1 Park Intermediate Landscape Architecture Plans (60%)

- a. Based on the approved Park conceptual plan and phase 1 budget, the Consultant will prepare Intermediate Design Plans (60% Construction Documents) for Phase 1 of the park project. Phase 1 assumes a construction budget of approximately \$100,000 and will include trails and small site improvements. Intermediate Design plans will show layout and details for preliminary review, but they will not include enough detail for bidding or construction. The Intermediate Design Plans will be submitted to the City for review and comment. The Consultant will perform the following tasks as part of the Design Development Design Phase:
 - i. Preparation of Intermediate design plans, typical construction details, and preliminary specifications (60% Construction Documents) for the park amenities and site development.
 - ii. Provide information on finishes, equipment, lighting, and site utilities.
 - iii. Meet with City staff to review the Intermediate Design package.
- b. This task consists of one (1) submittal, Consultant will incorporate input received for these plans in the Construction Documents.

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F. Phase 1 Park Final Landscape Architecture Plans (90%, 100%)

Based upon the approved plans and project budgets from the Intermediate Design phase, the Consultant will prepare Final Construction Documents for the Phase 1 Park project. The plans will be submitted concurrently to the City permitting, development, and project teams for review and comment.

- a. Prepare final drawing to include the following on 22"x34" plan sheets:
 - i. Cover Sheet: Showing sheet index, project location map, contact information, and plan submittal and review log.
 - ii. General Notes, Project Specifications, and Materials Legend: Showing general notes related to proposed construction based on jurisdictional standards.
 - iii. Hardscape Plans and Layout Plans: Showing site hardscape materials and specifications, as well as dimensional control and layout for proposed hardscape.
 - iv. Fine Grading: Showing spot elevations within landscape and hardscape areas. Landscape and hardscape areas consist of trails, seating areas, and planting beds. Retaining walls over 2' are not anticipated for this project, should retaining walls over 2' in height be needed to accomplish the grading, they will be shown with proposed top and toe elevations in a "wall zone".
 - v. Planting Plans: Showing plant species, sizes, and location with associated details for canopy trees, ornamental trees, shrubs and groundcover, and turf.
 - vi. Landscape and Hardscape Details: Will consist of details, sections, and elevation views. Certain submittals, shop drawings, samples, cut sheets and mockups will be listed for approval by Landscape Architect.
- b. Incorporate City Front End Documents into the Project Manual.
- c. 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. Submit 90% Construction Documents for City Development Review
- e. Meet with City staff to review 90% Construction Document package
- f. Submit 100% Construction Documents for final development review.

G. Civil Bid Phase Services

The Scope of Services listed below shall be performed as part of Consultant's Scope of Services. Consultant's role will be provided to the City and billed on a lump sum basis. Consultant shall not proceed with performance of services, without written authorization by the City.

- 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.

EXHIBIT A SCOPE OF SERVICES

- 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. Assist the City in the advertisement of the Project for competitive bids.
- d. Assist the City with any Pre-Bidders meetings.
- e. Prepare addenda as appropriate to interpret, clarify, or expand the Bid Documents.
- f. Assist the City in the opening and tabulation of bids for construction of the Project.
- g. Prepare a written summary of the bid tabulation and evaluation together with a letter addressing the recommended contractor to be awarded of the construction contract.
- h. 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.
- i. 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.

H. Landscape Architecture Bid Phase Services

The Scope of Services listed below shall be performed as part of Consultant's Scope of Services. Consultant's role will be provided to the City and billed on a lump sum basis. Consultant shall not proceed with performance of services, without written authorization by the City.

- 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.
- 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

EXHIBIT A SCOPE OF SERVICES

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 recommended contractor to be awarded 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.

I. Record Drawings

The Scope of Services listed below shall be performed as part of Consultant's Scope of Services. Consultant's role will be provided upon acceptance of the construction project by the City and billed on a lump sum basis.

- a. 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.

J. Boundary Retracement:

Consultant will trace the boundary in the field in an effort to determine whether it is legally correct. If discrepancies or errors are found with the boundary then Consultant will inform the City but this task does not include effort to correct the work of others.

TBPELS Firm Numbers: Frisco: 10193822

K. Design Survey:

Consultant will prepare a topographic survey for the site to be used for site planning and civil engineering design purposes. The topographic survey is to be used in-house and will not be issued as a stand-alone survey document. The survey will consist of: Elevations around the immediate perimeter of the site; Contour lines representing the surface of the existing ground at one foot intervals based on a survey grid system and tied to existing control points; Observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, and franchised utility facility appurtenances; Dig Tess markings of subsurface

EXHIBIT A SCOPE OF SERVICES

utilities that are in place at the time our field work is being done; limited bathymetry along the dam and limits of proposed fill; and two benchmarks established with the survey.

TBPELS Firm Numbers: Frisco: 10193822

L. Tree Inventory and Survey

Consultant, via a subconsultant, will perform an on-site tree inventory, which will show the approximate locations, species name, general health assessment, and provide numbered tags for each of the protected trees. Data will be collected by a handheld GPS unit and will therefore be mapping grade, not survey grade. We will endeavor to locate all trees meeting the requirements of the local tree protection ordinance but do not guarantee it; some trees may be missed in areas of heavy tree coverage or limited access.

Consultant will utilize the onsite tree inventory to provide a tree survey prepared by a certified arborist or landscape architect. The tree survey will consist of information for trees that measure 12 caliper inches or larger including tree location, species, health, and caliber inch, as required by the City of Sherman Tree Preservation Ordinance. The survey will be utilized by The City to determine if any mitigation will be required, a separate preservation and mitigation plan will not be provided.

M. Drainage Study

KH will prepare a Drainage Study to support construction plans for the cut and fill proposed within the reservoir pool of Choctaw Creek Site 8a ("Site 8a").

KH will prepare a hydrologic model for the watershed upstream of Site 8a using HEC-HMS. The downstream extent of the model will be the downstream face of the Site 8a dam. This task assumes record drawings will be available and legible. Pre-Project and Post-Project models will be prepared to analyze the impacts of the proposed project.

KH will prepare a Drainage Study for submittal to the City of Sherman and NRCS. This task includes addressing two rounds of comments. Additional rounds can be addressed at an hourly rate or as an additional service. All review fees will be the responsibility of the Client.

EXHIBIT A SCOPE OF SERVICES

V. Special Services:

N. Civil Construction Phase Services

The Scope of Services listed below shall be performed as part of Consultant's Scope of Services. Consultant's role will be provided upon request of the City and billed on a reimbursable basis. Consultant shall not proceed with performance of services without written authorization by the City.

- 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 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

EXHIBIT A SCOPE OF SERVICES

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.

This task has been budgeted for up to 80 hours of KH effort.

O. Landscape Architecture Park Construction Phase Services

The Scope of Services listed below shall be performed as part of Consultant's Scope of Services. Consultant's role will be provided upon request of the City and billed on a reimbursable basis as lump sum basis. Consultant shall not proceed with performance of services without written authorization by the City.

- 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. *Requests for information.* Coordinate with Engineer and issue clarifications and 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.
- e. *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.
- f. *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

EXHIBIT A SCOPE OF SERVICES

- 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.
- g. *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.
 - h. *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.
 - i. *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.
 - j. *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.*

This task has been budgeted for up to 20 hours of KH effort.

P. Meetings and Team Coordination:

The Scope of Services listed below may or may not be performed as part of our Scope of Services. Consultant's role will be provided upon request of the City and billed on a reimbursable basis as labor and direct expenses are incurred. The budgeted fee for this task is based upon approximately 80 hours of labor. Consultant will not proceed with performance of services beyond the hours budgeted, without written authorization by the City.

Consultant will prepare for and attend meetings with the design team, reviewing staff, neighbors and other stakeholders. Because the extent of the effort required is unknown we have provided a projected budget for these services but actual cost will depend on actual effort required.

This task has been budgeted for up to 80 hours of KH effort.

EXHIBIT A SCOPE OF SERVICES

Q. USACE Coordination:

The existing dam is a registered high hazard dam through TCEQ. Any impacts adjacent to the Dam needs to get approval through Choctaw Watershed WID, City of Sherman, County, and Upper Elm Red SWCD since they're all listed as owners. This task is intended to capture effort required for various exhibits and plans to be reviewed by the TCEQ. The following exhibits are anticipated and included as part of this task:

CCSWCD Site Plan

Max Flood Pool Storage Map

This task has been budgeted for up to 80 hours of KH effort.

VI. Additional Services:

Various services incidental to the project, but not within the scope of the Services covered by A-Q 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. 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.
- ii. Appearances before hearings for eminent domain proceedings are specifically not included in the specified per parcel payment.
- iii. Appearances before regulatory agencies.
- iv. Assistance to the City as an expert witness in any litigation or claim, arising from, or in connection with, the Project.
- v. 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.
- vi. Detailed mill, shop, and/or laboratory inspection of materials or equipment.
- vii. Preparation of applications and supporting documents for government grants or planning advances for public works projects.
- viii. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.

EXHIBIT A SCOPE OF SERVICES

- ix. Revision of reports and Construction Contract Documents after specific approval by City.
- x. Redesign to reflect project scope changes requested by the City, TxDOT, franchise utilities, and/or developer required to address changed conditions or change in direction previously approved by the City, mandated by changing governmental laws, or necessitated by the City/City's acceptance of substitutions proposed by the Contractor.
- xi. Water quality design such as bubblers and fountains.
- xii. Structural engineering needed for headwalls, junction boxes, or other facilities beyond the limits allowed in TxDOT or City standard details.
- xiii. Groundwater well analysis and hydrogeological study is not included in this analysis.
- xiv. Geotechnical Engineering.

VII. Standard and Project Specific Assumptions:

- a) Fees are to perform each task one time and address up to two rounds of simultaneous City and/or developer review comments unless otherwise noted in the associated task description.
- b) Our scope of services is depicted in the Site Exhibit and project description in Exhibit A as part of this Agreement.
- c) Our services will be performed in general accordance with current published City design standards and specifications.
- d) Effort resulting from changes to the buildings, site plan, or utility design after commencement of our work will be additional services.
- e) The improvements we design will be publicly bid and will be designed and built in a single phase.
- f) Design of franchise utilities is beyond the scope of this agreement.
- g) Inspections and Certifications during construction, if required, will be performed by others and is beyond the scope of this agreement.
- h) We shall be entitled to rely on the accuracy and completeness of information provided to us by others. The following items are anticipated:
 - Offsite easements, if needed.
 - Latest As-built plans for the reservoir and adjacent development.
 - A dimensionally correct and zoning compliant site plan in AutoCAD format.
 - A current title commitment with legible copies of the Schedule B exceptions.
 - Timely participation by other members of the consultant team.
 - Any previously prepared surveys, reports, or documents with bearing on our scope of services.
 - Permission to enter the subject site for surveying purposes.
 - Geotechnical information provided in the as-builts for the pond.
- i) Design of Life Safety lighting and signage is beyond the scope of this agreement.
- j) Consultant does not guarantee the issuance of permits or approvals. If permits are

EXHIBIT A SCOPE OF SERVICES

issued for this project, the conditions and expiration dates are the sole responsibility of the City.

- k) Consultant has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. If provided, Opinions of Probable Construction Costs (OPCC) are based on the information known to Consultant at the time and represent only Consultant's judgment as a design professional. Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from the OPCC.
- l) Additional tasks may be necessary to complete the project based on AHJ requirements and/or requests. If necessary Consultant will provide the City with a separate scope and fee for this effort.
- m) Consultant shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the Contract Documents. The City shall not allow the contractor to take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications. In case of any errors, omissions or discrepancies in the drawings or specifications, the City shall direct the contractor to promptly submit the matter to the City before the improvements are built. The City shall promptly make a determination and issue the necessary instructions to the contractor in writing. Any adjustment by the contractor without this determination and instructions shall be at the contractor's own risk and expense. The Work is to be made complete as intended by the Contract Documents.
- n) In the performance of any services during construction, Consultant shall not be responsible for the means, methods, acts, techniques, equipment choice and usage, sequences, schedules or for safety precautions or programs of any Contractor, Subcontractor, or any other individual or entity performing or furnishing work. Consultant shall not have the authority or responsibility to stop or direct the work of any Contractor or authorize changes to the Contractor's scope of work. Consultant will not be responsible for any inspections or certifications during or after completion of the project.
- o) Our plans will establish proposed grade elevations. The City understands that there is the potential for vertical movement of pavement after construction is complete. The amount of vertical movement can be mitigated per geotechnical recommendation. Our plans will direct the contractor to the Geotechnical Report for subgrade recommendations. The City understands that even with proper subgrade preparation of the pavement and other facilities there is still the potential for vertical movement and finely graded areas, ADA routes, etc. may need to be adjusted and maintained in the future if they move.
- p) The property is zoned to allow the intended use. Changes to the zoning and/or request for variances or special use permits will not be required.
- q) Traffic control plans, if required, will be prepared by the Contractor or others and is not part of our scope.
- r) Access improvements are not proposed.
- s) Structural engineering needed for headwalls, junction boxes, or other facilities

EXHIBIT A SCOPE OF SERVICES

beyond the limits allowed in TxDOT or City standard details will be provided by a separate agreement.

- t) Bubbler system and/or fountains for the proposed detention pond(s) or any other water clarification system will be provided by others.
- u) Geotechnical information may be required by the USACE and/or NRCS. There is geotechnical information provided in the as-built drawings for the existing pond. KH assumes that additional geotechnical information will not be required.
- v) The basis for the mass grading plan will be the Site Plan shown in the Subject Site section of this agreement, unless an alternate plan is provided by the City prior to Consultant beginning our scope of work.

EXHIBIT B
PROJECT BUDGET SUMMARY

Basic Services

A. Preliminary Civil Design Plans (30%) <u>(Expected Completion: February 2025)</u>	\$30,000.00
B. Intermediate Civil Design Plans (60%) <u>(Expected Completion: March 2025)</u>	\$40,000.00
C. Final Design/Construction Civil Plans (90%, 100%) <u>(Expected Completion: May 2025)</u>	\$30,000.00
D. Park Conceptual Master Plan (Landscape Architecture)	\$10,000.00
E. Phase 1 Park Intermediate Landscape Architecture Plans	\$8,000.00
F. Phase 1 Park Final Landscape Architecture Plans	\$12,000.00
G. Civil Bid Phase Services <u>(Expected Completion: May 2025)</u>	\$20,000.00
H. Landscape Architecture Bid Phase Services <u>(Expected Completion: May 2025)</u>	\$5,000.00
I. Record Drawings	\$12,000.00
J. Boundary Retracement:	\$10,000.00
K. Design Survey	\$25,000.00
L. Tree Inventory and Survey:	\$15,000.00
M. <u>Drainage Study</u>	<u>\$30,000.00</u>
<i><u>Total Basic Services (Lump Sum)</u></i>	<i><u>\$247,000.00 (LS)</u></i>

Special Services

N. Civil Construction Phase Services	\$20,000.00 (HR)
O. Landscape Architecture Construction Phase Services	\$5,000.00 (HR)
P. Meetings and Team Coordination	\$20,000.00 (HR)
Q. USACE Coordination	\$20,000.00 (HR)

<i>Total Authorized Special Services</i>	<i>\$65,000.00</i>
<i>Project Budget, Grand Total (Not-To-Exceed)</i>	<i>\$312,000.00</i>

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.

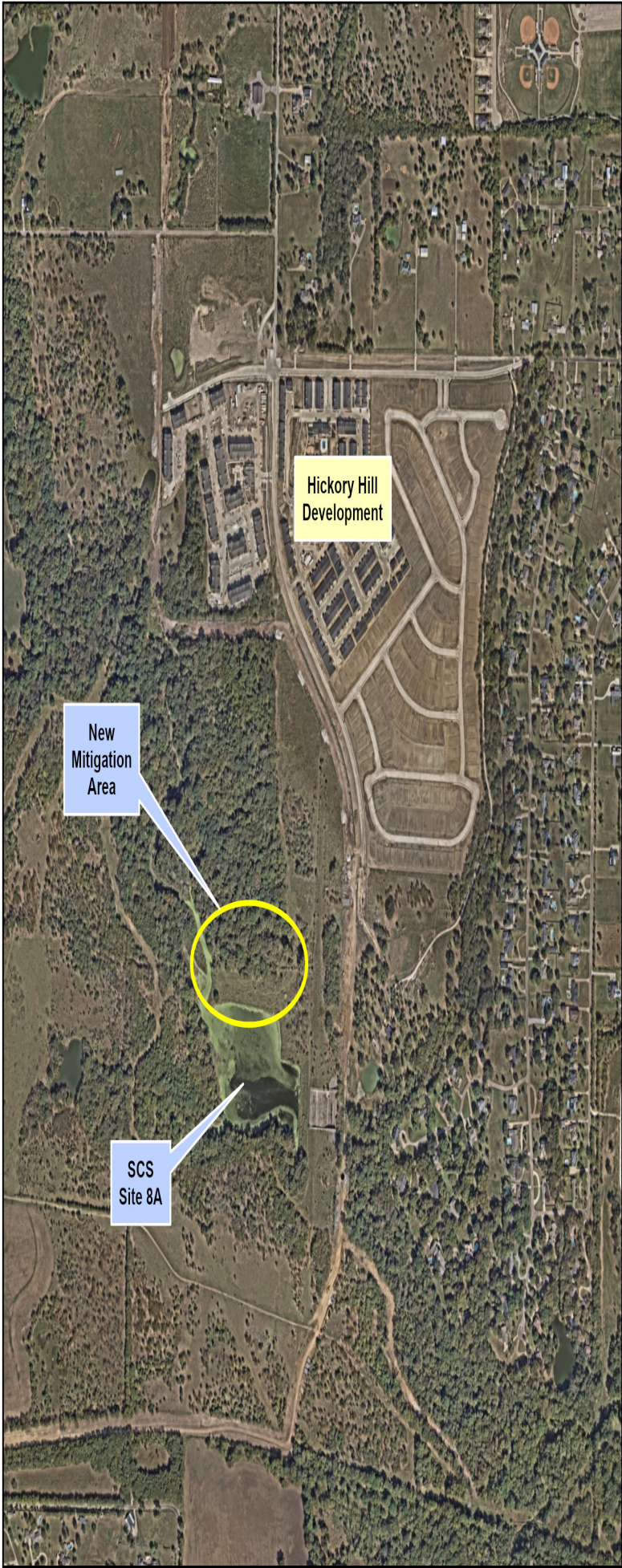
Coverage Required		Limits
<u> X </u>	1. Worker's Compensation & Employer's Liability	▪ Statutory Limits of the State of Texas
<u> X </u>	2. General Liability	▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate
<u> </u>	3. XCU Coverage	▪ Minimum \$1,000,000.00 each occurrence;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





City Council Regular Meeting

Agenda Item No. D.4.

Meeting Date: 2/3/2025

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** RESOLUTION NO. 7473**

Authorizing the Purchase of Furniture for the Remodeled City Hall from Business Essentials

Issue:

Authorizing the Purchase of Furniture for the Remodeled City Hall from Business Essentials

Background:

The Sherman City Hall has been under construction since August 2024. Completion is estimated to be in late March or early April. Hidell and Associates Architects have been working with City Staff regarding a new furniture layout. The furniture selected is similar in type and quality to the furniture recently installed at the Police Headquarters.

Origination:

Hidell and Associates Architects, Inc
City Manager's Office

Financial Consideration:

The total cost of the furniture is \$459,665.37, this money has been captured in savings from Fire Station No.1.

Staff Recommendation:

Staff recommends approval

Alternatives:

As directed by Council

Attachments:

1. Resolution No. 7473
2. Request Letter from Hidell

RESOLUTION NO. 7473

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF FURNITURE FOR THE REMODELED CITY HALL FROM BUSINESS ESSENTIALS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to authorize purchase of Dell computer hardware from CDWG totaling One Hundred Seventeen Thousand Eight Hundred Fifty-Five Dollars (\$117,855.00). Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's current Fiscal Year 2024/2025 budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the 3rd day of February 2025.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
SHAWN TEAMANN, MAYOR

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

BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

January 15, 2025

City of Sherman
Brain Stevens
Facilities Manager
915 Birge St.
Sherman, Texas 75090

Re: City Hall Furniture

Brain,

Hidell and Associates Architects, Inc. has been working with City Staff and Business Essentials regarding a new furniture layout for the City Hall Renovation Project. The furniture selected is of a similar type and quality to the new furniture installed at the Police Headquarters Facility. The furniture will be purchased utilizing state contract pricing (TIPS) through Business Essentials. Vendor Number 286 (Contract Number 230301). A summary of the new furniture is included below:

City of Sherman-City Hall Project Summary Cost		
Room Title	Room Numbers	Total
Lobby/Public Lobby	101/107	\$ 7,911.75
Conference Rooms (2)	132/142	\$ 39,532.62
Council Chambers/Training	144	\$ 109,704.88
Break Room & Outdoor Courtyard	129/Outdoor	\$ 11,659.74
Level 1 Offices	134/140/141	\$ 42,495.01
Level 2 Offices	120/122/125/132/148	\$ 49,750.50
Level 3 Offices	109/110/111/112/116/117/118/119	\$ 42,361.24
Workspaces	126/146	\$ 61,799.33
Admin	130	\$ 12,521.54
Storage	117/147	\$ 5,070.38
Waste Receptacles	misc.	\$ 1,957.98
Additional Seating	misc.	\$ 18,778.00
Office Accessories	misc.	\$ 9,258.40
Delivery and Install	fees	\$ 42,414.00
Design Fees	fees	\$ 4,450.00

Total Cost \$ 459,665.37

City of Sherman City Hall Reconfiguration Furniture Proposal

This provides new furniture for the office spaces, Council Chambers, new conference rooms, break area, and mics. Spaces. Development Services will be utilizing an existing conference room table, conference chairs, and some recently purchased desk units within their area.

We recommend approval of the furniture cost. I have included a copy of the vendors (Business Essentials) TIPS contract information.

Should you have any questions, or need any additional information, please let me know.

Sincerely,
Hidell and Associates Architects

A handwritten signature in blue ink, appearing to read "Aaron Babcock". The signature is fluid and cursive, with the first name "Aaron" and last name "Babcock" clearly distinguishable.

Aaron Babcock
Principal

Cc: Bill Hidell



Vendor Number: 286

About Us

Business Essentials is the largest 100%, locally owned office supplier in North Texas and has been providing our customers with business solutions for over 100 years. Offices in DFW, Texarkana, and Longview give BE the ability to service a large market with next day service, provided by our own delivery trucks and drivers. With our 31 distribution centers across the United States, Business Essentials can also service you nationally with the same local service our customers have come to expect from us. Our HUB certification and Edgar compliance with the State of Texas allows us to be a great partner for your purchasing needs!

At Business Essentials, we pride ourselves in not only servicing our customers but becoming your partner by providing real value and smart solutions to your everyday needs. Business Essentials thanks you for considering us to be your single-source provider and invites you to join us...

BESMART

BECOMMUNITY

BESIMPLE

BECONNECTED

BERELIABLE

BELOCAL

Awarded Contracts

CONTRACT #	CONTRACT NAME	EXPIRATION DATE
230301	Furniture, Furnishings and Services	3/31/2026
230103	Janitorial and Sanitation Supplies and Services	6/30/2024
210401	Office and School Supplies Products and Services	5/31/2028

EDGAR Compliant

The Education Department of General Administrative Regulations (EDGAR) are the federal regulations that govern all federal grants awarded by the U.S. Department of Education on or after December 26, 2014 to local districts (LEAs) and charters including State-administered programs.

We are self-reporting, and all POs/orders come directly to us to make it easier for customers to use!



City Council Regular Meeting

Agenda Item No. D.5.

Meeting Date: 2/3/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** RESOLUTION NO. 7474**

Authorizing Execution of a Professional Services Agreement with Mead & Hunt, Inc. for the Blalock Park Interceptor Improvement

Issue:

To consider a Professional Services Agreement with Mead & Hunt, Inc. for the Blalock Park Interceptor Improvement

Background:

An analysis of the wastewater system recommended installing the Blalock Park Interceptor to route as much flow from industrial areas to the north wastewater treatment plant as possible. This new outfall line will divert up to 2 million gallons per day from the South Wastewater Treatment Plant (WWTP) to the North WWTP. This will extend the time needed before having to increase the capacity of the New South WWTP.

Origination:

Engineering Department

Financial Consideration:

This item is budgeted for as funding for this agreement is \$594,512.00 and will be funded through the Greater Texoma Utility Authority (GTUA) 2024 Open Market Bond proceeds.

Staff Recommendation:

It is recommended that the contract for professional services with Mead & Hunt, Inc. for the Blalock Park Interceptor Improvement be approved.

Alternatives:

As may be directed by the City Council

Attachments:

1. Resolution No. 7474
2. Professional Services Agreement
3. Location Map

RESOLUTION NO. 7474

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MEAD & HUNT, INC. FOR THE BLALOCK PARK INTERCEPTOR IMPROVEMENT; 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 Mead & Hunt, Inc. for the Blalock Park Interceptor Improvement, 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 3rd day of February 2025.

CITY OF SHERMAN, TEXAS

**BY: _____
SHAWN TEAMANN, MAYOR**

ATTEST:

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

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

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

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
Mead & Hunt, Inc.
FOR
PROFESSIONAL SERVICES

Made as of the _____ day of _____, 2024:

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

and Consultant: Mead & Hunt, Inc.
 6001 Interstate 20 West, Suite #214
 Arlington, Texas 76017
 Telephone: (817) 719-0372

for the following Project: **Blalock Park Interceptor Improvement**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sherman, Texas, a home-rule municipality ("City"), and Mead & Hunt, Inc., a Wisconsin 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 Blalock Park Interceptor Improvement 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 **Five Hundred and Fifty One Thousand and ninety seven Dollars (\$551,097.00)**; and
 - (b) for Special Services, in an amount not to exceed **Forty Three Thousand and two hundred and fifteen Dollars (\$43,215.00)** (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	\$309
Senior Project Manager	\$276
Project Manager	\$217
Project Engineer	\$195
Engineer II	\$172
Engineer I	\$146
Senior Technician	\$188
Admin	\$93

- 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% Engineering Estimate of Probable Construction Contract (EOPCC) due to the negligence 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:

Mark Perkins
Vice President
Mead & Hunt, Inc.
6001 Interstate 20 West, Suite #214
Arlington, Texas 76017
Telephone: (817) 719-0372
Email: mark.perkins@meadhunt.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.

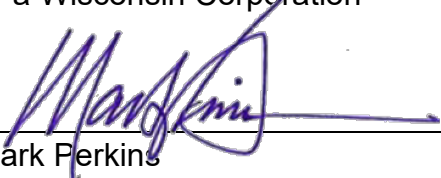
CITY:

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

By: _____
Robby Hefton
City Manager

CONSULTANT:

Mead & Hunt, Inc.
a Wisconsin Corporation

By:  _____
Mark Perkins
Vice President

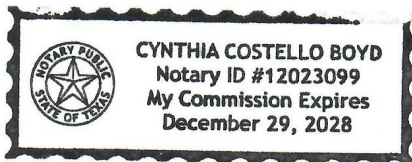
APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **MARK PERKINS**, 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 **MEAD & HUNT**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 16 DAY OF January 2025.



Cynthia Costello Boyd
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: December 29, 2028

EXHIBIT A SCOPE OF SERVICES

I. PROJECT DESCRIPTION

A. Project Summary

Mead & Hunt will provide engineering consulting services to the City of Sherman for design and bidding for the replacement of the existing Blalock Park 18-inch interceptor pipeline to divert selected industrial flow to the Post Oak Wastewater Treatment Plant (WWTP). The design is expected to include approximately 3,800 linear feet of 21-inch pipeline, a new diversion structure, and an aerial crossing, or siphon, to replace the existing aerial crossing.

It is recognized that the specific assignment under this agreement does not involve electrical and instrumentation design and construction related services

Mead & Hunt will provide project management services and will act as the primary point of contact for the project. Subconsultants include Carollo Engineers, Inc. and Plummer Associates, Inc.

B. Assumptions

- a. The Blalock Park interceptor will be used to divert selected industrial flow from the South WWTP to the Post Oak WWTP, which is expected to contribute to deferral of expansion of the MBR plant.
- b. A design-bid-build delivery approach will be used.
- c. The capacity of the new pipeline will be approximately 10 million gallons per day (MGD), limited by the downstream pipeline capacity.
- d. No odor control treatment to be included in the project.
- e. City to pay permit fees, if required.
- f. The City will contract directly with a Surveyor for all surveying services needed for design and easement document preparation. Mead & Hunt will provide coordination with the City's surveyor to support design work.
- g. The existing manhole where the new 21-inch interceptor connects to the existing Blalock Park 18-inch interceptor will be replaced with a diversion structure.
- h. The diversion structure will be manually operated and will not contain instrumentation or electrically actuated valves or gates.
- i. Preliminary design memorandum will be provided in digital (PDF) format only.

EXHIBIT A SCOPE OF SERVICES

- j. Final Design of interceptor to be based on the route selected by the City during the Preliminary Design Phase.
- k. Geotechnical investigation was managed by Plummer & Associate, Inc. under a separate Contract. Initial survey coordination was managed by Plummer & Associates, Inc.
- l. Front end documents for bid to be provided by the City.
- m. No pre-procurement.
- n. City to pay fees for any necessary advertisement directly.
- o. Plan holder documentation distribution through CivCast.
- p. Project will be constructed as one Construction Contract.
- q. Additional compensation for rebid or if bid as multiple construction contracts.

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:

EXHIBIT A SCOPE OF SERVICES

- 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. Drive / walk the existing and proposed pipeline route with City Personnel. Discuss preliminary junction box location, access road, aerial crossing versus siphon versus tunneling and providing a memo of the site visit discussion.
- b. Assess the feasibility of three conceptual options: paralleling the existing pipeline as closely as practical, paralleling the existing pipeline offset onto Economic Development Corp. (EDC) property, and expanding the MBR plant to accommodate the industrial flows being diverted. Assessment of existing route to include creek crossing options, contractor access, and permitting requirements, and probable completion time.
- c. Permitting evaluation to include preparation of Pre-Construction Notice (PCN) to the USACE for the 404 Nationwide Permit and an associated Aquatic Resources Delineation Report or Threatened and Endangered Species Letter Report. Also to include preliminary coordination with Texas Historical Commission.
- d. Information gathering and preliminary coordination with BNSF if junction box or pipe to be in railway ROW.
- e. Project management to include (7) Teams meeting for internal coordination and Client updates.

EXHIBIT A SCOPE OF SERVICES

B. Detail Design Phase

1. Basic Design Plans (60%)

- a. Prepare plan and profile of the proposed sewer route alignment.
- b. Detailed diversion junction box, appurtenances, bypass system, capacities of channels.
- c. Prepare 60% Engineers Opinion of Probable Construction Cost (EOPCC) for budgetary purposes.
- d. Rough draft of technical specifications.
- e. Prepare preliminary structure plans of piers and structures.
- f. Coordination with City of Sherman record drawings, flows from existing facilities, location of existing structures.
- g. QA/QC to include an external QA/QC and (1) in-person meetings with City Personnel at 60% design to discuss comments

2. Final Design/ Construction Plans (100%)

- a. Prepare construction plans and specifications for sanitary sewer line, diversion box, creek crossing, and associated improvements suitable for bidding purposes. Prepare plan and profile for sanitary sewer line and creek crossing. Prepare plan, sections and details for diversion structure and proposed connections to existing pipeline. Provide details or notes for embedment, and existing pipe abandonment. Includes one (1) site visits during design.
- b. Design of diversion structure civil and mechanical plans, all weather road for maintenance access at diversion structure, civil grading around diversion structure site and access road, and technical specifications. Includes (1) site visit during design.
- c. QA/QC to include an external QA/QC and (1) in-person meetings with City Personnel at 90% design to discuss comments
- d. Prepare detailed cost estimates based on current unit prices from the proposal of authorized construction, which shall include summaries of bid items and

EXHIBIT A SCOPE OF SERVICES

quantities on the unit price system of bidding, wherever practical.

- e. Finalize miscellaneous plan sheets, including cover sheet, index, general notes, project control and applicable City standard details.
- f. Submit three (3) final sealed copies each of any necessary right-of-way or easement documents.
- g. 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.
- h. 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).
- i. Project management to include (9) teams meeting for internal coordination and Client updates.

C. 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.
- 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 one Pre-Bid meeting.

EXHIBIT A SCOPE OF SERVICES

- 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. Contractors will be contacted by phone or email to enhance exposure to eligible bidders.
- k. One re-bid meeting will be conducted.
- l. Additional compensation for re-bid or if bid as multiple construction contracts in accordance with Section 3.10 of this agreement.

D. Optional Services

- a. Assist with assessment, sizing, bid document preparation, and bidding of bypass pumping services, if deemed necessary by the City.

E. 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. Staking of the Centerline of the proposed Project for utility coordination. The Consultant or its surveyor shall stake the centerline throughout the extent

EXHIBIT A SCOPE OF SERVICES

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.

- iii. 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.
- iv. Appearances before hearings for eminent domain proceedings are specifically not included in the specified per parcel payment.
- v. Appearances before regulatory agencies.
- vi. Assistance to the City as an expert witness in any litigation or claim, arising from, or in connection with, the Project.
- vii. 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.
- viii. Detailed mill, shop, and/or laboratory inspection of materials or equipment.
- ix. 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.
- x. Preparation of applications and supporting documents for government grants or planning advances for public works projects.
- xi. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.
- xii. Revision of reports and Construction Contract Documents after specific approval by City.
- xiii. Subsurface Utility Engineering that involves Level "A" or "B" identification of a utility.
- xiv. Data collection or analysis not included in Article III.
- xv. Model development, scenarios or evaluations not included in Article III.
- xvi. Additional meetings not included in Article III.

IV. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

EXHIBIT A 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. Electrical and Instrumentation design at the diversion structure.
2. Construction administration Services.

EXHIBIT B
PROJECT BUDGET SUMMARY

I. Basic Services

A. Preliminary Design (PD) (Expected Completion: Notice to Proceed + 60 Days)	\$116,649.00
B. Final Design/Construction Plans (100%) (Expected Completion: PD Approval + 120 Days)	\$396,974.00
C. Bid Phase Services as one project (Expected Completion: Authorize to Bid + 60 Days)	\$37,474.00
<i>Total Basic Services (Lump Sum)</i>	<u><i>\$551,097.00</i></u>

II. Special Services

Assistance with Temporary Bypass Pumping	\$43,215.00
<i>Total Authorized Special Services</i>	<i>\$0.00</i>
<i>Project Budget, Grand Total (Not-To-Exceed)</i>	<i>\$594,312.00</i>

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): | |

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.

Mead & Hunt, Inc.

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

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

None / Not Applicable

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.

None / Not Applicable

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?

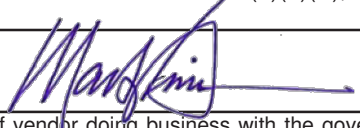
☐ Yes

☐ 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.

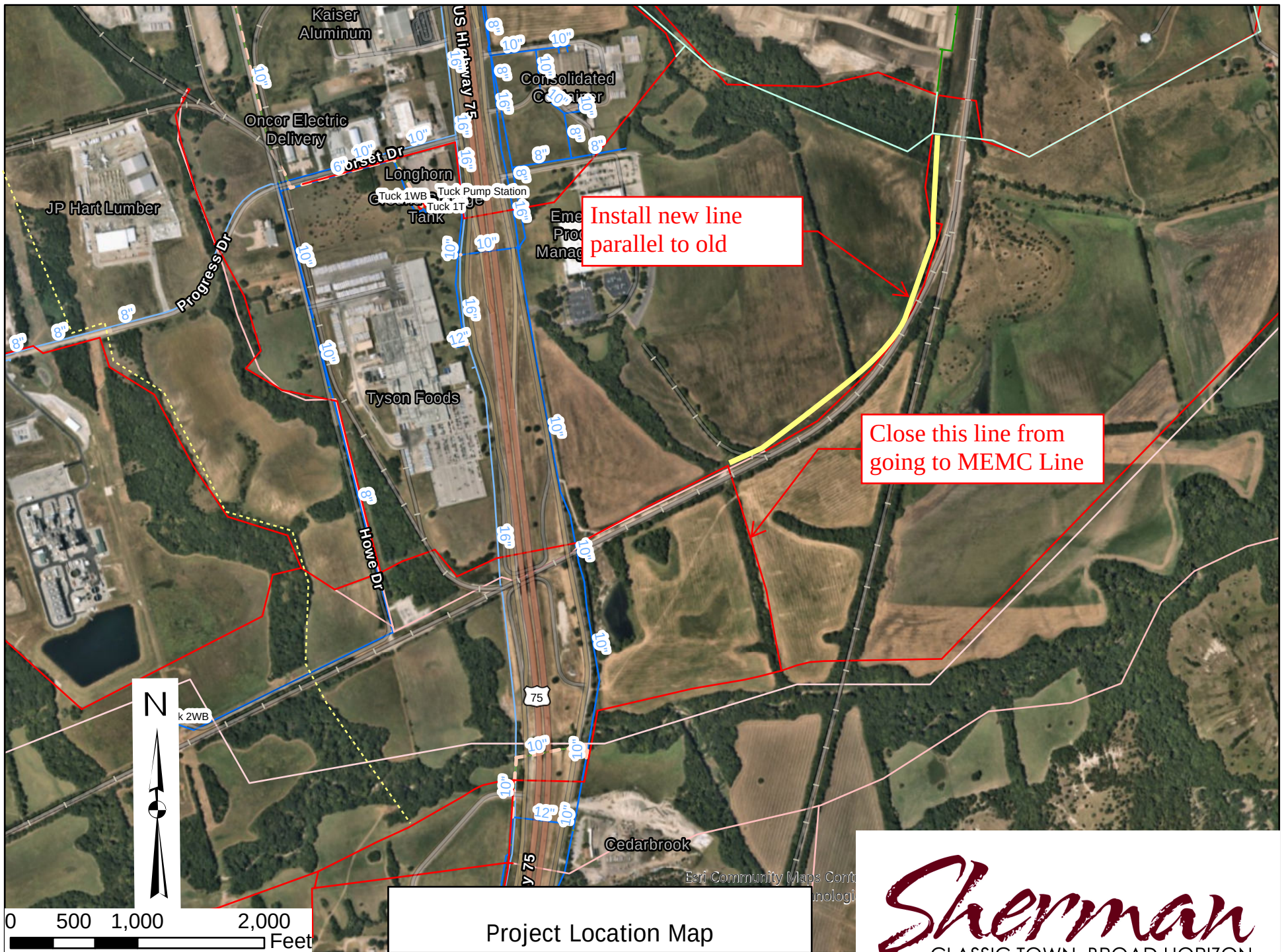
None / Not Applicable

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

1/16/2025

Date





City Council Regular Meeting

Agenda Item No. D.6.

Meeting Date: 2/3/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** RESOLUTION NO. 7475**

Authorizing Execution of a Second Amendment to the Professional Services Agreement with Brockette/Davis/Drake, Inc. for the Engineering Design of Flanary Road and Progress Drive Expansion/Improvements

Issue:

To consider Amendment No. 2 to the Professional Services Agreement with Brockette/Davis/Drake, Inc. for the Engineering Design of Flanary Road and Progress Drive Expansion/Improvements

Background:

On December 17, 2018, City Council awarded a Professional Services Agreement to Brockette/Davis/Drake, Inc. for the Engineering Design of Flanary Road and Progress Drive Extensions/Improvements in the amount of \$156,600.00. This was a design requested by the Sherman Economic Development Corporation (SEDCO). The design was for a four-lane median divided roadway along Flanary Road, now Interurban Parkway, that would initially construct half of the roadway. The design also included a four-lane undivided roadway extension of Progress Drive to Flanary that would construct half of the roadway. This would allow for a secondary exit from the industrial locations in the area as well as improve the traffic flow to and from the industrial locations.

On February 8, 2023, City staff approved Amendment No. 1. A developer proposed plans bring in manufacturing operations on the south side of the Progress Drive extension requiring Progress to be constructed sooner than the Flanary Road improvements. Amendment No. 1 broke the project into two construction sets, provided construction drawings for the ultimate four lanes of Progress Drive, provide construction drawings for the ultimate four lane divided roadway of Interurban Parkway, and preparation of all drainage easements and right-of-way documents needed to construct the projects.

The developer of the new manufacturing facility on the south side of the Progress Drive extension, working with BNSF Railroad, SEDCO and Progress Rail have proposed a railroad spur requiring the design of Progress Drive to be lowered approximately 5 feet and the reconstruction of some of the existing Progress Drive as well as an existing driveway into Progress Rail.

This Amendment No. 2 will provide additional surveying, redesign of Progress Drive paving and drainage, the design of an 18-inch water main lowering, and any easement documents that may be needed from Progress Rail for their driveway/parking lot modifications. This Amendment No. 2 adds \$24,700 to the agreement for a total cost of \$219,300.00.

Origination:

Engineering Department

Financial Consideration:

The \$24,700.00 of funding needed for this is available in CO's and will be reimbursed by SEDCO.

Staff Recommendation:

It is recommended that Amendment No. 2 to the Professional Services Agreement with Brockette/Davis/Drake, Inc. for the Engineering Design of Flanary Road and Progress Drive Expansion/Improvements be approved.

Alternatives:

As may be directed by the City Council.

Attachments:

1. Resolution No. 7475
2. Signed Amendment No 2 - Flanary Progress 20250128 Final (4656952.1)
3. Res. No. 6445 - Original Agreement
4. 2023-02-08 Amendment No 1 Flanary Progress -Signed
5. Location Map

RESOLUTION NO. 7475

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH BROCKETTE/DAVIS/DRAKE, INC. FOR THE ENGINEERING DESIGN OF FLANARY ROAD AND PROGRESS DRIVE EXPANSION/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 Second Amendment to the Professional Services Agreement with Brockette/Davis/Drake, Inc. for the Engineering Design of Flanary Road and Progress Drive Expansion/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, TX on this the 3rd day of February 2025.

CITY OF SHERMAN, TEXAS

**BY: _____
SHAWN TEAMANN, MAYOR**

ATTEST:

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

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

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

AMENDMENT NO. 2

TO THE PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES BETWEEN THE CITY OF SHERMAN ("CITY") AND BROCKETTE/DAVIS/DRAKE, INC. ("ENGINEER") FOR THE FLANARY ROAD AND PROGRESS DRIVE EXPANSION/IMPROVEMENTS PROJECT

Dated December 17, 2018 ("Original Agreement")

This Amendment No. 2 serves to increase the contract fees under the Original Agreement and Amendment No. 1 dated February 8, 2023 ("Amendment No. 1") based on the following additional work and adjustments to project scope:

- Lower the east end of Progress Drive approximately 5 feet near the connection point to accommodate a new rail crossing.
- Lower an existing 18-inch water main.
- Modification of an existing adjacent parking/drive as required.

The contract amount under the Original Agreement and Amendment No. 1 shall be amended and increased by a fee not to exceed the following amounts:

<u>Description</u>	<u>Fee</u>
Preliminary Surveying	
Topographic Survey	
Progress Drive	\$ 3,600.00
Construction Documents	
Progress Drive Paving/Drainage	\$ 8,500.00
Progress Drive 18-inch Water Lowering	\$ 7,500.00
Slope Easement	
First Easement (boundary verification plus easement)	\$ 3,600.00
Second Easement (easement document)	<u>\$ 1,500.00</u>
TOTAL FEE INCREASE (NOT TO EXCEED):	\$ 24,700.00

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 Exhibit A (Proposed Fees) of the Original Agreement and Amendment No. 1 to read as follows:

PRELIMINARY SURVEYING

4. Prepare an on the ground topographic survey of existing Progress Drive. The scope of topographic survey (cross sections) will be approximately 300-feet east of the end of the existing Progress Drive.
5. Prepare slope easement (if required) including boundary verification, metes/bounds, and exhibit.

CONSTRUCTION DOCUMENTS

3. Lowering Progress Drive Connection Point Approximately 5 Feet
 - Modification to the paving plan cross sections, cost estimate, and storm sewer plan.
 - Prepare a plan/profile for the lowering of the existing 18-inch water main.
 - Provide associated details.

BROCKETTE/DAVIS/DRAKE, INC. 2024 RATE SCHEDULE

Senior Principal	\$ 325.00/HR
Principal	\$ 300.00/HR
Associate Principal	\$ 250.00/HR
Associate	\$ 225.00/HR
Senior Project Manager	\$ 200.00/HR
Project Manager	\$ 175.00/HR
Project Engineer	\$ 150.00/HR
Design Engineer	\$ 125.00/HR
Senior Technician	\$ 150.00/HR
Technician	\$ 125.00/HR
Clerical	\$ 70.00/HR

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 Exhibit A (Proposed Fees) of the Original Agreement and Amendment No. 1 to read as follows:

Proposed Fees

Engineer shall be compensated on the following basis. Additional Services shall be performed based on the 2024 rate schedule.

<u>Description</u>	<u>Fee</u>
Preliminary Engineering	\$ 5,500.00
Preliminary Surveying (Topographic Survey)	
Flanary Road	\$ 15,800.00
Progress Drive	\$ 13,100.00
Separate Instrument Easements	\$ 5,300.00
Construction Documents	
Flanary Road	\$ 93,000.00
Progress Drive Paving/Drainage	\$ 68,500.00
Progress Drive 18-inch Water Main Lowering	\$ 7,500.00
Slope Easement	
First Easement (boundary verification plus easement)	\$ 3,600.00
Second Easement (easement document)	\$ 1,500.00
Post Design Services (Hourly Fee)	<u>\$ 5,500.00</u>
TOTAL FEE	\$ 219,300.00

The parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Original Agreement and Amendment No. 1 and acknowledge and agree that the Original Agreement and Amendment No. 1 remain in full force and effect, except as amended in this Amendment No. 2. To the extent that any provision contained herein conflicts with the Original Agreement and Amendment No. 1, the provision contained herein shall supersede such conflicting provision contained in the Amendment No. 1 and Original Agreement, in that order. 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.

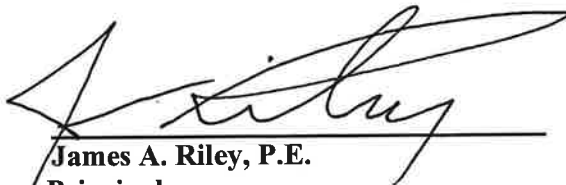
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EXECUTED in three (3) counterparts (each of which is an original) on behalf of ENGINEER as of the date shown below, and on behalf of the OWNER by its City Manager (thereunto duly authorized) this _____ day of _____, 2025.

OWNER:
CITY OF SHERMAN, TEXAS

CONSULTANT:
BROCKETTE/DAVIS/DRAKE, INC.

Robby Hefton
City Manager



James A. Riley, P.E.
Principal

ATTEST:

ATTEST:

Linda Ashby
City Clerk



APPROVAL RECOMMENDED:

Wayne E. Lee, P.E., CFM / Civil Engineer

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

BY:

Ryan D. Pittman
City Attorney

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS

COUNTY OF Dallas

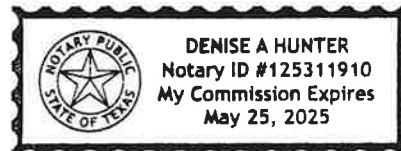
BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared James A. Riley of Brockette/Davis/Drake, Inc. known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Brockette/Davis/Drake, 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 28th day of January, A.D. 2025.

Denise A. Hunter
Notary Public In and For Dallas County, Texas

My Commission Expires:

05-25-25



RESOLUTION NO. 6445

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH BROCKETTE/DAVIS/DRAKE, INC. FOR THE ENGINEERING DESIGN OF FLANARY ROAD AND PROGRESS DRIVE EXPANSION/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:

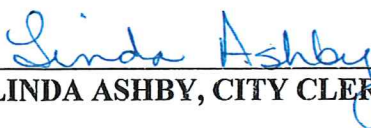
SECTION 1. That the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a Professional Services Agreement with Brockett/Davis/Drake, Inc. for the engineering design of Flanary Road and Progress Drive Expansion/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.

PASSED AND APPROVED on this the 17th day of December, 2018.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: 
LINDA ASHBY, CITY CLERK

BY: 
DAVID PLYLER, MAYOR

**APPROVED AS TO FORM
AND CONTENT:**

BY: 
BRANDON S. SHELBY,
CITY ATTORNEY

AGREEMENT FOR PROFESSIONAL SERVICES

THIS Agreement for Professional Services ("Agreement") is entered into December 17, 2018 by and between the CITY OF SHERMAN, TEXAS, hereinafter referred to as the "City", and Brockette/Davis/Drake, Inc., a Texas corporation, hereinafter referred to as "Company".

WHEREAS, the City desires Company to perform certain work and services set forth in the Scope of Services attached hereto as Exhibit A and incorporated herein (the "Scope of Services") (the work and services to be provided by the Company under this Agreement, including all plans, drawings, specifications, designs, reports, records, and other work product, and estimates, set forth in the Scope of Services and otherwise described or referred to herein are referred to in this Agreement as the "Services"); and

WHEREAS, the Company has expressed a willingness and desires to perform the Services as set forth in this Agreement.

NOW, THEREFORE, the City of Sherman, Texas and Brockette/Davis/Drake, Inc. in consideration of the covenants and agreements set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, do hereby contract and agree as follows:

ARTICLE I

GENERAL

The Company shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform all Services set forth in Article II hereof for the City in accordance with the terms, conditions and provisions of the Scope of Services, attached

hereto as Exhibit "A" and incorporated herein for all purposes, and all of the terms, conditions, and provisions of this Agreement. The City may, at any time, stop any Services by the Company upon giving the Company written notice. Company shall be bound to City by the terms, conditions and responsibilities toward the City for Company's services set forth in this Agreement.

Company shall serve as City's design professional and engineering representative for the project for which the Services are being provided by Company, providing professional engineering services, consultation and advice with respect thereto. Company's work and services consist of that work and services performed by Company and its owners, directors, officers, employees, agents, contractors, subcontractors, representatives, and consultants.

Company shall perform all work hereunder in a manner satisfactory and acceptable to City in accordance with the terms and conditions of this Agreement, including (without limitation) the standard of care set forth in this Agreement. Company shall perform all of its services in a timely and professional manner, utilizing at all times an economical and expeditious manner for performing such services. No less than monthly, Company shall keep City informed, orally or in writing (as requested by City), as to the status of all services of Company in process. All oral information shall be subsequently confirmed in writing.

Company shall not begin work on any Services described herein or other work until City directs Company in writing to proceed.

Company will use its professional skill, judgment and abilities in the performance of its work and Services hereunder, and all work and Services performed under this Agreement shall be conducted in a manner consistent with that level of care and skill ordinarily exercised by reputable members of the engineering profession currently practicing in the same locality in which the work

and Services hereunder are being provided under similar conditions. Company shall re-perform and otherwise remedy any work or Services provided by or for Company not meeting or satisfying this standard of care without additional compensation. Further, Company shall perform all services in accordance with, and Company's work product shall comply with, any applicable law, rule, statute, ordinance, regulation, standard, policy or order of any federal, state or local governmental entity or agency having jurisdiction over any matter related to this Agreement or the project for which the Services are being provided by the Company. Company shall be wholly and solely responsible for any work or Services provided by any officer, employee, agent, representative, contractor or subcontractor of Company.

Company represents that it is authorized to practice civil engineering in the State of Texas and that any necessary licenses, permits or other authorization to practice civil engineering and professional surveying and to provide the Services set forth herein have been heretofore acquired as required by law, rule or regulation. Company agrees and acknowledges that City is entering into this Agreement in reliance on Company's professional abilities with respect to performing the Services set forth herein.

Notwithstanding anything to the contrary in this Agreement, the Company is and shall be construed to be an independent contractor exercising control over its work and services and the manner in which it is performed. Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture, a joint enterprise relationship, or to allow the City to exercise discretion or control over the professional manner in which the Company performs the work and Services which are the subject matter of this Agreement; provided always however that the work and Services to be provided by Company shall be provided in a manner consistent with all applicable laws, standards, rules and regulations governing such work and

Services. The method and manner in which Company's work and Services hereunder shall be performed shall be determined by Company in its sole discretion. The officers, employees, agents, and representatives of, and the methods, equipment and facilities used by, the Company shall at all times be under the Company's exclusive direction and control.

ARTICLE II

SERVICES

A. The following services, when authorized in writing by a Notice to Proceed, shall be performed by the Company in accordance with the City's requirements:

PREPARATION OF ALL PLANS, SPECIFICATIONS, DRAWINGS, DESIGNS, DOCUMENTS, REPORTS, RECORDS, OTHER WORK PRODUCT, AND ESTIMATES NECESSARY FOR THE FLANARY ROAD AND PROGRESS DRIVE EXTENSIONS/IMPROVEMENTS PROJECT DESCRIBED IN THE SCOPE OF SERVICES ATTACHED HERETO AS EXHIBIT "A".

B. Company shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, plans and other work and Services furnished by for, or on behalf of Company under this Agreement. Company shall, without additional compensation, correct or revise any errors or deficiencies in the design, drawings, specifications, plans and other work and Services.

C. Neither City's review, approval or acceptance of, nor payment for any of the Services required or provided under this Agreement, shall be construed to operate as a waiver of

any rights under this Agreement or of any cause of action arising out of the performance of this Agreement or a release of the responsibility and liability of Company, its owners, officers, employees, subcontractors, agents and consultants for the accuracy and competency of the same, and Company shall be and remain liable to City in accordance with applicable law for all damages to City caused by Company's negligent performance of or willful misconduct in connection with any of the Services or any other services or work furnished by or on behalf of Company under or in connection with this Agreement, nor shall such review, approval, acceptance, or payment be deemed to be an assumption of or an indemnification for such responsibility or liability by City for any defect, error or omission in the same, and shall not constitute nor be deemed a release of the responsibility and liability of Company, its employees, associates, agents and consultants for the accuracy or competency of their designs, working drawings and specifications, or other Services, documents and work, it being understood that City at all times is relying on Company's skill and knowledge in preparing and providing the Services.

D. The rights and remedies of City and Company under this Agreement are as provided by law.

E. Notwithstanding City's review, approval, or acceptance of, or payment for, any plans, drawings, specifications, or any other work product or Services of Company, Company represents that (i) such plans, drawings, specifications, and other work product or Services (and including, without limitation, as the same may be amended or supplemented by Company), (i) shall be sufficient and adequate for the project and fit for the purposes for which they are intended, and (ii) shall, to the best of Company's knowledge, information and belief as a civil engineer performing the practice of civil engineering in accordance with the standards, duties, and obligations set forth herein, be free from material error, and shall be satisfactory to City. In

accordance with the standard of care set forth herein, Company agrees that if it shall recommend unsuitable materials in connection with the project for which the Services are being provided by the Company or this Agreement or if the design of the project should be defective in any way, Company will assume sole responsibility for any damages, loss, claims, or expenses to the extent caused by Company's recommendation of unsuitable materials or defective design.

ARTICLE III

PAYMENT

A. City shall pay Company for all Services authorized in writing and properly performed by Company on the basis herein described, subject to additions or deletions for changes or extras agreed upon in writing, and subject to the City's right to withhold payment pursuant to the terms of this Agreement.

B. Partial payment shall be paid based upon a percentage of work completed. Company shall submit to City monthly invoices for its Services under this Agreement. Each invoice shall be accompanied by such documentation as the City may require to verify the accuracy of the invoice, including an itemized statement of reimbursable costs incurred (if any), and the sum of all prior payments under this Agreement. Company shall not be entitled to any compensation for any Services or work not actually performed or for any lost profits as a result of any abandonment or suspension of any Services or work by the City.

Any provision hereof to the contrary notwithstanding, City shall not be obligated to make payment to Company hereunder if:

1. Company is in default of any of its obligations under this Agreement or any other documents in connection with the Services or the project (and payment may be withheld to the extent of any such default);

2. Any part of such payment is attributable to any work or Services of Company which are not performed in accordance with this Agreement;

3. Company has failed to make payment promptly to subcontractors or consultants or other third parties used by Company in connection with Company's Services or other work hereunder for which the City has made payment to Company; or

4. If City, in its good faith judgment and after consultation with Company, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Company's Services or other work under this Agreement, no additional payments will be due Company hereunder unless and until Company performs a sufficient portion of its Services so that such portion of the compensation remaining unpaid is determined by City to be sufficient to complete the Company's Services or other work.

C. Upon complete performance of this Agreement by Company and final approval and acceptance of Company's Services by City, City will make final payment to Company of the balance due under this Agreement within thirty (30) days of the following month after final payment for such Services has been billed by Company.

D. City may deduct from any amounts due or to become due to Company any sum or sums owing by Company to City. In the event of any breach by Company of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against City, or the City's premises or property, arising out of Company's performance of this Agreement, City shall have the right to retain out of any payments due or to become due to

Company an amount sufficient to completely protect the City from any and all loss, damage or expense there from, until the breach, claim or lien has been satisfactorily remedied or adjusted by the Company.

E. Company shall not be entitled to any compensation for any Services or work not actually performed or for any lost profits as a result of any abandonment or suspension of any Services or other work by the City.

ARTICLE IV

TIME FOR PERFORMANCE

A. Company shall perform all Services and any other work as provided for under this Agreement in a proper, efficient and professional manner. Subject to the terms and provisions of this Agreement, both parties have agreed to the provisions of this Agreement in anticipation of the orderly and continuous progress of the Services through completion of the Scope of Services specified in Exhibit "A", attached hereto.

B. In the event Company's performance of this Agreement is delayed or interfered with by acts of the City or others, Company may request an extension of time for the performance of same as hereinafter provided, but shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.

C. No allowance of any extension of time, for any cause whatsoever, shall be claimed by or made to the Company, unless Company shall have made written request upon City for such extension within forty-eight (48) hours after the cause for such extension occurred, and unless City and Company have agreed in writing upon the allowance of additional time to be made.

ARTICLE V

DOCUMENTS

A. All instruments of service (including all plans, specifications, drawings, reports, information, designs, documents, computations, computer programs, estimates, surveys, other data or work items, etc., in whatever form or format (whether electronic or otherwise)) prepared by or for Company under or in connection with this Agreement shall be submitted for approval of the City. All instruments of service shall be professionally sealed as may be required by law or by City.

B. All such instruments of service, together with necessary supporting documents, shall be delivered to City, and shall be, belong to, and remain the sole property of the City for the City's exclusive reuse at any time, and the City shall have unlimited rights, for the benefit of City, in all instruments of service, including the right to use same on any other work of City without additional cost to City. The City shall have the right to use such instruments of service for the purpose of completing the project for which the instruments of service were prepared or for such other purposes as the City may deem appropriate; provided, however, that should the City use the same for a purpose not in connection with the project, the City does so at its own risk.

C. Company agrees to and does hereby grant and assign to City all intellectual property rights (whether copyright or otherwise) in and to all such instruments of service in which Company may have a copyright or other intellectual property interest, and to all designs as to which Company may assert any rights or establish any claim under patent, copyright, or other intellectual property laws. Company, after completion of the Services and final payment, agrees to furnish the originals of all such instruments of service to the City (or, if this Agreement is terminated or the project for

which the Services are being provided is abandoned prior to such completion, Company shall provide the originals of all such instruments of service (whether finished or unfinished) to the City upon such termination or abandonment and the payment of any amounts then due the Company pursuant to this Agreement).

D. All documents or other instruments of service supplied by or on behalf of Company to City as provided herein shall be in Microsoft Word 2003 or compatible with Microsoft Word 2003.

ARTICLE VI

TERMINATION

A. City may suspend or terminate this Agreement at any time and for any reason (or for no reason), in its sole discretion, by giving written notice to the Company. In the event of such suspension or termination by City, Company shall have no recourse against City, except for payment for the Services of Company, in accordance with the terms of this Agreement, reasonably determined by the City to have been properly performed hereunder prior to the suspension or termination and for which Company has not been paid. Such payment will be due upon delivery of all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items, or any other instruments of service, in whatever form or format, prepared by, for, or on behalf of Company in connection with this Agreement, to City.

B. Either City or Company may suspend or terminate this Agreement because of a breach of this Agreement by the other party, such suspension or termination to be effective ten (10) days after receipt by the breaching party of a written notice specifying such breach, unless the breaching party corrects such breach or presents a mutually agreeable plan to cure such breach

within such time. In the event of such suspension or termination, payment to the Company, in accordance with the terms of this Agreement, will be made on the basis of Services reasonably determined by City to be satisfactorily performed prior to the date of suspension or termination. Such payment will be due upon delivery of all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items, or any other instruments of service, in whatever form or format, prepared by, for, or on behalf of Company in connection with this Agreement, to City.

In the event of such termination, City may proceed to complete the Services in any manner deemed proper by City, either by the use of its own forces or by resubmitting to others.

In the event of such termination, City may, without terminating this Agreement or taking over the Services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of the Company.

C. Should the City require a modification of this Agreement, and in the event City and Company fail to agree upon such modification, either City or Company shall have the option in their respective sole discretion of terminating this Agreement. In the event of such termination, payment to Company shall be made by the City in accordance with the terms of this Agreement, for the Services mutually agreed upon by the City and the Company to be properly performed by the Company prior to such termination date. Such payment will be due upon delivery of all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items, or any other instruments of service, in whatever form or format, prepared by, for, or on behalf of Company in connection with this Agreement, to City.

D. In the event of termination of this Agreement for cause or breach of this Agreement, Company shall promptly deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items, or any other instruments of service, in whatever form or format, prepared by, for, or on behalf of Company in connection with this Agreement, to City.

ARTICLE VII

INSURANCE

A. In connection with this Agreement, Company shall provide and maintain the minimum insurance coverages set forth below:

1. Company shall provide and maintain Workers Compensation at statutory limits, including Employers Liability coverage a minimum limits of \$500,000 each-occurrence each accident/\$500,000 by disease each-occurrence/\$500,000 by disease aggregate.

2. Company shall provide and maintain in full force and effect during the time of this Agreement, commercial automobile liability insurance (including, but not limited to, insurance covering the operation of owned, non-owned, and hired automobiles, trucks and other vehicles) protecting Company and City as an additional Insured at minimum combined single limits of \$1,000,000 per occurrence for bodily injury and property damage.

3. Company shall provide Commercial General Liability Insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate) and contractual liability. Coverage for

products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each- project aggregate limit of insurance.

4. Company shall also provide and maintain Professional Liability coverage at minimum limits of \$2,000,000.00 covering claims resulting from engineering errors and omissions. Such insurance shall be kept in effect for at least four (4) years after the completion of the Services and this Agreement. If Company fails to maintain the insurance covered during that time, City may pay the premiums to keep the insurance in effect and recover the cost from the Company. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Agreement (or earlier) must be maintained during the full term of this Agreement and for the four year period thereafter.

B. With reference to the foregoing insurance, Company shall specifically endorse applicable insurance policies as follows:

1. The City of Sherman, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.

2. All liability policies with the exception of professional liability shall contain no cross liability exclusions or insured versus insured restrictions.

3. A waiver of subrogation in favor of the City of Sherman, Texas shall be contained in the Workers Compensation and all liability policies.

4. All insurance policies shall be endorsed to the effect that the City of Sherman, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.

5. All insurance policies, which name the City of Sherman, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

6. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

7. Company may maintain reasonable and customary deductibles, subject to approval by the City of Sherman, Texas

8. Insurance must be purchased from insurers that are financially acceptable to the City of Sherman, Texas.

C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to the City simultaneously with the execution of this Agreement, and shall contain provisions representing and warranting the following:

1. Set forth all endorsements and insurance coverages according to requirements and instructions contained herein.

2. Shall specifically set forth the notice-of-cancellation or termination provisions to the City of Sherman, Texas,

3. Upon request, Company shall furnish the City of Sherman, Texas with certified copies of all insurance policies.

D. City reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by City.

ARTICLE VIII

COMPANY'S INDEMNIFICATION OBLIGATION

Company covenants and agrees to **FULLY INDEMNIFY AND HOLD HARMLESS** the City of Sherman, Texas and the elected officials, the officers, employees, representatives, and volunteers of the City of Sherman, Texas, individually or collectively, in both their official and private capacities (the City of Sherman, Texas, and the elected officials, the officers, employees, representatives, and volunteers of the City of Sherman, Texas each being a "Sherman Person" and collectively the "Sherman Persons"), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability and suits, of any kind and nature whatsoever, made upon or incurred by any Sherman Person, whether directly or indirectly, (collectively, the "Claims"), that arise out of, result from, or relate to an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the Company or the Company's agent, consultant under contract, or another entity over which the Company exercises control (such agent, consultant under contract, or another entity being "Company Persons"). **SUCH INDEMNITY AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE CLAIMS FOUND TO HAVE BEEN CAUSED IN PART BY THE NEGLIGENCE OF A SHERMAN PERSON. However**

when Claims arise out of the co-negligence of a Sherman Person and the Company or any Company Persons, Company's liability under this clause shall be reduced by that portion of the total amount of the Claims equal to the Sherman Person or Persons' proportionate share of the negligence that caused the loss attributable to such negligence. Likewise, Company's liability for Sherman Person's defense costs and attorneys' fees shall be reduced by that portion of the defense costs and attorneys' fees equal to Sherman Person or Persons' proportionate share of the negligence that caused the loss attributable to such negligence.

Company shall promptly advise the City in writing of any claim or demand against any Sherman Person or Company or Company Person related to or arising out of Company's activities under this Agreement. The Sherman Persons shall have the right, at the Sherman Persons' option and at own expense, to participate in such defense without relieving Company of any of its obligations hereunder. The provisions of any indemnity, and hold harmless obligation set forth in this Agreement shall survive the termination or expiration of this Agreement.

ARTICLE IX

COMPANY INDEMNIFICATION FOR EMPLOYEES

Company agrees that it is an independent contractor and not an agent of the City, and that Company is subject, as an employer, to all applicable unemployment compensation statutes, laws, rules, and regulations, so as to relieve City of any responsibility or liability from treating Company's employees as employees of City for the purpose of keeping records, making reports or payments of unemployment compensation taxes or contributions. WITHOUT LIMITING THE INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN ARTICLE VIII AND ANY OTHER INDEMNITY, AND HOLD HARMLESS PROVISION INCLUDED IN THIS AGREEMENT, COMPANY FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY OF SHERMAN, TEXAS AND ALL OTHER SHERMAN PERSONS (AS DEFINED IN ARTICLE VIII) FROM AND AGAINST AND REIMBURSE THE SAME FOR ANY CLAIMS, COSTS, LIENS, HARM, DAMAGES, LOSSES, FEES, PROCEEDINGS, ACTIONS, CAUSES OF ACTION, DEMANDS, PENALTIES, FINES, JUDGMENTS, SUITS, EXPENSES OR LIABILITY OF ANY KIND OR NATURE INCURRED UNDER OR RELATED TO SAID STATUTES OR IN CONNECTION WITH EMPLOYEES OF COMPANY.

ARTICLE X

ASSIGNMENT

Company shall not and has no power or authority to sell, assign, transfer, or otherwise convey (by any means, including by operation of law or otherwise), or subcontract, this Agreement or any right, duty, obligation or part thereof, without the prior written consent of City. Sale of

more than 50% ownership of Company shall be construed as an assignment, transfer, or other conveyance, and any such sale, assignment, transfer, or other conveyance, or subcontract, without the City's prior written consent shall be null and void *ab initio*.

ARTICLE XI

APPLICABLE LAWS; GOVERNING LAW; VENUE

Company shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and codes (including, without limitation, building and related codes), including but not limited to the Americans With Disabilities Act and Chapter 469 of the Texas Government Code (relating to elimination of architectural barriers), relating or applicable to the work and Services to be performed under this Agreement.

This Agreement is performable in Grayson County, State of Texas and shall be governed by the laws of the State of Texas; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. Venue on any suit or matter hereunder shall be exclusively in Grayson County, Texas.

ARTICLE XII

ADJUSTMENTS IN SERVICES

No claims for extra services, additional services or changes in the services will be made by Company without a written agreement with City prior to the performance of such services.

ARTICLE XIII

EXECUTION BECOMES EFFECTIVE

This Agreement will be effective upon the last of the representatives of the parties to execute this Agreement, as set forth below.

ARTICLE XIV

AGREEMENT AMENDMENTS

This Agreement contains the entire and integrated understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by duly authorized representatives of the parties, except as may be otherwise provided therein.

ARTICLE XV

GENDER AND NUMBER; HEADINGS

The use of any gender in this Agreement shall be applicable to all genders, and the use of singular number shall include the plural and conversely. Article and section headings are for convenience only and shall not be used in interpretation of this Agreement.

ARTICLE XVI

NOTICES AND AUTHORITY

A. The Company agrees to send all notices required under this Agreement to the City Manager of the City of Sherman at 220 W. Mulberry St., Sherman, TX 75090.

B. The City agrees to send all notices required under this Agreement to the Company at 4144 N. Central Expressway, Suite 1100, Dallas, Texas 75204.

C. For purposes of this Agreement, notices and all other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given when received. From time to time either party may designate another address within the 48 contiguous states of the United States for all purposes of this Agreement by giving the other party not less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

D. The undersigned officers and/or agents of each of the parties hereto are the properly authorized officials or representatives and have the necessary authority to execute this Agreement on behalf of each of the respective parties.

ARTICLE XVII

MISCELLANEOUS

A. No Third Party Benefits. This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

B. Rights and Remedies Cumulative; No Waiver; Survival of Remedies. 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 right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise. The failure by either party to exercise any right, power, or authority given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

C. Severability. The terms and provisions of this Agreement are severable, and if any term or provision is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable term or provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable term or provision herein, the parties agree to seek to negotiate the insertion of a term or provision as

similar in its terms to such illegal, invalid or unenforceable term or provision as may be possible, with the intent that such added term or provision is legal, valid and enforceable.

D. Release of Information. Company shall not divulge or release any information concerning the project or this Agreement to the public, including any the media representative, without City's prior written consent.

E. Force Majeure. Neither party is liable to the other for any damages for delay in performance caused by acts of God, strikes, lockouts, accidents, fire, casualty, labor trouble, failure of power, governmental authority, riots, insurrections, war, acts or threats of terrorism, or other events or reasons of a like nature which are beyond the control of the party obligated to perform and not avoidable by the diligence of that party ("Event of Force Majeure"); in such event, the party obligated to perform give the other party prompt notice of such delay and the performance of this Agreement shall be excused for the period of such delay. If such an event necessitates a change in the time required for performance of any act or services hereunder, subject to the other terms and provisions of this Agreement, the parties shall make an equitable adjustment of the schedule and price; provided, however, that the party obligated to perform shall continue to promptly perform all of its obligations under this Agreement while the parties are determining the nature and extent of any such adjustments.

F. Authorized Signatories. The undersigned officers and/or agents of the parties hereto are the properly authorized officials or representatives and have the necessary authority to execute this Agreement on behalf of each of the respective parties, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, parties have caused this Agreement to be executed in duplicate this 31st day of December 2018, with an original to each party.

COMPANY: BROCKETT · DAVIS · DRAKE, INC.

BY: 

NAME: ROBERT E. HILL
Address _____

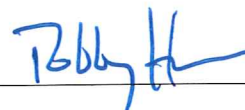
TITLE: President

ATTEST: BY: _____

NAME: _____

TITLE: _____

CITY: CITY OF SHERMAN

BY: 

NAME: Robby Hefton

TITLE: City Manager

ATTEST: BY: 

NAME: Linda Ashby

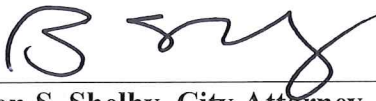
TITLE: City Clerk

APPROVAL RECOMMENDED:

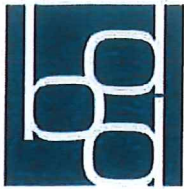


Clint Philpott, P.E. / Director of Engineering

APPROVED AS TO FORM:



Brandon S. Shelby, City Attorney



December 4, 2018

Mr. Clint Philpott, P.E.
Director of Engineering
City of Sherman
220 W. Mulberry Street
Sherman, TX 75090

Re: Civil Engineering/Survey Fee Proposal
Flanary Road and Progress Drive Extension/Improvements
Sherman, Texas

Dear Mr. Philpott:

Brockette/Davis/Drake, Inc. (BDD) is pleased to submit for your consideration the following proposal to provide civil engineering and surveying services for the above referenced project. Our understanding of the scope of the project is as follows:

- Flanary Road approximately 4,200 LF from FM 1417 to the extension of Progress Drive.
- Progress Drive approximately 2,400 LF from its westerly terminus to the extension of Flanary Road.
- Drainage Plan for the proposed roadway.

Our proposed scope of services is as follows:

PRELIMINARY ENGINEERING

1. Obtain as-built engineering plans from the City of Sherman.
2. Attend meetings with the City of Sherman (4 meetings estimated).

PRELIMINARY SURVEYING

1. Prepare an on the ground topographic survey for the proposed roadway. BDD will tie to the boundary of the tract.
 - Approx. 200-foot wide topographic survey utilizing the centerline (100 feet each side of centerline) of each roadway.
2. Separate instrument easements for right-of-way dedication. It is our understanding the Sherman Economic Development Corporation owns the property where the roadways are being constructed.
3. A boundary verification will be required to prepare a metes/bounds description and tying the topographic survey.

CONSTRUCTION DOCUMENTS

1. Paving Plan/Profile
 - Prepare a plan/profile for the proposed Progress Drive and Flanary Road.
 - Prepare the necessary construction details.
2. Drainage Plan
 - Prepare a drainage area map for the proposed roadway and the land area draining to the road.
 - Prepare plan/profile for the proposed storm sewer system.
 - Prepare the necessary construction details.
 - BDD will supplement the on the ground topographic information with aerial topography to prepare the drainage area map.

brockettedavisdrake, inc. • Dallas / Austin • Structural & Civil Engineering
4144 N. Central Expressway, Suite 1100, Dallas, Texas 75204
phone 214.824.3647 • fax 214.824.3373 • www.bddeng.com

Mr. Clint Philpott
City of Sherman
Re: Civil Engineering/Survey Fee Proposal
Flanary Road and Progress Drive Extension/Improvements
Sherman, Texas
December 4, 2018
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3. Bid Documents
 - Prepare quantity estimate for the contract documents/bidding.
4. Erosion Control Plan
 - An erosion control plan indicating a minimal set of controls shall be included in the construction plans. This plan alone does not meet the requirements of a Storm Water Pollution Prevention Plan (SWPPP). BDD will not prepare the Storm Water Pollution Prevention Plan (SWPPP) Manual. It will be the owner's/contractor's responsibility to prepare the SWPPP, Notice of Intent (NOI) and the Notice of Termination (NOT). BDD will coordinate with the client's SWPPP consultant in providing them with the necessary information from the plans to complete the SWPPP.

POST DESIGN SERVICES

1. Answer contractor questions.
2. Review contractor product submittals during construction as requested.
3. Prepare client requested "Record Drawings" based on contractor markups. The "Record Drawings" will not be sealed and signed by a Professional Engineer employed by Brockette/Davis/Drake unless all construction proposed in the plans is witnessed and observed by a representative of BDD under the direct supervision of the Professional Engineer.
4. Provide client requested services after city approval of the construction documents.
5. Perform periodic site visits during construction (approximately 3 visits).*
6. Perform a final punch list site visit.*

* The engineering site visits will be for the purpose of observing the progress of the work. They will not be an inspection of the work. Construction inspection shall be provided by a testing agency selected by the owner.

Note: It is understood that the architect and/or owner will be responsible for the overall construction administration of this project and that Brockette/Davis/Drake will provide limited post design services as identified herein. Requested site visits during construction will be on an hourly basis as directed (per the attached rate schedule).

COMPENSATION: BDD proposes to provide the herein-defined services for the following fees. Invoices will be submitted monthly for work completed to date and shall be due upon receipt.

<u>Description</u>	<u>Fee</u>
Preliminary Engineering	\$ 5,500.00
Preliminary Surveying	
Topographic Survey	
Flanary Road	\$ 15,800.00
Progress Drive	\$ 9,500.00
Separate Instrument Easements	\$ 5,300.00
Construction Documents	
Flanary Road	\$ 70,000.00
Progress Drive	\$ 45,000.00
Post Design Services (hourly estimated fee)	\$ 5,500.00
Total Estimated Fee (without change in scope)	\$ 156,600.00

REIMBURSABLE EXPENSES: Reimbursable expenses (printing, deliveries, mileage, long distance communications, records research, etc.) shall also be invoiced at our cost plus 10%. State and local

Mr. Clint Philpott
City of Sherman
Re: Civil Engineering/Survey Fee Proposal
Flanary Road and Progress Drive Extension/Improvements
Sherman, Texas
December 4, 2018
Page 3 of 5

sales tax at a rate of 8.25% will be invoiced for separate instrument easements without mark-up.

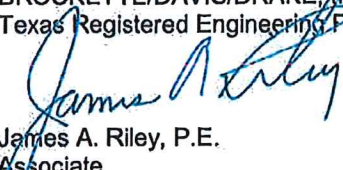
ADDITIONAL SERVICES: Compensation for authorized additional services, including additional site visits, shall be on an hourly basis in accordance with the enclosed rate schedule.

EXCLUSIONS: This proposal specifically excludes the following items as well as any work not considered to be within the scope of normal civil engineering and surveying services:

1. offsite improvements other than those listed in the scope of services
2. traffic control plans or traffic studies
3. detention/retention calculations or design
4. retaining or screen wall design
5. fire protection beyond normal fire hydrant installation
6. design of bracing or shoring for trench safety
7. franchise utility design and staking
8. public works inspection (if required)
9. construction management and/or supervision of the civil engineering work
10. ADA (Americans with Disabilities Act) and accessibility compliance and/or submittal to TDLR (Texas Department of Licensing and Regulation); architect to ensure site plan compliance with the ADA
11. specifications
12. Storm Water Pollution Prevention Plan (SWPPP), Notice of Intent (NOI) and Notice of Termination (NOT)
13. environmental assessments or environmental site investigations
14. geotechnical investigations
15. flood studies and/or FEMA submittals (CLOMR and LOMR)
16. Texas Commission on Environmental Quality (TCEQ) and/or Environmental Protection Agency (EPA) permitting
17. 404 permitting
18. boundary, land title, tree and as-built surveys except as noted for the topographic and separate instruments
19. lighting
20. landscaping/irrigation
21. construction staking
22. platting
23. wet utility design

The return of an executed copy of this letter agreement will serve as your acceptance and our authorization to commence work. Brackette/Davis/Drake, Inc. appreciates the opportunity to submit this proposal. Should you require further information concerning this proposal, please do not hesitate to call.

Sincerely,
BROCKETTE/DAVIS/DRAKE, INC.
Texas Registered Engineering Firm No. F-841


James A. Riley, P.E.
Associate

JAR/dh

Accepted: _____
Signature

Printed Name: _____

Title: _____

Name of Company: _____

Date: _____

Mr. Clint Philpott
City of Sherman
Re: Civil Engineering/Survey Fee Proposal
Flanary Road and Progress Drive Extension/Improvements
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**BROCKETTE/DAVIS/DRAKE, INC.
RATE SCHEDULE
2018**

PRINCIPAL	\$ 300.00/HR
ASSOCIATE	\$ 225.00/HR
SENIOR PROJECT MANAGER	\$ 200.00/HR
PROJECT MANAGER	\$ 175.00/HR
PROJECT ENGINEER	\$ 150.00/HR
DESIGN ENGINEER	\$ 125.00/HR
SENIOR TECHNICIAN	\$ 150.00/HR
TECHNICIAN	\$ 125.00/HR
CLERICAL	\$ 70.00/HR
3 MAN SURVEY CREW	\$ 190.00/HR
2 MAN SURVEY CREW	\$ 180.00/HR
1 MAN SURVEY CREW	\$ 110.00/HR
GPS/RTK SYSTEM	\$ 70.00/HR

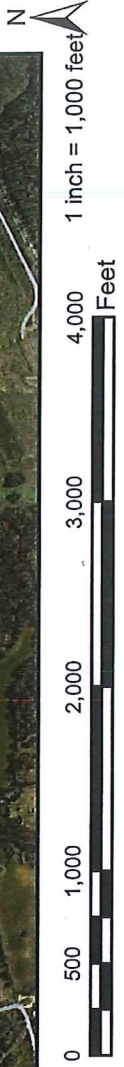
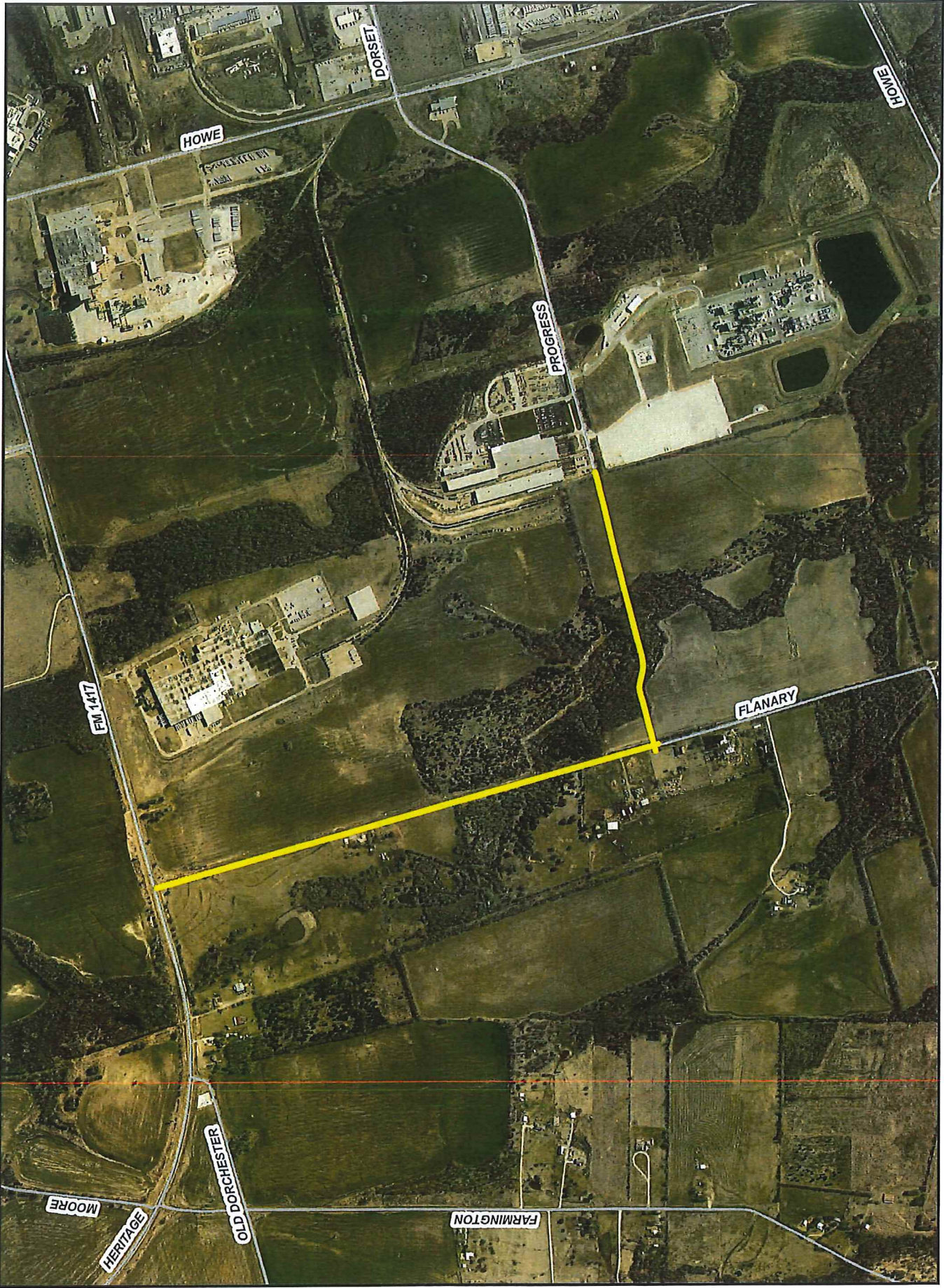
RATES EFFECTIVE THROUGH DECEMBER 31, 2018

Mr. Clint Philpott
City of Sherman
Re: Civil Engineering/Survey Fee Proposal
Flanary Road and Progress Drive Extension/Improvements
Sherman, Texas
December 4, 2018
Page 5 of 5

DESIGN SCHEDULE (week = 5 working days)

Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
Surveying			6 weeks																				
DD (Prel. Horiz/Vertical)						3 weeks																	
City Review								2 weeks															
CD												8 weeks											
City Review																		2 weeks					
Bidding																					3 weeks		

Flanary Road and Progress Drive Expansion/Improvements



AMENDMENT NO. 1

TO THE PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES BETWEEN
THE CITY OF SHERMAN (OWNER) AND BROCKETTE/DAVIS/DRAKE, INC. (ENGINEER)
FOR THE FLANARY ROAD AND PROGRESS DRIVE EXPANSION/IMPROVEMENTS PROJECT

Dated December 17, 2018 ("Original Agreement")

This Amendment No. 1 serves to increase the contract fees under the Original Agreement based on the following additional work and adjustments to project scope:

- Splitting the construction of the project into two separate projects and full paving section and drainage modifications.
- Flanary Road
 1. Break into a separate project.
 2. Modify construction documents to provide design plans (paving, drainage) for entire paving section design.
 3. Modify quantities and bid package.
- Progress Drive
 1. Break into a separate project.
 2. Modify construction documents to provide design plans (paving, drainage) for entire paving section, in lieu of half paving section.
 3. Modify quantities and bid package.
- Separate Instrument Easement/ROW
 1. Prepare separate instrument document for the drainage easements adjacent to the storm sewer crossings.
 2. Prepare right-of-way dedication documents to construct the roadway.

The contract amount under the Original Agreement shall be increased by a fee not to exceed the following amounts:

Basic Services

Design Phase and Plan Preparation

*Flanary Road	\$ 23,000
*Progress Drive	\$ 15,000
*Separate Instrument Easement/ROW	<u>\$ 9,900</u>

TOTAL FEE INCREASE (NOT TO EXCEED): \$ 47,900

[Rest of page left intentionally blank]

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 2022 rate schedule.

Basic Services

Preliminary Engineering	\$ 5,500
Preliminary Surveying (Topographic Survey)	
*Flanary Road	\$ 15,800
*Progress Drive	\$ 9,500
Separate Instrument Easements	\$ 5,300
Construction Documents	
*Flanary Road	\$ 93,000
*Progress Drive	\$ 60,000
Post Design Services (Hourly Estimated Fee)	\$ <u>5,500</u>

CONTRACT TOTAL: **\$ 194,600**

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 8TH day of FEBRUARY, 2023.

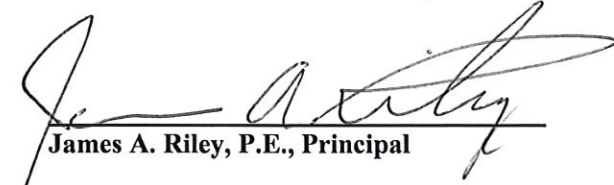
OWNER:
CITY OF SHERMAN, TEXAS


Wayne E. Lee, P.E., Director of Engineering

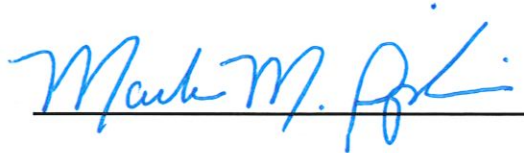
ATTEST:


Amber Doar

ENGINEER:
BROCKETTE/DAVIS/DRAKE, INC.


James A. Riley, P.E., Principal

ATTEST:


Mark M. Foli

CORPORATE ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF Dallas §

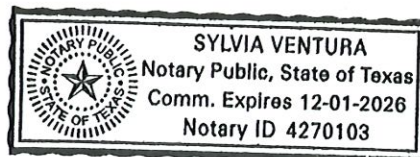
BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared James A. Riley, P.E. of Brockette/Davis/Drake, Inc. known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Brockette/Davis/Drake, Inc., a corporation, that 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 February, A.D. 2023.

Sylvia Ventura
Notary Public In and For Dallas County, Texas

My Commission Expires:

12-01-2026



BROCKETTE/DAVIS/DRAKE, INC.
RATE SCHEDULE
2022

SENIOR PRINCIPAL	\$ 325.00/HR
PRINCIPAL	\$ 300.00/HR
ASSOCIATE PRINCIPAL	\$ 250.00/HR
ASSOCIATE	\$ 225.00/HR
SENIOR PROJECT MANAGER	\$ 200.00/HR
PROJECT MANAGER	\$ 175.00/HR
PROJECT ENGINEER	\$ 150.00/HR
DESIGN ENGINEER	\$ 125.00/HR
SENIOR TECHNICIAN	\$ 150.00/HR
TECHNICIAN	\$ 125.00/HR
CLERICAL	\$ 70.00/HR

RATES EFFECTIVE THROUGH DECEMBER 31, 2022





City Council Regular Meeting

Agenda Item No. D.7.

Meeting Date: 2/3/2025

Prepared By: Nate Strauch, Community and Support Services Manager

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** RESOLUTION NO. 7476**

Awarding a Bid to and Execution of a Contract With All Pro Irrigation LLC for the Kidd-Key Water Fountain Remodel Project

Issue:

To consider awarding a bid to and authorizing execution of a contract with All Pro Irrigation, LLC, of Denison, Texas, based on an invitation to bid for the Kidd-Key Water Fountain Remodel project.

Background:

The Kidd-Key Conservatory water fountain has been in disrepair for several years. At the October 7, 2024 meeting, the City Council approved a request to advertise for the solicitation of public bids for the remodeling of the Kidd-Key Conservatory water fountain. On November 21, 2024, City staff received three (3) bid submittals.

The lowest, responsive bid was submitted by All Pro Irrigation LLC of Denison, Texas, with a price of \$63,000.00.

Origination:

Management Services

Financial Consideration:

Project to be funded with City funds from the Capital Improvement Program.

Staff Recommendation:

City staff recommends awarding a bid to and authorizing the City Manager to execute a contract with All Pro Irrigation, LLC of Denison, Texas.

Alternatives:

As may be directed by the City Council.

Attachments:

1. Resolution No. 7476
2. Construction Agreement_signed
3. Exhibit A - Kidd Key Water Fountain ITB - Final
4. Exhibit B_Bid Submittal_All Pro Irrigation LLC
5. Exhibit C_City's Insurance Requirements
6. Exhibit D_Affidavit of No Prohibited Interest
7. Exhibit E_COI_signed
8. Bid Tabulation - Kidd-Key Water Fountain Remodel ITB

RESOLUTION NO. 7476

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AWARDING A BID TO AND AUTHORIZING EXECUTION OF A CONTRACT WITH ALL PRO IRRIGATION, LLC FOR THE KIDD-KEY FOUNTAIN REMODEL 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 All Pro Irrigation, LLC of Denison, Texas, is hereby awarded the bid for the Kidd-Key Fountain Remodel Project in the amount of Sixty-Three Thousand Dollars and No Cents (\$63,000.00); and that the City Manager be and is hereby authorized and directed, subject to all contract documents being properly completed and approved as to form and content by the City Attorney, to execute a contract with All Pro Irrigation, LLC for the Kidd-Key Fountain Remodel Project, in accordance with all contract documents attached hereto and made a part hereof for all purposes. Funds for this purchase are being committed out of the City of Sherman's fiscal year 2024-2025 budget.

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

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, on this the 3rd day of February 2025.

CITY OF SHERMAN, TEXAS

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

BY: _____
SHAWN TEAMANN, MAYOR

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

BY: _____
RYAN PITTMAN, CITY ATTORNEY

**CONSTRUCTION AGREEMENT BETWEEN THE CITY OF SHERMAN, TEXAS
AND All Pro Irrigation, LLC**

The **City of SHERMAN, Texas**, a home-rule municipality (“SHERMAN”), and All Pro Irrigation, LLC, a Pool Contractor (“Contractor”), enter into this Construction Agreement (“Agreement”) for **Kidd-Key Fountain Remodel Project**. SHERMAN and Contractor are sometimes referred to collectively as the “parties” or individually as a “party.”

WHEREAS, SHERMAN desires to engage Contractor to provide services in connection with **Kidd-Key Fountain Remodel Project** under the terms and conditions of this Agreement (“Project”);

WHEREAS, SHERMAN issued a Request for Proposals, attached hereto as Exhibit A and incorporated herein for all purposes (“Bid Request”), seeking competitively sealed bids for **Kidd-Key Fountain Remodel Project**; and

WHEREAS, Contractor timely submitted a sealed response to the Bid Request, attached hereto as Exhibit B and incorporated herein for all purposes (“Submittal”), seeking to provide such services for City; and

WHEREAS, based on Contractor’s representations in response to the Bid Request, including those representations set forth in the Submittal, City has selected Contractor to provide the services sought in the Bid Request under the terms and conditions of this Agreement (“Project”).

WHEREAS, Contractor has agreed to provide the services for the Project.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Scope of Services.

Contractor shall provide the services and deliverables that are set forth and described in the Agreement Documents (hereinafter defined) and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide the services and deliverables as specified by the terms and conditions of the Agreement Documents (collectively, “Services”). The parties understand and agree that deviations or modifications to the scope of Services described in the Agreement Documents, in the form of one or more written change orders, may be authorized from time to time by SHERMAN (“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 SHERMAN City Council’s

authorization for the SHERMAN City Manager to execute said Change Order. Contractor agrees that SHERMAN's project managers, superintendents and/or inspectors are not authorized to issue verbal or written Change Orders.

2. Term.

Contractor shall mobilize on-site and commence performance of the Project (the "Mobilization Date") within seven (7) calendar days of the Preconstruction Meeting date, to be determined by SHERMAN after the Effective Date of this Agreement (hereinafter defined), and shall complete the Services within fifty-six (56) calendar days of the Mobilization Date. All obligations relating to time set forth herein are material and are of the essence of this Agreement. This Agreement shall remain in full force and effect until completion of the Project to SHERMAN's satisfaction. The obligations listed hereunder shall be fulfilled upon the completion of the Project to SHERMAN's satisfaction.

3. Compensation.

In exchange for the Services as described in the Agreement Documents, SHERMAN agrees to pay the Contractor in an amount not to exceed Sixty Three Thousand Dollars (\$ 63,000) for the completion of the Project contemplated by and in accordance with the Agreement Documents as follows:

On a monthly basis, Contractor shall submit a written invoice to SHERMAN for all Services completed in the immediately preceding month. The applicable portion of Contractor's Fee as reflected in each such invoice shall be due and payable by SHERMAN within thirty (30) days after SHERMAN finally accepts the Services described in each such invoice in accordance with the Agreement Documents and SHERMAN's ordinances, rules, regulations and requirements, as they exist, may be amended or in the future arising, except that SHERMAN is entitled to retain an amount equal to five percent (5%) of the Contractor's Fee, which shall be due and payable within thirty (30) days after Contractor completes the Project and SHERMAN finally accepts the same. Notwithstanding anything to the contrary herein, SHERMAN shall not be required to pay any invoice submitted by Contractor if Contractor is in breach of this Agreement.

Contractor and SHERMAN acknowledge and agree that the continuation of this Agreement after the close of any given fiscal year of SHERMAN, 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 SHERMAN 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.

4. Agreement Documents.

The “Agreement Documents,” as that term is used herein, shall mean and include the following documents, and this Agreement expressly incorporates the same herein by reference for all purposes:

- a. This Agreement;
- b. The Bid Request, attached hereto as Exhibit A;
- c. The Submittal, attached hereto as Exhibit B;
- d. SHERMAN’s Insurance Requirements, attached hereto as Exhibit C;
- d. City of SHERMAN’s Standard Construction Details (which is on file in with the City Engineering Department);
- e. The Standard Specifications for Public Works Construction (North Central Texas Third Edition 1998) as amended and supplemented by the City of SHERMAN’s Special Provisions to said Standard Specification, as amended (which is on file in the City Engineering Department);
- f. Affidavit of No Prohibited Interested, attached hereto as Exhibit D;
- g. Conflict of Interest Questionnaire, attached hereto as Exhibit E;

This Agreement shall incorporate the terms of the Agreement Documents in their entirety. To the extent that Exhibit A, Exhibit B, Exhibit C, Exhibit D or Exhibit E are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of Exhibit A, Exhibit C, Exhibit D, Exhibit E and Exhibit B shall prevail in that order.

5. Liquidated Damages.

Contractor acknowledges and agrees that if Contractor fails to timely perform or complete any of the Services required under the terms of the Agreement Documents, SHERMAN will sustain actual damages as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the parties agree that if Contractor fails to timely perform or complete any of the Services required under the terms of the Agreement Documents, then Contractor shall pay SHERMAN the sum of fifty and 00/100 dollars (\$50.00) for each calendar day in which the Services are not completed, not as a penalty but as liquidated damages for the damages that would be suffered by SHERMAN as a result of delay for each and every calendar day that the Contractor shall have failed to have completed the Services as required herein.

6. Payment, Performance and Maintenance Bonds.

Prior to commencing work under this Agreement, Contractor shall furnish to SHERMAN a payment bond and a performance bond, each of which shall be in an amount equal to one hundred percent (100%) of the total cost of the Project to ensure SHERMAN is indemnified: (i) against any claims for nonpayment of any part of the construction or work performed in connection with the Project; and (ii) for the completion of the Project in accordance with this Agreement. Prior to SHERMAN's final acceptance of the Project, Contractor shall furnish to SHERMAN a two (2) year maintenance bond in an amount equal to one hundred percent (100%) of the total cost of the Project to ensure the repair or remedy of any maintenance issues SHERMAN may have regarding the Project after SHERMAN finally accepts the same.

The bonds required by SHERMAN pursuant to this Section 5 must be: (i) good and sufficient bonds; (ii) in the amounts prescribed herein; and (iii) with a reputable and solvent corporate surety in favor of SHERMAN.

7. Entire Agreement.

The Agreement Documents contain all representations, understandings, contracts and agreements between the parties regarding the subject matter of this Agreement. The Agreement Documents supersede all oral or written previous and contemporaneous agreements, writings, understandings, representations or contracts between the parties regarding the subject matter of this Agreement. This Agreement in no way modifies or supersedes any document executed by the parties prior to the Effective Date of this Agreement which does not concern the subject matter of this Agreement. No amendment to the Agreement Documents shall be made except on the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement Documents except as specifically provided for in such amendment.

8. Required Insurance.

Contractor shall not start work under this Agreement until Contractor has obtained, at Contractor's expense, all of the insurance specified in, and required by, the Agreement Documents. Contractor shall procure and keep in full force and effect the types and amounts of insurance specified in SHERMAN's Insurance Requirements, attached hereto as Exhibit C and incorporated herein for all purposes, for and during all aspects and phases of Contractor's work throughout the term of this Agreement at no expense to SHERMAN. Contractor also shall comply with all other requirements set forth in Exhibit C.

9. No Prohibited Interest; Vendor Disclosure.

Contractor acknowledges and agrees that it is aware of, and will abide by, the no prohibited interest requirement of the SHERMAN City Charter. Contractor shall execute and deliver to SHERMAN the Affidavit of No Prohibited Interest, attached hereto as Exhibit D and incorporated herein for all purposes, no later than the Effective Date of this Agreement (hereinafter defined). 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. In this connection, Contractor shall execute and deliver to SHERMAN the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit E and incorporated herein for all purposes, no later than the Effective Date of this Agreement.

10. Indemnity.

CONTRACTOR HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SHERMAN AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS “SHERMAN” 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 SHERMAN (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 SHERMAN BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN 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, SHERMAN SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION

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

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

11. 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. SHERMAN assumes no such responsibility or liability. SHERMAN shall have no such responsibility or liability to either Contractor or its officers, agents, representatives, employees, subcontractors, licensees, invitees or other persons.
12. Compliance with Laws; Standard of Care.
Contractor shall comply with all federal, state and local laws, statutes, ordinances, regulations and policies, as they exist, may be amended or in the future arising, applicable to Contractor and its work. Contractor shall ensure that its officers, agents, representatives, employees, subcontractors, licensees, invitees and other parties performing services for or on behalf of Contractor under this Agreement comply with all applicable laws, statutes, ordinances, regulations and policies. If Contractor observes or is notified that the work under this Agreement is at variance with applicable laws, statutes, ordinances, regulations and policies, Contractor shall immediately notify SHERMAN in writing. Contractor shall perform the Services in accordance with the prevailing standard of care by exercising the skill and care ordinarily utilized by professionals performing the same or similar services under the same or similar circumstances in the State of Texas.
13. Termination.
SHERMAN is entitled to terminate this Agreement at any time for any reason or for no reason by giving Contractor at least thirty (30) days' prior written notice of the termination date.

SHERMAN is entitled to terminate this Agreement immediately on breach of any term or provision of the Agreement 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 Agreement Documents or fail to diligently perform the Services in an efficient, timely and careful manner and in strict accordance with the provisions of the Agreement Documents, then SHERMAN shall have the right to terminate this Agreement and complete the work in any manner it deems desirable, including engaging the services of other parties, if Contractor does not cure any such default after five (5) days written notice thereof. Any such act by SHERMAN shall not be deemed a waiver of any other right or remedy of SHERMAN.

If after exercising any remedy provided herein, the cost to SHERMAN of the performance of the balance of the work on the Project is in excess of that part of the Contractor's Fee which has not yet been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse SHERMAN for such excess, without waiver of any other right or remedy of SHERMAN.

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

14. 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 their signatures hereto, warrant and represent that they have the authority to bind their respective parties as duly authorized representatives thereof.

15. Assignment.

Contractor agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of SHERMAN. Contractor 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 Contractor of its full obligations to SHERMAN as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Contractor, and there shall be no third party billing.

16. No Waiver of Immunity.

The parties acknowledge and agree that, in executing and performing this Agreement, SHERMAN 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.

17. 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 included in this Agreement.
18. Consideration.
This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
19. Attorneys' Fees.
If either party files any action or brings any proceeding against the other arising from this Agreement, then as between SHERMAN 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.
20. 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 Collin County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Collin County, Texas.
21. Binding Effect.
This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.
22. No 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.
23. 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.
24. Indemnity.
The parties agree that the indemnity provision set forth in Section 10 herein is conspicuous and the parties have read and understood the same.

25. Notice.

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 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 to any courier service that provides a return receipt showing the date of actual delivery of the same to the addressee thereof. Notice given in accordance herewith shall be effective on receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to: All Pro Irrigation, LLC
Attn: Otha B Maines III
4431 W. Crawford
Denison, TX 75020
Telephone: 903-327-8830
Email: opiemaimes@gmail.com

If to SHERMAN, to: City of SHERMAN
Attn: Robby Hefton, City Manager
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7201
Facsimile: (903) 892-7355
Email: robbyh@cityofsherman.com

With a copy to:

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

26. Representations.

Each party states that they have carefully read this Agreement, know the contents hereof, have consulted with an attorney of their choice regarding the meaning and effect hereof and is signing the same solely of their own judgment.

27. Independent Contractor.

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of SHERMAN; 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 SHERMAN 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 SHERMAN and Contractor.

28. Incorporation of Recitals.

The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of SHERMAN and the authorized representative of Contractor.

29. Reference to Contractor.

When referring to “Contractor” herein, this Agreement shall refer to and be binding upon Contractor, 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 Contractor is legally responsible.

30. Reference to SHERMAN.

When referring to “SHERMAN” herein, this Agreement shall refer to and be binding upon SHERMAN, its Council Members, officers, agents, representatives, employees and/or any other authorized third parties for whom SHERMAN is legally responsible.

31. Certifications Required by Texas Law.

In accordance with Chapter 2270 of the Texas Government Code (to the extent applicable), Contractor hereby certifies that Contractor 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), Contractor hereby certifies that Contractor 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), Contractor hereby certifies that Contractor 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 in this Section have the meanings ascribed to them in the referenced statutes if defined therein.

32. Debarment/Suspension.

SHERMAN 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. SHERMAN, Contractor and Contractor’s subcontractors shall comply with federal and state regulations regarding debarment and suspension. Contractor shall include

a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.

33. Restrictions on Lobbying.

SHERMAN and Contractor are prohibited from using funds awarded under the Agreement for lobbying purposes. Contractor shall include a statement of compliance with this provision in applicable procurement solicitations and third-party agreements for work on the Project.

34. Miscellaneous Drafting Provisions.

This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

35. 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.

[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 sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager
Date: _____

ATTEST:

APPROVED AS TO FORM:

Linda Ashby, City Clerk

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

a _____

By: [Signature]

Printed Name: Otha B Maines III

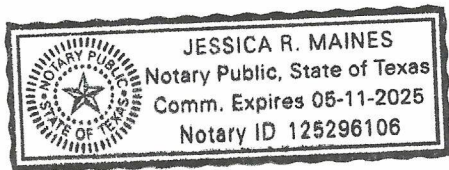
Title: Owner

Date: 1/20/25

STATE OF TEXAS §
 §
COUNTY OF Grayson §

BEFORE ME, the undersigned authority, on this day personally appeared Otha B Maines III known to me to be one of the persons whose names are subscribed to the foregoing instrument; that he acknowledged to me he is the Owner and duly authorized representative for All Pro Irrigation, LLC and that he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 20th day of January, 2025.



[Signature]
Notary Public in and for the State of Texas
My Commission Expires: May 11, 2025

Exhibit A
Invitation to Bid



City of Sherman
PO Box 1106
Sherman, TX 75091-1106

Invitation to Bid

For

KIDD-KEY WATER FOUNTAIN REMODEL
ITB No. 2025-04

Publication Dates: **Sunday October 27, 2024**
 Sunday November 3, 2024

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CITY OF SHERMAN, TEXAS

FINANCE DEPARTMENT

INVITATION TO BID - BID NO. 2025-04; Kidd-Key Water Fountain Remodel

The enclosed **INVITATION TO BID** (ITB) and accompanying **SPECIFICATIONS** are for your convenience in bidding the enclosed referenced **Kidd-Key Water Fountain Remodel** for the City of Sherman.

Questions may be addressed to the Finance Department at the address listed below. The bids will be opened at **2:00 p.m. on Thursday, November 14, 2024**, at the following address:

**City of Sherman – Finance Department
Municipal Building
405 N. Rusk Street
Sherman, TX
903-892-7215
craigl@cityofsherman.com**

Bids may be submitted by mail to the following address:

**City of Sherman
Finance Dept. – ITB for Kidd-Key Water Fountain Remodel- No. 2025-04**

**P.O. Box 1106
Sherman, TX 75091-1106**

OR

Electronically at www.publicpurchase.com

OR

By delivery at the Municipal Building address listed above.

NOTICE TO BIDDERS

Bids will be received by the City of Sherman, Sherman, Texas, at the Finance Department, Attention: Craig Long, Sherman Municipal Building, 405 N. Rusk, Sherman, Texas 75091 until the hour **2:00 PM on the 14th day of November 2024**, at which time bids duly delivered and submitted will be considered for supplying the following:

BID NO. 2025-04 – Kidd-Key Water Fountain Remodel

The award is intended to be included on the agenda of a regularly scheduled meeting of the City Council at the following address:

**City Council Chambers
City Hall
220 W. Mulberry
Sherman, TX**

Each bid delivered to the City shall be sealed and clearly marked “Kidd-Key Water Fountain Remodel – Bid # 2025-04” on the exterior of the bid. Electronic submittals may only be made through Public Purchase at <https://www.publicpurchase.com>. No email or faxed bids will be accepted. Each bid shall be **manually signed and dated by a person having the authority to bind the firm in a contract. Bids that are not signed and dated will be rejected.**

Please note that all bids **must be received at the designated location or through Public Purchase by the deadline shown.** Bids received after the deadline will not be considered for the award of the contract, and shall be considered void and unacceptable. The Opening is scheduled for **2:00 p.m., Thursday, November 14, 2024**, at which time the sealed bids will be opened.

Any bid received after stated closing time will be returned unopened. If bids are sent by mail to the Finance Department, the bidder shall be responsible for actual delivery of the bid before the advertised date and hour for opening of bids. If the mail is delayed by the postal service, courier service, or an ISP (Internet Service Provider), beyond the date and hour set for the bid opening, bids thus delayed will not be considered.

The City of Sherman will receive sealed bids for: **Kidd-Key Water Fountain Remodel.**

Bidders should carefully examine all terms, conditions, specifications and related documents. Should a bidder find discrepancies in or omissions from the specifications or related documents, or should there be doubt as to their meaning, the City of Sherman Finance Department should be notified immediately for clarification prior to submitting the bid. In the event of any conflict between the terms and conditions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City of Sherman’s interpretation shall govern.

Information concerning the bid specifications or bid process/procedures may be submitted in writing to Craig Long, Budget Analyst at craigl@cityofsherman.com, or via phone at (903) 892-7215.

Until the final awarding by the City of Sherman, said City reserves the right to reject any and/or all bids, to waive technicalities, to re-advertise, and proceed otherwise when the best interests of said City will be realized hereby.

[Rest of Page Intentionally Left Blank]

CITY OF SHERMAN GENERAL CONDITIONS

ADDENDA

It is the responsibility of the vendor to check for addenda. Addenda will be posted to: www.ci.sherman.tx.us and to www.publicpurchase.com.

ANNUAL CONTRACT FUNDING

The city operates on a fiscal year that ends on September 30th. Because state law mandates that a municipality may not commit funds beyond a fiscal year, this bid is subject to cancellation if funds for this commodity are not approved in the next fiscal year.

ASSIGNMENT OF BID/CONTRACT

The successful bidder may not assign their rights and duties under and award without the written consent of the City. Such consent shall not relieve the assignor of liability in event of default by their assignee.

BID CONSIDERATION / TABULATION

Until final award of the Contract, the city reserves the right to reject any or all bids, to waive technicalities, and to re-advertise for new bids, or proposed to do the work otherwise in the best interests of the City.

BID SUBMISSION

Bids may be submitted in person, by mail, or electronically at www.publicpurchase.com.

- Submit bids via mail to PO Box 1106, Sherman, TX 75091-1106.
- To submit a bid via mail, all documents must be returned and an original signature provided on the proposal to bidders sheet.
- Bids will not be accepted without a signature.
- Bids submitted by email or fax will not be accepted.
- The City is not responsible for mail service. See page 4, paragraph 2 of the Notice to Bidders.

BRAND NAMES

If items for which bids have been called for have been identified by a “brand name or equal” description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering “equal” products will be considered for award if such products are clearly identified in the bids and are determined by the City to be equal in all material respects to the brand name products referenced. **Unless the bidder clearly indicates in their bid that they are offering an “equal product”, their bid shall be considered as offering a brand name product referenced in the Proposal Schedule.**

CHANGES OR ALTERATIONS

No part of this bid may be changed/alterd in any way. Vendors must submit written requests to change any specifications/conditions with their proposal. ***Changes made without submission of a written request to this bid will result in disqualification.***

COMPLETING INFORMATION

Bidder must fill in all information asked for in the blanks provided under each item. Failure to comply may result in rejection of the Bid at the City's option.

CONTRACT CLAUSE

All bidders understand and agree that the vendor's bid response will become a legally binding contract upon acceptance in writing by the City. This contract may be superseded only if replaced with a more extensive contract that is agreed to by both parties.

DEFAULT

In case of default of the successful bidder, the city of Sherman may procure the articles from other sources and hold the bidder responsible for any excess cost occasioned thereby.

DELIVERY

The City reserves the right to demand bond or penalty to guarantee delivery by the date indicated. If order is given and the Bidder fails to furnish the materials by the guaranteed date, the City reserves the right to cancel the order without liability on its part. All prices are to be F.O.B. Sherman, Texas all freight prepaid.

DELIVERY DATE

Delivery date is an important factor to the City and may be required to be a part of each bid. The city of Sherman considers delivery time to be that period elapsing from the time the individual order is placed until that order or work thereunder is received by the City at the specified delivery location. The delivery date indicates a guaranteed delivery at Sherman, Texas. Failure of the bidder to meet guaranteed delivery dates or service performance could affect future City orders.

Whenever the Contractor encounters any difficulty which is delaying or threatens to delay timely performance (including actual or potential labor disputes), the Contractor shall immediately give notice thereof in writing to the City, stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery or performance schedule or be construed as a waiver by the City of any rights or remedies to which it is entitled by law or pursuant to provisions herein. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery or performance schedule because of such delivery.

INDEMNIFICATION

In case any action in court is brought against the Owner, or any officer or agent of the Owner, for the failure, omission, or neglect of the vendor to perform any of the covenants, acts, matters, or things by this contract undertaken; or for injury or damage caused by the alleged negligence of the vendor or his subcontractors or his or their agents, or in connection with any claim based on lawful

demands of subcontractors, workmen, materialmen, or suppliers the vendor shall indemnify and save harmless the Owner and his officers and agents, from all losses, damages, costs, expenses, judgments, or decrees arising out of such action.

INSURANCE

Deductibles, of any type, are the responsibility of the vendor/contractor.

MISCELLANEOUS

Except as to any supplies or components which the specifications provide need not be new, all supplies and components to be provided under this contract shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production and of the most suitable grade for the purpose intended. If at any time during the performance of this contract the Contractor believes that the furnishing of supplies or components which are not new is necessary or desirable, they shall notify the City immediately, in writing, including the reasons therefore and proposing any consideration which will flow to the City if authorization to use supplies or components is granted.

The city of Sherman supports a recycling program. Recycled materials are acceptable and will be considered for award. The City desires to use recycled products when a comparable material/product is available. If your company distributes products made of recycled materials please submit an alternate bid for the items requested. All recycled products should meet the minimum standards established in the bid specifications provided. State any exceptions: costs, warranties and percentage of recycle materials used in the manufacture of the material/product. The City will determine the acceptability of the materials/product bid as an alternate.

Successful bidder(s) agrees to extend prices to all entities that have entered into or will enter into joint purchasing inter-local cooperation agreements with the city of Sherman. As such, the city of Sherman has executed an inter-local agreement with certain other governmental entities authorizing participation in a cooperative purchasing program. The successful vendor may be asked to provide product/services, based upon the bid price, to any other participant in the forum.

The City operates on a fiscal year that ends on September 30th. State law mandates that a municipality may not commit funds beyond a fiscal year; this bid is subject to cancellation if funds for this commodity are not approved in the next fiscal year.

PAYMENT TERMS & CONDITIONS

All bids shall specify terms and conditions of payment, which will be considered as part of, but not control, the award of bid. City review, inspection, and processing procedures ordinarily require thirty (30) days after receipt of invoice, materials or service. Bids which call for payment before 30 days from receipt of invoice, or cash discounts given on such payment, will be considered only if in the opinion of the City the review, inspection and processing procedures can be completed as to the specific purchases within the specified time. It is the intention of the city of Sherman to make payment on completed orders within thirty (30) days of receiving invoicing unless unusual circumstances arise. Invoices shall be fully documented as to labor, materials and equipment provided.

PROVISIONAL CLAUSES

The city of Sherman will not enter into any contract where the cost is provisional upon such clauses as are known as “escalator” or “cost-plus” clauses.

REJECTION OF BIDS

The City reserves the right to reject any or all bids or to waive technicalities at its option when in the best interests of said City. Bids will be considered irregular if they show any omissions, alteration of form, additions, or conditions not called for, unauthorized alternate bids or irregularities of any kind. However, the City reserves the right to waive any irregularities and to make the award in the best interests of the City.

The City reserves the right to reject any or all bids, and all bids submitted are subject to this reservation. Bids may be rejected, among other reasons, for any of the following specific reasons:

- Bids received after the time limit for receiving bids as stated in the advertisement.
- Proposal containing any irregularities.
- Bids submitted via fax or email.
- Unbalanced value of any items.

Bidders may be disqualified and their bids not considered, among other reasons, for any of the following specific reasons:

- Reason for believing collusion exists among the Bidders.
- Reasonable grounds for believing that any Bidder is interested in more than one Proposal for the work contemplated.
- The Bidder being interested in any litigation against the City.
- The Bidder being in arrears on any existing contract or having defaulted on a previous contract.
- Lack of competency as revealed by a financial statement, experience and equipment, questionnaires, etc.
- Uncompleted work, which in the judgment of the City will prevent or hinder the prompt completion of additional work if awarded.

REQUEST FOR NON-CONSIDERATION

Bids deposited with the City cannot be withdrawn prior to the time set for opening bids. Request for non-consideration of bids must be made in writing to the Finance Department and received by the City prior to the time set for opening bids. After other bids are opened and publicly read, the Proposal for which non-consideration is properly requested may be returned unopened. The Proposal may not be withdrawn after the bids have been opened, and the Bidder, in submitting the same, warrants and guarantees that this bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such bid will not and cannot be withdrawn because of any mistake committed by the Bidder.

SALES TAX

The total for each bid submitted must include any applicable taxes. Although the City is exempt from most City, State, or Federal taxes, this is not true in all cases. It is suggested that taxes, if any, be separately identified, itemized, and stated on each bid. The City cannot determine for the bidder

whether or not the bid is taxable to the City. The bidder through the bidder's attorney or tax consultant must make such determination. Bills submitted for taxes after the bids are awarded will not be honored.

PROPOSAL DEFINITIONS:

"City" is the City of Sherman, Texas.

"Bidder" is an individual or business submitting a bid or proposal to the City of Sherman.

"Independent contractor" or "contractor" is one who contracts to perform work or furnish materials in accordance with a contract.

I. PROPOSAL TERMS

- A. The City of Sherman reserves the right to reject any and all proposals received as a result of this ITB. If a proposal is selected, it will be the most advantageous regarding price, quality of service, the independent contractor's qualifications and capabilities to provide the specified service, and other factors which the City of Sherman may consider. The City does not intend to award a contract fully on the basis of any response made to the proposal: the City reserves the right to consider proposals for modifications at any time before a contract would be awarded; and negotiations would be undertaken with the independent contractor whose proposal is deemed to best meet the City's specifications and needs.
- B. Proposals must be signed by an official authorized to bind the independent contractor to its provisions for a period of at least ninety (90) days. Failure of the successful bidder to accept the obligation of the contract may result in the cancellation of any award.
- C. In the event it becomes necessary to revise any part of the ITB, addenda will be provided. The deadline for submission of proposals may be adjusted to allow for revisions. To be considered, the entire proposal document, with any amendments, should be returned by the specified date, time and method identified on page 2 of this document.
- D. Proposals should be prepared simply and economically providing a straightforward, concise description of the independent contractor's ability to meet the requirements of the ITB. Proposals shall be written in ink or typewritten. No erasures are permitted. Mistakes may be crossed out and corrected and must be initialed in ink by the person signing the proposal.
- E. The price quotations from the contractor stated in this proposal will not be subject to any price increase from the closing date of this ITB to the mutually agreed to date of contract.
- F. The City of Sherman reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire ITB.

SCOPE OF WORK

Contract shall provide all labor and materials, and perform all work necessary for the completion of improvements as described below:

Demolition

- ❖ Demolition of Existing Fountain

Steel and Plumbing

- ❖ Steel – ½" – 10" o.c.
- ❖ Plumbing – Two (2) Main Drains and Four (4) Bubblers for Circulation
- ❖ Auto-Fill Connecting to Existing Waterline

Fountain Structure

- ❖ Repour Concrete Base and Surrounding Concrete to Match Existing Fountain – Height and diameter
- ❖ Mount Existing Black Cast Iron Fountain to Create a Water Feature

Electric

- ❖ Electric Connection and Wiring

Maintenance and Miscellaneous

- ❖ Pool Equipment – All Equipment to be Pentair
 - Automation – EasyTouch PL4
 - 3HP Intelliflo VSF
 - 200 square foot Cartridge Filter
 - In-Line Chlorinator
 - Four (4) Color LED Micro Lights with Transformer
 - Small Cedar Enclosure around Equipment

Start-Up and Clean-Up

- ❖ Includes Chemical Start-Up of Fountain

Seat Wall

- ❖ Concrete Seat Wall to Retain North Slope of Fountain Walkway





BIDDERS INFORMATION

Bidder's Name: _____

Bidder's Company _____

Bidder's Address _____

Bidder's City/State _____

Bidder's Phone/Fax # _____

Bidder's E-Mail _____

BID FORM

Bidder accepts all of the terms and conditions set forth in the Advertisement for Bid and the Bid Specification Package. Bidder has visited the sites and become familiar with and is satisfied as to the general conditions that may affect cost, progress, and performance of specified work.

Lump Sum Price: \$ _____

Signature of Bidder _____

Bidder (print name) _____

Contractor References

Customer Name: _____

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Customer Name: _____

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Customer Name: _____

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Exhibit C

City's Insurance Requirements

I. GENERAL INSURANCE REQUIREMENTS –

- A. All policies shall name the City of Sherman, its officers, agents, representatives and employees as additional insureds as to all applicable coverages with the exception of workers compensation 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 all applicable endorsement(s) evidencing the required insurance shall be submitted prior to commencing work under this Agreement. If the Agreement is renewed or extended by City, a Certificate of Insurance and all applicable 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 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.
—	3. XCU Coverage	▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate.
—	4. Professional Liability	▪ Minimum \$1,000,000.00 each claim; ▪ Minimum \$2,000,000.00 in the aggregate.
—	5. Umbrella Coverage or Excess Liability Coverage	▪ An amount of \$ 2,000,000.00.
<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 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 City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.	

- X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).
- X 10. The Certificate of Insurance must state the project title.
- ___ 11. Other Insurance Requirements (State Below):

Exhibit D
Affidavit of No Prohibited Interest

THE STATE OF _____ §

THE COUNTY OF _____ §

I, _____, an authorized agent of Contractor, make this affidavit and hereby under oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision under this Agreement (Check all that apply):

- _____ Ownership of ten percent (10%) or more of the voting shares of the business entity.
- _____ Ownership of Twenty-Five Thousand and 00/100 Dollars (\$25,000) or more of the fair market value of the business entity.
- _____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.
- _____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars (\$25,000).
- _____ A relative of mine has a substantial interest in the business entity or property that would be affected by my business decision of the public body which I am a member.
- _____ Other: _____.
- _____ None of the Above.

Upon filing this affidavit with the City of Sherman, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573, TEX. GOV'T CODE, as amended, is a member of a public body which took action on the agreement.

Signed this ____ day of _____, 202__.

Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared _____, and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this _____ day of _____, 202__.

Notary Public in and for the State of _____
My commission expires: _____

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor doing business with local governmental entity****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

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
or

- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

TEXAS ETHICS FORM 1295 & VERIFICATION FORM 2270

NOTE: TEC Form 1295 will not be required for all submitting contractors, but, will be required from the recommended contractor prior to award. Verification Form 2270 is required with all proposal submittals. See next page for forms.

INSTRUCTIONS for State Law Mandated Certificate of Interested Parties Form (Form 1295)

1. Pursuant to House Bill 1295 passed by the 84th Texas Legislature (Section 2252.908, Texas Government Code, as amended) and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the Sherman City Council must be accompanied by an original signature unsworn declaration, Certificate of Interested Parties, Form 1295.
2. Form 1295 must be completed in accordance with the TEC Rules: (<https://www.ethics.state.tx.us/legal/ch46.html>) and Section 2252.908 of the Texas Government Code, as amended: (<http://www.legis.state.tx.us/tlodocs/84R/billtext/html/HB01295F.htm>).
3. For questions or issues regarding the TEC rules and state law provisions and how Form 1295 should be completed, please consult with your own legal counsel.
4. In order to fill out and submit Form 1295, you will need to log in as directed on the TEC website: [https://www.ethics.state.tx.us/whatsnew/elf info form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf%20info%20form1295.htm)

Tutorials for creating an account and for creating and submitting Form 1295 may also be found on this web page.
5. Please provide the bolded information exactly as it appears below when creating your certificate:

Who is the contract with? Click the button for **Other**

Governmental Entity

Agency/Entity Name: **City of Sherman**

Contract ID Number: **2025-04**

Description of Goods and Services to be provided: **Kidd-Key Water Fountain Remodel**
6. All other fields as required or as applicable to the individual vendor must be completed as explained in the tutorial video.
7. Vendors must provide a signed, original signature copy of this form along with four signed, notarized, original signature copies of the contract no later than 14 days after Notice of Recommendation for Award is received. All documents shall be signed by an Officer, Director or other Authorized Agent of the company. If the individual signing as Authorized Agent is not an officer or director of the company, appropriate documentation must be included with these documents to confirm that the individual has the authority to bind the company contractually.

VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2270

By signing below, the signatory hereby verifies that the firm it represents:

1. Does not boycott Israel; and,
2. Will not boycott Israel during the term of the contract.

SIGNED BY: _____

Print Name & Title: _____

Firm Name: _____

Date Signed: _____

NOTARIZATION

THE STATE OF _____)

COUNTY OF _____)

BEFORE ME, the undersigned notary public on this day personally appeared _____, on behalf of _____ (Company), who, being duly sworn, stated under oath that he/she has read the foregoing verification required by Texas Government Code Section 2270.002 and said statements contained therein are true and correct.

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 202__.

NOTARY PUBLIC IN AND
FOR THE STATE OF _____

The following definitions apply to Texas Government Code Section 2270.001:

(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

State law requires any firm entering into an agreement or contract with the Authority to complete the foregoing verification. TEX. GOV'T CODE § 2270.002.

PERFORMANCE BOND

BOND NO. _____

STATE OF TEXAS §

§ KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF Grayson §

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

WHEREAS, the PRINCIPAL has entered into a certain written contract with the OWNER, for **Kidd-Key Water Fountain Remodel** (Name of Project) which contract is hereby referred to and made part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

PRINCIPAL:

SURETY:

Name of Contractor

Name of Surety

Signature

Signature

Printed Name and Title

Printed Name and Title

Address

Address

City, State, Zip

City, State, Zip

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

PAYMENT BOND

BOND NO. _____

STATE OF TEXAS §

§ KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF Grayson §

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

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

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

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

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

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

PRINCIPAL:

SURETY:

Name of Contractor

Name of Surety

Signature

Signature

Printed Name and Title

Printed Name and Title

Address

Address

City, State, Zip

City, State, Zip

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

MAINTENANCE BOND

BOND NO. _____

STATE OF TEXAS §

§ KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF Grayson §

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

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

WHEREAS, under the plans, specifications, and contract, it is provided that the contractor will maintain and keep in good repair the work herein contracted to be done and performed for a period of one (1) years from the date of the acceptance of said work, and to do all necessary repairing and/or reconstructing in whole or in part of said improvements that should be occasioned by settlement of foundation, defective workmanship or materials furnished in the construction or any part thereof or any of the accessories thereto constructed by the contractor. It being understood that the purpose of this section, in part, is to cover all defective conditions arising by reason of defective material and charge the same against the said contractor and sureties on this obligation, and the said contractor sureties hereon shall be subject to the liquidation damages mentioned in said contract for each day's failure on its part to comply with the terms of said provisions of said contract. Now, therefore, if the said contractor shall keep and perform its said agreement to maintain said work and keep the same in repair for the said maintenance period of one (1) years, as provided, then these presents shall be null and void, and have no further effect, but if default shall be made by said contractor in the performance of its contract to so maintain and repair said work, then these presents shall have full force and effect, and said City of Sherman shall have and recover from the said contractor and its principal and sureties damages in the premises, as provided; and it is further agreed that this obligation shall be continuing one against the principal and sureties, hereon, and that successive recoveries may be and had hereon for successive branches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished or in any manner affected from any cause during said time.

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

PRINCIPAL:

SURETY:

Name of Contractor

Name of Surety

Signature

Signature

Printed Name and Title

Printed Name and Title

Address

Address

City, State, Zip

City, State, Zip

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

**CONSTRUCTION AGREEMENT BETWEEN THE CITY OF SHERMAN, TEXAS
AND _____**

The **City of SHERMAN, Texas**, a home-rule municipality ("SHERMAN"), and _____, a _____ ("Contractor"), enter into this Construction Agreement ("Agreement") for **Kidd-Key Fountain Remodel Project**. SHERMAN and Contractor are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, SHERMAN desires to engage Contractor to provide services in connection with **Kidd-Key Fountain Remodel Project** under the terms and conditions of this Agreement ("Project");

WHEREAS, SHERMAN issued a Request for Proposals, attached hereto as Exhibit A and incorporated herein for all purposes ("Bid Request"), seeking competitively sealed bids for **Kidd-Key Fountain Remodel Project**; and

WHEREAS, Contractor timely submitted a sealed response to the Bid Request, attached hereto as Exhibit B and incorporated herein for all purposes ("Submittal"), seeking to provide such services for City; and

WHEREAS, based on Contractor's representations in response to the Bid Request, including those representations set forth in the Submittal, City has selected Contractor to provide the services sought in the Bid Request under the terms and conditions of this Agreement ("Project").

WHEREAS, Contractor has agreed to provide the services for the Project.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Scope of Services.

Contractor shall provide the services and deliverables that are set forth and described in the Agreement Documents (hereinafter defined) and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide the services and deliverables as specified by the terms and conditions of the Agreement Documents (collectively, "Services"). The parties understand and agree that deviations or modifications to the scope of Services described in the Agreement Documents, in the form of one or more written change orders, may be authorized from time to time by SHERMAN ("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 SHERMAN City Council's

authorization for the SHERMAN City Manager to execute said Change Order. Contractor agrees that SHERMAN's project managers, superintendents and/or inspectors are not authorized to issue verbal or written Change Orders.

2. Term.

Contractor shall mobilize on-site and commence performance of the Project (the "Mobilization Date") within seven (7) calendar days of the Preconstruction Meeting date, to be determined by SHERMAN after the Effective Date of this Agreement (hereinafter defined), and shall complete the Services within fifty-six (56) calendar days of the Mobilization Date. All obligations relating to time set forth herein are material and are of the essence of this Agreement. This Agreement shall remain in full force and effect until completion of the Project to SHERMAN's satisfaction. The obligations listed hereunder shall be fulfilled upon the completion of the Project to SHERMAN's satisfaction.

3. Compensation.

In exchange for the Services as described in the Agreement Documents, SHERMAN agrees to pay the Contractor in an amount not to exceed _____ (\$_____) for the completion of the Project contemplated by and in accordance with the Agreement Documents as follows:

On a monthly basis, Contractor shall submit a written invoice to SHERMAN for all Services completed in the immediately preceding month. The applicable portion of Contractor's Fee as reflected in each such invoice shall be due and payable by SHERMAN within thirty (30) days after SHERMAN finally accepts the Services described in each such invoice in accordance with the Agreement Documents and SHERMAN's ordinances, rules, regulations and requirements, as they exist, may be amended or in the future arising, except that SHERMAN is entitled to retain an amount equal to five percent (5%) of the Contractor's Fee, which shall be due and payable within thirty (30) days after Contractor completes the Project and SHERMAN finally accepts the same. Notwithstanding anything to the contrary herein, SHERMAN shall not be required to pay any invoice submitted by Contractor if Contractor is in breach of this Agreement.

Contractor and SHERMAN acknowledge and agree that the continuation of this Agreement after the close of any given fiscal year of SHERMAN, 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 SHERMAN 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.

4. Agreement Documents.

The “Agreement Documents,” as that term is used herein, shall mean and include the following documents, and this Agreement expressly incorporates the same herein by reference for all purposes:

- a. This Agreement;
- b. The Bid Request, attached hereto as Exhibit A;
- c. The Submittal, attached hereto as Exhibit B;
- d. SHERMAN’s Insurance Requirements, attached hereto as Exhibit C;
- d. City of SHERMAN’s Standard Construction Details (which is on file in with the City Engineering Department);
- e. The Standard Specifications for Public Works Construction (North Central Texas Third Edition 1998) as amended and supplemented by the City of SHERMAN’s Special Provisions to said Standard Specification, as amended (which is on file in the City Engineering Department);
- f. Affidavit of No Prohibited Interested, attached hereto as Exhibit D;
- g. Conflict of Interest Questionnaire, attached hereto as Exhibit E;

This Agreement shall incorporate the terms of the Agreement Documents in their entirety. To the extent that Exhibit A, Exhibit B, Exhibit C, Exhibit D or Exhibit E are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of Exhibit A, Exhibit C, Exhibit D, Exhibit E and Exhibit B shall prevail in that order.

5. Liquidated Damages.

Contractor acknowledges and agrees that if Contractor fails to timely perform or complete any of the Services required under the terms of the Agreement Documents, SHERMAN will sustain actual damages as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the parties agree that if Contractor fails to timely perform or complete any of the Services required under the terms of the Agreement Documents, then Contractor shall pay SHERMAN the sum of fifty and 00/100 dollars (\$50.00) for each calendar day in which the Services are not completed, not as a penalty but as liquidated damages for the damages that would be suffered by SHERMAN as a result of delay for each and every calendar day that the Contractor shall have failed to have completed the Services as required herein.

6. Payment, Performance and Maintenance Bonds.

Prior to commencing work under this Agreement, Contractor shall furnish to SHERMAN a payment bond and a performance bond, each of which shall be in an amount equal to one hundred percent (100%) of the total cost of the Project to ensure SHERMAN is indemnified: (i) against any claims for nonpayment of any part of the construction or work performed in connection with the Project; and (ii) for the completion of the Project in accordance with this Agreement. Prior to SHERMAN's final acceptance of the Project, Contractor shall furnish to SHERMAN a two (2) year maintenance bond in an amount equal to one hundred percent (100%) of the total cost of the Project to ensure the repair or remedy of any maintenance issues SHERMAN may have regarding the Project after SHERMAN finally accepts the same.

The bonds required by SHERMAN pursuant to this Section 5 must be: (i) good and sufficient bonds; (ii) in the amounts prescribed herein; and (iii) with a reputable and solvent corporate surety in favor of SHERMAN.

7. Entire Agreement.

The Agreement Documents contain all representations, understandings, contracts and agreements between the parties regarding the subject matter of this Agreement. The Agreement Documents supersede all oral or written previous and contemporaneous agreements, writings, understandings, representations or contracts between the parties regarding the subject matter of this Agreement. This Agreement in no way modifies or supersedes any document executed by the parties prior to the Effective Date of this Agreement which does not concern the subject matter of this Agreement. No amendment to the Agreement Documents shall be made except on the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement Documents except as specifically provided for in such amendment.

8. Required Insurance.

Contractor shall not start work under this Agreement until Contractor has obtained, at Contractor's expense, all of the insurance specified in, and required by, the Agreement Documents. Contractor shall procure and keep in full force and effect the types and amounts of insurance specified in SHERMAN's Insurance Requirements, attached hereto as Exhibit C and incorporated herein for all purposes, for and during all aspects and phases of Contractor's work throughout the term of this Agreement at no expense to SHERMAN. Contractor also shall comply with all other requirements set forth in Exhibit C.

9. No Prohibited Interest; Vendor Disclosure.

Contractor acknowledges and agrees that it is aware of, and will abide by, the no prohibited interest requirement of the SHERMAN City Charter. Contractor shall execute and deliver to SHERMAN the Affidavit of No Prohibited Interest, attached hereto as Exhibit D and incorporated herein for all purposes, no later than the Effective Date of this Agreement (hereinafter defined). 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. In this connection, Contractor shall execute and deliver to SHERMAN the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit E and incorporated herein for all purposes, no later than the Effective Date of this Agreement.

10. Indemnity.

CONTRACTOR HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SHERMAN AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS “SHERMAN” 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 SHERMAN (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 SHERMAN BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN 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, SHERMAN SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION

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

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

11. 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. SHERMAN assumes no such responsibility or liability. SHERMAN shall have no such responsibility or liability to either Contractor or its officers, agents, representatives, employees, subcontractors, licensees, invitees or other persons.
12. Compliance with Laws; Standard of Care.
Contractor shall comply with all federal, state and local laws, statutes, ordinances, regulations and policies, as they exist, may be amended or in the future arising, applicable to Contractor and its work. Contractor shall ensure that its officers, agents, representatives, employees, subcontractors, licensees, invitees and other parties performing services for or on behalf of Contractor under this Agreement comply with all applicable laws, statutes, ordinances, regulations and policies. If Contractor observes or is notified that the work under this Agreement is at variance with applicable laws, statutes, ordinances, regulations and policies, Contractor shall immediately notify SHERMAN in writing. Contractor shall perform the Services in accordance with the prevailing standard of care by exercising the skill and care ordinarily utilized by professionals performing the same or similar services under the same or similar circumstances in the State of Texas.
13. Termination.
SHERMAN is entitled to terminate this Agreement at any time for any reason or for no reason by giving Contractor at least thirty (30) days' prior written notice of the termination date.

SHERMAN is entitled to terminate this Agreement immediately on breach of any term or provision of the Agreement 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 Agreement Documents or fail to diligently perform the Services in an efficient, timely and careful manner and in strict accordance with the provisions of the Agreement Documents, then SHERMAN shall have the right to terminate this Agreement and complete the work in any manner it deems desirable, including engaging the services of other parties, if Contractor does not cure any such default after five (5) days written notice thereof. Any such act by SHERMAN shall not be deemed a waiver of any other right or remedy of SHERMAN.

If after exercising any remedy provided herein, the cost to SHERMAN of the performance of the balance of the work on the Project is in excess of that part of the Contractor's Fee which has not yet been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse SHERMAN for such excess, without waiver of any other right or remedy of SHERMAN.

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

14. 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 their signatures hereto, warrant and represent that they have the authority to bind their respective parties as duly authorized representatives thereof.

15. Assignment.

Contractor agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of SHERMAN. Contractor 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 Contractor of its full obligations to SHERMAN as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Contractor, and there shall be no third party billing.

16. No Waiver of Immunity.

The parties acknowledge and agree that, in executing and performing this Agreement, SHERMAN 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.

17. 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 included in this Agreement.
18. Consideration.
This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
19. Attorneys' Fees.
If either party files any action or brings any proceeding against the other arising from this Agreement, then as between SHERMAN 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.
20. 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 Collin County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Collin County, Texas.
21. Binding Effect.
This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.
22. No 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.
23. 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.
24. Indemnity.
The parties agree that the indemnity provision set forth in Section 10 herein is conspicuous and the parties have read and understood the same.

25. Notice.

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 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 to any courier service that provides a return receipt showing the date of actual delivery of the same to the addressee thereof. Notice given in accordance herewith shall be effective on receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to: _____

Telephone: _____
Email: _____

If to SHERMAN, to: City of SHERMAN
Attn: Robby Hefton, City Manager
220 W. Mulberry Street
Sherman, Texas 75090
Telephone: (903) 892-7201
Facsimile: (903) 892-7355
Email: robbyh@cityofsherman.com

With a copy to:

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

26. Representations.

Each party states that they have carefully read this Agreement, know the contents hereof, have consulted with an attorney of their choice regarding the meaning and effect hereof and is signing the same solely of their own judgment.

27. Independent Contractor.

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of SHERMAN; 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 SHERMAN 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 SHERMAN and Contractor.

28. Incorporation of Recitals.

The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of SHERMAN and the authorized representative of Contractor.

29. Reference to Contractor.

When referring to “Contractor” herein, this Agreement shall refer to and be binding upon Contractor, 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 Contractor is legally responsible.

30. Reference to SHERMAN.

When referring to “SHERMAN” herein, this Agreement shall refer to and be binding upon SHERMAN, its Council Members, officers, agents, representatives, employees and/or any other authorized third parties for whom SHERMAN is legally responsible.

31. Certifications Required by Texas Law.

In accordance with Chapter 2270 of the Texas Government Code (to the extent applicable), Contractor hereby certifies that Contractor 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), Contractor hereby certifies that Contractor 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), Contractor hereby certifies that Contractor 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 in this Section have the meanings ascribed to them in the referenced statutes if defined therein.

32. Debarment/Suspension.

SHERMAN 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. SHERMAN, Contractor and Contractor’s subcontractors shall comply with federal and state regulations regarding debarment and suspension. Contractor shall include

a statement of compliance with federal and state debarment and suspension regulations in all third-party agreements for work on the Project.

33. Restrictions on Lobbying.

SHERMAN and Contractor are prohibited from using funds awarded under the Agreement for lobbying purposes. Contractor shall include a statement of compliance with this provision in applicable procurement solicitations and third-party agreements for work on the Project.

34. Miscellaneous Drafting Provisions.

This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

35. 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.

[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 sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

CITY OF SHERMAN, TEXAS,
a home-rule municipality

By: _____
Robby Hefton, City Manager

Date: _____

ATTEST:

APPROVED AS TO FORM:

Linda Ashby, City Clerk

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

a _____

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 202_.

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

BIDDERS INFORMATION

Bidder's Name: Otha (Opie) Maines

Bidder's Company All Pro Pools

Bidder's Address 4431 W. Crawford St, Ste 102

Bidder's City/State Denison, TX 75020

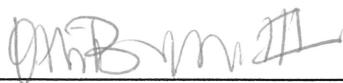
Bidder's Phone/Fax # 903-327-8830

Bidder's E-Mail opiemaines@gmail.com

BID FORM

Bidder accepts all of the terms and conditions set forth in the Advertisement for Bid and the Bid Specification Package. Bidder has visited the sites and become familiar with and is satisfied as to the general conditions that may affect cost, progress, and performance of specified work.

Lump Sum Price: \$ \$63,000.00

Signature of Bidder 

Bidder (print name) Otha Maines

Contractor References

Customer Name: Roger Townsend Construction
Address: PO Box 793 Pottsboro, TX 75076
Contact: Roger Townsend Telephone #: 903-821-7750
Scope of work performed: Landscaping, Irrigation, Retaining Walls, Pools
Length of Service: 5+ years

Customer Name: Toby Fritts, Inc.
Address: Hwy 289 Pottsboro, TX 75076
Contact: Toby Fritts Telephone #: 903-870-8627
Scope of work performed: Landscaping, Irrigation, Retaining Walls, Pools
Length of Service: 10+ years

Customer Name: Juston & Amber Dobbs
Address: 2905 Wellington Dr Sherman, TX 75092
Contact: Juston & Amber Dobbs Telephone #: 903-815-2757
Scope of work performed: Landscaping & Pool Service
Length of Service: 5+ years

Exhibit C

City's Insurance Requirements

I. GENERAL INSURANCE REQUIREMENTS –

- A. All policies shall name the City of Sherman, its officers, agents, representatives and employees as additional insureds as to all applicable coverages with the exception of workers compensation 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 all applicable endorsement(s) evidencing the required insurance shall be submitted prior to commencing work under this Agreement. If the Agreement is renewed or extended by City, a Certificate of Insurance and all applicable 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 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.
<u> </u>	4. Professional Liability	▪ Minimum \$1,000,000.00 each claim; ▪ Minimum \$2,000,000.00 in the aggregate.
<u> </u>	5. Umbrella Coverage or Excess Liability Coverage	▪ An amount of \$ 2,000,000.00.
<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 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 City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.	

- X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).
- X 10. The Certificate of Insurance must state the project title.
- ___ 11. Other Insurance Requirements (State Below):

Exhibit D
Affidavit of No Prohibited Interest

THE STATE OF Texas §

THE COUNTY OF Grayson §

I, Otha Maines, an authorized agent of Contractor, make this affidavit and hereby under oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision under this Agreement (Check all that apply):

_____ Ownership of ten percent (10%) or more of the voting shares of the business entity.

_____ Ownership of Twenty-Five Thousand and 00/100 Dollars (\$25,000) or more of the fair market value of the business entity.

_____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars (\$25,000).

_____ A relative of mine has a substantial interest in the business entity or property that would be affected by my business decision of the public body which I am a member.

_____ Other: _____.

X _____ None of the Above.

Upon filing this affidavit with the City of Sherman, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573, TEX. GOV'T CODE, as amended, is a member of a public body which took action on the agreement.

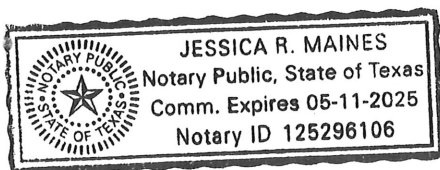
Signed this 19 day of November, 2024.

Otha Maines
Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared Otha Maines, and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this 19 day of November, 2024.

Jessica R Maines
Notary Public in and for the State of Texas
My commission expires: May 11, 2025



CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor doing business with local governmental entity**

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.

All Pro Irrigation, LLC

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

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

N/A

Name of Officer

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

N/A

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.

N/A

- 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

1/21/25

Date

VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2270

By signing below, the signatory hereby verifies that the firm it represents:

1. Does not boycott Israel; and,
2. Will not boycott Israel during the term of the contract.

SIGNED BY:



Print Name & Title:

Otha Maines, Owner

Firm Name:

All Pro Pools

Date Signed:

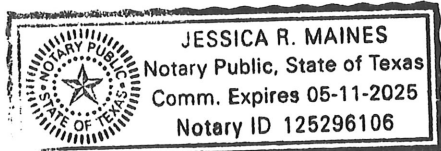
11-19-24

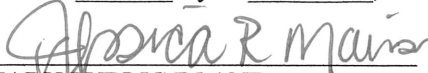
NOTARIZATION

THE STATE OF Texas)
)
COUNTY OF Grayson)

BEFORE ME, the undersigned notary public on this day personally appeared Otha Maines, on behalf of All Pro Pools (Company), who, being duly sworn, stated under oath that he/she has read the foregoing verification required by Texas Government Code Section 2270.002 and said statements contained therein are true and correct.

SWORN TO AND SUBSCRIBED before me on the 19 day of November, 2024.




NOTARY PUBLIC IN AND
FOR THE STATE OF Texas

The following definitions apply to Texas Government Code Section 2270.001:

(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

State law requires any firm entering into an agreement or contract with the Authority to complete the foregoing verification. **TEX. GOV'T CODE § 2270.002.**

Exhibit C

City's Insurance Requirements

I. GENERAL INSURANCE REQUIREMENTS –

- A. All policies shall name the City of Sherman, its officers, agents, representatives and employees as additional insureds as to all applicable coverages with the exception of workers compensation 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).

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<u> </u>	3. XCU Coverage	▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate.
<u> </u>	4. Professional Liability	▪ Minimum \$1,000,000.00 each claim; ▪ Minimum \$2,000,000.00 in the aggregate.
<u> </u>	5. Umbrella Coverage or Excess Liability Coverage	▪ An amount of \$ 2,000,000.00.
<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 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 City as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.	

- X 8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
- X 9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).
- X 10. The Certificate of Insurance must state the project title.
- ___ 11. Other Insurance Requirements (State Below):

Exhibit D
Affidavit of No Prohibited Interest

THE STATE OF Texas §

THE COUNTY OF Grayson §

I, Otha Maines, an authorized agent of Contractor, make this affidavit and hereby under oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision under this Agreement (Check all that apply):

_____ Ownership of ten percent (10%) or more of the voting shares of the business entity.

_____ Ownership of Twenty-Five Thousand and 00/100 Dollars (\$25,000) or more of the fair market value of the business entity.

_____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars (\$25,000).

_____ A relative of mine has a substantial interest in the business entity or property that would be affected by my business decision of the public body which I am a member.

_____ Other: _____.

X _____ None of the Above.

Upon filing this affidavit with the City of Sherman, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573, TEX. GOV'T CODE, as amended, is a member of a public body which took action on the agreement.

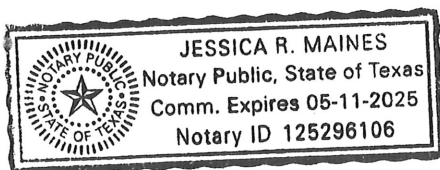
Signed this 19 day of November, 2024.

Otha Maines
Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared Otha Maines, and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this 19 day of November, 2024.

Jessica R Maines
Notary Public in and for the State of Texas
My commission expires: May 11, 2025



CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****For vendor doing business with local governmental entity****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.

All Pro Irrigation, LLC

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

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

N/A

Name of Officer

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

N/A

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.

N/A

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

1/21/25

Date

CITY OF SHERMAN
BID TABULATION
Kidd-Key Water Fountain Remodel - Invitation to Bid
BID OPENING Thursday, November 21, 2024; 2:00 PM

Vendor	Lump Sum Price	NOTES
Apex Construction	142,625.00	
All Pro Irrigation LLC	63,000.00	
In Control Construction LLC	243,406.44	



City Council Regular Meeting

Agenda Item No. D.8.

Meeting Date: 2/3/2025

Prepared By: Wayne Lee, Director of Engineering

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** RESOLUTION NO. 7477**

Authorizing Execution of a Professional Services Agreement with Mead & Hunt, Inc. for the WWTP Relift Pump Station and Filter

Issue:

To consider a Professional Services Agreement with Mead & Hunt, Inc. for the WWTP Relift Pump Station and Filter

Background:

Due to recent industrial and residential growth throughout the city and rerouting additional flows from the south Wastewater Treatment Plant (WWTP) to the North WWTP, the North WWTP treatment plant will require additional expansion in the form of increased capacity to the relift pump station and to the filter system. This expansion to the North WWTP has been determined to be a more cost effective method of treatment for types of expected industrial wastes that are being routed through the new Membrane Biological Reactor (MBR) South WWTP.

In order to accommodate the expected flows as quickly as possible and perform construction as soon as possible, engineers have been selected and an agreement for proposed design activities are set in this request.

Origination:

Engineering Department

Financial Consideration:

This item has been budgeted for. The funding needed for this agreement is for \$297,401.00. The project is funded through the Greater Texoma Utility Authority (GTUA) 2024 Open Market Bond proceeds.

Staff Recommendation:

It is recommended that the contract for professional services with Mead & Hunt, Inc. for the WWTP Relift Pump Station and Filter be approved.

Alternatives:

As may be directed by the City Council

Attachments:

1. Resolution No. 7477
2. Professional Services Agreement

3. Location Map

RESOLUTION NO. 7477

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MEAD & HUNT, INC. FOR THE WWTP RELIFT PUMP STATION AND FILTER; 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 Mead & Hunt, Inc. for the WWTP Relift Pump Station and Filter, 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 3rd day of February 2025.

CITY OF SHERMAN, TEXAS

ATTEST:

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

**BY: _____
SHAWN TEAMANN, MAYOR**

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

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

AGREEMENT
BETWEEN
THE CITY OF SHERMAN, TEXAS AND
Mead & Hunt, Inc.
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: Mead & Hunt, Inc.
 6001 Interstate 20 West, Suite #214
 Arlington, Texas 76017
 Telephone: (817) 719-0372

for the following Project: **WWTP Relift Pump Station and Filter**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sherman, Texas, a home-rule municipality ("City"), and Mead & Hunt, Inc., a Wisconsin 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 WWTP Relift Pump Station and Filter 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 **Two Hundred and Ninety Seven Thousand and Four Hundred and One Dollars (\$297,401.00)**; and (b) for Special Services, in an amount not to exceed **Zero Dollars (\$0.00)** (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	\$309
Senior Project Manager	\$276
Project Manager	\$217
Project Engineer	\$195
Engineer II	\$172
Engineer I	\$146
Senior Technician	\$188
Admin	\$93

- 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% Estimate of Probable Construction Cost (EOPCC) due to the negligence 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:

Mark Perkins
Vice President
Mead & Hunt, Inc.
6001 Interstate 20 West, Suite #214
Arlington, Texas 76017
Telephone: (817) 719-0372
Email: mark.perkins@meadhunt.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:

Mead & Hunt, Inc.
a Wisconsin Corporation

By:  _____
Mark Perkins
Vice President

APPROVED AS TO FORM:

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

STATE OF TEXAS §
 §
COUNTY OF LARSEN §

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED **MARK PERKINS**, 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 **MEAD & HUNT**, AND THAT HE EXECUTED SAID INSTRUMENT FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 16 DAY OF January 2025.



Cynthia Costello Boyd
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 12/29/2028

EXHIBIT A SCOPE OF SERVICES

I. **PROJECT DESCRIPTION**

A. Project Summary

Mead & Hunt will provide engineering consulting services to the City of Sherman for design and bidding for the addition of one effluent filter and a Effluent Relift Pump at the Post Oak Wastewater Treatment Plant.

It is recognized that the specific assignment under this agreement does not involve construction related services

Mead & Hunt will provide project management services and will act as the primary point of contact for the project. Subconsultants include Carollo Engineers, Inc. and Plummer Associates, Inc.

B. Assumptions

- a. The Effluent Filter and Relift Pump Station will be located inside the Post Oak WWTP.
- b. A design-bid-build delivery approach will be used.
- c. No odor control treatment to be included in the project.
- d. City to pay fees for permits directly.
- e. Any necessary surveying will be paid for and contracted directly by the City. No surveying or subsurface utility engineering is included in this scope of work.
- f. One new 6 MGD pump will be added to the existing Relift Pump Station and no new relift structure will be added, all electrical and mechanical design included.
- g. One new effluent filter will be added having an average flow capacity of 3 MGD and a 2-hour peak flow capacity of 6 MGD.
- h. The effluent filtration system is expected to be similar in configuration to that being added in the Phase IA project.
- i. The relift pump to be specified is expected to be similar to those being installed as part of the Phase IA project.
- j. No preliminary design phase is proposed.
- k. Geotechnical investigation is proposed; it is anticipated that previous geotechnical evaluations can be used. Geotechnical services, if needed, will

EXHIBIT A SCOPE OF SERVICES

require additional compensation.

- l. Front end documents for bid to be provided by the City.
- m. No pre-procurement.
- n. City to pay fees for any necessary advertisement directly.
- o. Plan holder documentation distribution through CivCast.
- p. Project will be constructed as one Construction Contract.
- q. Additional compensation for re-bid or if bid as multiple construction contracts.

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.
 - 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.

EXHIBIT A SCOPE OF SERVICES

- 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. Detailed Design/Construction Plans

- a. Preparation of mechanical plans and specifications for Relift Pump Station and Filter. Mechanical specification for cover above the wet well to be provided. Include a 60% and 100% PDF submittal to the City.
- b. Civil plan to include site grading for new filter pad. Include a 60% and 100% PDF submittal.
- c. Structural design plans to include new concrete pad and canopy design over the effluent filter and review of proposed cover over the wet well. Include a 60% and 100% PDF submittal to the City.
- d. Electrical and instrumentation design plan and specifications for one additional 6-MGD pump and associated controls modification for the Relift Pump Station.
- e. Electrical and instrumentation design plan and specifications for one additional 3-MGD average flow effluent filter and associated control modifications for the effluent filter.
- f. Project management to include (1) kick off meeting and (5) Teams meetings for internal coordination and Client updates. Preparation of monthly invoice and submit for review
- g. 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.

EXHIBIT A SCOPE OF SERVICES

- h. Finalize miscellaneous plan sheets, including cover sheet, index, general notes, project control and applicable City standard details.
- i. 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.
- j. 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).
- k. Submittal of plans for TCEQ approval.

B. 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.
- 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 one Pre-Bid meeting.
- 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.

EXHIBIT A SCOPE OF SERVICES

- h. Prepare a written summary of the bid tabulation and evaluation together with a letter addressing the recommendation of 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.

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. 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.
 - iii. 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.
 - iv. Appearances before hearings for eminent domain proceedings are specifically not included in the specified per parcel payment.
 - v. Appearances before regulatory agencies.
 - vi. Assistance to the City as an expert witness in any litigation or claim, arising from, or in connection with, the Project.

EXHIBIT A SCOPE OF SERVICES

- vii. 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.
- viii. Detailed mill, shop, and/or laboratory inspection of materials or equipment.
- ix. 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.
- x. Preparation of applications and supporting documents for government grants or planning advances for public works projects.
- xi. Preparation of report, sketches, drawings, presentations, and permit applications involving environmental, historical, and archaeological considerations.
- xii. Revision of reports and Construction Contract Documents after specific approval by City.
- xiii. Subsurface Utility Engineering that involves Level "A" or "B" identification of a utility.
- xiv. Contractors will be contacted by phone or email to enhance exposure to eligible bidders.
- xv. Additional compensation for re-bid or if bid as multiple construction contracts in accordance with contract terms in accordance with section 3:10 of this Agreement

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. Construction administration Services.
- 2. Additional effluent filters.
- 3. New wet well and relift pump station design

EXHIBIT B
PROJECT BUDGET SUMMARY

I. Basic Services

A. Detailed Design
(Expected Completion: Notice to Proceed + 150 Days) \$261,050.00

B. Bid Phase Services
(Expected Completion: Authorize to Bid + 60 Days) \$36,351.00

Total Basic Services (Lump Sum) \$297,401.00

Project Budget, Grand Total (Not-To-Exceed) \$297,401.00

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): | |

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.

Mead & Hunt, Inc.

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

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

None / Not Applicable

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.

None / Not Applicable

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?

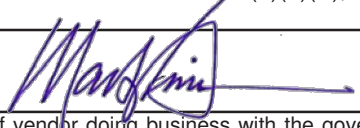
☐ Yes

☐ 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.

None / Not Applicable

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

1/16/2025

Date





City Council Regular Meeting

Agenda Item No. D.9.

Meeting Date: 2/3/2025

Prepared By: Loren Siems, Right of Way Specialist

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** RESOLUTION NO. 7478**

Authorizing Execution of an Easement to Oncor Electric Delivery Company, LLC for the Installation of Overhead and/or Underground Electric Supply

Issue:

To consider executing a 15 foot wide easement for the installation of overhead and/or underground electric supply across the property conveyed to the City of Sherman by deed recorded as Volume 866, page 199 in Grayson County, Texas

Background:

Oncor is requesting an electrical easement across the front of the subject property owned by the City of Sherman. The proposed easement will be for overhead and/or underground electric supply and communications facilities.

Origination:

Engineering department

Financial Consideration:

Oncor is paying \$2.00 per foot for easement for a total of \$80.00

Staff Recommendation:

City staff has no objections to the proposed easement.

Alternatives:

As may be directed by City Council

Attachments:

1. Resolution No. 7478
2. Oncor easement
3. Property location

RESOLUTION NO. 7478

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING EXECUTION OF AN EASEMENT TO ONCOR ELECTRIC DELIVERY COMPANY, LLC FOR THE INSTALLATION OF OVERHEAD AND/OR UNDERGROUND ELECTRIC SUPPLY, 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, execute an Easement to Oncor Electric Delivery Company, LLC for the installation of overhead and/or underground electric supply.

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 3rd day of February, 2025.

CITY OF SHERMAN, TEXAS

BY: _____
SHAWN TEAMANN, MAYOR

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

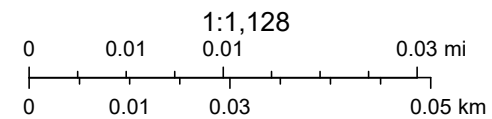
BY: _____
RYAN D. PITTMAN, CITY ATTORNEY

Grayson CAD Web Map



9/5/2024, 4:24:46 PM

— Roads  Abstracts  Parcels



© OpenStreetMap (and) contributors, CC-BY-SA

Grayson County Appraisal District, BIS Consulting - www.bisconsulting.com

Disclaimer: This product is for informational purposes only and has not been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of boundaries.



TED W. WALTERS & ASSOCIATES, LLC

September 4, 2024

Jason Hendrix
2014 Republic Drive
Tyler, TX 75701

City of Sherman
Attn: Engineering
220 W. Mulberry street
Sherman, Tx 75090

Please find the following documents for your review and signature:

- Oncor Electrical ROW Agreement

If everything appears in order please sign the documents in the presence of a Notary Public, who should sign, date and seal the acknowledgments. Please return the original documents and W-9 to me in the self-addressed envelope provided. Keep the copy for your records

Oncor is paying \$2.00 a foot. The distance across is 40 feet for a total of \$80.00

If you have any questions, please feel free to contact me at **903-530-1255** or by email at jasonhndrx@yahoo.com. Thank you for your time.

Sincerely,

Jason Hendrix
ROW Agent

EASEMENT AND RIGHT OF WAY

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

That **City of Sherman**, hereinafter called "Grantor," whether one or more, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration to Grantor in hand paid by **Oncor Electric Delivery Company LLC, a Delaware limited liability company**, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202-1234, hereinafter referred to as "Grantee," has granted, sold and conveyed and by these presents does grant, sell and convey unto said Grantee, its successors and assigns, an easement and right-of-way for overhead and/or underground electric supply and communications facilities, consisting of a variable number of wires and cables, supporting structures, surface mounted equipment, conduits and all necessary or desirable appurtenances over, under, through, across and upon Grantor's land described as follows:

SEE EXHIBIT "A" (ATTACHED)

Grantor recognizes that the general course of said lines, or the metes and bounds as described above, is based on preliminary surveys only, and Grantor hereby agrees that the easement and right-of-way and its general dimensions hereby granted shall apply to the actual location of said lines when constructed.

Together with the right of ingress and egress along and upon said easement and right-of-way and over and across Grantor's adjoining properties for the purpose of and with the right to construct, maintain, operate, repair, remove, replace, reconstruct, abandon in place, and to change the size and capacity of said facilities; the right to relocate said facilities in the same relative direction of said facilities; the right to relocate said facilities in the same relative position to any adjacent road if and as such is widened in the future; the right to lease wire space for the purpose of permitting others to string or lay wire or cable along said facilities; the right to prevent excavation within the easement area; the right to prevent construction of, within the easement area, any and all buildings, structures or other obstructions which, in the sole judgment of Grantee, may endanger or interfere with the efficiency, safety, and/or convenient operation of said facilities and their appurtenances and the right to trim or remove trees or shrubbery within, but not limited to, said easement area, including by use of herbicides or other similar chemicals approved by the U.S. Environmental Protection Agency, to the extent in the sole judgment of Grantee, as may be necessary to prevent possible interference with the operation of said facilities or to remove possible hazard thereto. Grantor shall not make changes in grade, elevation or contour of the land or impound water within the easement area as described above without prior written consent of Grantee.

Grantor reserves the right to use the land within the above described easement area for purposes not inconsistent with Grantee's use of such property, provided such use shall not, in the sole judgment of Grantee, interfere with the exercise by Grantee of the rights hereby granted.

TO HAVE AND TO HOLD the above described easement and right-of-way unto the said Grantee, its successors and assigns, until all of said electric lines and facilities shall be abandoned, and in that event said easement and right-of-way shall cease and all rights herein granted shall terminate and revert to Grantor or Grantor's heirs, successors or assigns, and legal representatives, and Grantor hereby binds Grantor and Grantor's heirs, successors, assigns, and legal representatives to warrant and forever defend the above described easement and right-of-way unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this _____ day of _____, 20____.

City of Sherman

By: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as the act and deed of **City of Sherman**, as the _____ thereof, for the purposes and consideration therein expressed, in the capacity therein stated and that he/she is authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A.D. 20____.

Notary Public in and for the State of Texas



P.O. BOX 992 | 6477 FM 311, SPRING BRANCH, TX 78070
WWW.SHERWOODSURVEYING.COM
TBPELS FIRM #10044200

24ONCOR087 CITY OF SHERMAN

DATE: 11/06/2024

EXHIBIT "A"
ONCOR ELECTRIC EASEMENT (0.014 ACRES) .

BEING A 15 FOOT WIDE (0.014 ACRE) ONCOR ELECTRIC EASEMENT SITUATED IN THE S. DUNMAN SURVEY ABSTRACT NUMBER 329 GRAYSON COUNTY, TEXAS, AND BEING A PART OF A CALLED 1.904 ACRE TRACT OF LAND CONVEYED TO THE CITY OF SHERMAN BY DEED RECORDED IN VOLUME 866, PAGE 199, OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS, SAID 0.014 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING, AT A 1/2" IRON ROD FOUND HAVING GRID COORDINATES OF (N:7264604.98 E:2545851.27) SITUATED IN THE WESTERLY LINE OF US HIGHWAY 75, FOR THE NORTHEASTERLY CORNER HEREOF, AND BEING THE NORTHEASTERLY CORNER OF SAID 1.904 ACRE CITY OF SHERMAN TRACT, COMMON WITH THE SOUTHEASTERLY CORNER OF A 5.74 ACRE TRACT OF LAND CONVEYED TO THOMAS & LAURA SWOR BY DEED RECORDED IN DOCUMENT NUMBER 2016-26053 OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY TEXAS;

THENCE, WITH THE WEST LINE OF US HIGHWAY 75, COMMON WITH THE EASTERLY LINE OF SAID 1.904 ACRE TRACT, S 06°41'12" E A DISTANCE OF 39.07 FEET TO A 1/2" IRON ROD FOUND FOR THE SOUTHEASTERLY CORNER HEREOF, AND BEING A SOUTHEASTERLY CORNER OF SAID 1.904 ACRE TRACT, COMMON WITH THE NORTHEASTERLY CORNER OF A CALLED 73.79 ACRE TRACT OF LAND CONVEYED TO TYSON FRESH MEATS INC. BY DEED RECORDED IN DOCUMENT NUMBER 2006-11855 OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS;

THENCE, WITH THE COMMON LINE OF SAID 1.904 ACRE TRACT AND THE 73.79 ACRE TRACT, S 74°49'02" W A DISTANCE OF 15.17 FEET TO A POINT, FOR THE SOUTHWESTERLY CORNER HEREOF, FROM WHICH A 1/2" IRON ROD FOUND FOR AN INTERIOR ELL CORNER OF SAID 1.904 ACRE TRACT BEARS S 74°49'02" W A DISTANCE OF 173.02 FEET;

THENCE, OVER AND ACROSS SAID 1.904 ACRE TRACT, N 06°41'12" W A DISTANCE OF 39.10 FEET TO A POINT IN THE NORTHERLY LINE OF SAID 1.904 ACRE TRACT, COMMON WITH THE SOUTHERLY LINE OF SAID 5.74 ACRE TRACT;

THENCE, WITH SAID COMMON LINE N 74°57'32" E A DISTANCE OF 15.16 FEET TO THE **POINT OF BEGINNING** AND CONTAINING 0.014 ACRES OF LAND, MORE OR LESS.



I, CODY T. EMANIS, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED FROM A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

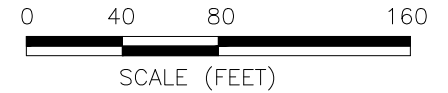
A SURVEY EXHIBIT WAS PREPARED ON THIS SAME DATE. BASIS OF BEARING IS NAD 83 TEXAS STATE PLANE COORDINATES, NORTH CENTRAL ZONE.




CODY T. EMANIS 11-06-2024
R.P.L.S. #7015 STATE OF TEXAS

LEGEND

- 1/2" IRON ROD FOUND
(UNLESS NOTED)
- CM CONTROLLING MONUMENT
- DENOTES EASEMENT AREA
- APPARENT RIGHT-OF-WAY



SWOR THOMAS G & LAURA J
ACRES 5.74
DOC# 2016-26053

"EXHIBIT B"
15' WIDE ONCOR
ELECTRIC EASEMENT
0.014 ACRES

**POINT OF BEGINNING
(GRID)**
N:7264604.98
E:2545851.27

**US HIGHWAY 75
(VARIABLE WIDTH)**

CITY OF SHERMAN
ACRES 1.904
VOL 866 PG 199



TYSON FRESH MEATS INC
ACRES 73.79
DOC# 2006-11855

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 06°41'12" E	39.07'
L2	S 74°49'02" W	15.17'
L3	N 06°41'12" W	39.10'
L4	N 74°57'32" E	15.16'

LEGAL DESCRIPTION

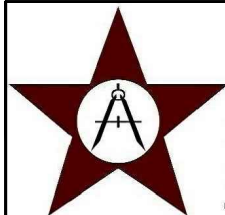
BEING A 15 FOOT WIDE (0.014 ACRE) ONCOR ELECTRIC EASEMENT SITUATED IN THE S. DUNMAN SURVEY ABSTRACT NUMBER 329 GRAYSON COUNTY, TEXAS, AND BEING A PART OF A CALLED 1.904 ACRE TRACT OF LAND CONVEYED TO THE CITY OF SHERMAN BY DEED RECORDED IN VOLUME 866, PAGE 199, OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS

SURVEYOR NOTES:

THIS BOUNDARY SURVEY WAS COMPLETED WITHOUT ADDITIONAL RESEARCH TO DETERMINE IF OTHER MATTERS OF RECORD, IF ANY, MIGHT AFFECT THIS PROPERTY, SUCH AS EASEMENTS, SETBACKS, OR OTHER ENCUMBRANCES.

BASIS OF BEARING IS NAD83 TEXAS STATE PLANE COORDINATES, NORTH CENTRAL ZONE

DATE OF FIELDWORK: 11/05/2024

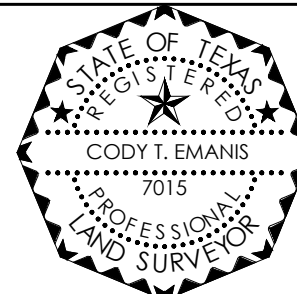


**SHERWOOD
SURVEYING & S.U.E.**
UTILITIES | RESIDENTIAL | COMMERCIAL | INDUSTRIAL
6477 FM 311, P.O. BOX 992 TBPCLS FIRM#10044200
SPRING BRANCH, TEXAS 78070
PHONE (830) 228-5788 FAX (830) 885-2170

DATE: 11/06/2024

DRAWN BY: CO

PROJECT No. 24ONCOR087



SURVEYORS CERTIFICATE

I, CODY T. EMANIS, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, REGISTRATION NUMBER 7015, HEREBY STATE THAT DURING THE MONTH OF NOVEMBER, 2024, A SURVEY OF THE REAL PROPERTY SHOWN HEREON WAS MADE UPON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

Cody T. Emanis
CODY T. EMANIS
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 7015

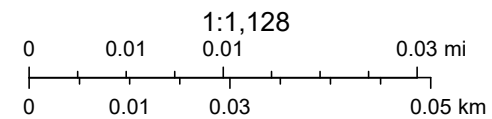
11/06/2024
DATE

Grayson CAD Web Map



9/5/2024, 4:24:46 PM

— Roads  Abstracts  Parcels



© OpenStreetMap (and) contributors, CC-BY-SA

Grayson County Appraisal District, BIS Consulting - www.bisconsulting.com

Disclaimer: This product is for informational purposes only and has not been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of boundaries.



TED W. WALTERS & ASSOCIATES, LLC

September 4, 2024

Jason Hendrix
2014 Republic Drive
Tyler, TX 75701

City of Sherman
Attn: Engineering
220 W. Mulberry street
Sherman, Tx 75090

Please find the following documents for your review and signature:

- Oncor Electrical ROW Agreement

If everything appears in order please sign the documents in the presence of a Notary Public, who should sign, date and seal the acknowledgments. Please return the original documents and W-9 to me in the self-addressed envelope provided. Keep the copy for your records

Oncor is paying \$2.00 a foot. The distance across is 40 feet for a total of \$80.00

If you have any questions, please feel free to contact me at **903-530-1255** or by email at jasonhndrx@yahoo.com. Thank you for your time.

Sincerely,

Jason Hendrix
ROW Agent

EASEMENT AND RIGHT OF WAY

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

That **City of Sherman**, hereinafter called "Grantor," whether one or more, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration to Grantor in hand paid by **Oncor Electric Delivery Company LLC, a Delaware limited liability company**, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202-1234, hereinafter referred to as "Grantee," has granted, sold and conveyed and by these presents does grant, sell and convey unto said Grantee, its successors and assigns, an easement and right-of-way for overhead and/or underground electric supply and communications facilities, consisting of a variable number of wires and cables, supporting structures, surface mounted equipment, conduits and all necessary or desirable appurtenances over, under, through, across and upon Grantor's land described as follows:

SEE EXHIBIT "A" (ATTACHED)

Grantor recognizes that the general course of said lines, or the metes and bounds as described above, is based on preliminary surveys only, and Grantor hereby agrees that the easement and right-of-way and its general dimensions hereby granted shall apply to the actual location of said lines when constructed.

Together with the right of ingress and egress along and upon said easement and right-of-way and over and across Grantor's adjoining properties for the purpose of and with the right to construct, maintain, operate, repair, remove, replace, reconstruct, abandon in place, and to change the size and capacity of said facilities; the right to relocate said facilities in the same relative direction of said facilities; the right to relocate said facilities in the same relative position to any adjacent road if and as such is widened in the future; the right to lease wire space for the purpose of permitting others to string or lay wire or cable along said facilities; the right to prevent excavation within the easement area; the right to prevent construction of, within the easement area, any and all buildings, structures or other obstructions which, in the sole judgment of Grantee, may endanger or interfere with the efficiency, safety, and/or convenient operation of said facilities and their appurtenances and the right to trim or remove trees or shrubbery within, but not limited to, said easement area, including by use of herbicides or other similar chemicals approved by the U.S. Environmental Protection Agency, to the extent in the sole judgment of Grantee, as may be necessary to prevent possible interference with the operation of said facilities or to remove possible hazard thereto. Grantor shall not make changes in grade, elevation or contour of the land or impound water within the easement area as described above without prior written consent of Grantee.

Grantor reserves the right to use the land within the above described easement area for purposes not inconsistent with Grantee's use of such property, provided such use shall not, in the sole judgment of Grantee, interfere with the exercise by Grantee of the rights hereby granted.

TO HAVE AND TO HOLD the above described easement and right-of-way unto the said Grantee, its successors and assigns, until all of said electric lines and facilities shall be abandoned, and in that event said easement and right-of-way shall cease and all rights herein granted shall terminate and revert to Grantor or Grantor's heirs, successors or assigns, and legal representatives, and Grantor hereby binds Grantor and Grantor's heirs, successors, assigns, and legal representatives to warrant and forever defend the above described easement and right-of-way unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this _____ day of _____, 20____.

City of Sherman

By: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF GRAYSON §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as the act and deed of **City of Sherman**, as the _____ thereof, for the purposes and consideration therein expressed, in the capacity therein stated and that he/she is authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A.D. 20____.

Notary Public in and for the State of Texas



P.O. BOX 992 | 6477 FM 311, SPRING BRANCH, TX 78070
WWW.SHERWOODSURVEYING.COM
TBPES FIRM #10044200

24ONCOR087 CITY OF SHERMAN

DATE: 11/06/2024

EXHIBIT "A"
ONCOR ELECTRIC EASEMENT (0.014 ACRES) .

BEING A 15 FOOT WIDE (0.014 ACRE) ONCOR ELECTRIC EASEMENT SITUATED IN THE S. DUNMAN SURVEY ABSTRACT NUMBER 329 GRAYSON COUNTY, TEXAS, AND BEING A PART OF A CALLED 1.904 ACRE TRACT OF LAND CONVEYED TO THE CITY OF SHERMAN BY DEED RECORDED IN VOLUME 866, PAGE 199, OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS, SAID 0.014 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING, AT A 1/2" IRON ROD FOUND HAVING GRID COORDINATES OF (N:7264604.98 E:2545851.27) SITUATED IN THE WESTERLY LINE OF US HIGHWAY 75, FOR THE NORTHEASTERLY CORNER HEREOF, AND BEING THE NORTHEASTERLY CORNER OF SAID 1.904 ACRE CITY OF SHERMAN TRACT, COMMON WITH THE SOUTHEASTERLY CORNER OF A 5.74 ACRE TRACT OF LAND CONVEYED TO THOMAS & LAURA SWOR BY DEED RECORDED IN DOCUMENT NUMBER 2016-26053 OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY TEXAS;

THENCE, WITH THE WEST LINE OF US HIGHWAY 75, COMMON WITH THE EASTERLY LINE OF SAID 1.904 ACRE TRACT, S 06°41'12" E A DISTANCE OF 39.07 FEET TO A 1/2" IRON ROD FOUND FOR THE SOUTHEASTERLY CORNER HEREOF, AND BEING A SOUTHEASTERLY CORNER OF SAID 1.904 ACRE TRACT, COMMON WITH THE NORTHEASTERLY CORNER OF A CALLED 73.79 ACRE TRACT OF LAND CONVEYED TO TYSON FRESH MEATS INC. BY DEED RECORDED IN DOCUMENT NUMBER 2006-11855 OF THE OFFICIAL PUBLIC RECORDS OF GRAYSON COUNTY, TEXAS;

THENCE, WITH THE COMMON LINE OF SAID 1.904 ACRE TRACT AND THE 73.79 ACRE TRACT, S 74°49'02" W A DISTANCE OF 15.17 FEET TO A POINT, FOR THE SOUTHWESTERLY CORNER HEREOF, FROM WHICH A 1/2" IRON ROD FOUND FOR AN INTERIOR ELL CORNER OF SAID 1.904 ACRE TRACT BEARS S 74°49'02" W A DISTANCE OF 173.02 FEET;

THENCE, OVER AND ACROSS SAID 1.904 ACRE TRACT, N 06°41'12" W A DISTANCE OF 39.10 FEET TO A POINT IN THE NORTHERLY LINE OF SAID 1.904 ACRE TRACT, COMMON WITH THE SOUTHERLY LINE OF SAID 5.74 ACRE TRACT;

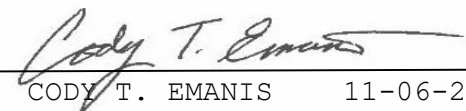
THENCE, WITH SAID COMMON LINE N 74°57'32" E A DISTANCE OF 15.16 FEET TO THE **POINT OF BEGINNING** AND CONTAINING 0.014 ACRES OF LAND, MORE OR LESS.



I, CODY T. EMANIS, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED FROM A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

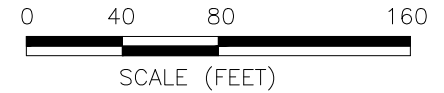
A SURVEY EXHIBIT WAS PREPARED ON THIS SAME DATE. BASIS OF BEARING IS NAD 83 TEXAS STATE PLANE COORDINATES, NORTH CENTRAL ZONE.




CODY T. EMANIS 11-06-2024
R.P.L.S. #7015 STATE OF TEXAS

LEGEND

- 1/2" IRON ROD FOUND
(UNLESS NOTED)
- CM CONTROLLING MONUMENT
- DENOTES EASEMENT AREA
- APPARENT RIGHT-OF-WAY



SWOR THOMAS G & LAURA J
ACRES 5.74
DOC# 2016-26053

"EXHIBIT B"
15' WIDE ONCOR
ELECTRIC EASEMENT
0.014 ACRES

**POINT OF BEGINNING
(GRID)**
N:7264604.98
E:2545851.27

**US HIGHWAY 75
(VARIABLE WIDTH)**

CITY OF SHERMAN
ACRES 1.904
VOL 866 PG 199



TYSON FRESH MEATS INC
ACRES 73.79
DOC# 2006-11855

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 06°41'12" E	39.07'
L2	S 74°49'02" W	15.17'
L3	N 06°41'12" W	39.10'
L4	N 74°57'32" E	15.16'

LEGAL DESCRIPTION

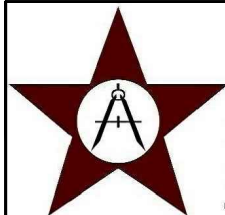
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SURVEYOR NOTES:

THIS BOUNDARY SURVEY WAS COMPLETED WITHOUT ADDITIONAL RESEARCH TO DETERMINE IF OTHER MATTERS OF RECORD, IF ANY, MIGHT AFFECT THIS PROPERTY, SUCH AS EASEMENTS, SETBACKS, OR OTHER ENCUMBRANCES.

BASIS OF BEARING IS NAD83 TEXAS STATE PLANE COORDINATES, NORTH CENTRAL ZONE

DATE OF FIELDWORK: 11/05/2024

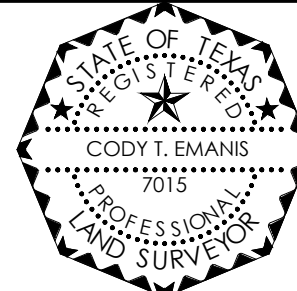


**SHERWOOD
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UTILITIES | RESIDENTIAL | COMMERCIAL | INDUSTRIAL
6477 FM 311, P.O. BOX 992 TBPCLS FIRM#10044200
SPRING BRANCH, TEXAS 78070
PHONE (830) 228-5788 FAX (830) 885-2170

DATE: 11/06/2024

DRAWN BY: CO

PROJECT No. 24ONCOR087



SURVEYORS CERTIFICATE

I, CODY T. EMANIS, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, REGISTRATION NUMBER 7015, HEREBY STATE THAT DURING THE MONTH OF NOVEMBER, 2024, A SURVEY OF THE REAL PROPERTY SHOWN HEREON WAS MADE UPON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

Cody T. Emanis
CODY T. EMANIS
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 7015

11/06/2024
DATE





City Council Regular Meeting

Agenda Item No. D.10.

Meeting Date: 2/3/2025

Prepared By: Kim Hobbs, Quality Services Administrative Assistant

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** RESOLUTION NO. 7479**

Authorizing the Purchase of a New 2024 Tahoe RST 4x4 for the Equipment Services Department from Sam Pack's Five Star Chevrolet through the Texas Local Government Purchasing Cooperative (BuyBoard).

Issue:

To consider approval of a resolution to purchase a new 2024 Tahoe RST 4x4 for the Equipment Services Department from Sam Pack's Five Star Chevrolet through the Texas Local Government Purchasing Cooperative (BuyBoard).

Background:

The City needs additional fleet vehicles to balance the needs demanded by break fixes. This vehicle has the flexibility to be utilized in various departments as it has the storage and power requirements needed. The requested purchase will be used in the daily operations of Equipment Services as a fleet travel unit, however, depending on the needs present, it may be swapped with another unit from Police or Fire.

Origination:

Department of Public Works

Financial Consideration:

The new 2024 Tahoe RST will be purchased from Sam Pack's Five Star Chevrolet for \$74,093.99 through BuyBoard. Funding for this purchase will be out of the 2024-2025 fiscal year budget.

Staff Recommendation:

It is recommended that staff be authorized to purchase a new 2024 Tahoe RST from Sam Pack's Five Star Chevrolet through BuyBoard.

Alternatives:

As may be recommended by the City Council

Attachments:

1. Resolution No. 7479
2. 2024 Tahoe Sam Pack's Chevrolet
3. BuyBoard Interlocal Participation Agreement

RESOLUTION NO. 7479

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING THE PURCHASE OF A NEW 2024 TAHOE RST 4X4 FROM SAM PACK'S FIVE STAR CHEVROLET FOR THE EQUIPMENT SERVICES DEPARTMENT THROUGH BUYBOARD; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

SECTION 1. That the City Manager be and is hereby authorized and directed to purchase from Sam Pack's Five Star Chevrolet through Buyboard a new 2024 Tahoe RST 4x4 at a total price of Seventy Four Thousand Ninety Three Dollars and Ninety Nine Cents (\$74,093.99). Any agreements related to the purchase must be approved by the City Attorney. Funds for this purchase are being committed out of the City of Sherman's Fleet Replacement Fund.

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 3rd day of February 2025.

CITY OF SHERMAN, TEXAS

**BY: _____
SHAWN TEAMANN, MAYOR**

ATTEST:

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

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

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

Sam Pack's Five Star Ford - Aftermarket Build Sheet

PO# Parts
Date Parts Ordered
Agency Name
Vehicle Type
Salesperson

PO # Labor
Date to Chevy
Last Part ETA
Vehicle ETA
Quantity of Vehicle order

[illegible]

Stock #s

[illegible]

Parts Total	\$0.00
--------------------	---------------

Total of Build	\$0.00
-----------------------	---------------

Labor Hours

0

Labor Price

\$0.00

[illegible]

RECEIVED JUN 15 2002

YOUR COPY

INTERLOCAL PARTICIPATION AGREEMENT RECEIVED JUN 15 2002

for the
Texas Local Government Purchasing Cooperative

This Interlocal Participation Agreement ("Agreement") is made and entered into by and between the Texas Local Government Purchasing Cooperative ("Cooperative"), an administrative agency of cooperating local governments, acting on its own behalf and the behalf of all participating local governments, and the undersigned local government of the State of Texas ("Cooperative Member"). The purpose of this Agreement is to facilitate compliance with state bidding requirements, to identify qualified vendors of commodities, goods and services, to relieve the burdens of the governmental purchasing function, and to realize the various potential economies, including administrative cost savings, for Cooperative Members.

WITNESSETH:

WHEREAS, the Cooperative Members are authorized by Chapter 791, et seq., The Interlocal Cooperation Act of the Government Code ("the Act"), to agree with other local governments to form purchasing cooperatives; and

WHEREAS, the Cooperative is an administrative agency of local governments cooperating in the discharge of their governmental functions; and

WHEREAS, the Cooperative Member does hereby adopt the Organizational Interlocal Agreement, together with such amendments as may be made in the future, reflecting the evolving mission of the Cooperative and further agrees to become an additional party to that certain Organizational Interlocal Agreement promulgated on the 26th day of January, 1998.

NOW, THEREFORE, BE IT RESOLVED that the undersigned Cooperative Member in consideration of the agreement of the Cooperative and the Cooperative Members to provide services as detailed herein does agree to the following terms, conditions, and general provisions.

In return for the payment of the contributions and subject to all terms of this Agreement, the parties agree as follows:

TERMS AND CONDITIONS

1. Adopt Organizational Interlocal Cooperation Agreement. The Cooperative Member by the adoption and execution of this Agreement hereby adopts and approves the Organizational Interlocal Agreement dated January 26, 1998, together with such amendments as may be made in the future and further agrees to become a Cooperative Member.
2. Term. The initial term of this Agreement shall commence at 12:01 a.m. on the date executed and signed and shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement. The terms, conditions, and general provisions set forth below shall apply to the initial term and all renewals.
3. Termination.
 - a. By the Cooperative Member. This Agreement may be terminated by the Cooperative Member at any time by thirty (30) days prior written notice to the Cooperative; provided all charges owed to the Cooperative and any vendor have been fully paid.
 - b. By the Cooperative. The Cooperative may terminate this Agreement by:
 1. Giving ten (10) days notice by certified mail to the Cooperative Member if the Cooperative Member fails or refuses to make the payments or contributions as herein provided; or
 2. Giving thirty (30) days notice by certified mail to the Cooperative Member.

- c. **Termination Procedure.** If the Cooperative Member terminates its participation during the term of this Agreement or breaches this Agreement, or if the Cooperative terminates participation of the Cooperative Member under any provision of this Article, the Cooperative Member shall bear the full financial responsibility for any purchases occurring after the termination date, and for any unpaid charges accrued during its term of membership in the Cooperative. The Cooperative may seek the whole amount due, if any, from the terminated Cooperative Member. The Cooperative Member will not be entitled to a refund of membership dues paid.
4. **Payments.**
 - a. The Cooperative Member agrees to pay membership fees based on a plan developed by the Cooperative. Membership fees are payable by Cooperative Member upon receipt of an invoice from the Cooperative, Cooperative Contractor or vendor. A late charge amounting to the maximum interest allowed by law, but not less than the rate of interest under Section 2251.021, et seq., Texas Government Code, shall begin to accrue daily on the 31st day following the due date and continue to accrue until the contribution and late charges are paid in full. The Cooperative reserves the right to collect all funds that are due to the Cooperative in the event of termination by Cooperative Member or breach of this Agreement by Cooperative Member.
 - b. The Cooperative Member will make timely payments to the vendor for the goods, materials and services received in accordance with the terms and conditions of the Invitation to Bid and related procurement documents. Payment for goods, materials and services and inspections and acceptance of goods, materials and services ordered by the procuring party shall be the exclusive obligation of the procuring Cooperative Member.
5. **Cooperative Reporting.** The Cooperative will provide periodic activity reports to the Cooperative Member. These reports may be modified from time to time as deemed appropriate by the Cooperative.
6. **Administration.** Cooperative Member will use the BuyBoard purchasing application in accordance with instruction from the Cooperative; discontinue use upon termination of participation; maintain confidentiality and prevent unauthorized use; maintain equipment, software and testing to operate the system at its own expense; report all purchase orders generated to Cooperative or its designee in accordance with instructions of the Cooperative; and make a final accounting to Cooperative upon termination of membership.
7. **Amendments.** The Board may amend this agreement, provided that notice is sent to each participant at least 60 days prior to the effective date of any change described in such amendment which, in the opinion of the Board, will have a material effect on the Cooperative Members participation in the Cooperative.

GENERAL PROVISIONS

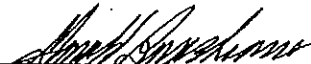
1. **Authorization to Participate.** Each Cooperative Member represents and warrants that its governing body has duly authorized its participation in the Cooperative.
2. **Bylaws.** The Cooperative Member agrees to abide by the Bylaws of the Cooperative, as they may be amended, and any and all reasonable policies and procedures established by the Cooperative.
3. **Compensation.** The parties agree that the payments under this Agreement and all related exhibits and documents are amounts that fairly compensate the Cooperative for the services or functions performed under the Agreement, and that the portion of gross sales paid by participating vendors enables the Cooperative to pay the necessary licensing fees, marketing costs, and related expenses required to operate a statewide system of electronic commerce for the local governments of Texas.
4. **Cooperation and Access.** The Cooperative Member agrees that it will cooperate in compliance with any reasonable requests for information and/or records made by the Cooperative. The Cooperative reserves the right to audit the relevant records of any Cooperative Member. Any breach of this Article shall be considered material and shall make the Agreement subject to termination on ten (10) days written notice to the Cooperative Member.

5. **Coordinator.** The Cooperative Member agrees to appoint a program coordinator who shall have express authority to represent and bind the Cooperative Member, and the Cooperative will not be required to contact any other individual regarding program matters. Any notice to or any agreements with the coordinator shall be binding upon the Cooperative Member. The Cooperative Member reserves the right to change the coordinator as needed by giving written notice to the Cooperative. Such notice is not effective until actually received by the Cooperative.
6. **Current Revenue.** The Cooperative Member hereby warrants that all payments, contributions, fees, and disbursements required of it hereunder shall be made from current revenues budgeted and available to the Cooperative Member.
7. **Defense and Prosecution of Claims.** The Cooperative Member authorizes the Cooperative to regulate the commencement, defense, intervention, or participation in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, or other appearances of the Cooperative and/or any past or current Cooperative Member in any litigation, claim or dispute, and to engage counsel and appropriate experts, in the Cooperative's sole discretion, with respect to such litigation, claim or disputes. The Cooperative Member does hereby agree that any suit brought against the Cooperative or a Cooperative Member may be defended in the name of the Cooperative or the Member by the counsel selected by the Cooperative, in its sole discretion, or its designee, on behalf of and at the expense of the Cooperative as necessary for the prosecution or defense of any litigation. Full cooperation by the Cooperative Member shall be extended to supply any information needed or helpful in such prosecution or defense. Subject to specific revocation, the Cooperative Member hereby designates the Cooperative to act as a class representative on its behalf in matters arising out of this Agreement.
8. **Governance.** The Board of Trustees (Board) will govern the Cooperative in accordance with the Bylaws. Travis County, Texas will be the location for filing any dispute, claim or lawsuit.
9. **Limitations of Liability.** COOPERATIVE, ITS ENDORSERS (TEXAS ASSOCIATION OF SCHOOL BOARDS, TEXAS ASSOCIATION OF COUNTIES, AND TEXAS MUNICIPAL LEAGUE) AND SERVICING CONTRACTOR (TEXAS ASSOCIATION OF SCHOOL BOARDS) DO NOT WARRANT THAT THE OPERATION OR USE OF COOPERATIVE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. COOPERATIVE, ITS ENDORSERS AND SERVICING CONTRACTORS, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCT OR SERVICE FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT IN REGARD TO ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
10. **Merger.** This Interlocal Participation Agreement, Terms and Conditions, and General Provisions, together with the Bylaws, Organizational Interlocal Agreement, and Exhibits, represents the complete understanding of the Cooperative, and Cooperative Member electing to participate in the Cooperative.
11. **Notice.** Any written notice to the Cooperative shall be made by first class mail, postage prepaid, and delivered to the Associate Executive Director Financial Planning, Texas Association of School Boards, Inc., P.O. Box 400, Austin, Texas 78767-0400.
12. **Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and venue shall lie in Travis County, Texas.
13. **Warranty.** By the execution and delivery of this Agreement, the undersigned individuals warrant that they have been duly authorized by all requisite administrative action required to enter into and perform the terms of this Agreement.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, sign this Agreement as of the date indicated.

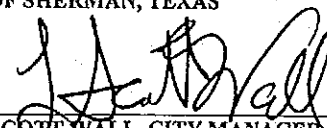
TO BE COMPLETED BY THE COOPERATIVE:

TEXAS LOCAL GOVERNMENT PURCHASING COOPERATIVE, as acting on behalf of all other Cooperative Members

By:  Date: 7-15-02
Gerald Brashears, Cooperative Administrator

TO BE COMPLETED BY COOPERATIVE MEMBER:

CITY OF SHERMAN, TEXAS

By:  Date: 5/28/2002
L. SCOTT WALL, CITY MANAGER

Coordinator for the Cooperative Member is:

Name: MARYANN WINKLER
Address: 405 N. RUSK STREET
SHERMAN, TEXAS 75090
Phone: (903) 892-7285
Fax: (903) 891-0255
Email: PURCH@TEXOMA.NET



City Council Regular Meeting

Agenda Item No. D.11.

Meeting Date: 2/3/2025

Prepared By: Jana Garner, Grants Coordinator

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** RESOLUTION NO. 7480**

Authorizing Submission and Acceptance of a Grant Application to the Governor's Office for a Criminal Justice Assistance Grant Program

Issue:

Submission of an application and acceptance of Criminal Justice Assistance Grant to the Governor's Office

Background:

If awarded, grant will provide financial support to the Sherman Police Department for the purchase of a FARO system to assist in the documentation of crime scenes and car crashes.

Origination:

Sherman Police Department

Financial Consideration:

Funding will be used by the Sherman Police Department to purchase a FARO system costing approximately \$76,049. There is no matching required.

Staff Recommendation:

It is staff recommendation that the Sherman City Council approve the resolution to apply to the Criminal Justice Assistance Grant Program

Alternatives:

The Sherman City Council may not approve the submission of the grant application.

Attachments:

1. Resolution No. 7480
2. Sherman PD Estimate_FARO

RESOLUTION NO. 7480

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS, AUTHORIZING SUBMISSION OF A GRANT APPLICATION AND THE ACCEPTANCE OF THE CRIMINAL JUSTICE GRANT PROGRAM, FY2026 THROUGH THE OFFICE OF THE GOVERNOR – CRIMINAL JUSTICE DIVISION TO FUND THE ADDITION OF A FARO SYSTEM FOR THE SHERMAN POLICE DEPARTMENT. 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 SO RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS:

SECTION 1. That the City Manager be and is hereby authorized, subject to all contract documents being properly completed and approved as to form and content by City Attorney, to submit a grant application for the Criminal Justice Grant Program, FY2026 through the office of the Governor, Public Safety Office, Criminal Justice Division to fund a FARO system, with an estimated cost of \$76,049, for the Sherman Police Department.

SECTION 2. That the City Manager is hereby authorized to apply for, accept, reject, alter, or terminate a grant.

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

SECTION 4. That it is hereby approved that in the event of loss or misuse of the Office of the Governor – Criminal Justice Division funds, the City of Sherman assures that the funds will be returned to the Office of the Governor - Criminal Justice Division in full.

SECTION 5. That the City Council understands there is no matching requirement for said project by the Office of the Governor – Criminal Justice Division and the Texoma Council of Governments Criminal Justice Grant application; and

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SHERMAN, TEXAS on this the 3rd day of February 2025.

CITY OF SHERMAN, TEXAS

**BY: _____
SHAWN TEAMANN, MAYOR**

ATTEST:

BY: _____
LINDA ASHBY, CITY CLERK

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

BY: _____
RYAN D. PITMANN, CITY ATTORNEY

Items in Estimate:

Clear Estimate

Edit	Part#	Desc.	Unit Price	Qty	Disc.	Totals
	LS9-PU	FARO Focus Premium USA (200m)	\$ 49,999	1	0%	\$ 49,999
	ACCS-PWR-0014	Power Block	\$ 610	1	0%	\$ 610
	ACCSS8032	Carbon Fiber Tripod	\$ 1,300	1	0%	\$ 1,300
	COMP0123X64	VR Ready Notebook	\$ 5,930	1	0%	\$ 5,930
	SSA0900-1Y	SCENE Sub 1Y	\$ 2,190	1	0%	\$ 2,190
	SSA51007-1Y	FARO Zone 3D Expert Subscription 1Y	\$ 1,940	1	0%	\$ 1,940
	TR-BL-SCN-POS	Scanner Training - Facility POS	\$ 0	1	0%	\$ 0
	TR-BL-SCN-POS-FOR	Scanner Trng Forensic- Customer Site UG	\$ 9,610	1	0%	\$ 9,610
	ACCSS0299	80mm Trajectory Spheres	\$ 1,220	1	0%	\$ 1,220
	ACCSS0287	200mm Koppa Target w/tripod	\$ 3,250	1	0%	\$ 3,250

Total Discount:	0.00%	Amount Discounted:	\$0
Total Number of Items:	10	Total Price:	\$76.402



City Council Regular Meeting

Agenda Item No. E.1.

Meeting Date: 2/3/2025

Prepared By: Rob Rae, Developmental Services Director

Approved By: Zachary Flores, Assistant City Manager

Caption:

*** REQUEST TO ADVERTISE**

Sale of Approximately 1.65 Acres of Land Located in the 900 Block of South Travis Street

Issue:

Seeking permission to advertise for bids for the sale of approximately 1.65 Acres of land located in the 900 Block of South Travis Street

Background:

On November 15, 2023, the City of Sherman closed on the property at 915 South Travis Street, known as the Southgate Apartments. After the closing, the Neighborhood Services Department began demolishing the substandard structures at the site. Staff recommends proceeding with the sale of approximately 1.65 acres of land located at 915 South Travis Street. Staff proposes soliciting sealed bids for this property, with a minimum “reserve” attached to the sale. Staff recommends that this property remain residential and complement the surrounding neighborhoods, including Washington Elementary. Staff expects that the sale package will be ready for advertisement near the end of February 2025 with a bid opening in late March 2025.

Origination:

Development Services

Financial Consideration:

The cost of advertising is expected to amount to approximately \$200.00.

Staff Recommendation:

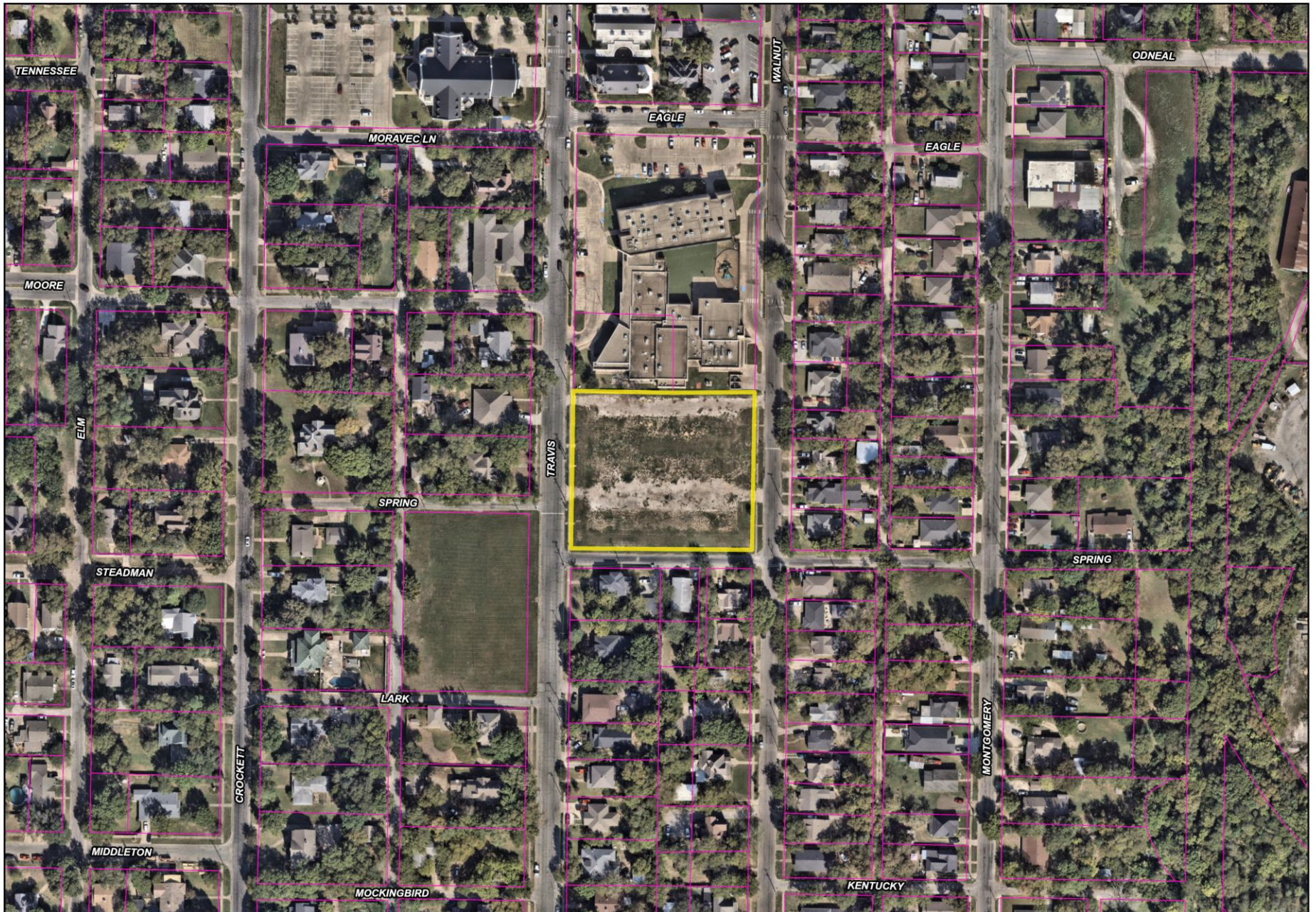
It is recommended that the City Council authorize Staff the request to advertise.

Alternatives:

As may be directed by the City Council

Attachments:

1. Location Map





City Council Regular Meeting

Agenda Item No. F.1.

Meeting Date: 2/3/2025

Prepared By: Caleb Green, Development Services Inspector

Approved By: Zachary Flores, Assistant City Manager

Caption:

Other Business

Receive Update on the Residential Rental Inspection Program

Issue:

To provide an update to the City Council on the Residential Rental Inspection Program.

Background:

On February 5th, 2024, City Council approved Ordinance No. 6691 Article 3.11, allowing city staff to initiate a residential rental inspection program. This program was started to hold apartment complexes accountable for property maintenance issues. At the time of approval, the city council requested staff return in 12 months and give an update on the program's progress.

Since the program inception in February 2024:

- 53 properties have registered for the program
- 31 properties have been registered
- 650 violations have been corrected

Origination:

Development Services

Financial Consideration:

None

Staff Recommendation:

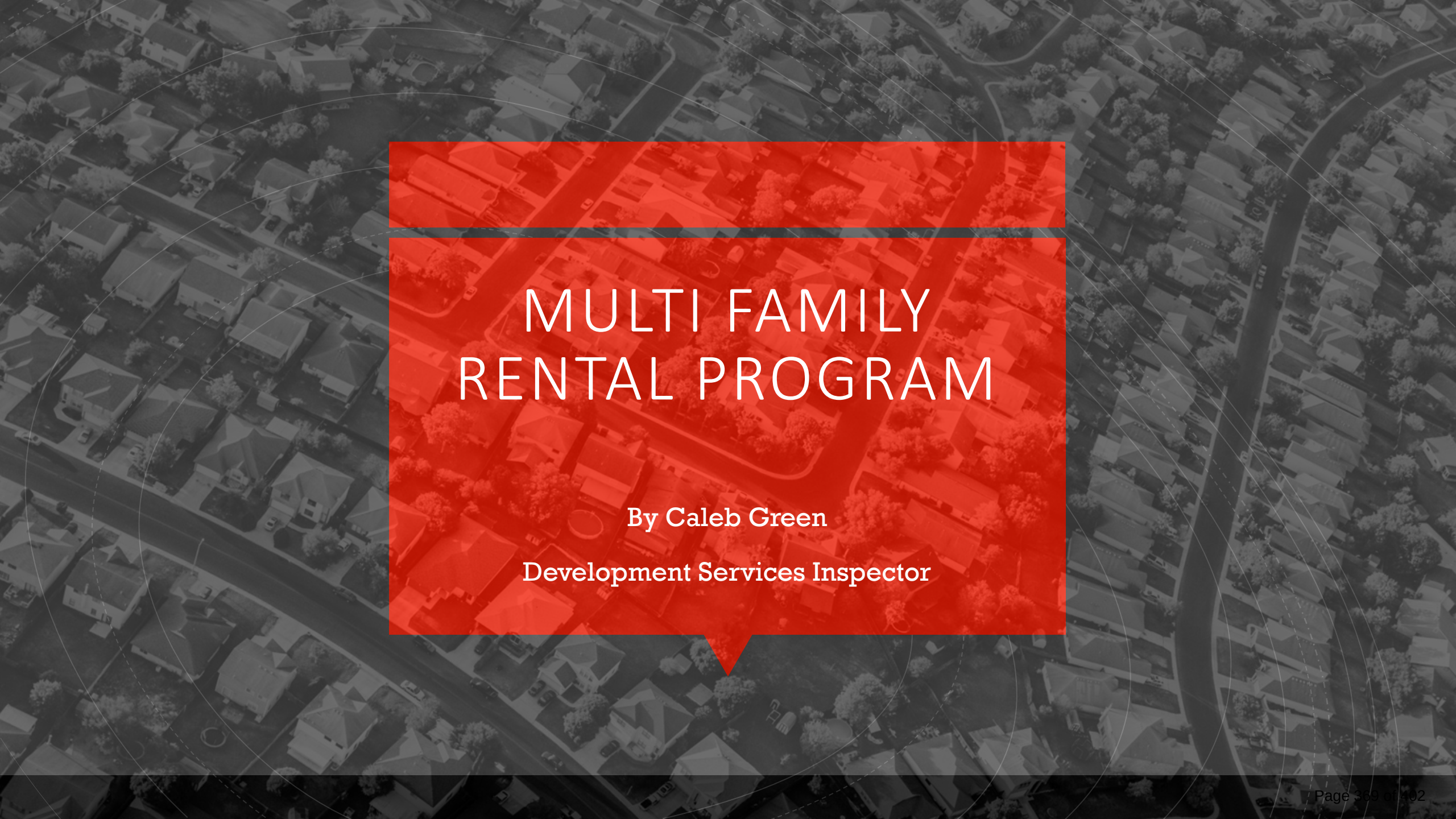
No Action is Required

Alternatives:

None

Attachments:

1. Presentation

An aerial photograph of a suburban neighborhood with numerous houses, trees, and streets. A large, semi-transparent red rectangle is centered over the image, containing white text. The rectangle has a small triangular point at the bottom center.

MULTI FAMILY RENTAL PROGRAM

By Caleb Green

Development Services Inspector

Program Overview

One

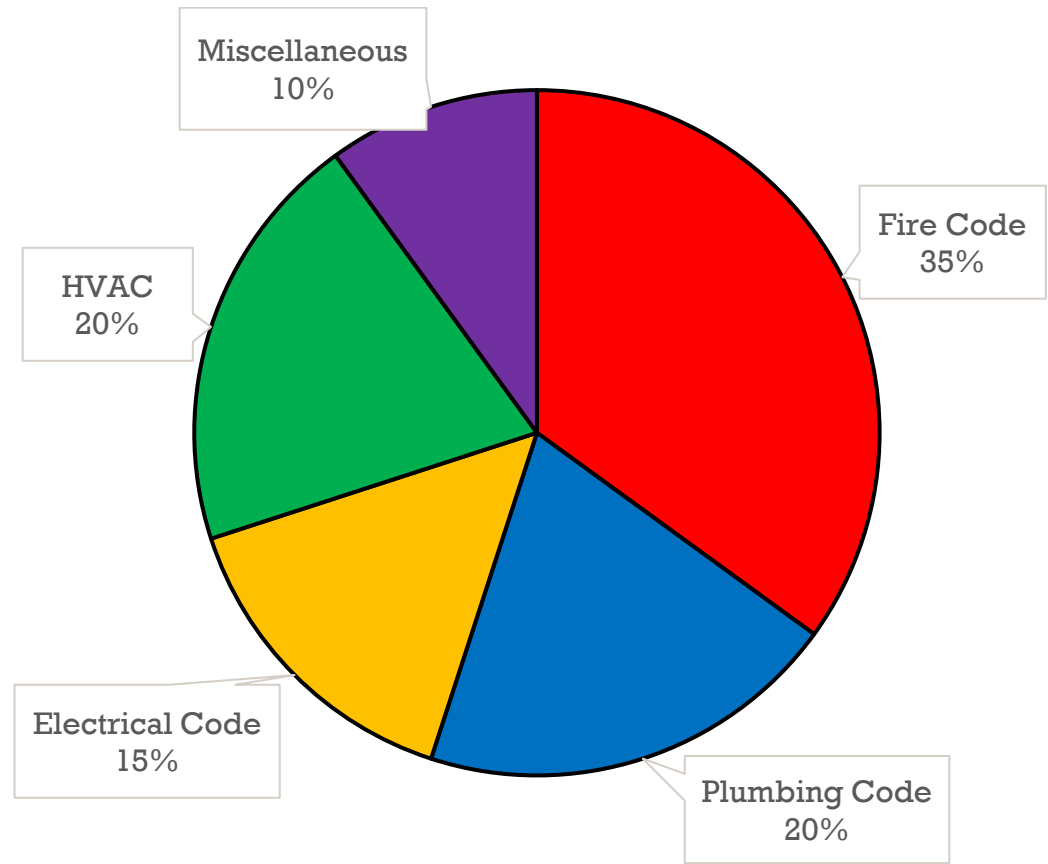
- Currently 53 properties are a part of the program and growing.

Two

- Since February 2024, 31 properties have been inspected/reinspected

Three

- Approximately 650 violations have been corrected in 2024



■ Fire Code ■ Plumbing Code ■ Electrical Code ■ HVAC ■ Miscellaneous

Violation Chart





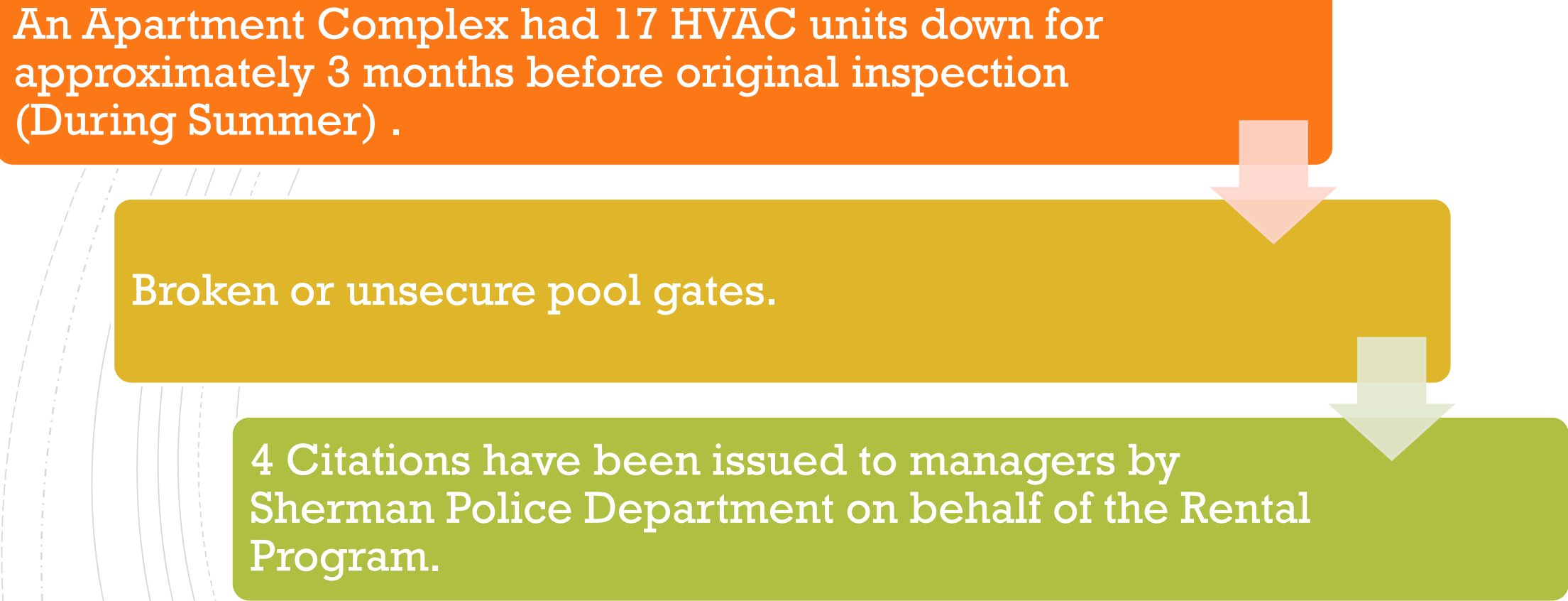


May 21, 2024 at 11:19 AM



May 21, 2024 at 11:19 AM

An Apartment Complex had 17 HVAC units down for approximately 3 months before original inspection (During Summer) .



```
graph TD; A[An Apartment Complex had 17 HVAC units down for approximately 3 months before original inspection (During Summer) .] --> B[Broken or unsecure pool gates.]; B --> C[4 Citations have been issued to managers by Sherman Police Department on behalf of the Rental Program.];
```

Broken or unsecure pool gates.

4 Citations have been issued to managers by Sherman Police Department on behalf of the Rental Program.

Residential Rental Property License and Standards

At the City Council meeting on February 5, 2024, Council approved Article 3.11 of Ordinance 6691 regarding Residential Rental properties. Article 3.11 Residential Rental Property License and Standards is effective immediately. [Article 3.11](#)

The purpose of this article is to protect the health, safety, and welfare of the citizens of the City by establishing minimum standards governing the construction, use, occupancy, management, operation and maintenance of multi-family dwelling complexes; by establishing additional standards governing utilities, facilities, and other physical components and conditions essential to make multi-family dwelling complexes safe, sanitary and fit for human use, occupancy and habitation.

The Residential Rental Property License and Standard Ordinance only applies to multi-family complexes; single-family rental units are exempt from this ordinance at this time.

Landlords/Managers shall be registered/renewed every year no later than January 15, by visiting [MYGOV](#).

The required [Landlord/Tenant Checklist](#). ([Spanish Version](#)).

[Residential Rental Property Readiness Guide](#)

To report violations with the City of Sherman, go to [Rental Property Violations](#).

Additional information:

- [Renter's Rights | Office of the Attorney General \(texasattorneygeneral.gov\)](#)
- [PROPERTY CODE CHAPTER 92. RESIDENTIAL TENANCIES \(texas.gov\)](#)

Rental Program Information Page

Please provide your contact information.

First Name

Last Name

Address

Apt #

Email Address

Phone Number

Description of Violation

☒ Receive an email copy of this form.

Email address

This field is not part of the form submission.

Submit

Submit and Print

Online
Rental
Complaint
Form



Recommendations:

- Properties platted into separate lots but operating as one would fall under the program
- Single Family Rentals to be inspected on complaint base only



City Council Regular Meeting

Agenda Item No. F.2.

Meeting Date: 2/3/2025

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Zachary Flores, Assistant City Manager

Caption:

OTHER BUSINESS

Receive Update from Hidell and Associates Architects, Inc. for Ongoing Construction Projects

Issue:

Receive Presentation for ongoing construction projects

Background:

During the construction process of Fire Station No. 1, Hidell and City Staff identified cost savings items totaling a savings amount in the \$650,000 to \$700,000 range.

The City Hall building had approximately \$98,000 in savings, however, funds were needed for the additional scope of new west wall windows and recently uncovered structural framing and underground plumbing issues. Further funding needed is estimated to be in the \$150,000 range.

Origination:

Hidell and Associates Architects

Financial Consideration:

\$150,000 to refill contingency and pay for additional windows. This money is captured from the savings of Fire Station No.1.

Staff Recommendation:

Staff recommends approval of the additional funds.

Alternatives:

None

Attachments:

1. Sherman Fire Station No. 1 Rebuild Cost Update
2. Sherman City Hall Remodel Cost Update

January 15, 2025

City of Sherman
Brain Stevens
Facilities Manager
915 Birge St.
Sherman, Texas 75090

Re: Fire Station No. 1 Rebuild

Brain,

This letter provides an update on the potential project cost savings on the Sherman Fire Station No. 1 Project. Our team has been working with City Staff and the General Contractor (Byrne Construction) to identify cost savings items throughout the construction process. The project realized over \$824,000 in savings through design decisions and contractor buy-out savings.

During construction, we utilized some of these funds for value-added items, such as a new roof over the existing structure, all new underground sewer lines, upgraded mechanical units with added efficiencies, and comfort upgrades throughout the facility. We are working to finalize the cost savings amount, with an anticipated \$650,000 to \$700,000 range.

Should you have any questions, or need any additional information, please let me know.

Sincerely,
Hidell and Associates Architects



Aaron Babcock
Principal

Cc: Bill Hidell

January 15, 2025

City of Sherman
Brain Stevens
Facilities Manager
915 Birge St.
Sherman, Texas 75090

Re: Sherman City Hall Cost Updates

Brain,

This letter provides an update on the project's costs of the Sherman City Hall project. Our team has been working with City Staff and the General Contractor (Tegrity Contractors) to identify cost savings items. We have realized approximately \$98,000 in savings through lighting, exterior glass, and A/V system modifications. The quality of these systems has not been compromised to achieve these savings; rather, City Staff and our design team have worked directly with the subcontractors to find quality solutions that meet needs at a better value. We are currently utilizing this as our contingency funding, which has assisted in paying for several existing conditions and required project updates discovered after demolition.

We anticipate utilizing all the cost savings realized to help fund the additional scope of new west wall windows and recently uncovered structural framing and underground plumbing issues that need to be addressed. Our team is working with the contractor to determine solutions and develop a total cost impact for these items. We anticipate the additional funding required to make these scope changes and cover any remaining contingency items in the \$150,000 range.

We will continue to work with City Staff and the contractor to find value where possible while maintaining the quality required.

Sincerely,
Hidell and Associates Architects



Aaron Babcock
Principal

Cc: Bill Hidell



City Council Regular Meeting

Agenda Item No. F.3.

Meeting Date: 2/3/2025

Prepared By: Nate Strauch, Community and Support Services Manager

Approved By: Zachary Flores, Assistant City Manager

Caption:

OTHER BUSINESS

Receive update on ongoing projects in Sherman

Issue:

Receive update on ongoing projects in Sherman

Background:

City staff provides regular updates using the City's drone for various on-going projects in Sherman.

Origination:

City Manager's Office

Financial Consideration:

None

Staff Recommendation:

None

Alternatives:

Attachments:

None



City Council Regular Meeting

Agenda Item No. F.4.

Meeting Date: 2/3/2025

Prepared By: Teri Fine, Assistant to the City Manager

Approved By: Zachary Flores, Assistant City Manager

Caption:

Other Business

Appoint City Council Working Groups

Issue:

To appoint members to three work groups

Background:

In order to tackle specific issues and projects efficiently the City Manager's Office is requesting to create three separate working groups consisting of two Council Members each. The working groups include:

1. Public Safety
2. Facilities
3. Zoning

These groups will meet regularly to discuss challenges, brainstorm solutions, and develop actionable recommendations. Regular updates will be given at City Council meetings.

Origination:

City Manager's Office

Financial Consideration:

No cost to approving this board

Staff Recommendation:

Staff recommends appointment of the working group members

Alternatives:

Council could consider adoption of the policies based on staff recommendations and not utilize these working groups

Attachments:

None



City Council Regular Meeting

Agenda Item No. F.5.

Meeting Date: 2/3/2025

Prepared By: Mary Lawrence, Chief Financial Officer

Approved By: Zachary Flores, Assistant City Manager

Caption:

OTHER BUSINESS

Discuss and Consider Approval of the Budget Calendar for Fiscal Year (FY) 2025-2026

Issue:

Discuss and Consider Approval of the Budget Calendar for Fiscal Year (FY) 2025-2026

Background:

Several meetings are necessary to develop the budget for the upcoming fiscal year. There is some flexibility in meeting dates in the proposed budget calendar. Particularly important are the dates for the Budget Planning Meeting, Capital Improvement Program (CIP) Work Session, and the Budget Workshop. The Budget Planning Meeting will be used to garner Council input on Council initiatives to be included in the budget development process. The Budget Workshop will present a more detailed picture of the City budget and will be used to summarize Council direction for the upcoming year. The CIP Work Session will be used to develop the five-year CIP as required by the City Charter.

Included in this year's budget process will be discussion of the five-year financial and operational projections as has been the practice for the past several years. Although we will only be developing a budget and appropriating funds for FY 2025-2026, this five-year time horizon will include the impacts of such things as the capital improvement program, debt service, and projected tax base changes on the City's long-term financial outlook.

Origination:

City Manager's Office

Financial Consideration:

None

Staff Recommendation:

The staff recommends the Council approved the budget calendar as presented **by motion and order.**

Alternatives:

City Council members could select alternatives dates for the meetings, subject to Charter and State law requirements.

Attachments:

1. Proposed Budget Calendar - FY 2025 - 2026

PROPOSED BUDGET CALENDAR

FISCAL YEAR 2025-2026

Budget Planning Meeting with City Council and Financial Update	April 11, 2025
Capital Improvement Program Work Session	May 22, 2025
Budget Workshop*	June 12 - 13, 2025

Present Draft Budget to Council Tax Rates Submitted to Council for Consideration	August 4, 2025
Public Hearing and Final Action on Budget Ordinance	August 18, 2025
Public Hearing and Final Action on Tax Rate Ordinance	August 18, 2025

Notes:

Meeting times to be confirmed after the Budget Calendar is approved.

It is recommended that the Budget Planning Meeting be held in the City Council Chambers.

* This is expected to be a one-day Workshop; but an additional day is scheduled as a placeholder in case more time is needed.



City Council Regular Meeting

Agenda Item No. F.6.

Meeting Date: 2/3/2025

Prepared By: Mary Lawrence, Chief Financial Officer

Approved By: Zachary Flores, Assistant City Manager

Caption:

***OTHER BUSINESS**

Approve Investment Report for Quarter Ended December 31, 2024

Issue:

To approve the Investment Report for the quarter ended December 31, 2024

Background:

The total operating portfolio book value of about \$40.4 million increased by about \$4.6 million from the previous quarter due to deposits in the Local Government Investment Pools. The underlying investments were adequately diversified among five different types of securities. The portfolio's weighted-average maturity of 339 days decreased from 399 days last quarter. The portfolio yield of 4.28% was 12 basis points above our benchmark 1-year Constant Maturity Treasury Index of 4.16%. Book value approximated market value.

The debt proceeds portfolio balance of \$72.3 million increased by \$10.4 million due to a deposit of \$19.9 million in debt proceeds and from withdrawals for payments on capital projects. The portfolio includes a Local Government Investment Pool, a U.S. Treasury Note, and U.S. Agencies. The portfolio's weighted-average maturity of 9 days decreased from 17 days last quarter. The portfolio yield of 4.83% was 43 basis points above the benchmark yield for this portfolio, the 4-week Constant Maturity Index of 4.4%. Book value approximated market value.

Origination:

Finance Department

Financial Consideration:

None

Staff Recommendation:

Staff recommends the Council accept the Investment Report as presented.

Alternatives:

The Council could offer suggestions for improvement or could request more frequent reporting.

Attachments:

1. 2024-12-31 Investment Report w_Memo



memorandum

DATE: January 21, 2025

TO: The City of Sherman Investment Committee
Councilman Juston Dobbs
Deputy Mayor Pam Howeth
Robby Hefton, City Manager

FROM: Mary Lawrence, Chief Financial Officer *ml*

SUBJECT: Investment Reports for the Quarter Ended December 31, 2024.

Enclosed is a copy of the quarterly investment reports for December 31, 2024. As of that date, the City followed all applicable state laws and internal policies for the portfolio.

The total operating portfolio book value of about \$40.4 million increased by about \$4.6 million from the previous quarter due to deposits in the Local Government Investment Pools. The underlying investments were adequately diversified among five different types of securities. The portfolio's weighted-average maturity of 339 days decreased from 399 days last quarter. The portfolio yield of 4.28% was 12 basis points above our benchmark 1-year Constant Maturity Treasury Index of 4.16%. Book value approximated market value.

The debt proceeds portfolio balance of \$72.3 million increased by \$10.4 million due to a deposit of \$19.9 million in debt proceeds and from withdrawals for payments on capital projects. The portfolio includes a Local Government Investment Pool, a U.S. Treasury Note, and U.S. Agencies. The portfolio's weighted-average maturity of 9 days decreased from 17 days last quarter. The portfolio yield of 4.83% was 43 basis points above the benchmark yield for this portfolio, the 4-week Constant Maturity Index of 4.4%. Book value approximated market value.

The investment reports will be on the February 3, 2025, City Council agenda for their review and approval. Please call me if you have any questions about this item.

attachment (as stated above)

CITY OF SHERMAN, TEXAS
INVESTMENT PORTFOLIO SUMMARY
For the Quarter Ending December 31, 2024

Total Portfolio Summary				
	Current Quarter 12/31/2024	Prior Quarter 9/30/2024	Change From Prior Quarter	
Book Value	\$ 40,352,448	\$ 35,729,632	\$	4,622,816
Market Value	\$ 40,251,741	\$ 35,705,668	\$	4,546,073
Weighted Average Maturity - Days	339	399	(60)	
Weighted Average Yield	4.28%	4.33%	-0.05%	
Earned Income	\$ 369,857	\$ 457,314	\$	(87,457)
Earned Income - Year-to-Date	\$ 369,857	\$ 1,612,186	\$	(1,242,329)

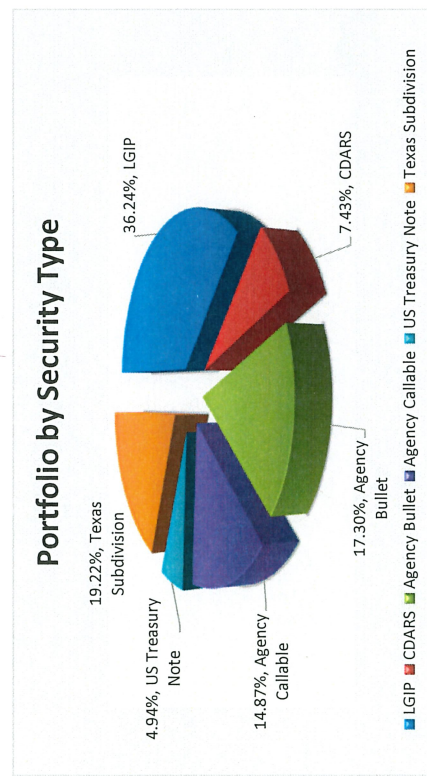
This report complies with the requirements of the public funds investment law and covers all the funds of the City of Sherman that are subject to that law.

As of December 31, 2024, the City's portfolio had a book value of \$40.4 million and a market value of \$40.3 million. Of this amount, approximately \$14.6 million was held in Local Government Investment Pools (LGIP), \$3 million was held in Certificates of Deposit (CD), \$13.0 million was held in U.S. Agency Securities, \$2.0 million was held in U.S. Treasury Notes and \$7.8 million was held in State of Texas political subdivision obligations.

The portfolio value increased by \$4.6 million from the previous quarter due to net deposits in Local Government Investment Pools of \$4.4 million. Additionally, purchases of \$4 million of U.S. Agency Securities were offset by calls and maturities of \$4 million of U.S. Agency Securities.

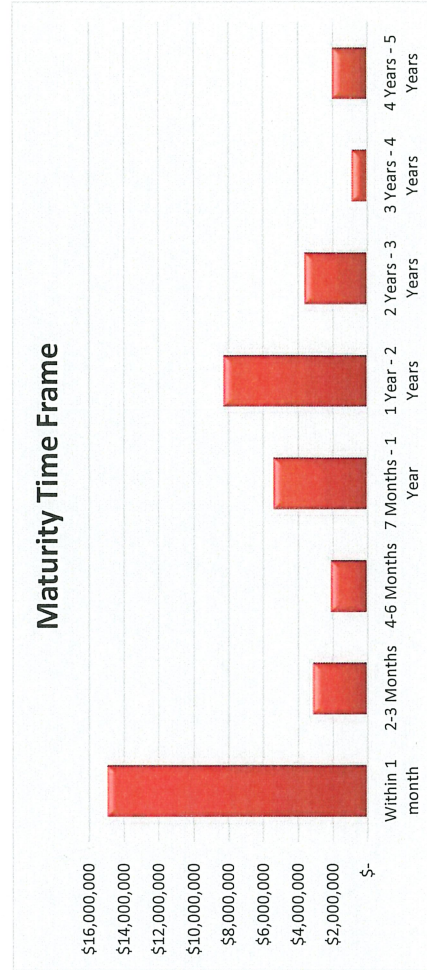
The weighted average yield of the portfolio was 4.28%, which is 12 basis points more than the 1-year Constant Maturity Treasury Index of 4.16%, and 5 basis points less than the previous quarter.

The weighted average maturity of the portfolio decreased from 399 days at September 30, 2024, to 339 days at December 31, 2024.



Mary Lawrence

Mary Lawrence, Chief Financial Officer and City of Sherman Investment Officer



Jana Walker

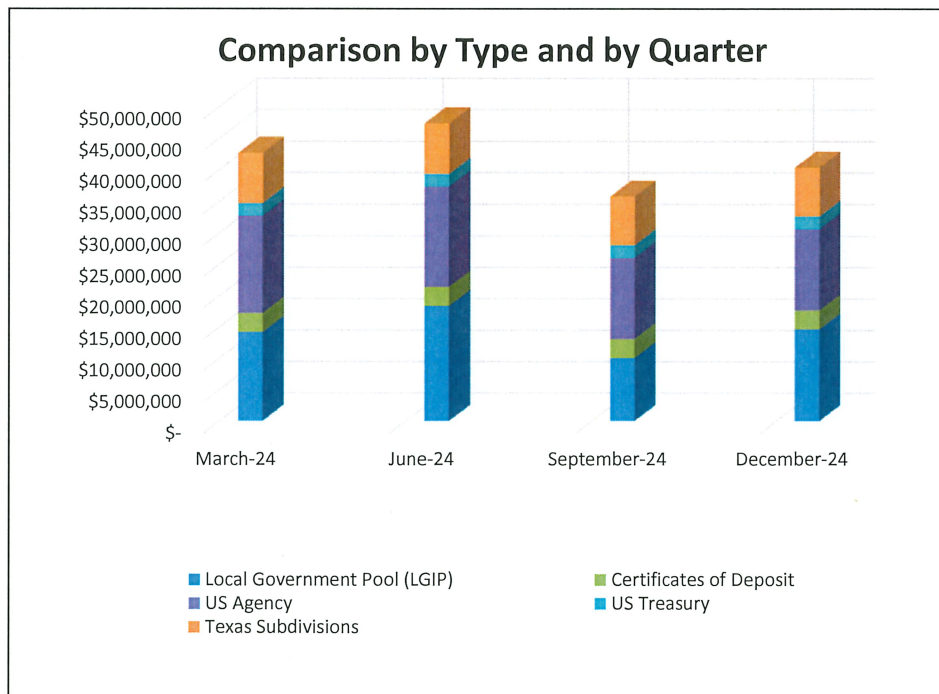
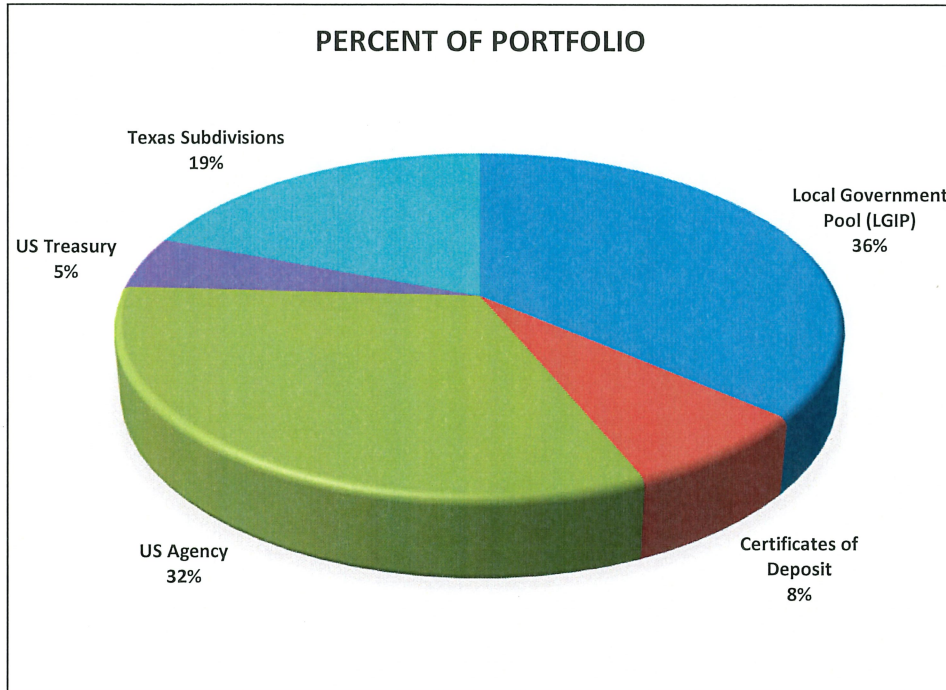
Jana Walker, Controller and City of Sherman Investment Officer

CUSIP	Settlement Date	Security Type	Security Description	CPN Rate	Maturity Date	Credit Rating	Par Value	Purchase Price	Original Cost	Book Value	Market Price	Market Value	Days to Maturity	YTM
TexPool		LGIP	TexPool		1/1/2025	AAAm	\$ 7,327,196	100.00	\$ 7,327,196	7,327,196	100.00	7,327,196	1	4.73%
TexStar		LGIP	TexStar		1/1/2025	AAAm	5,379,950	100.00	5,379,950	5,379,950	100.00	5,379,950	1	4.72%
TexPool ARPA		LGIP	TexPool ARPA		1/1/2025	AAAm	1,915,966	100.00	1,915,966	1,915,966	100.00	1,915,966	1	4.73%
CDARS 1028340563	01/04/24	CDARS	Bank of Texas	4.40%	1/2/2026		1,000,000	100.00	1,000,000	1,000,000	100.00	1,000,000	367	4.50%
CDARS 1029294042	07/05/24	CDARS	Bank of Texas	5.21%	7/3/2025		2,000,000	100.00	2,000,000	2,000,000	100.00	2,000,000	184	5.34%
38616JCT7	01/04/22	Texas Subdivision	Grand Prairie TX TXbl Ref	3.00%	1/1/2025	AA	310,000	103.887	322,050	310,000	100.00	310,000	1	1.60%
882808ES7	02/24/23	Texas Subdivision	Texas St. Tech Univ Rev	2.96%	2/15/2025	AA+	885,000	98.381	870,672	884,053	99.83	883,507	46	3.86%
983064YX8	03/11/21	Texas Subdivision	City of Wylie, TX GO	3.00%	2/15/2025	AA	250,000	110.740	276,852	250,855	99.93	249,823	46	0.25%
3133ENPYO-A	02/25/22	Agency Bullet	FFCB	1.75%	2/25/2025	AA+	1,000,000	99.966	999,960	999,983	99.60	995,999	56	1.76%
3133ENPYO-B	03/11/22	Agency Bullet	FFCB	1.75%	2/25/2025	AA+	1,000,000	99.513	995,913	1,000,526	99.60	996,000	56	1.92%
3130AJHU6	04/30/24	Agency Bullet	FHLB	0.50%	4/14/2025	AA+	1,500,000	95.642	1,434,943	1,480,237	98.92	1,483,786	104	5.22%
88213AKC8	01/24/23	Texas Subdivision	Texas St. A&M Univ R	2.69%	5/15/2025	AA	510,000	96.496	492,130	507,118	99.41	506,975	135	4.30%
88213ABW4	03/24/23	Texas Subdivision	Texas St A&M Univ R	2.88%	5/15/2025	AA	115,000	97.770	113,668	114,552	99.48	114,400	135	3.98%
91282CEY3	01/23/23	US Treasury Note	US Treasury	3.00%	7/15/2025	AA	1,000,000	97.740	977,431	995,446	99.35	993,547	196	3.97%
248775YW2	02/07/23	Texas Subdivision	Denton Cnty TX	0.77%	7/15/2025	AA	1,335,000	92.332	1,233,264	1,312,265	98.15	1,310,296	196	4.11%
87638QQW2	03/24/23	Texas Subdivision	Tarrant Cnty TX Cult Hosp Rev	1.39%	9/1/2025	AA	100,000	93.750	93,854	98,261	97.98	97,981	244	4.12%
3130ARCN9	03/29/22	Agency Bullet	FHLB	2.00%	9/29/2025	AA+	1,000,000	100.000	1,000,000	1,000,000	98.28	982,825	272	2.00%
79625GFC2	04/13/22	Texas Subdivision	San Antonio Tx Elec & Gas TXBI	3.15%	2/1/2026	AA+	350,000	100.000	350,000	350,000	98.83	345,906	397	3.15%
232769JW0	09/02/22	Texas Subdivision	Cypress-Fairbanks TX Ind Sch	5.00%	2/15/2026	AA+	500,000	104.770	523,031	507,771	100.79	503,964	411	3.52%
3130B13E5	04/23/24	Agency Bullet	FHLB	5.38%	4/23/2026	AA	1,500,000	100.000	1,500,000	1,500,000	99.95	1,499,277	478	5.75%
3130AMMJB	06/06/21	Agency Callable	FHLB	1.50%	6/9/2026	AA+	1,000,000	100.000	1,000,000	1,000,000	96.15	961,459	525	0.40%
537096ZT1	01/19/24	Texas Subdivision	Little Elm TX ISD	0.00%	8/15/2026	AA+	480,000	89.228	428,294	447,335	92.82	445,550	592	4.50%
876448DY4	01/24/23	Texas Subdivision	Tarrant Tx Regl Water Dist	0.75%	9/1/2026	AA	400,000	89.195	356,780	380,039	94.36	377,448	609	4.00%
4637778E5	02/07/23	Texas Subdivision	Irving TX Table	1.47%	9/15/2026	AA	600,000	91.000	549,467	574,290	95.39	572,332	623	4.18%
3133ERP96	12/24/24	Agency Bullet	FFCB	4.25%	9/24/2026	AA+	1,000,000	99.954	999,540	999,544	100.02	1,000,213	632	4.28%
3130B4AN1	12/23/24	Agency Callable	FHLB	4.35%	12/18/2026	AA+	1,500,000	100.000	1,500,000	1,500,000	99.56	1,493,416	717	4.35%
91282CJT9	02/02/24	US Treasury Note	US Treasury	4.00%	1/15/2027	AA+	1,000,000	99.585	995,703	997,021	99.50	995,000	745	4.16%
1164753A0	01/24/24	Texas Subdivision	Brownsville TXD USR	1.48%	9/1/2027	AA+	1,210,000	90.040	1,089,484	1,120,705	92.37	1,117,727	974	4.50%
3130B4B42	12/23/24	Agency Callable	FHLB	4.63%	12/23/2027	AA+	1,500,000	100.000	1,500,000	1,500,000	99.90	1,498,504	1,087	4.63%
248415XT3	07/10/24	Texas Subdivision	Denison TX ISD	2.02%	8/1/2028	AA+	975,000	91.204	889,239	899,335	91.88	895,847	1,309	4.41%
31242WFF4	01/24/24	Agency Callable	FAMCA	5.17%	1/29/2029	AA+	1,000,000	100.000	1,000,000	1,000,000	99.94	999,411	1,490	5.17%
31310B04R7	02/22/24	Agency Callable	FHLB	4.65%	2/16/2029	AA+	1,000,000	100.000	1,000,000	1,000,000	99.74	997,436	1,508	4.65%
Total									\$ 40,115,086	\$ 40,352,448		\$ 40,251,741		

CUSIP	Settle Date	Security Description	Maturity Date	Market Value 9/30/2024	Change in Market Value	Market Value 12/31/2024
TexPool		TexPool		\$ 4,267,436	\$ 3,059,760	\$ 7,327,196
TexStar		TexStar		3,833,280	1,546,670	\$ 5,379,950
TexPool ARPA		TexPool ARPA		1,954,108	(38,142)	\$ 1,915,966
CDARS 1028340563		Bank of Texas	1/2/2026	1,000,000	-	\$ 1,000,000
CDARS 1029294042		Bank of Texas	7/3/2025	2,000,000	-	\$ 2,000,000
3130APNE1	11/18/2021	FHLB	11/18/2024	994,991	(994,991)	\$ -
386166JC7	2/24/2022	Grand Prairie TX TXbl Ref	1/1/2025	309,039	961	\$ 310,000
983064YX8	3/11/2021	City of Wylie, TX GO	2/15/2025	249,459	364	\$ 249,823
882806ES7	3/24/2023	Texas St. Tech Univ Rev	2/15/2025	881,185	2,322	\$ 883,507
3133ENPY0-A	2/25/2022	FFCB	2/25/2025	988,571	7,428	\$ 995,999
3133ENPY0-B	3/11/2022	FFCB	2/25/2025	988,571	7,429	\$ 996,000
3130AJHU6	4/14/2024	FHLB	4/14/2025	1,469,710	14,076	\$ 1,483,786
88213AKC8	1/24/2023	Texas St. A&M Univ R	5/15/2025	505,566	1,409	\$ 506,975
88213ABW4	3/24/2023	Texas St A&M Univ R	5/15/2025	114,138	262	\$ 114,400
91282CEY3	1/23/2023	US Treasury	7/15/2025	991,859	1,688	\$ 993,547
2487757W2	2/7/2023	Denton Cnty TX	7/15/2025	1,301,051	9,245	\$ 1,310,296
87638QQW2	3/24/2023	Tarrant Cnty TX Cult Hosp Rev	9/1/2025	97,325	656	\$ 97,981
3130ARCN9	3/29/2022	FHLB	9/29/2025	979,879	2,946	\$ 982,825
3134GX3U6	10/24/2022	Freddie Mac	10/24/2025	999,504	(999,504)	\$ -
79625GFC2	4/13/2022	San Antonio Tx Elec & Gas TXBI	2/1/2026	346,889	(983)	\$ 345,906
232769JW0	9/2/2022	Cypress-Fairbanks TX Ind Sch	2/15/2026	506,670	(2,706)	\$ 503,964
3130B13E5	4/23/2024	FHLB	4/23/2026	1,502,143	(2,866)	\$ 1,499,277
3130AMMJ8	6/6/2021	FHLB	6/9/2026	964,190	(2,731)	\$ 961,459
876448DY4	1/24/2023	Tarrant Tx Regl Water Dist	9/1/2026	377,575	(127)	\$ 377,448
3134GYH96	2/27/2023	FHLMC	2/24/2026	1,000,309	(1,000,309)	\$ -
4637778E5	2/7/2023	Irving Tx Table	9/15/2026	573,845	(1,513)	\$ 572,332
5370962Z1	1/19/2024	Little Elm TX ISD	8/15/2026	444,340	1,210	\$ 445,550
3133ERP96	12/24/2024	FFCB	9/24/2026	-	1,000,213	\$ 1,000,213
3130B4AN1	12/23/2024	FHLB	12/18/2026	-	1,493,416	\$ 1,493,416
91282CJT9	2/2/2024	US Treasury	1/15/2027	1,007,969	(12,969)	\$ 995,000
3134H1LK7	1/26/2024	FHLMC	6/11/2027	1,000,494	(1,000,494)	\$ -
1164753A0	1/24/2024	Brownsville TXD USR	9/1/2027	1,130,051	(12,324)	\$ 1,117,727
3130B4B42	12/23/2024	FHLB	12/23/2027	-	1,498,504	\$ 1,498,504
248415XT3	7/10/2024	Denison TX ISD	8/1/2028	913,584	(17,737)	\$ 895,847
31242WFF4	1/24/2024	FAMCA	1/29/2029	1,001,166	(1,755)	\$ 999,411
31310B04R7	2/22/2024	FHLB	2/16/2029	1,010,771	(13,335)	\$ 997,436
Total				\$ 35,705,668	\$ 4,546,073	\$ 40,251,741

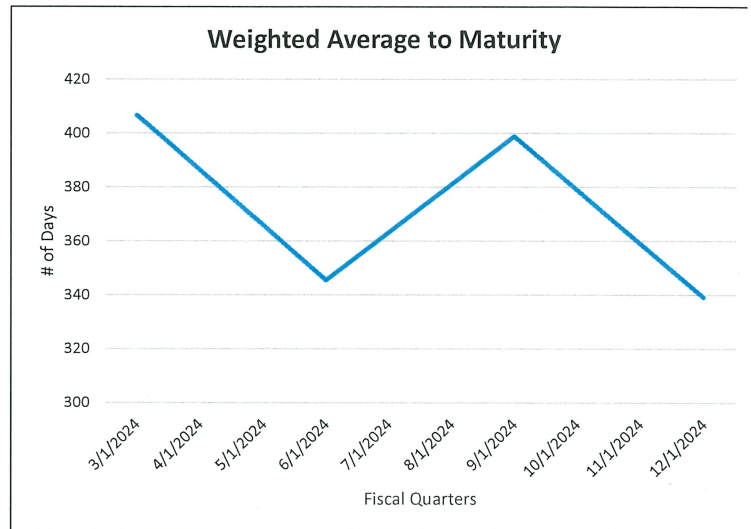
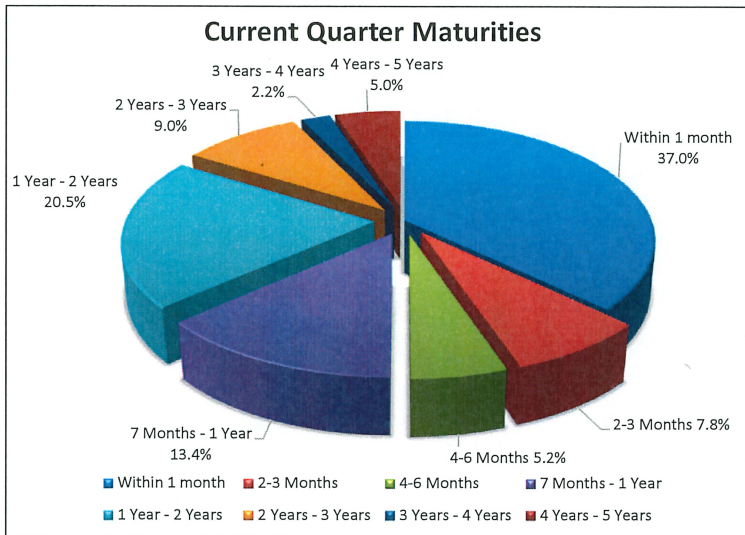
Trade Date	Settle Date	CUSIP	Security Description	Coupon	Maturity Date	Call Date	Par Value	Principal Amount	Interest Purchased/Received	Total Amount	YTM
<u>Maturities, Calls and Withdrawals</u>											
	10/16/2024	TexPool ARPA	TexPool ARPA				60,950	60,950		60,950	4.73%
	11/7/2024	TexPool	TexPool				2,000,000	2,000,000		2,000,000	4.73%
	10/24/2024	3134AGX3U6	Freddie Mac	5.15%	10/24/2025	10/24/2024	1,000,000	1,000,000	25,750	1,025,750	5.15%
	11/18/2024	3130APNE1	FHLB	0.90%	11/18/2024		1,000,000	1,000,000	4,500	1,004,500	0.90%
	11/24/2024	3134GYH96	FHLMC	5.20%	2/24/2026	11/24/2024	1,000,000	1,000,000	13,000	1,013,000	5.20%
	12/11/2024	3134H1LK7	FHLMC	5.20%	6/11/2027	12/11/2024	1,000,000	1,000,000	26,000	1,026,000	4.98%
<u>Purchases</u>											
	11/25/2024	TexPool	TexPool				5,000,000	5,000,000		5,000,000	4.73%
	12/27/2024	TexSTAR	TexSTAR				1,500,000	1,500,000		1,500,000	4.72%
	12/23/2024	3130B4AN1	FHLB	4.35%	12/18/2026		1,500,000	1,500,000	906	1,500,906	4.35%
	12/23/2024	3130B4B42	FHLB	4.63%	12/23/2027		1,500,000	1,500,000	-	1,500,000	4.63%
	12/24/2024	3133ERP96	FFCB	4.28%	9/24/2026		1,000,000	999,540	-	999,540	4.28%
<u>Income Payments</u>											
	12/31/2024	TexPool	TexPool		1/1/2025				59,759	59,759	4.73%
	12/31/2024	TexStar	TexSTAR		1/1/2025				46,670	46,670	4.72%
	12/31/2024	TexPool ARPA	TexPool ARPA		1/1/2025				22,808	22,808	4.73%
	12/31/2024	CDARS 1028340563	Bank of Texas	4.40%	1/2/2026				11,156	11,156	4.50%
	12/31/2024	CDARS 1029294042	Bank of Texas	5.21%	7/3/2025				26,282	26,282	5.34%
	10/14/2024	3130AJHU6	FHLB	0.50%	4/14/2025				3,750	3,750	5.22%
	10/23/2024	3130B13E5	FHLB	5.38%	4/23/2026				40,312	40,312	5.75%
	11/15/2024	88213ABW4	Texas St A&M Univ R	2.88%	5/15/2025				1,658	1,658	3.98%
	11/15/2024	88213AKC8	Texas St. A&M Univ R	2.69%	5/15/2025				6,849	6,849	4.30%
	12/9/2024	3130AMMJ8	FHLB	1.50%	6/9/2026				7,500	7,500	0.40%
Total										\$ 296,900	

Cash/Investment Type	Balance 3/31/2024	Balance 6/30/2024	Balance 9/30/2024	Balance 12/31/2024	Percent of Portfolio	Portfolio Cap
Local Government Pool (LGIP)	\$ 14,170,066	\$ 18,378,702	\$ 10,054,824	\$ 14,623,112	36%	50.00%
Certificates of Deposit	3,000,000	3,000,000	3,000,000	3,000,000	7%	50.00%
US Agency	15,505,023	15,951,159	12,964,646	12,980,290	32%	50.00%
US Treasury	1,984,543	1,987,185	1,989,826	1,992,467	5%	50.00%
Texas Subdivisions	7,964,836	8,001,020	7,720,336	7,756,579	19%	50.00%
Total	\$ 42,624,468	\$ 47,318,066	\$ 35,729,632	\$ 40,352,448	100.00%	

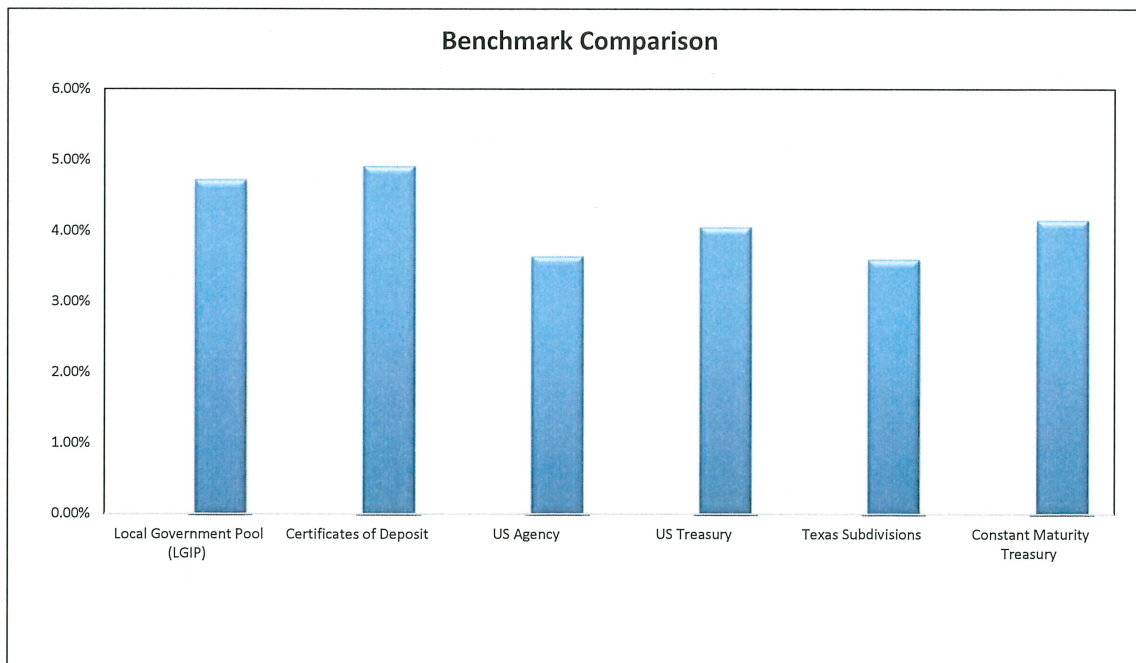


Maturity Time Frame	Balance 3/31/2024	Balance 6/30/2024	Balance 9/30/2024	Balance 12/31/2024	Percent of Portfolio
Within 1 month	\$ 16,170,066	\$ 21,378,627	\$ 10,054,824	\$ 14,933,112	37.0%
2-3 Months	500,000	1,205,557	1,000,000	3,135,417	7.8%
4-6 Months	4,199,904	1,000,000	3,445,849	2,101,907	5.2%
7 Months - 1 Year	4,446,712	5,509,516	7,475,131	5,405,972	13.4%
1 Year - 2 Years	8,843,664	10,740,379	7,749,393	8,258,979	20.5%
2 Years - 3 Years	3,362,287	3,375,994	3,110,441	3,617,726	9.0%
3 Years - 4 Years	3,101,835	2,107,993	893,994	899,335	2.2%
4 Years - 5 Years	2,000,000	2,000,000	2,000,000	2,000,000	5.0%
	\$ 42,624,468	\$ 47,318,066	\$ 35,729,632	\$ 40,352,448	100.00%

Liquidity Indicator					Maximum Allowable
Weighted Average Maturity	406.80	345.53	398.88	339.29	500.00



Date Received/ Purchased	CUSIP	Security Description	Coupon	YTM	Interest Purchased/ Received	Accrued Interest/ Amortization	Income Earned
12/31/2024	TexPool	TexPool		4.73%	\$ 59,759	\$ -	\$ 59,759
12/31/2024	TexStar	TexSTAR		4.72%	46,670	-	46,670
12/31/2024	TexPool ARPA	TexPool ARPA		4.73%	22,808	-	22,808
12/31/2024	CDARS 1028340563	Bank of Texas	4.40%	4.50%	11,156	-	11,156
12/31/2024	CDARS 1029294042	Bank of Texas	5.21%	5.34%	26,282	-	26,282
10/14/2024	3130AJHU6	FHLB	0.50%	5.22%	3,750	15,290	19,040
10/23/2024	3130B13E5	FHLB	5.38%	5.75%	40,312	(18,892)	21,420
10/24/2024	3134AGX3U6	Freddie Mac	5.15%	5.15%	25,750	(22,317)	3,433
11/15/2024	88213ABW4	Texas St A&M Univ R	2.88%	3.98%	1,658	(531)	1,127
11/15/2024	88213AKC8	Texas St. A&M Univ R	2.69%	4.30%	6,849	(1,489)	5,360
11/18/2024	3130APNE1	FHLB	0.90%	0.90%	4,500	(3,300)	1,200
11/24/2024	3134GYH96	FHLMC	5.20%	5.20%	13,000	(5,200)	7,800
12/9/2024	3130AMMJ8	FHLB	1.50%	0.40%	7,500	(3,750)	3,750
12/11/2024	3134H1LK7	FHLMC	5.20%	4.98%	26,000	(17,186)	8,814
12/23/2024	3130B4AN1	FHLB	4.35%	4.35%	906	363	1,269
12/31/2024	386166JC7	Grand Praire TX TXbl Ref	3.00%	1.60%	-	1,269	1,269
12/31/2024	91282CEY3	US Treasury	3.00%	3.97%	-	9,777	9,777
12/31/2024	2487757W2	Denton Cnty TX	0.77%	4.11%	-	13,077	13,077
12/31/2024	91282CJT9	US Treasury	4.00%	4.16%	-	10,364	10,364
12/31/2024	31242WFF4	FHLB	5.17%	5.17%	-	12,925	12,925
12/31/2024	79625GFC2	San Antonio Tx Elec & Gas TXBI	3.15%	3.15%	-	2,752	2,752
12/31/2024	248415XT3	Denison TX ISD	2.02%	4.41%	-	10,261	10,261
12/31/2024	232769JW0	Cypress-Fairbanks Tx Ind Sch	5.00%	3.52%	-	4,523	4,523
12/31/2024	983064YX8	City of Wylie, TX GO	3.00%	0.25%	-	166	166
12/31/2024	882806ES7	Texas St. Tech Univ Rev	2.96%	3.86%	-	8,445	8,445
12/31/2024	31310B04R7	FHLB	4.65%	4.65%	-	11,625	11,625
12/31/2024	3133ENPY0-A	FFCB	1.75%	1.76%	-	4,403	4,403
12/31/2024	3133ENPY0-B	FFCB	1.75%	1.92%	-	4,786	4,786
12/31/2024	876448DY4	Tarrant Tx Regl Water Dist	0.75%	4.00%	-	3,749	3,749
12/31/2024	87638QQW2	Tarrant Cnty TX Cult Hosp Rev	1.39%	4.12%	-	988	988
12/31/2024	1164753A0	Brownsville TXD USR	1.48%	4.50%	-	12,831	12,831
12/31/2024	4637778E5	Irving Tx Table	1.47%	4.18%	-	5,942	5,942
12/31/2024	3130ARCN9	FHLB	2.00%	2.00%	-	5,000	5,000
12/31/2024	537096Z1	Little Elm TX ISD	0.00%	4.50%	-	5,025	5,025
12/31/2024	3130B4B42	FHLB	4.63%	4.63%	-	1,349	1,349
12/31/2024	3133ERP96	FFCB	4.25%	4.28%	-	713	713
					\$ 296,900	\$ 72,957	\$ 369,857



CITY OF SHERMAN, TEXAS
DEBT PROCEEDS PORTFOLIO SUMMARY
For the Quarter Ending December 31, 2024

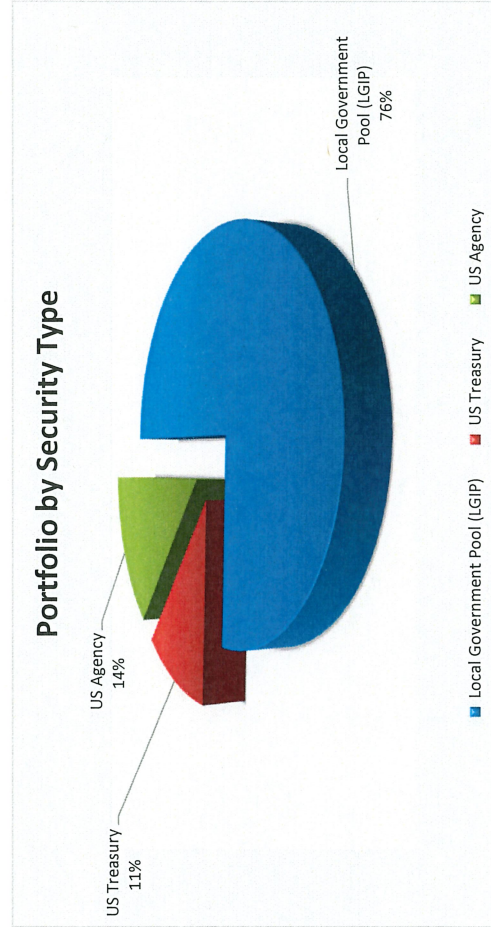
Total Portfolio Summary			
	Current Quarter 12/31/2024	Prior Quarter 9/30/2024	Change From Prior Quarter
Book Value	\$ 72,320,808	\$ 61,920,328	\$ 10,400,480
Market Value	\$ 72,337,039	\$ 61,956,042	\$ 10,380,997
Weighted Average Maturity - Days	9	17	(8)
Weighted Average Yield	4.83%	4.52%	0.32%
Earned Income	\$ 858,039	\$ 848,111	\$ 9,928
Earned Income - Year-to-Date	\$ 858,039	\$ 4,285,439	\$ (3,427,400)

This report complies with the requirements of the public funds investment law and covers all the funds of the City of Sherman that are subject to that law.

As of December 31, 2024, the City of Sherman's debt proceeds portfolio had a book value of about \$72.3 million, which approximates the market value. Of this amount, \$54.7 million was held in Local Government Investment Pools (LGIP), \$7.6 million was held in U.S. Treasury Notes and \$10 million was held in U.S. Agency Securities.

The portfolio value increased by \$10.4 million from the previous quarter due a deposit of \$19.9 million in 2024 Certificates of Obligation proceeds, offset by draws for project payments.

The weighted average yield on the portfolio was 4.83%, 43 basis points above the 4-week Constant Maturity Treasury Index of 4.40%, and 32 basis points above the previous quarter.



Mary Lawrence

Mary Lawrence, Chief Financial Officer and City of Sherman Investment Officer

Jana Walker

Jana Walker, Controller and City of Sherman Investment Officer

Name/CUSIP	Debt Issuance	Settlement Date	Security Type	Security Description	Maturity Date	Par Value	Purchase Price	Original Cost	Book Value	Market Price	Market Value	Days to Maturity	YTM
TexPool	2023 Certificates of Obligation		LGIP	TexPool	1/1/2025	\$ 33,758,881	100.00	\$ 33,758,881	\$ 33,758,881	100.00	\$ 33,758,881	1	4.73%
TexPool	2024 Tax Notes		LGIP	TexPool	1/1/2025	762,699	100.00	762,699	762,699	100.00	762,699	1	4.73%
TexPool	2024 Certificates of Obligation		LGIP	TexPool	1/1/2025	20,157,768	100.00	20,157,768	20,157,768	100.00	20,157,768	1	4.73%
313385AC0	2023 Certificates of Obligation	02/23/24	US Agency	FHLB	1/3/2025	10,000,000	95.73	9,573,438	9,994,496	99.96	9,996,492	3	5.12%
91282CED9	2023 Certificates of Obligation	07/10/24	US Treasury Note	US Treasury	3/15/2025	7,700,000	97.75	7,526,750	7,646,964	99.50	7,661,199	74	5.16%
Total							\$ 72,379,348	\$ 71,779,536	\$ 72,320,808		\$ 72,337,039		

CUSIP	Security Type / Description	Maturity Date	Market Value 9/30/2024	Change in Market Value	Market Value 12/31/2024
TexPool 2023 CO	LGIP		\$ 41,207,104	\$ (7,448,223)	\$ 33,758,881
TexPool 2024 Tax Notes	LGIP		2,259,247	(1,496,548)	762,699
TexPool 2024 CO	LGIP		-	20,157,768	20,157,768
3130AMHGO-FHLB 2021 CO	US Agency-Callable	11/26/2024	993,533	(993,533)	-
313385ACO-FHLB 2023 CO	US Agency	1/3/2025	9,884,813	111,679	9,996,492
91282CED9-US Treasury 2023 CO	US Treasury Note	3/15/2025	7,611,345	49,854	7,661,199
Total			\$ 61,956,042	\$ 10,380,997	\$ 72,337,039

Settle Date	Name	Security Description	Coupon	Maturity Date	Call Date	Par Value	Price	Principal Amount	Interest Purchased/Received	Total Amount	YTM
<u>Project Payments/Draws</u>											
10/28/2024	TexPool 2023 CO	LGIP				\$ 2,656,966		\$ 2,656,966	\$ -	\$ 2,656,966	
11/25/2024	TexPool 2023 CO	LGIP				4,025,160		4,025,160	-	4,025,160	
12/20/2024	TexPool 2023 CO	LGIP				1,218,573		1,218,573	-	1,218,573	
12/24/2024	TexPool 2024 Tax Notes	LGIP				1,521,934		1,521,934	-	1,521,934	
11/26/2024	3130AMHGO	FHLB	0.475%	11/26/2024		1,000,000	100.00	1,000,000	2,375	1,002,375	0.475%
<u>Maturities and Calls</u>											
<u>Deposits/Purchases</u>											
7/23/2024	TexPool 2024 CO	LGIP				19,999,554		19,999,554	-	19,999,554	
<u>Income Payments</u>											
10/31/2024	Texpool 2023 CO	LGIP							170,883	170,883	4.91%
10/31/2024	TexPool 2024 Tax Notes	LGIP							9,427	9,427	4.91%
10/31/2024	Texpool 2024 CO	LGIP							2,664	2,664	4.91%
11/30/2024	Texpool 2023 CO	LGIP							147,967	147,967	4.73%
11/30/2024	TexPool 2024 Tax Notes	LGIP							8,820	8,820	4.73%
11/30/2024	Texpool 2024 CO	LGIP							77,766	77,766	4.73%
12/31/2024	Texpool 2023 CO	LGIP							133,627	133,627	4.56%
12/31/2024	TexPool 2024 Tax Notes	LGIP							7,138	7,138	4.56%
12/31/2024	Texpool 2024 CO	LGIP							77,784	77,784	4.56%
Total										\$ 638,451	

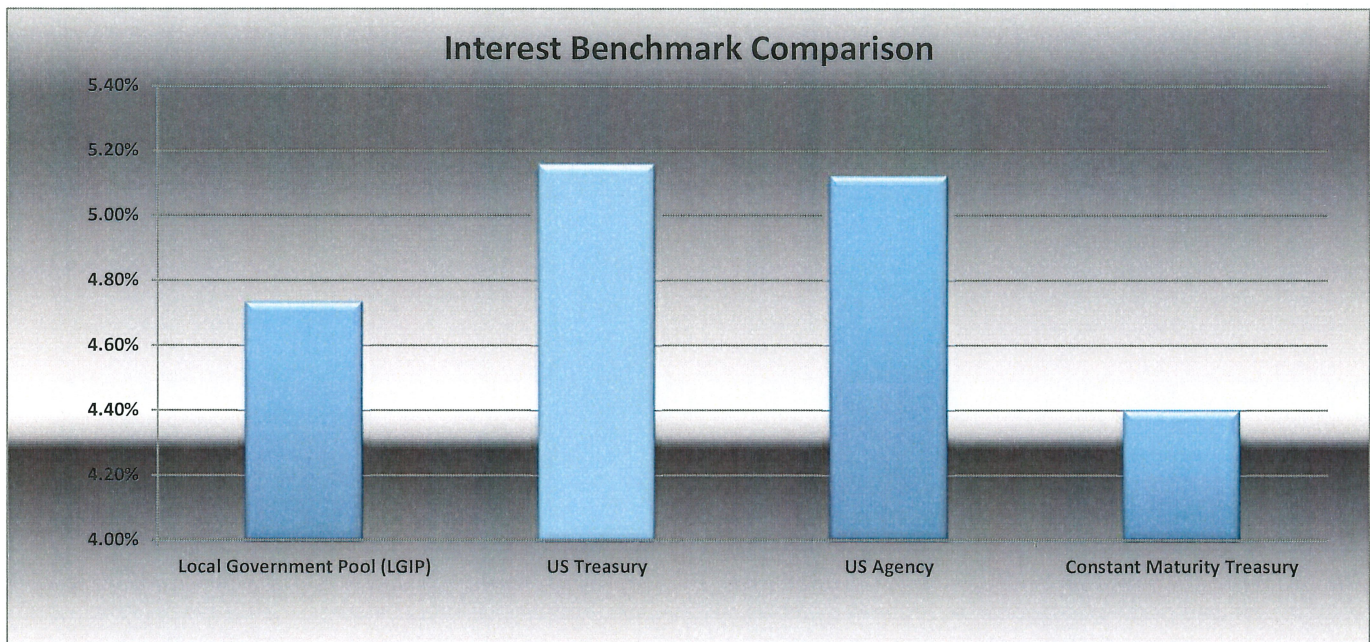
Cash / Investment Type	Balance 3/31/2024	Balance 6/30/2024	Balance 9/30/2024	Balance 12/31/2024	Percent of Portfolio	Portfolio Cap
Local Government Pool (LGIP)	\$ 52,026,393	\$ 40,172,836	\$ 43,466,351	\$ 54,679,348	75.61%	100.00%
US Agency	28,869,248	29,119,952	10,870,655	9,994,496	13.82%	100.00%
US Treasury	-	-	7,583,321	7,646,964	10.57%	100.00%
Total	\$ 80,895,641	\$ 69,292,788	\$ 61,920,328	\$ 72,320,808	100.00%	

Maturity Time Frame	Balance 3/31/2024	Balance 6/30/2024	Balance 9/30/2024	Balance 12/31/2024	Percent of Portfolio	Maximum Allowable
Within 1 month	\$ 52,026,393	\$ 40,172,836	\$ 43,466,351	\$ 64,673,844	89.4%	100%
2 months - 1 year	21,369,248	29,119,952	18,453,977	7,646,964	10.6%	
1 year - 2 years	7,500,000	-	-	-	0.0%	
2 years - 3 years	-	-	-	-	0.0%	
3 years - 4 years	-	-	-	-	0.0%	
	\$ 80,895,641	\$ 69,292,788	\$ 61,920,328	\$ 72,320,808		

Liquidity Indicator

Weighted Average Maturity	99.45	39.84	16.77	9.00
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Date Received/ Purchased	Name	Security Description	Coupon	YTM	Interest Purchased/ Received	Accrued Interest/ Amortization	Income Earned
10/31/2024	Texpool 2023 CO	LGIP		4.91%	\$ 170,883	\$ -	\$ 170,883
10/31/2024	TexPool 2024 Tax Notes	LGIP		4.91%	9,427	-	9,427
10/31/2024	Texpool 2024 CO	LGIP		4.91%	2,664	-	2,664
11/30/2024	Texpool 2023 CO	LGIP		4.73%	147,967	-	147,967
11/30/2024	TexPool 2024 Tax Notes	LGIP		4.73%	8,820	-	8,820
11/30/2024	Texpool 2024 CO	LGIP		4.73%	77,766	-	77,766
12/31/2024	Texpool 2023 CO	LGIP		4.56%	133,627	-	133,627
12/31/2024	TexPool 2024 Tax Notes	LGIP		4.56%	7,138	-	7,138
12/31/2024	Texpool 2024 CO	LGIP		4.56%	77,784	-	77,784
11/26/2024	3130AMHGO-FHLB 2021 CO	US Agency-Callable		0.48%	2,375	(1,583)	792
12/31/2024	313385ACO-FHLB 2023 CO	US Agency		5.12%	-	123,841	123,841
12/31/2024	91282CED9-US Treasury 2023 CO	US Treasury Note		5.16%	-	97,330	97,330
					\$ 638,451	\$ 219,588	\$ 858,039



2025

Council Calendar

January						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

February						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

March						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

April						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

May						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	23	23	24
25	26	27	28	29	30	31

June						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	6	7	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

July						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

August						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

September						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

October						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

November						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

December						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

	Holiday
	Holiday for Firefighters/Police Only
	City Council Regular Meeting
	Special Called Meeting
	Budget Workshop
	Cancelled City Council Meeting

[illegible]